

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.14750 of 2006

ORDER:

This writ petition under Article 226 of the Constitution of India is filed by the petitioner/ driver seeking the following relief:

“to declare the order, dated 14.8.2002, in I.D.No.113/2000 passed by the 1st respondent and the proceedings, dated 16.11.2005, issued by the 2nd respondent insofar as denying continuity of service, attendant benefits and back wages as illegal, arbitrary and unjust and consequently set aside the said award and the proceedings in so far as not granting continuity of service, attendant benefits and back wages and as a result grant the relief of continuity of service, attendant benefits and back wages to the petitioner and pass such other order or orders as may deem fit and proper under the circumstances of the case.”

2. I have heard the submissions of *Sri G.Ravi Mohan*, learned counsel for the petitioner and of *Sri B.Mayur Reddy*, learned Standing Counsel for the TSRTC. I have perused the material record.

3. The core facts, in brief, are as follows:

On 10.11.1999, the petitioner, while discharging his duties as driver on the bus bearing No.AP9Z 9253 of Kothagudem-Yellandu route, tried to overtake a lorry, during the second trip, without noticing other vehicular traffic movement on the road and dashed a steering auto bearing No.AP 20 U 2592 coming in the opposite direction. In the said accident, three persons including the auto driver died on the spot. On a report, a case in Crime No.155 of 1999 was registered against the petitioner by the Station House Officer, III Town Police Station, Kothagudem, for the offences punishable under Sections 304-A and 337 of the IPC. The joint accident committee consisting of Depot Manager, Kothagudem Depot and Depot Manager, Bhadrachalam Depot perused the preliminary report submitted by the Chief Inspector and other material on

record and submitted a report. Based on the report, a charge sheet, dated 26.11.1999 with the following charges was served on the petitioner/ driver.

“(1)For having driven the vehicle No.AP9Z 9253 of Kothagudem on 10.11.1999 on the route Yellandu near Anesettypally with rash and negligent manner dashed to steering auto bearing No. AP 20U 2592 resulting auto driver and two auto passengers died on the spot and five auto passengers sustained grievous injuries. In injured one lady auto passenger succumbed to injuries at Hospital, which caused inconvenience to the traveling public besides loss of revenue to the corporation which constitutes mis-conduct as per the APSRTC Employees (conduct) Reg. 28 (ix) (a & b) of 1963.

(2) For having driven the vehicle No.AP9Z 9253 of Kothagudem on 10-11-99 on the route Yellandu near Ansettypally with rash and negligent manner dashed to steering auto AP 20U 2592, both the vehicles damaged, the cost of damages worked out to Rs.995/- and an amount of Rs.3,335/- paid to S.C.Company main hospital, Kothagudem towards treatment charges of injured person has caused inconvenience to the traveling public besides loss of revenue to the corporation which constitutes mis-conduct as per the APSRTC Employees (conduct) Reg.28 (xiii) of 1963.

(3) For having driven the vehicle No.AP9Z 9253 of Kothagudem on 10-11-99 with rash and negligent manner dashed to auto bearing No.AP20 U 2592 resulting in four auto persons including auto driver died and four other auto passengers sustained injuries and brought down the image of the corporation which constitutes mis-conduct as per the APSRTC Employees (conduct) Reg.28 (xxxi) of 1963”.

As his reply to the charge sheet was not satisfactory and convincing, a regular enquiry was ordered. The Enquiry Officer duly conducted an enquiry and submitted a report finding the petitioner guilty of the charges levelled against him. As the explanation submitted by the petitioner to the Enquiry report was found unsatisfactory, the Disciplinary Authority passed orders, dated 13.03.2000, imposing a punishment of removal from service. The appeal of the petitioner was dismissed by proceedings, dated 16.06.2000, and his review petition was dismissed, vide proceedings, dated 24.11.2000, of the Reviewing Authority, Regional Manager, Khammam. The petitioner raised an industrial

dispute and filed a claim petition and the same was resisted by the Corporation. The learned Presiding Officer of the Industrial Tribunal-cum-Labour Court, Warangal, by his Award, dated 14.08.2002, confirmed the findings of the Enquiry Officer that the charges are proved and dismissed the claim petition of the petitioner confirming the penalty of removal from service. However, the petitioner submitted a representation, dated 25.07.2005, together with a copy of the judgment, dated 28.06.2005, in the CC No.148 of 2000 passed by the learned Additional Judicial First Class Magistrate, Kothagudem, whereby, he was acquitted of the charges framed for the offences punishable under Sections 304-A and 337 of the IPC and requested to provide him a chance to work as a driver stating *inter alia* that for the said act of kindness, he will be always be grateful. The Executive Director, (Hyderabad & Karimnagar Zones) having considered the representation of the petitioner submitted along with the judgment in the calendar case took a lenient view considering the length of service put in by the petitioner in the organization and ordered his appointment into service as a fresh driver on the following conditions:

- 1) Sri Tajuddin, E.100647, on appointment as a fresh Driver shall report to Regional Manager/Khammam Region for further postings within seven days from the date of receipt of this order, failing which, the order stands cancelled.
- 2) His appointment as a fresh Driver is subject to Medical fitness in A1 category.
- 3) He shall produce valid Heavy Passenger Vehicle Driving Licence.
- 4) On appointment as fresh driver, Sri Tajuddin, E.100647, will become junior most Driver in Khammam Region."

(Reproduced verbatim)

Having not been satisfied with the said orders, the petitioner/ Driver filed the present writ petition.

4. Learned counsel for the petitioner, while reiterating the contentions, which were all through advanced by the petitioner in various proceedings upto culmination of the proceedings in an award of the Tribunal *inter alia* submitted

as follows: Till the date of his removal from service, the petitioner discharged his duties as driver of the Corporation without any blemish or complaint from any quarter and to the utmost satisfaction of his superiors. On his fresh appointment also, he was discharging his duties without any remark and to the satisfaction of all his superiors. The learned Presiding Officer of the Tribunal-cum-Labour Court did not grant any relief to the petitioner. The allegations made against the petitioner that he was rash and negligent in driving the bus and was responsible for the accident are not correct. The petitioner was acquitted in the criminal case by the learned Additional Judicial Magistrate of First Class, Kothagudem, after an elaborate trial. Therefore, the judgment in the criminal case establishes that the petitioner is not in any way responsible for the alleged accident. After the acquittal of the petitioner in the criminal case, his review petition was considered by the Executive Director; and, by proceedings, dated 16.11.2005, impugned in the writ petition, the petitioner was appointed as a fresh Driver. But the reliefs of continuity of service, attendant benefits and back wages were not granted. The said proceedings denying the said relief to the petitioner are illegal. When once a competent Court of Judicial Magistrate of First Class held that the petitioner was not responsible for the accident, the Executive Director ought to have passed orders of reinstatement with back wages, consequential and attendant benefits. The orders directing appointment of the petitioner as a fresh Driver without granting any further reliefs is highly disproportionate to the alleged misconduct.

5. Per contra, the learned Standing Counsel for the Corporation representing the 2nd respondent Executive Director, Hyderabad and Karimnagar Zones while reiterating the contentions of the Corporation supported the order of the Tribunal and the proceedings issued by the 2nd respondent.

6. I have given earnest consideration to the facts and submissions.

7. After the driver caused a fatal accident by his rash and negligent driving resulting in death of two passengers and the auto Driver, three charges were formulated against the petitioner. The procedure envisaged under the Regulations and law was duly followed and a domestic enquiry was held. The Enquiry Officer, after due enquiry, submitted a report holding that the charges formulated against the petitioner are proved. After serving the enquiry report on the petitioner and issuing a show cause notice to him and after finding that his explanation containing his comments and objections is not satisfactory and convincing, the order of removal from service was passed by the Disciplinary Authority. The appeal and the application for review were rejected by the appellate and review authorities. Thereafter, the petitioner raised an industrial dispute and filed a claim petition. The said claim petition was resisted by the Corporation. On merits, the learned Presiding Officer of the Tribunal-cum-Labour Court dismissed the claim petition of the petitioner confirming the finding that the charges are proved and that the punishment of removal from service is just and fair in the facts and circumstances of the case. Thus, the matter has attained finality. Thereafter, after acquittal of the petitioner in the calendar case, he filed a representation to provide him a chance to work as Driver in the Corporation *inter alia* stating that for such act of kindness, he would be ever grateful. Purely on humanitarian grounds and out of generosity and mercy, the Executive Director directed his appointment as a fresh Driver subject to certain conditions. Therefore, the petitioner cannot re-agitate the issues, which have become final as his appointment is purely on grounds of generosity and mercy and not on his entitlement under facts and in law.

8. On the above analysis this Court is of the considered view that the petitioner is not entitled to the reliefs claimed in the writ petition and that the writ petition being devoid of merit is liable for dismissal.

9. Accordingly, the Writ Petition is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

03rd March, 2017
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