

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.11755 of 2007

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner/A.P.S.R.T.C. (hereinafter 'Corporation') is directed against the Award, dated 15.06.2006, of the learned Chairman, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (hereinafter 'the Tribunal'), passed in I.D.No.18 of 2006.

2. I have heard the submissions of Sri N.Vasudeva Reddy, learned Standing Counsel for A.P.S.R.T.C. representing the sole writ petitioner, and of Sri Vedula Srinivas, learned senior counsel appearing for the 1st respondent-workman. I have perused the material record.

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

The 1st respondent/workman worked as a driver in the Corporation. On 13.01.2001, while he was performing his duties as a driver on the bus bearing registration No.AP 09 Z 4631 plying on route Charminar-Uppal, the accident involving a pedestrian had occurred at 20:30 hours near Uppal Nalla Cheruvu. After hitting the pedestrian, the bus capsized into Uppal Nalla Cheruvu by endangering the lives of six passengers who were travelling in the bus. The pedestrian succumbed to the injuries on the spot. The driver, service conductor and the passengers in the bus have not sustained injuries. On receiving information about the accident, the Chief Inspector of Uppal Depot visited the scene of accident and obtained a rough sketch of the scene and also the statements of the crew. The Traffic Inspector submitted a preliminary report to the Depot

Manager concerned. On a report, the Station House Officer, Uppal Police Station, registered a case in crime No.14 of 2002 for the offence punishable under Section 304-A of Indian Penal Code. Pursuant to the said report, a charge-sheet was served on the first respondent/driver, on 15.02.2002; and, the charge formulated verbatim reads as under:-

“For having driven the bus No.AP 9Z 4631 Service No.130/2 on route no.71 in a rash and negligent manner without any proper precaution and with lack of anticipation at about 22:30 hrs on 13.01.2002 near Uppal Nallacheruvu, which resulted in the bus hit a pedestrian who dies on the spot and subsequently capsized into Nallacheruvu endangering the lives of six passengers who were travelling in the bus which constitutes misconduct in terms of Reg.28 (xxxii) of APSRTC Employees (Conduct) Reg. 1963.”

As the explanation submitted by the 1st respondent/driver was not convincing, a regular enquiry was ordered. After duly conducting the enquiry, the Enquiry Officer gave a report holding that the charge levelled against the 1st respondent/driver was proved. A show-cause notice was issued to the 1st respondent/driver calling for his explanation. As the comments and objections in the explanation of the 1st respondent/driver are not satisfactory and convincing, the order was passed removing the 1st respondent-driver from service. The 1st respondent/driver's appeal and review petitions were rejected by orders, dated 15.01.2003 and 06.02.2003 respectively passed by the appellate and reviewing authorities. The 1st respondent-driver raised an industrial dispute and filed a clam petition before the Tribunal. The same was resisted by the Corporation. On merits and by the Award impugned in this writ petition, the learned Chairman of the Tribunal held *inter alia* that the driver did not hit the pedestrian and was not responsible for the death of the pedestrian, but the 1st respondent/driver committed two mistakes, viz., (1) he did not check the position of the battery and the head lights while starting at

Charminar; and, (2) he did not take precaution before keeping the bus to the left side of the road; and that he drove the bus despite lack of sufficient light at the place of accident and that he took the bus to an unsafe place without taking the assistance of the service conductor or a passenger and, hence, the bus slowly capsized into Nalla Cheruvu. Having held so, the learned Chairman of the Tribunal examined the proportionality of the punishment to the gravity of the charge held proved by the Enquiry Officer and observed that there are sufficient grounds to interfere with the extreme penalty of removal from service and, accordingly, set aside the said punishment and directed reinstatement of the 1st respondent/driver into service with continuity of service and 50% back wages and other service benefits. Aggrieved thereby, the Corporation preferred this writ petition.

4. The learned Standing Counsel for the petitioner-Corporation, while bringing the facts and chronology of events to the notice of this Court, would contend as follows:

The 1st respondent/driver, by his rash and negligent driving of the bus and lack of anticipation, caused the accident and that the bus first dashed a pedestrian, who succumbed to the injuries on the spot, and that later, the bus capsized into Nalla Cheruvu (Tank) endangering lives of six passengers who were travelling in the bus at that time. The bus would not have capsized unless the bus was proceeding at a high speed at the time of accident. The Chief Inspector visited the spot of accident and obtained material documents. The Traffic Inspector submitted a preliminary report to the Depot Manager concerned. Accordingly a charge was formulated. In the departmental enquiry, the Chief Inspector

and conductor of the bus were examined in the presence of the 1st respondent/driver and their statements were taken on record. Thus, after due enquiry and process, for proved misconduct, the punishment of removal from service was awarded, considering the gravity of the charge and the finding of the Enquiry Officer that the said charge was proved. After considering all the aspects, the disciplinary authority inflicted the punishment of removal from service. When according to the explanation of the 1st respondent/driver the battery of the bus was weak and the head lights were dull, he ought not to have started the bus without getting the defects rectified. The learned Chairman of the Tribunal also held that the 1st respondent/driver was responsible for the accident, though he did not agree with the findings of the Enquiry Officer that a pedestrian was involved in the accident. When once the charge is held proved, the learned Chairman of the Tribunal ought not to have interfered with the punishment of removal from service considering the ghastly nature of the accident. The Tribunal had not properly exercised its jurisdiction. The impugned Award is liable to be set aside insofar as the reduction of punishment and the penalty that was imposed by the Corporation is to be restored.

5. Per contra, the learned counsel for the 1st respondent/driver, while supporting the Award passed by the Tribunal, would submit as follows:

Though the 1st respondent/driver gave a detailed explanation as to the cause of accident, the Enquiry Officer did not appreciate the said explanation. The learned Chairman of the Tribunal, having examined the facts correctly and the evidence in proper perspective, came to the correct conclusion that there is no material to show that the accident was on account of the rash and negligent driving by the driver of the bus and

that a pedestrian, who was said to have succumbed to the injuries on the spot, was involved in the accident. The Tribunal considered the explanation of the 1st respondent/driver in correct perspective and rightly held that the 1st respondent/driver ought to have taken more precautions while taking the bus to the left side of the road and ought to have examined as to whether the left side of the road was safe or not before taking the bus to the left side and that he committed only two mistakes, which are mentioned in the award. There is no finding that the acts that are allegedly proved would amount to misconduct. The learned Chairman of the Tribunal, therefore, ought to have exonerated the 1st respondent/driver from the charge levelled against him and ought to have ordered reinstatement into service with full back wages with continuity of service and all attendant benefits. However, the 1st respondent/driver did not challenge the Award of the Tribunal with regard to the penalty. There is no merit in the writ petition. The writ petition is devoid of merit and is liable to be dismissed.'

6. I have carefully perused the material record. I have bestowed my attention to the facts and the submissions.

7. The bus was involved in an accident and that a case in Crime No.14 of 2002 was registered against the 1st respondent/driver for the offence punishable under Section 304-A of IPC and that the criminal case ended in acquittal are all not in dispute. Be it noted that the graveman of the charge reflects that the 1st respondent/driver drove the bus in rash and negligent manner and without taking proper precautions and that for lack of anticipation on his part, he caused the accident and that in the accident, the bus hit a pedestrian and that later, the bus capsized into

Nalla Cheruvu endangering the lives of six persons who were travelling in the bus and that the pedestrian succumbed to the injuries on the spot. Immediately after the accident, the 1st respondent/driver gave a detailed explanation about the manner and method of accident. In the explanation, the 1st respondent stated to the following effect: 'When the bus started as Charminar, the battery of the bus was not working properly and hence, the headlights of the bus were not shedding bright light. On account of poor lights, he was not having perfect vision of the road. Therefore, he drove the bus slowly with the help of the street lights. The bus reached Nalla Cheruvu; there were no street lights at that place. At that time, another vehicle, with its head lights on, came from opposite direction. The driver of the said vehicle did not apply dimmer and dipper. To steer clear of the intense glare of the head lights of the vehicle coming from the opposite direction, he thought it fit to keep the bus to the left side. Accordingly, he took the bus to the left side of the road. There was dumped garbage as well as gravel on the left side of the road. In the circumstances, he could not maintain the road margin and the bus slowly drifted into Nalla Cheruvu. He, the six passengers, who were travelling in the bus, and the conductor safely escaped from the bus by breaking open the front windshield. No injuries were sustained by any of them. However, after the police who were on patrol duty came to the spot, they alleged that the bus hit a pedestrian and the pedestrian died on the spot and showed the dead body by taking him to that place. They later registered a crime against him. The bus did not hit the pedestrian. He saw the dead body of the pedestrian only when the police showed him while taking him to the police station.' Learned Chairman of the Tribunal, having carefully analyzing the evidence, has held that the driver of the

bus was not responsible for the death of the pedestrian and that the pedestrian was not involved in the accident. The learned Chairman, therefore, did not accept the version that after hitting the pedestrian the driver got confused and took the vehicle into Nalla Cheruvu. The learned Chairman, having partly accepted the explanation of the 1st respondent/driver, held that the headlights of the bus were weak and that the battery of the bus was not working properly and therefore, the headlights were not shedding bright light and hence, the 1st respondent/driver had difficulty in having perfect vision of the road at the night time and that he drove the bus slowly at the spot of the accident where there were no street lights and that due to the focus of the lights of the vehicle which came from the opposite side, he could not have clear vision of the road and as such, he tried to keep the bus to the left side of the road and that on the left side of the road there was garbage and also road repair material and as such, the bus drifted slowly into Nalla cheruvu and that if the driver had not stopped the bus, the bus would have gone into Nalla Cheruvu with high speed and the passengers, conductor and the 1st respondent/driver himself would have sustained severe injuries or at least minor injuries, but, none of them had sustained injuries in the accident and that the said facts cumulatively show that the driver kept the bus to the left side of the road but had not properly maintained the margin and as such, the bus capsized into Nalla Cheruvu and, therefore, the driver ought to have taken more precautions as he was very much aware of the weak battery and dull head lights and that he did not instruct the conductor or the passengers to give caution before taking the bus to the left side of the road and that he failed to take care before taking the bus to the left side of the road and did not make sure whether the place was

safe or not and that he committed two mistakes, viz., (i) he did not check the position of the battery and the head lights while starting at Charminar; and, (ii) he did not take precaution before keeping the bus to the left side of the road. The learned Chairman of the Tribunal further recorded a finding that the driver did not hit the pedestrian and was not responsible for the death of the pedestrian and that he drove the bus despite lack of sufficient light at the place of accident and that he took the bus to an unsafe place without taking the assistance of the service conductor or a passenger and, hence, the bus slowly capsized into Nalla Cheruvu.

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 Chairman of the Tribunal. Further, this Court shall not go into the adequacy or the reliability of the evidence and shall not interfere with the findings of the Tribunal, if there is some legal evidence in support of the findings. When once conclusions arrived at by the Chairman of the Tribunal 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 Tribunal.

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:

¹ (2015) 2 SCC 610

- (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."

10. Coming to the quantum of punishment, though the punishment of removal from service was set aside and a lesser punishment, indicated supra, was imposed by the Tribunal, the 1st respondent/driver did not assail the said portion of the Award before this Court by stating that the said reduced penalty is also excessive. Learned counsel for the 1st respondent/driver stated that the already retired from service. Though the learned Standing Counsel for Corporation contended that the Tribunal ought not to have interfered with the quantum of penalty, when once the

Tribunal concurred with the findings of the Enquiry Officer that the charges are proved, the fact of the matter is that the Tribunal did not fully agree with the findings of the Enquiry officer and the officers concerned of the Corporation and while examining the proportionality of the penalty gave its own reasons for setting aside the order of removal and imposing a lesser penalty. In the facts and circumstances of the case this Court does not find any strong reasons to interfere with the said findings of the Tribunal, more particularly at this distance of time and in the light of the fact that this Court is informed that the 1st respondent/ driver retired from service.

11. Having regard to the reasons and the legal position obtaining this Court finds that there is no acceptable merit in the contentions of the writ petitioner/Corporation and hence, the writ petition, which is devoid of merit, is liable for dismissal.

12. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

25th April, 2017
Bvv

M. Seetharama Murthi, J