

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.25213 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioners-Corporation is directed against the Award, dated 23.02.2006, of the learned Presiding Officer, Labour Court-III, Hyderabad, passed in ID.no.30 of 2005.

2. Heard the submissions of Sri A. Ravi Babu, learned standing counsel for the Corporation representing the writ petitioners, and of Sri M. Amanullah Khan, learned counsel appearing for the 1st respondent-driver. I have perused the material record.

3. From the pleadings and the submissions made before this Court, the facts and events that emerge for consideration, in brief, are as follows:

The 1st respondent was working as a driver in the Corporation since 1990. While he was performing his duties as a driver on the bus bearing registration number A.P. 10 Z 8861, on 15.04.2003, plying on the route Nalgonda-Munugodu-Choutuppal, which is a night service, an accident with a motorcycle had occurred near Government School, after crossing Kanchanapally stage. In the said accident, the rider of the motorcycle and three pillion riders sustained injuries. Two pillion riders and the rider of the motorcycle succumbed to the injuries on the spot and another pillion rider succumbed to the injuries while being shifted to the hospital. The Superintendent (Traffic), Nalgonda depot, visited the accident spot and prepared a rough sketch of the scene of accident and recorded the statements of the crew. Later, he submitted a preliminary enquiry report. On a report, the Station House Officer, Nalgonda Police Station, registered a case in Crime No.33 of 2003 against the 1st respondent-driver for the offence punishable under Section 304-A of the Indian Penal Code.

As the Officer concerned of the Corporation was of the view that the accident occurred due to the rash and negligent driving of the 1st respondent-driver, a charge sheet was issued with the charge, which is verbatim as follows.

‘For having driven the vehicle No.AP10 Z 8861 of Nalgonda Depot in rash and negligent manner without any anticipation and judgment and without taken any precautionary measures and dashed with a motorcyclist near Kanchanpally on 15-4-2003 while you were performing duty of NLG-MNGD-CPL resulting in death of Sri P. Ravinder Reddy, aged 40 years and three pillion riders also died, which constitutes misconduct in terms of Reg.28(ix) (a) of APSRTC Employees (Conduct) Reg.1963.’

As the explanation of the 1st respondent was found unsatisfactory, a domestic enquiry was ordered. After duly conducting the enquiry, the enquiry officer gave a report, dated 27.08.2003, holding that the charge formulated against the 1st respondent is proved. Eventually, by orders dated 15.10.2003, the 1st respondent was removed from service. His appeal was dismissed and his review petition was rejected by the appellate and reviewing authorities by orders, dated 14.05.2004 and 23.11.2004, passed respectively by the said authorities. Aggrieved thereof, the 1st respondent raised an industrial dispute and filed a claim petition before the Labour Court. The same was resisted by the Corporation. On merits and by the Award impugned in this writ petition, the Labour Court recorded, *inter alia*, a finding that the 1st respondent was not rash and negligent in driving the bus and that the accident had not occurred due to his rashness and negligence and that it is established that there is lack of anticipation on the part of the 1st respondent in driving the bus and that he drove the bus without taking precautionary measures at the time of accident and that there was contributory negligence on his part as well as the driver of the motorcycle and that the driver of the motorcycle was mainly responsible for the accident. The 1st respondent produced a copy of the judgment, dated 26.10.2004 in C.C.No.558 of 2004 rendered by the learned Judicial Magistrate of First Class, Special Mobile Court, Nalgonda, whereby the 1st respondent was acquitted of the charge for the offence punishable under Section 304-A IPC.

Considering the fact that the rashness and negligence on the part of the driver are not proved and the further fact that the 1st respondent was acquitted in the criminal case, the learned Presiding Officer of the Labour Court held that the punishment of removal from service is liable to be set aside and that the 1st respondent is entitled to be reinstated into service. Accordingly, after setting aside the order of removal from service, the 1st respondent was permitted to be reinstated as driver with continuity of service but, without back wages and attendant benefits; and it was further held that on such reinstatement, three increments of the 1st respondent-driver shall be stopped with cumulative effect. Aggrieved of the said Award, the Corporation preferred this writ petition.

4. Learned standing counsel for the Corporation would submit as follows:

The 1st respondent-driver while driving the bus during night service caused a ghastly fatal accident. In the said accident, four persons traveling on a motorcycle including the rider of the motorcycle died on account of the injuries sustained in the accident. A responsible officer of the Corporation immediately visited the spot and prepared a sketch of the scene of accident and recorded the statements of the crew. The enquiry officer after conducting a detailed enquiry, in accordance with procedure and principles of natural justice, recorded a finding that the charge formulated against the 1st respondent was proved. The enquiry was fairly and properly held and the findings of the enquiry officer are based on legal evidence. Therefore, the Labour Court ought not to have interfered with the finding of fact recorded in the departmental enquiry and ought to have refrained from re-appreciating the evidence. The said course adopted by the Presiding Officer of the Labour Court is not correct, proper and legal. He ought to have held that the charge formulated is proved and that the 1st respondent-driver of the bus was rash and negligent. The findings to the contra and the further finding that the accident

was due to lack of anticipation and for not taking precautionary measures at the time of accident and that the driver of the motorcycle was mainly responsible for the accident and that the accident was due to contributory negligence of the driver are incorrect and are not based on proper appreciation of evidence. In view of the ghastly nature of the accident and the gravity of the charge that was held proved by the enquiry officer, the Corporation was justified in passing the order of removal of the 1st respondent from service. The Corporation is not bound to keep in service, the employee, with whom the relationship reached the point of complete loss of confidence/faith. The domestic enquiry was promptly conducted in accordance with procedure and the enquiry officer gave his report, on 27.08.2003; whereas the judgment in the calendar case was rendered on 26.10.2004. A perusal of the judgment reflects that the calendar case ended in acquittal as the witnesses examined by the prosecution turned hostile to the case of the prosecution. The standard of proof in a criminal case is proof beyond reasonable doubt; whereas, in a domestic enquiry, the standard of proof is preponderance of probabilities. The enquiry has been held independently of the criminal proceedings. Therefore, the acquittal in the criminal case is of no help to the 1st respondent either to contend that he is not guilty of the charge formulated for the purpose of disciplinary enquiry or to successfully canvass that he is entitled to be reinstated into service after setting aside the order of removal from service. The findings of the criminal Court will have no effect on previously conducted domestic enquiry. The departmental proceedings are more proximate to the incident in point of time when compared to the criminal proceedings. Hence, the Award is liable to be set aside and the findings of the enquiry officer that the charges formulated against the 1st respondent are proved are to be restored and consequently the punishment imposed by the disciplinary authority viz., removal from service is also to be restored after setting aside the Award.

5. Per contra, learned counsel for the 1st respondent while supporting the Award would contend as follows: - 'The accident occurred when the petitioner is performing night service. At the spot of accident, there is 'S' curve. The 1st respondent stated in his explanation that the motorcyclist drove the vehicle rashly and negligently and that at that time one child was sitting on the petrol tank of the motorcycle and that in all three persons other than the rider of the motorcycle were traveling on the motorcycle and that due to the inconvenience and inability to control the vehicle with three other persons on the vehicle at the 'S' curve, the motorcyclist solely contributed to the accident by his rash and negligent driving. The 1st respondent is not at all responsible for the accident. By the time the domestic enquiry concluded and the enquiry officer submitted his report, the judgment in the calendar case was not rendered by the Court of the learned Magistrate. The contents of the charge in the calendar case and the contents of the charge formulated for the purpose of the domestic enquiry are exactly the same. Therefore, the departmental proceedings ought not to have been held till the disposal of the calendar case. In a case of this nature, there is a bar for continuation of the disciplinary proceedings simultaneously with the criminal proceedings as the charge framed in the disciplinary proceeding against the 1st respondent is of a grave nature and as it involved a complex question of fact. Therefore, the departmental proceedings ought not to have been conducted till the conclusion of the trial in the criminal case. Since the facts and the evidence in both the proceedings viz., departmental proceedings and criminal case were the same without there being any iota of a difference and as there was no scope for distinction being drawn between the departmental proceedings and the criminal case, the fact that the departmental proceedings were conducted ahead of the criminal proceedings does not preclude the 1st respondent from relying upon the acquittal recorded in the calendar case. Therefore, the Presiding Officer of the Labour Court was correct in considering the said aspect while deciding the

quantum of punishment. The evidence adduced before the enquiry officer does not support the finding recorded that the 1st respondent was rash and negligent and was responsible for the accident. The enquiry officer held as follows: 'Though the motorcyclist has not followed the road rules and drove the vehicle on the right side at high speed and in a zigzag manner, the delinquent on observing the movement of the motorcyclist from a distance of 35 feet could have anticipated and stopped the vehicle well in advance.' The said finding indicates that the 1st respondent-driver is not responsible for the accident. The finding of the enquiry officer that the 1st respondent-driver and conductor gave contradictory and different versions is not correct. The enquiry officer ought to have seen that there are speed breakers at the spot of accident as there is an 'S' curve at the spot of the accident. None of the witnesses spoke about the speed of the vehicle at the time of accident. There was no scope to drive the bus at a high speed at that spot. The 1st respondent clearly stated in his explanation that he stopped the vehicle on the left side of the road and that the motorcyclist dashed the bus which is in a stationary condition. The rough sketch does not indicate that there were skid marks on the road. The said aspect indicates that the bus was not proceeding at high speed and that sudden brakes were not applied by the driver of the bus. The conductor's statement, even if it is to be relied upon, also indicates that the driver of the bus slowed down the bus and the bus was proceeding slowly at the time of accident. The Officer of the Corporation, who visited the spot, did not prepare the sketch on the same day and the sketch prepared on the next day of the accident ought not to have been relied upon by the enquiry officer. The enquiry officer did not consider the crime records like MV Inspector's report and the rough sketch prepared by the investigating officer. On the other hand, the learned Presiding Officer appreciated the facts correctly and the evidence in correct perspective and recorded a finding that the driver of the bus was not rash and negligent in driving the bus and that the accident had not occurred

due to his rashness and negligence and that it is established that there is lack of anticipation on the part of the 1st respondent in driving the bus and that he drove the bus without taking precautionary measures at the time of accident and that there was contributory negligence on his part as well as the rider of the motorcycle and that the rider of the motorcycle was mainly responsible for the accident and rightly held that the charge as formulated is not proved and, therefore, modified the punishment to a lesser punishment after setting aside the order of removal from service after duly taking into consideration the further fact that the 1st respondent was acquitted in the calendar case.' He, therefore, prayed for dismissal of the writ petition.

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

7. The charge relates to an accident caused by the 1st respondent while driving the bus of the Corporation during night service. According to the Corporation, the accident had occurred due to the rash and negligent driving of the 1st respondent and also lack of anticipation on his part while driving the bus, but, according to the 1st respondent, he was not responsible for the accident and that the driver of the motorcycle, on which one child and two pillion riders were traveling, and who was in a drunken condition, was solely responsible for the accident. Admittedly, there is an 'S' curve on the road at the accident spot. There are also speed breakers. It is also admitted that a child was sitting on the petrol tank of the motorcycle and two pillion riders were also traveling on the motorcycle at the time of accident. Three persons who travelled on the motorcycle succumbed to the injuries on the spot while the other pillion rider, who is a 13 year old boy, succumbed to the injuries sustained in the accident while being shifted to the hospital. The Officer of the Corporation, who visited the spot immediately after coming to know about the accident, is not an eyewitness to the accident. The statement of the Conductor before the enquiry officer reflects that the driver has reduced the

speed and taken the vehicle to the left side. The rough sketch of the scene of accident also reflects that the dead bodies of the persons who traveled on the motorcycle are seen on the right side of the bus indicating that the motorcycle hit the bus on the right side. The enquiry officer also agreed with the submission of the 1st respondent that the motorcyclist who was carrying three persons on the motorcycle might not have controlled the vehicle due to more number of persons traveling on the motorcycle at the night time. However, since the 1st respondent has accepted in his preliminary statement that he noticed the motorcycle when it was at a distance of 35 feet, the enquiry officer came to the conclusion that he could have anticipated and avoided the accident by stopping the vehicle and that he did not do so and that he did not take the bus to the extreme left side though there was sufficient space on the left side and failed to avert the accident and, therefore, recorded a finding that the driver of the bus was rash and negligent and lacked anticipation and failed to take precautions to avert the accident. Be that as it may. It is undisputed before this Court that the Labour Court is the last Court of fact and that it has jurisdiction to re-appreciate the evidence adduced during domestic enquiry and substitute its own findings and reverse the findings of the disciplinary authority if the facts and evidence on record warrant such a course. In the case on hand, the learned Presiding Officer of the Labour Court on careful analysis of the evidence recorded a finding that 1st respondent was not rash and negligent in driving the bus and that the accident had not occurred due to his rashness and negligence and that it is established that there is lack of anticipation on the part of the 1st respondent in driving the bus and that he drove the bus without taking precautionary measures at the time of accident and that there was contributory negligence on his part as well as the rider of the motorcycle and that the rider of the motorcycle was mainly responsible for the accident.

8. On the above analysis, this court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the said findings recorded by the learned Presiding officer of the Labour Court. Further, the law is fairly well settled that this Court shall not go into the adequacy or the reliability of the evidence and shall not interfere with the findings of the Labour Court, if there is some legal evidence, which supports its findings. When once conclusions arrived at by the learned Presiding Officer of the Labour Court are found to be sustainable on facts and the evidence, this Court will not normally substitute its subjective opinion in the place of one arrived at by the Labour Court.

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;

¹ (2015) 2 SCC 610

(i) the finding of fact is based on no evidence.”

10. Having regard to the finding recorded supra and the legal position obtaining, this Court finds that there is no acceptable merit in the contentions of the writ petitioner/ Corporation and that the writ petition is liable for dismissal.

11. Coming to the quantum of punishment, the main thrust of the argument of the Corporation is this: ‘The domestic enquiry was promptly conducted in accordance with procedure and the principles of natural justice. The enquiry officer gave his report, on 27.08.2003; whereas the judgment in the calendar case was rendered on 26.10.2004. The domestic enquiry has been held independently of the criminal proceedings. Therefore, the acquittal in the criminal case is of no help to the 1st respondent either to contend that he is not guilty of the charge formulated for the purpose of disciplinary enquiry or to successfully canvass that he is entitled to be reinstated into service after setting aside the order of removal from service. The findings of the criminal court will have no effect on previously conducted domestic enquiry. The departmental proceedings are more proximate to the incident in point of time when compared to the criminal proceedings. Therefore, the Labour Court ought not to have taken into consideration the acquittal of the 1st respondent/ driver in the criminal case as a circumstance for setting aside the order of removal from service passed by the Management.’ Per contra, the case of the 1st respondent is that by the time the domestic enquiry concluded and the enquiry officer submitted his report, the judgment in the calendar case was not rendered by the Court of the learned Magistrate and that as the contents of the charge in the calendar case and the contents of the charge in the domestic enquiry are exactly the same and that the evidence proposed for establishing the said exactly similar charges is also the same and, therefore, the departmental proceedings ought not to have been held till the disposal of

the calendar case and that in a case of this nature there is a bar for continuation of the disciplinary proceedings simultaneously with the criminal proceedings as the charge framed in the disciplinary proceeding against the 1st respondent is grave nature and involved a complex question of fact. He would reiterate that the departmental proceedings ought not to have been conducted till the conclusion of the trial in the criminal case and that the Presiding Officer of the Labour Court was correct in considering the vital aspect of acquittal of the 1st respondent-driver, while deciding the quantum of punishment.

12. In the case on hand, no doubt, the domestic enquiry was held promptly and the enquiry officer submitted his report, on 27.08.2003; whereas the judgment in the calendar case acquitting the 1st respondent was rendered on 26.10.2004. In that view of the matter, learned standing counsel relied upon the decision in *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya*² in support of the proposition that acquittal in calendar case has no effect of on previously concluded departmental proceedings. There is no need to dilate on this settled legal position. In the case on hand, the quantum of punishment is reduced not solely on the ground that the 1st respondent was acquitted in the calendar case. The learned Presiding Officer of the Labour Court while partly disagreeing with the findings of the enquiry officer recorded a clear finding that the 1st respondent-driver was not rash and negligent and that he was not responsible for the accident by his rash and negligent acts and that the accident was only due to lack of anticipation on his part and for not taking precautionary measures at the time of accident and that the accident was due to contributory negligence that too mainly due to the contributory negligence of the motorcyclist. In that view of the matter, the learned Presiding Officer came to a conclusion that the order of removal from service which is disproportionate to the gravity of the charge proved is liable to be set aside

² (2011) 4 SCC 584

and accordingly set it aside and imposed a lesser punishment as already noted. Since the reduction of penalty after setting aside the order of removal from service is mainly based on the afore-stated findings coupled with the acquittal in the calendar case and not merely on the finding of acquittal recorded in the criminal case, in the considered view of this Court, the modified punishment imposed by the Labour Court brooks no interference. Further, the learned counsel for the 1st respondent brought to the notice of this Court that after reinstatement into service, on 12.05.2006, the 1st respondent retired, on 15.05.2008, from service under a scheme of voluntary retirement. For that reason and the reasons assigned supra, this Court finds that this is not a fit case to restore the punishment of removal from service, at this distance of time.

13. Accordingly, this Court finds that there is no acceptable merit in anyone of the contentions of the Corporation and that the writ petition, which is devoid of merit, is liable for dismissal.

14. The Writ Petition is, accordingly, dismissed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

13th April, 2017
Vjl