

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 16829 OF 2007

DATED 17TH MARCH, 2017

Between:

The Depot Manager,
A.P.S.R.T.C. Bus Depot,
Mahabubabad,
Warangal District

... Petitioner

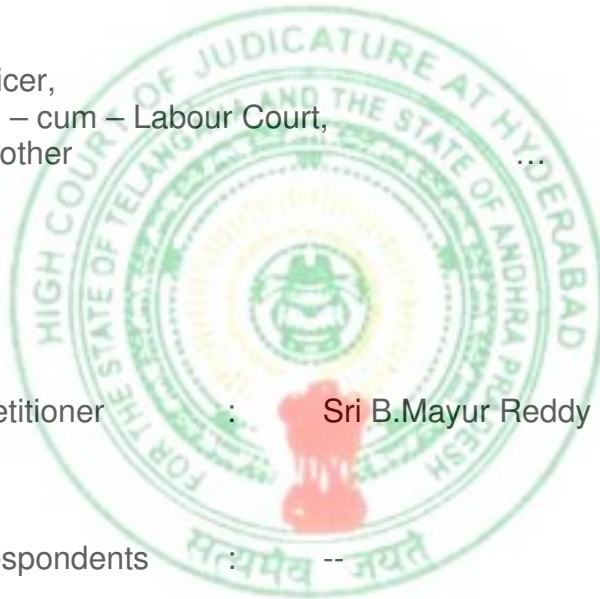
AND

The Presiding Officer,
Industrial Tribunal – cum – Labour Court,
Warangal, and another

... Respondents

Counsel for the petitioner : Sri B.Mayur Reddy

Counsel for the respondents : --



THE COURT MADE THE FOLLOWING

ORDER:

This Writ Petition arises out of award dated 28-09-2006 in I.D.No. 211 of 2003 on the file of the Industrial Tribunal – cum – Labour Court at Warangal (for short, 'the Tribunal').

2. Though respondent No. 2 has been served notice, no one entered appearance on his behalf.

3. Respondent No. 2 was appointed as a badly driver on daily wage basis with effect from 30-03-1998. His services were regularized with effect from 01-01-2000. Respondent No. 2 was assigned the duty on the route Mahabubabad – Khammam on 05-12-2000 in order to ply the bus bearing No. AP 10 Z 410. In the return trip when the bus reached Nallala X roads, respondent No. 2 caused an accident by dashing against a private stationed lorry, resulting in causing of the death of one person and injuries to seven passengers. A preliminary inquiry was held by the Assistant Manager (T), Mahabubabad, and based on his report dated 20-12-2000, departmental proceedings were initiated against respondent No. 2 and he was also placed under suspension. Charge sheet dated 20-12-2000 was issued, wherein the following charges were framed:

"CHARGES:

1. *For having driven the vehicle No. AP 10 Z 410 on the route Khammam – Mahabubabad on 05-12-2000 around 20.00 hours and hit to the rear portion of the stationed lorry No. AP 7 T 1404 which was stopped at Nallela x road as a result the lorry cleaner by name 'Asif' aged 18 years fell down from lorry and died on the spot, which is a misconduct in terms of Reg. 28 (ix) (b) of APSRTC Employees (Conduct) Reg. 1963.*
2. *For having driven the vehicle No. AP 10 Z 410 on the route Khammam – Mahabubabad on 05-12-2000 around 20.00 hours and hit to the rear portion of the stationed lorry No. AP 7 T 1404 which was stopped at Nallela x road in*

this accident the lorry Cleaner was lost his breath and the (7) passengers of the service bus were injured who were shifted to Govt. Hospital, Mahabubabad for First Aid which is a misconduct under Reg. 28 (xv) (xvi) & (xvii) of APSRTC Employees (Conduct) Reg. 1963.

3. *For having driven the vehicle No. AP 10 Z 410 in a rash and negligent manner on the route Khammam – Mahabubabad on 05-12-2000 around 20.00 hours and hit to the rear portion of the stationed lorry No. AP 7 T 1404 which was stopped at Nallela x road resulting for the death of the lorry Cleaner and causing injuries to the (7) passengers of the service bus, which is a misconduct under Reg. 28 (xxiv) (xxxi) & (xxxii) of APSRTC Employees (Conduct) Reg. 1963."*

The inquiry officer conducted the inquiry. Though the Assistant Manager (T), Mahabubabad, who conducted the preliminary inquiry, was examined in support of the charges, respondent No. 2, who did not choose to cross-examine him, only cross-examined the service conductor. After completion of inquiry, the inquiry officer has held respondent No. 2 guilty of all the charges. After considering the explanation from respondent No. 2, the petitioner came to the provisional conclusion that respondent No. 2 is guilty of all the charges and issued a show-cause notice but respondent No. 2 failed to submit his explanation to the said show-cause notice. The petitioner has issued proceedings dated 24-04-2001 removing respondent No. 2 from service. The appeal preferred by respondent No. 2 was dismissed by the Divisional Manager by his order dated 06-10-2001 and the further appeal was dismissed by the Regional Manager by his order dated 18-09-2002. Respondent No. 2 thereafter raised an industrial dispute under Section 2 – A (2) of the Industrial Disputes Act, 1947. Respondent No. 1 passed its award dated 28-09-2006 by setting aside the punishment of removal and directing reinstatement of respondent No. 2 into service with continuity of service, full back wages and other consequential benefits and substituted the penalty of postponement of annual increment for a period of six

months without cumulative effect. This award is under challenge in this Writ Petition.

4. At the hearing, Sri B.Mayur Reddy, learned standing counsel for T.S.R.T.C., has taken me through the record including the award of the Tribunal. Learned standing counsel in particular has drawn my attention to the reasoning of respondent No. 1 contained in para No. 10 of the award which reads as under:

"10. No-doubt when the bus reached the lorry the cleaner of the lorry aged 18 years fell down from the lorry and died on the spot and also 7 passengers of the bus received simple injuries and the driver and conductor also sustained simple injuries in the accident. Merely because a person was died and others were injured, the petitioner cannot be inflicted with a stringent punishment of removal. Petitioner stated that his right side mirror was not visible. He might have cleaned the mirror in the previous stage and started the vehicle. The petitioner also stated that the head lights of the bus were also dim. He might have rectified the same in the earlier trip but he failed to do so and the accident occurred in the return trip. The driver is expected to keep the vehicle in condition especially while he was driving in night services and he cannot claim exemption after the accident that the left side front mirror was dim and headlights were dim and as such he was unable to notice the front vehicle. Of course in this case he contended that lorry was parked without parking lights and there was a left curve, therefore he was unable to notice it till he reached near to it, but he added that immediately on noticing of the lorry he applied brakes, but the bus was skid and dashed to the rear portion of the lorry, therefore it cannot be said that there was lack of anticipation on his part. Considering the facts and circumstance of this case and the contributory negligence of the lorry driver in parking the vehicle in the middle of the road without parking lights at 8-30 p.m. in a neutral gear and also the past service record of the petitioner, the court feels that the punishment of removal is disproportionate to the gravity of misconduct. Therefore the removal order dated 24-04-2001 is set aside and the respondent is directed to reinstate the petitioner as driver with continuity of service, full back wages and other consequential benefits. As the petitioner failed to verify the head lights and also to clean the left side mirror while he was on night duty and as a result caused an accident in which a person was died and 7 passengers plus driver and conductor were received simple injuries. Therefore I feel it is reasonable to

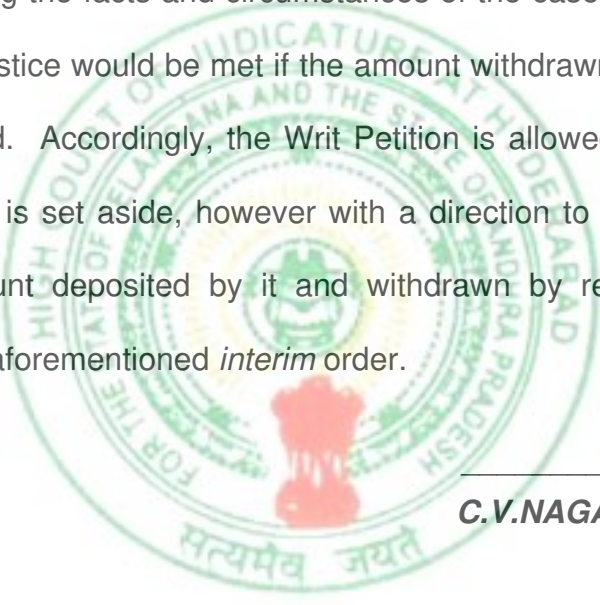
postpone the annual increment of the petitioner for a period of (6) months without cumulative effect as a deterrent punishment."

On a careful reading of the aforementioned reasoning of respondent No. 1, I find myself in agreement with the submission of learned standing counsel that there is neither rationality nor logic in the findings of respondent No. 1 which run self-contradictory. On the one hand the Tribunal having opined that the driver is expected to keep the vehicle in condition especially while he was driving in night services and he cannot claim exemption from such obligation having caused the accident and that due to his failure to clean the left side mirror (evidently a mis-description of left side wind screen), it has become dim affecting the visibility, she has however held that there is contributory negligence on the part of the driver of the lorry for parking the same without parking lights. A perusal of the record shows that no fresh evidence was adduced before the Tribunal. The Tribunal also does not appear to have given any weight to the fact that the Assistant Manager (T), who submitted preliminary inquiry report finding fault with respondent No. 2, was not even cross-examined by the latter, thereby his opinion on the negligence of respondent No. 2 remained unchallenged.

5. From the facts born out by record, it is evident that on account of failure of respondent No. 2 to clean the left side wind screen, the visibility got reduced, as a result of which respondent No. 2 has caused the accident by dashing the bus against the stationed lorry from its back side. Due to the huge impact, an 18 year old boy, who was the cleaner of the lorry, fell off the lorry and died apart from injuries being caused to seven passengers of the bus. By no means, the act of respondent No. 2 can be said to be free from negligence. In my opinion, respondent No. 1 ought not to have substituted her opinion on the disputed questions of fact with that arrived at by the disciplinary authority and confirmed

by as many as two appellate authorities and directed reinstatement of respondent No. 2 by substituting the penalty with that of postponement of annual increment without cumulative effect. In the light of the above discussion, I am of the opinion that the award of the Tribunal is not sustainable and the same is accordingly set aside.

6. Sri B.Mayur Reddy, learned standing counsel for T.S.R.T.C., submitted that in pursuance of *interim* order dated 09-08-2007, the petitioner has deposited 25% of the wages and that the same must have been withdrawn by respondent No. 2. Considering the facts and circumstances of the case, I am of the opinion that interests of justice would be met if the amount withdrawn by respondent No. 2 is not recovered. Accordingly, the Writ Petition is allowed, and the award of respondent No. 1 is set aside, however with a direction to the petitioner not to recover the amount deposited by it and withdrawn by respondent No. 2 in pursuance of the aforementioned *interim* order.



C.V.NAGARJUNA REDDY, J.

Date: 17-03-2017.

JSK