

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.4375 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the unsuccessful petitioner-workman-driver is directed against the proceedings, dated 13.04.2005, of the 1st respondent-the Regional Manager, APSRTC, Guntur.

1.1 Be it noted that during the pendency of the writ petition, the workman-driver died and his legal representatives are brought on record as petitioners 2 and 3.

2. I have heard the submissions of *Sri Y. Subba Rao*, learned counsel appearing for the writ petitioners, and of *Sri P. Durga Prasad*, learned Standing Counsel representing the respondents. I have perused the material record.

3. The parties shall hereinafter be referred to as the workman-driver and the Corporation for convenience and clarity.

4. The case of the workman-driver and the chronology of events that lead to the filing of this writ petition, in brief, are as follows:

The 1st petitioner (since died) was appointed as a driver in the respondents-Corporation on 10.11.1987. On 09.07.2004, while he was discharging his duties as a driver on the bus bearing registration No.A.P. 10 Z 3714, the bus met with a major accident at about 05:15 hours at bypass road four way junction while proceeding from Ponnur-Guntur. In the said accident, the bus dashed against a private lorry bearing registration No.A.16 V 4187 proceeding from Chilakaluripeta towards Vijayawada on the National Highway No.5. Besides the driver and the

service conductor, seven passengers in the bus sustained injuries; extensive damage was caused to the bus. According to the Corporation, a preliminary enquiry conducted by the Superintendent (T) of Ponnur Depot disclosed that the workman-driver was responsible for the cause of the major accident. A joint accident enquiry committee after considering the preliminary enquiry report and other records opined that the workman-driver by his rash and negligent driving and due to lack of anticipation was responsible for the major accident. Based on the said report of the joint enquiry committee, the workman-driver was placed under suspension from 17.07.2004 and was served with a charge sheet on the same day. The charge formulated reads verbatim as follows: - 'For having caused the major accident with Bus No.AP 10 Z 3714 at about 5.15 hrs., on 09-07-2004 at By-pass road, Guntur by hitting with a Private Lorry No.AP 16 V 4187 which was passing from Chilakaluripet side towards Vijayawada, without following the traffic rules, and in a negligent manner and with lack of anticipation while proceeding from Ponnur to Guntur due to which, 7 passengers in the bus sustained injuries, along with yourself and service Conductor, as well as extensive damages to the bus while you were performing 04-15 hrs., Guntur-Chirala service which constitutes misconduct under Reg.28(ix) (a & b) of APSRTC Employees (Conduct) Regulations, 1963.' As the driver's explanation was found not convincing and satisfactory, a domestic enquiry was ordered by nominating an enquiry officer. The said enquiry officer, after duly conducting an enquiry, submitted a detailed report, dated 08.10.2004, holding that the charge is proved. As the explanation of the driver, dated 06.11.2004, to the show cause notice, dated 30.10.2004, was found unconvincing and unsatisfactory, final orders, dated 11.11.2004, were passed ordering removal of the

workman-driver from service. His appeal was rejected by the appellate authority by proceedings, dated 23.12.2004. However, the reviewing authority while considering the review petition of the workman-driver and also his previous record took a lenient view and ordered his reinstatement into service by setting aside the order of removal and imposed a lesser punishment of withholding of annual increment for a period of two years, which shall have the effect on future increments, besides treating the period of removal, that is, from the date of removal till date of reinstatement as 'not on duty' for the purposes of leave and increments only. Aggrieved thereby the workman-driver preferred this writ petition.

5. Learned counsel for the workman-driver would submit as follows:

The workman gave a detailed explanation to the charge sheet. However, the same was not considered by the management and an enquiry was ordered. Though there was no evidence on record, the enquiry officer held that the charges are proved. Even the explanation given in reply to the show cause notice proposing the punishment of removal from service was not considered in proper perspective. The officers of the Corporation failed to see that on 09.07.2004 when the bus reached Bodampada By-pass road at about 5.10 hours it was noticed that a lorry which suffered a break down was stopped at the speed breaker at NH-5 road and, therefore, the traffic was proceeding towards right side of the lorry. Therefore, the workman-driver also drove the bus to the right side along with other vehicles to cross the lorry on the NH-5. However, meanwhile one private lorry coming from Chilakaluripeta to Vijayawada, which was being driven by its driver at a high speed, dashed the bus on the left front side. At 5.10 hours there was fog and mist. Though the lorry driver observed the movement of the bus, he yet

dashed the bus. Due to fog and mist, the headlights of the lorry were visible only from a little distance. Having observed the lorry from a little distance, the workman-driver swerved the bus to the extreme left margin of NH-5; however, the driver of the private lorry without controlling the vehicle and its speed dashed the bus of the Corporation. The passengers and the service Conductor gave statements that the driver of the Lorry without observing the bus dashed the bus at a high speed. There was no rashness or negligence on the part of the workman-driver in driving the bus. The driver of the lorry was alone responsible for the accident. No evidence was produced to prove the charges. In any view of the matter, the punishment imposed is highly disproportionate to the graveman of the charge proved. Hence, the writ petition may be allowed.

6. Per contra, learned Standing Counsel for the Corporation while supporting the findings of the enquiry officer, the disciplinary authority, the appellate authority and the reviewing authority would contend as follows: - 'The accident had occurred due to the rash and negligent driving on the part of the driver and also lack of anticipation on his part. He drove the vehicle at a high speed and in a rash and negligent manner and dashed a private lorry. In the said accident, besides the workman-driver and the service conductor, 7 passengers sustained injuries. The driver could have averted the accident, had he taken precaution while crossing the stranded lorry on NH5. The vehicle of the Corporation was damaged. The rough sketch of the accident spot discloses that there are skid marks of the private lorry on NH5 which clearly speak that the driver of the lorry applied brakes. Had the lorry driver not applied brakes, there would have been a direct hit to the bus resulting in loss of lives of the passengers travelling in the bus. After going through the

entire material on record and the evidence, the Enquiry Officer submitted his report with appropriate and correct findings that the charge levelled against the driver is proved. Basing on the said report, after following the due procedure, the punishment of removal from service was imposed on the driver. The said punishment is proportional to the gravity of the charge held proved by the Enquiry Officer. The appeal of the workman-driver was rejected. However, the reviewing authority taking into account the past record of the workman-driver and the manner of accident, took a lenient view and set aside the order of removal from service and imposed a lesser penalty of deferment of annual increment for a period of two (02) years with cumulative effect and further directed to treat the period from the date of removal till reinstatement into service as not on duty for leave and increments purposes only; the said penalty is just and proportionate to the misconduct proved. The writ petition which is devoid of merit may be dismissed.'

7. I have given earnest consideration to the facts and submissions. The graveman of the charge discloses that while driving the bus at 05:10 hours/morning hours on the bypass road-NH-5, the driver of the bus dashed against a lorry coming from Chilakaluripeta side towards Vijayawada and that the accident had occurred due to his rash and negligent driving and lack of anticipation on his part. It is undisputed that in the said accident 7 passengers in the bus as well as the workman-driver and the service conductor sustained injuries and that the bus also suffered extensive damage. The enquiry officer after considering the facts and circumstances and also the evidence that was adduced during the course of domestic enquiry held that the workman-driver of the bus while overtaking a stationary lorry on the national highway did not

properly anticipate the speed of the lorry coming from the opposite direction and that, therefore, he was responsible for the accident and that the workman-driver did not follow the traffic rules and drove the bus negligently. Be that as it may. Though the disciplinary authority imposed penalty of removal from service and the appellate authority confirmed the said penalty, the reviewing authority, having considered the manner and method of accident and also the record of the workman-driver took a lenient view. And while setting aside the order of removal from service, the said officer imposed a penalty of withholding of annual increment for a period of two years which shall have the effect on future increments besides treating the period of removal, that is from the date of removal till date of reinstatement as 'not on duty' for the purposes of leave and increments only.

8. Thus, a careful perusal of the material record would show that after examination of the facts, relevant evidence and circumstances, the reviewing authority arrived at the conclusion that the charge is proved and accordingly, confirmed the findings of the Enquiry Officer. This Court, in the facts and circumstances, does not find any grounds much less valid grounds calling for interference with the said concurrent findings of the Enquiry Officer and the officer of the Corporation. When once conclusions arrived at by the enquiry officer and the reviewing authority are found to be sustainable on facts and the evidence and when such findings are based on some legal evidence, this Court will not normally substitute its subjective opinion in the place of the one concurrently arrived at by the said officers.

9. 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.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience."

¹ (2015) 2 SCC 610

Therefore, having regard to the facts and the legal position, this Court holds that the contention that the charge formulated against petitioner/ Driver is not proved is devoid of merit and hence, needs no countenance in the facts and circumstances of the case.

9. On the above analysis of evidence and keeping in view the legal position obtaining, this Court finds that there is sufficient material to accept that the workman-driver was responsible for the accident and hence, it can safely be held that the charge is proved.

10. Coming to the quantum of punishment, it is to be noted that a lenient view was already taken and a penalty of withholding of annual increment for a period of two years which shall have the effect on future increments besides treating the period of removal, that is, from the date of removal till date of reinstatement as 'not on duty' for the purposes of leave and increments only, was imposed. Having regard to the misconduct held proved, this Court does not find that the penalty imposed either shocks the conscience or is shockingly disproportionate to the gravity of the charge proved.

12. Viewed thus, this Court finds that the contentions of the workman-driver do not merit consideration and that the writ petition, which is devoid of merit, is liable for dismissal.

13. In the result, the writ petition is dismissed.

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

M. SEETHARAMA MURTI, J

26th April, 2017

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