

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.26811 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the Depot Manager, A.P.S.R.T.C., Dharmavaram Depot, (hereinafter 'Corporation'), is directed against the Award, dated 25.02.2006, of the learned Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur, passed in I.D.No.125 of 2002.

2. I have heard the submissions of Sri A.Rama Rao, learned Standing Counsel for the petitioner-Corporation, and of Sri S.D.Goud, learned counsel for the 1st respondent/APSRTC Drivers' Union, which espoused the cause of the charge-sheeted employee/driver, E.Nagendra. I have perused the material record.

3. From the pleadings and submissions, the following facts emerge for consideration.

'The charge-sheeted employee was working as a driver in the Corporation. On 02.05.1996, he was discharging duties as driver on the bus bearing registration No.AAZ 9098 plying on the route Dharmavaram to Garisenapalli.m On the way, near Bathapalli, the bus met with an accident at 08:45 PM. The Senior Traffic Inspector of the Corporation visited the scene of accident and submitted a preliminary report. Based on the said report, the Corporation placed the driver under suspension from 22.05.1996 and later, issued a charge-sheet with verbatim the following charges:

1) For having driven the vehicle AAZ 9098 with lack of anticipation and at high speed due to which the vehicle met with an accident with the bullock cart at about 20:25 hours on 2-5-1996 near Bathapali on the route Dharmavaram – Garisnapalli, resulting one person travelling on the tyre of the bullock cart was died in the Government Hospital, Anantapur and another rider was seriously injured which constitutes misconduct under Regulations 28(ix)(a) of APSRTC Employees (Conduct) Regulations, 1963.

2) For having failed to take adequate precautionary measures while over taking tyre bullock cart due to which the vehicle AAZ 9098 driven by you met with an accident with bullock cart causing damages to both the vehicle and bullock cart which constitutes misconduct under Regulation 28(xiii) of APSRTC Employees (Conduct) Regulations, 1963.

As the explanation of the driver to the charges was found unsatisfactory, an Enquiry was ordered and an Enquiry Officer was appointed. The said officer conducted an enquiry and submitted a report, dated 06.08.1996, holding that the charges levelled against the driver are proved. A show cause notice, dated 24.08.1996, proposing the penalty of reduction of basic pay to minimum basic pay and also to treat the suspension period as not on duty for the purpose of leave, wages and increments was issued, calling upon the driver to submit his explanation, if any. However, as the disciplinary authority found that the objections and comments submitted by the driver in response to the show-cause notice are unsatisfactory and unconvincing, the final order, dated 05.12.1996, was passed reducing the basic pay of the driver to that of minimum basic pay for a period of two years, *inter alia* observing that the same shall have the effect of postponing the future increments and that the suspension period from 22.05.1996 till the date of reporting to duty at Hindupur Depot would be treated as not on duty for the purpose of leave, wages and increments and that an amount of Rs.281/- be recovered from the salary in three instalments commencing from

December, 1996, towards cost of damages caused to the bus of the Corporation involved in the accident. Thereafter, the appeal and revision preferred by the driver were rejected by orders, dated 15.12.1998 and 31.05.2001, respectively passed by the appellate and reviewing authorities. Therefore, the petitioner Union espoused the cause of the driver/workman and raised an industrial dispute and a claim petition was filed before the Industrial 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 came to the conclusion that the charges levelled against the driver are not proved and that the finding of the Enquiry Officer that the charges levelled are proved is incorrect and that therefore, the punishment imposed by the Corporation against the driver is liable to be set aside. Accordingly, the impugned Award was passed. Aggrieved thereby, the Corporation preferred this writ petition.'

4. At the hearing, the learned Standing Counsel for the petitioner/Corporation, while bringing to the notice of this Court the gravity of the charges formulated and held proved by the Enquiry Officer, 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 bullock cart (tyre wheeled bullock cart) from behind. In the said accident, the bullock cart capsized. One person travelling on the bullock cart died while receiving treatment in the Government Hospital and another person sustained grievous injuries. The driver could have averted the accident, had he taken

precaution while overtaking the bullock cart and acted in anticipation. The vehicle of the Corporation was damaged in the accident. The explanation that another bus with its head lights in on condition came at high speed from the opposite direction and that the driver of the said bus did not apply dimmer and dipper and that therefore, on account of the focus of the lights, the driver took the bus to the left side and stopped behind the bullock cart and that due to the focus of the lights of the opposite bus, the bullocks were frightened and dragged the bullock cart towards backside, that is, towards the bus and that in the process, the bullock cart dashed the bus and capsized and that the driver was not responsible for the accident, is incorrect. The Corporation examined the Senior Traffic Inspector as its witness. The driver did not cross examine the said witness and also did not produce any independent evidence. He only gave a self-serving statement. After going through the entire material on record and the evidence, the Enquiry Officer submitted his report with appropriate and correct findings that the charges levelled against the driver are proved. Basing on the said report, after following the due procedure, the punishment was imposed on the driver. The said punishment is proportional to the gravity of the charges held proved by the Enquiry Officer. His appeal and review petition were rejected by the competent authorities. There are no grounds to discard the findings of the Enquiry Officer. The learned Chairman of the Tribunal, having noted that the procedure followed for conducting the enquiry is valid, had unnecessarily and erroneously held that the charges levelled against the driver are not proved. Before the Tribunal, the driver did not produce any evidence, whereas, the Corporation produced the documents,

Exs.M.1 to M.17. There is no perversity in the findings of the Enquiry Officer and, therefore, the Tribunal ought not to have interfered with the said findings which are sustainable in the light of the facts and the evidence adduced by the Corporation. Therefore, the Award of the Tribunal is liable to be set aside and the order of the disciplinary authority, as confirmed by the appellate and reviewing authorities, is to be restored.'

5. Per contra, the learned counsel for the 1st respondent/Drivers' Union, while supporting the Award of the Tribunal, would contend as follows: 'The Tribunal is like a Court of first appeal. The Tribunal is conferred with the power to examine the facts and reappraise the evidence afresh and to record its independent findings. It is not supposed to simply endorse the findings of the Enquiry Officer. The procedure followed for conducting the enquiry is not disputed by the driver. However, he disputed the manner of appreciation of facts and evidence and the correctness and sustainability of the findings recorded by the Enquiry Officer. The Tribunal examined, in detail, the material on record. The Tribunal, having examined the facts correctly and the evidence in proper perspective, came to an independent conclusion that the charges are not proved and, therefore, held that the claim petition of the driver is liable to be allowed and accordingly answered the reference and passed the Award. The review petition of the driver was rejected on 31.05.2001. The Union espoused the cause of the driver. Reference was made in the year 2002 under Section 10 (1) (c) of the Industrial Disputes Act, 1947. Therefore, there is no delay in approaching the Industrial

Tribunal. When once the Tribunal records a finding that the charges are not proved and the said findings are sustainable and are based on appreciation of legal evidence, this Court, while exercising the jurisdiction under Article 226 of the Constitution of India, ordinarily will not venture into re-appreciation of evidence and will only see that whether or not the findings are based on evidence. In the case on hand, the findings are based on proper appreciation of facts and evidence and hence, the contentions of the Corporation are devoid of merit and the writ petition is liable to be dismissed.'

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

7. The learned Chairman of the Tribunal, having framed the point for determination answered that point after analysing the facts and evidence on each aspect including the aspects as to whether the driver was responsible by his rash and negligent acts for the accident and whether he lacked anticipation and whether or not he failed to take adequate precaution at the time of accident. The Tribunal also considered the charges framed and the explanation offered by the driver to the said charges. The Tribunal indeed examined the evidence that was adduced during the course of enquiry and its sufficiency and probative value before recording a finding that the charges are not proved. In fact, the Senior Ticket Inspector, who went to the spot of accident and who was examined as a witness by the Corporation, as rightly urged by the learned counsel for the 1st respondent Union, is not an eye-witness to the accident. The Tribunal examined the evidence of the said Senior Ticket

Inspector, in detail, and also noted that the sketch of scene of accident under exhibit M.3, which was drawn by him, on a perusal, would show that he had not visited the place of accident and that had he visited the scene of accident, he would have drawn the sketch correctly by showing the correct position of the bus and the bullock cart involved in the accident. The Tribunal noted that the said sketch, on a perusal, would show that the bullock cart, which capsized, is behind the bus, whereas, the version of the service conductor and the driver is that the bullock cart was in front of the bus at the time of accident. The Tribunal also considered the evidence of the service conductor who stated that the bus was proceeding slowly at the time of accident and the other circumstances and found that the explanation of the driver was plausible and accordingly held that the charges levelled against the driver are not proved. The Tribunal, by the way, has taken note of the fact that the driver was acquitted in the calendar case in C.C.No.175 of 1996 on the file of the Court of the learned Judicial Magistrate of First Class, Dharmavaram. After such detailed consideration it was held by the Tribunal that the charges levelled against the driver are not proved. 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 of fact recorded by the learned Chairman of the Tribunal. When once conclusions arrived at by the Chairman of the Tribunal are found to be sustainable on facts and evidence, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the said officer.

8. 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

9. As per the settled legal position, this Court, while exercising jurisdiction under Article 226 and 227 of the Constitution of India, shall not venture into re-appreciation of evidence and is only expected to see whether there is violation of the principles of natural justice in conducting the proceedings. Further, this Court shall not go into the question of adequacy or reliability of the evidence and shall not interfere with the findings recorded based on legal evidence, which supports the said findings. In that view of the matter, the contention of the Corporation that the finding of the Tribunal that the charges levelled against the driver/workman are not proved and are liable to be set aside, need not be countenanced. When once the Tribunal reached a conclusion that the charges levelled against the driver/workman are not proved and that the findings of the Enquiry Officer are not correct, the Tribunal is obligated to set aside the penalty imposed against the driver/workman. Viewed thus, this Court finds that there is no merit in the writ petition and the writ petition is liable to be dismissed.

10. 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.

20th April, 2017
Bvv

M.Seetharama Murti, J