

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.3949 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the unsuccessful workman-driver of APSRTC is directed against the Award, dated 30.01.2002, of the learned Presiding Officer of the Labour Court-III, Hyderabad, passed in ID.no.223 of 1999.

2. I have heard the submissions of *Sri P. Govinda Rajulu*, learned counsel for the writ petitioner, and of *Sri B. Mayur Reddy*, learned Standing Counsel appearing for the respondents. I have perused the material record.

3. The parties in this writ petition shall hereinafter be referred to as the petitioner-workman and respondents-Corporation.

4. The facts which are necessary to be stated as a prelude to this order, in brief, are as follows:

The petitioner was appointed in the Corporation as Khalasi in the year 1967. Thereafter, he was promoted as helper. Eventually he was promoted as driver. On 28.08.1996, while the petitioner was discharging his duties as a driver on the bus, bearing registration no.AP 9Z 8274, proceeding on route Mahaboobnagar-Hyderabad (non stop service), the bus was involved in a fatal accident at 09:30 hours. In the said accident, the bus dashed against an Auto coming from the opposite direction; one passenger received injuries and later succumbed to the injuries while receiving treatment in the hospital; three other passengers also received injuries and they were treated as outpatients in Jadcherla hospital. On receiving the information, the senior traffic inspector went to the spot and obtained a sketch of the spot. On a report, police registered a crime against the petitioner-workman under Section 304-A of IPC.

On the basis of the report submitted by the senior traffic inspector a preliminary enquiry was ordered and a preliminary enquiry report was submitted. Basing on the said report, the petitioner-workman was placed under suspension and he was served with a charge sheet with the following charge: *'For having driven the vehicle No.AP9z 8274 in a rash and negligent manner without applying brakes on 28.8.96 on the route Mahaboobnagar-Hyderabad and hit at oppositely coming Auto No.AP 22 T.4454 subjection one auto passenger to severe injuries and sSubsequently death in the Govt.Hospital, Jedcherla and other three (3) received injuries, treated as out-patient, which constitutes misconduct under Reg.28(ix(b) & xxix) of APSRTC Employees' (Conduct) Reg.1963.'* As the explanation offered by the petitioner was found unsatisfactory an enquiry was ordered by appointing an enquiry officer. After due enquiry, the enquiry officer submitted a report, dated 24.12.1997, finding that the charge formulated against the petitioner was proved. As the objections/comments submitted by the petitioner to the said report are found not satisfactory, a show cause notice, dated 23.02.1998, was issued and later the petitioner was removed from service as the petitioner's explanation to the show cause notice was not satisfactory. On 02.03.1998, the order of removal from service was passed. Aggrieved of the said orders, the petitioner preferred an appeal before the Deputy Traffic Manager. However, the said appeal was rejected, on 06.01.1999. The review petition of the petitioner-workman was also rejected by the Regional Manager, Mahabubnagar, by his orders, dated 06.08.1999. The petitioner raised an industrial dispute and filed a claim petition, *inter alia*, contending that he drove the bus carefully and in a safe manner and there was no rashness or negligence on his part; at the time of the accident, the bus was travelling in an ascending position; the accident had occurred only due to the rash and negligent driving of the driver of the auto, who failed to control the auto carrying 12 passengers; the sketch was prepared by the traffic inspector concerned on imagination; by

the time the sketch was prepared the vehicles were already removed from the scene by the police. The claim petition was resisted by the Corporation by filing a counter. In the Counter, the Corporation reiterated its stand that the accident was caused by the workman due to his rash and negligent driving of the bus; the finding of the enquiry officer that the charges are proved are based on evidence and material on record; in the facts and circumstances, the order of removal passed against the petitioner-workman is valid and the said order does not call for interference by the Labour Court. On merits, the Labour Court having found that the enquiry was duly and validly held, recorded a finding that it is not a case of rash and negligent driving but it is a case of misjudgement and that, therefore, the punishment was disproportionate to the proved misconduct and accordingly set aside the order of removal, dated 02.03.1998, and directed the Corporation to reinstate the petitioner into service with continuity of service but without back wages and by stoppage of three annual increments with cumulative effect. Not having been satisfied with the reduced or modified quantum of punishment imposed by the Labour Court, the petitioner filed this writ petition assailing the Award of the Labour Court passed in ID.No.223 of 1999.

5. Learned counsel for the petitioner while reiterating the stand, which was taken before the Labour Court, which is already stated supra, further contended as follows:

The charges framed are not in accordance with the regulations of the Corporation. The evidence on record including the circumstances in which the accident had occurred clearly suggest that the driver of the auto was rash and negligent and that at the time of accident he was not able to control the auto over loaded with 12 passengers and, therefore, dashed against the bus which was being driven by the workman-driver in a careful and safe manner at a place where the gradient of the road was steep and in the upward direction. The

statements of the passengers given at the time of accident were recorded on the SR and the said statements show that there is no negligence on the part of the driver of the bus and that the driver of the auto rickshaw was responsible for the accident. By the time the senior traffic inspector came to the spot, both the vehicles were removed from the spot and, therefore, the sketch was prepared on imagination and is not suggestive of the true circumstances which lead to the accident. The Labour Court failed to consider the fact that the driver was acquitted in the criminal case. The punishment imposed is a major punishment and on account of such disproportionate punishment the pay of the workman was reduced and he drew far less salary than the eligible salary till his retirement. The petitioner was reinstated in the month of April, 2002, and retired from service on 30.06.2005 on attaining the age of superannuation. He was therefore paid less retirement benefits. On account of the harsh punishment he is facing financial troubles.

6. The case of the Corporation, as stated in the counter, in brief is this:

The Labour Court considered the fact that one cow-boy suddenly came on the road side and that thereupon the driver applied brakes and then took the bus to the extreme left and that in that process the accident had taken place and that therefore it was a case of misjudgement by the driver. For that reason, the Labour Court considered the capital punishment of removal from service is disproportionate to proved misconduct. Consequently, the Labour Court modified the penalty and directed the respondents to reinstate the petitioner into service with continuity of service but without back wages and imposed a punishment of stoppage of three annual increments with cumulative effect.

7. While reiterating the stand which was taken in the counter, learned Standing Counsel for the Corporation would submit as follows: 'The enquiry officer after appreciating the facts and evidence came to a correct conclusion

that the charge framed is proved. Further, the disciplinary authority having regard to the facts and circumstances of the case and the gravity of the charge rightly came to the conclusion that the punishment of removal from service is just and proper and such a punishment is warranted considering the interests of the public and the Corporation. When once the Presiding Officer of the Labour Court also found, for whatever reasons, that the petitioner was responsible for the accident, he ought not to have interfered with the quantum of punishment, which is appropriate. The learned Presiding Officer out of generosity and mercy reduced the punishment. In any view of the matter the Corporation did not challenge the modified punishment considering the fact that the petitioner is retiring shortly and has a few years of left over service. Though the modified punishment is a lesser punishment, the petitioner still filed the writ petition without any valid and sufficient grounds. In-fact the Labour Court ought not to have interfered with the punishment in view of the settled legal position that when once charges are proved, the view of the disciplinary authority on the quantum of punishment is final and needs no interference. Hence, the writ petition may be dismissed.

8. I have bestowed my attention to the facts and submissions.

9. A careful perusal of the material record including the Award of the Labour Court would show that after necessary examination of the facts and evidence, the learned Presiding Officer of the Labour Court arrived at a conclusion that the accident was on account of misjudgement on the part of the driver of the bus and accordingly set aside the punishment of removal from service imposed by the disciplinary authority and directed reinstatement of the petitioner into service with continuity of service but without back wages by stopping three (3) annual increments with cumulative effect. This court, in the facts and circumstances, does not find any grounds much less valid grounds calling for interference with the finding of the learned Presiding Officer of the

Labour Court. When once conclusions arrived at by the enquiry officer and the Presiding Officer of the Labour Court are found to be sustainable on facts, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the said officer.

10. In the decision in *Union of India v. P. Gunasekaran*¹ the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

“In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.”

11. Therefore, having regard to the facts and the legal position, this Court holds that the first contention that the finding of the Labour Court that the accident was on account of the misjudgement of the petitioner-workman and that the driver of the auto was alone responsible for the accident needs no countenance.

¹ (2015) 2 SCC 610

12. Coming to the quantum of punishment, in the case on hand, the learned Presiding Officer of the Labour Court, having found that the accident was on account of misjudgement of the petitioner-workman, had set aside the punishment of removal from service and directed reinstatement of the petitioner into service with continuity of service but without back wages and imposed a penalty of stoppage of three annual increments with cumulative effect. Even before this writ petition is filed, the petitioner retired from service, on 30.06.2005. In view of the facts and circumstances, the contention that no punishment should have been imposed upon the petitioner and that the punishment imposed by the Labour Court deserves to be further reduced is devoid of merit and does not merit consideration. Since the Labour Court has already taken an appropriate view and reduced the punishment to the one which is proportionate to the gravamen of the charge that was held proved, this Court does not find any grounds whatsoever to agree with the contention of the petitioner-workman that the penalty imposed is disproportionate and requires further reduction.

13. In the result, the Writ Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

28.02.2017
Vjl