

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

W.P.NO.12654 OF 2008

O R D E R

Assailing the award dated 19.09.2007 passed by the Labour Court Guntur in I.D.No.125/2003, the Andhra Pradesh State Road Transport Corporation (for short 'the Corporation') filed the present writ petition.

The brief facts are that the workman joined in the service of the Corporation as driver on 13.1.1987 and has been discharging his duties as such. While so, on 19.02.2003, the following charge was framed against him:

"For having driven the vehicle AP 10 Z 2391 of Guntur-I Depot in a rash and negligent manner with lack of anticipation on the road, thereby caused a fatal accident at Dechavaram Midde at about 19.30 Hrs. on 21.1.2002 by hitting to a padday bags heap kept on the left side of the road and thereon to a Tata Indica car coming in opposite direction, which resulted in a person travelling in the car succumbed to injuries besides damaging the car completely in addition to minor damages to our bus, which constitutes misconduct under Regulation 28(ix)(a) of APSRTC Employees (Conduct) Regulations, 1963".

The workman filed his explanation denying the allegations. Not being satisfied with the same, the Corporation, appointed an Inquiry Officer, who after conducting inquiry, found the workman guilty of the charge. The workman was issued with a show cause notice of removal to which he submitted his explanation and eventually, was removed from service. As the workman remained unsuccessful in appeal and in review, raised Industrial Dispute. By the impugned award, the Labour Court, set aside the order of removal passed by the Corporation, and directed his reinstatement with continuity of service and other consequential benefits, except back

wages. Challenging the same, the present writ petition came to be filed by the Corporation.

While admitting the writ petition on 19.06.2008, this court taking note of the fact that the 1st respondent – workman was already reinstated, granted interim suspension of the impugned award in other respects.

On a vacate petition filed by the workman, this court by order dated 23.04.2010, while making the interim order dated 19.06.2008 absolute, directed the Corporation to fix the pay of the workman in the time scale applicable to the post of Driver as per his entitlement in pursuance of the impugned award.

The learned counsel for the petitioner - Corporation would submit that due to rash and negligent driving of the bus, by the workman, without lack of anticipation, hit a Tata Indica car coming in the opposite direction, which resulted in death of one of the persons travelling in the car and injuries to another person, apart from causing damage to the car and the bus of the Corporation. He submits that the Superintendent (T) who conducted preliminary inquiry, inspected the spot, drew rough sketch, examined the crew, recorded their statements and submitted a report, holding that the accident occurred due to rash and negligent driving of the workman. After receipt of the said report, the Joint Accident Enquiry Committee, consisting of Depot Manager, Guntur-I and Depot Manager, Narasaraopet, perused the records and concurred with the said report. Accordingly, the workman was placed under suspension on 19.2.2002 and charge sheet was issued. The learned counsel would submit that the Inquiry Officer followed the principles

of natural justice, and found the workman guilty of the charge. He further submits that even before the Labour Court a preliminary issue was framed with regard to validity of domestic enquiry and the same was held to be valid and binding on both the parties. He contended that the Inquiry Officer, based on evidence available on record, had categorically found the workman guilty of the charge and the Labour Court, having found the domestic inquiry valid, ought not have interfered with the said findings, and ordered reinstatement. With these submissions, he sought to aside the impugned award and to confirm the order of removal passed by the Corporation.

On the other hand, the learned counsel for the 1st respondent – workman supporting the impugned award, pleaded to dismiss the writ petition.

From the above, the main argument of the learned Standing Counsel for the Corporation is that the Labour Court having held the domestic enquiry to be valid, ought not have re-appreciated the evidence and interfered with the findings arrived at in the domestic enquiry and ordered reinstatement. The above contention of the learned counsel for the petitioner is no longer *res integra*. A learned single Judge of this court in *DIVISIONAL MANAGER APSRTC v. E.RAJA REDDY*¹, while considering the jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 and also judgment of the Apex Court in *FIRESTONE TYRE & RUBBER COMPANY OF INDIA P. LTD. V. MANAGEMENT*² analysed the legal position to the following effect:

¹ 1999 (5) ALT 450

² AIR 1973 SC 1227

- a) The Labour Court / Tribunal after introduction of Section 11-A of the Act is clothed with necessary power and jurisdiction to reappreciate the material available on record and substitute its own findings than that of the disciplinary authority. The power exercised by the Labour Court / Tribunal is akin to that of an appellate court.
- b) The Labour Court / Tribunal is duty bound to reappreciate the evidence in cases where the workman filed a memo as to the validity of the domestic enquiry.
- c) The Labour / Tribunal even after holding that the domestic enquiry was held in accordance with the principles of natural justice may yet to interfere with the findings and substitute its own findings, may reverse the findings arrived at by the disciplinary authority and hold that the charges are not established.
- d) The Labour Court / Tribunal can also find that the evidence and material available on record justifies the findings of misconduct arrived at by the disciplinary authority and still hold that the order of discharge or dismissal is not justified under the circumstances of a particular case and accordingly award only lesser punishment.

From a reading of the above principles, it is clear that the Labour court even after holding that the domestic inquiry was held in accordance with the principles of natural justice, is clothed with the power to re-appreciate the evidence adduced at the time of domestic inquiry and can come to a different conclusion to ascertain as to whether the charge framed against the workman is proved or not. In view of this legal position, the contention of the learned Standing Counsel for the Corporation, cannot be accepted.

The allegation against the workman is that he drove the bus in a rash and negligent manner with lack of anticipation on the road and caused accident by hitting paddy bags heap kept on the left side of the road and thereon to a Tata Indica car coming in opposite direction, which resulted in causing death of one of the persons travelling in the car and injuries to other person. To hold the workman guilty, the Inquiry Officer relied on the report of the Superintendent (T) who conducted preliminary enquiry. It is to be noticed that the said Superintendent (T), is not an eye witness to the incident. He only verified the place of accident. It has come on record that

he did not even examine any of the eyewitnesses or injured at the place of accident, which was deposed to in the domestic enquiry.

In the domestic inquiry, the conductor of the bus was examined and he sought to treat the statement made by him in the preliminary inquiry as his evidence before the Inquiry Officer. In the preliminary inquiry the conductor stated that while he was conducting the bus at Piduguralla at 7.30 hours, the bus suddenly swerved towards right side, and stopped with big bang. He did not state that the accident was due to rash and negligently driving of the driver of the bus.

The injured in the accident in question, filed claim petition in MVOP.No.622/2002 on the file of II Additional District Judge, claiming compensation. The written statement of the Corporation was marked as Ex.W-2 before the Inquiry Officer. The stand of the Corporation was that the workman was not at all rash and negligent in driving the bus and that he was very cautious enough in driving the bus slowly towards right side and that the accident was only due to non-observance of the road and traffic rules by the deceased car driver.

Further, the criminal case registered against the workman ended in acquittal.

Considering all the above facts and circumstances and the evidence on record, the Labour Court, in my considered view, rightly found that the Inquiry Officer, without any basis came to the conclusion that the workman drove the bus in a rash and negligent manner with lack of anticipation.

Accordingly, the Labour Court rightly set aside the said findings of the Inquiry Officer and consequently the order of removal was set aside directing the reinstatement of the workman.

Since the denial of back wages is not challenged by the workman, it may not be necessary to go into the said aspect.

For the foregoing reasons, I do find any merit in the writ petition and the same is accordingly dismissed, confirming the impugned award. No costs.

Miscellaneous petitions pending if any, shall stand closed.

C.PRAVEEN KUMAR,J

DATE: 13—03—2017

AVS

