

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT APPEAL No.424 OF 2017

JUDGMENT: *(Per Hon'ble Dr. Justice Shameem Akther)*

This Appeal, under clause 15 of Letters Patent, is preferred against the dismissal order dated 21.11.2016 passed by the learned Single Judge in Writ Petition No.19319 of 2006.

2. The parties hereinafter are referred to as arrayed in the Writ Petition.

3. The Writ Petition was filed under Article 226 of the Constitution of India seeking a direction in the nature of writ of certiorari calling for the records relating to the impugned award dated 20.01.2006 passed in I.D. No.87 of 2002 by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short, 'the Labour Court') published on 26.04.2006 in G.O.Rt. No.1020, directing the petitioner-APSRTC to reinstate the 1st respondent-workman into service with all service and attendant benefits and with full back-wages.

4. The case of the petitioner is that on 19.02.2002, the 1st respondent, while driving the bus bearing registration No.AP 11Z 507 belonging to the writ petitioner-Andhra Pradesh State Road Transport Corporation (APSRTC) from Vijayawada to go to Hyderabad at about 7-00 a.m., met with an accident due to his rash and negligent driving and caused extensive damage to the bus and also to other vehicles involved in the accident. After conducting a preliminary enquiry, the 1st respondent was

served with a charge sheet and was asked to submit his explanation. The enquiry officer found the 1st respondent guilty of the charges levelled against him and submitted his report. The explanations/objections submitted by the 1st respondent, as against the findings of the enquiry officer, were not considered by the authorities of the petitioner and a show cause notice, proposing the punishment of removal from service, was served on the 1st respondent. The 1st respondent, without submitting any explanation to that show cause notice, filed W.P. No.14423 of 2002 and the same was dismissed on 09.08.2002 giving opportunity to the 1st respondent to submit his explanation to the show cause notice and thereafter, the 1st respondent submitted his explanation, but however, the petitioner-APSRTC, having not satisfied with the explanation submitted by the 1st respondent, imposed punishment of removal from service. Questioning the same, the 1st respondent approached the Labour Court by filing I.D. No.87 of 2002 and the Labour Court passed an award dated 21.01.2006, directing the petitioner-APSRTC to reinstate the 1st respondent into service with all service and attendant benefits and with full back wages. Challenging the said order, the petitioner-APSRTC filed the present writ petition, which was dismissed by the learned Single Judge on 21.11.2016, holding that the Labour Court had appreciated the facts available on record in a proper perspective and directed reinstatement of the 1st respondent into service with all benefits.

5. Heard Sri N. Vasudeva Reddy, learned standing counsel for the appellant-APSRTC, Sri S. Pradeep Kumar, learned counsel for the 1st respondent, and the learned Government Pleader for Labour, appearing for the 2nd respondent.

6. Learned counsel appearing on behalf of the appellant-writ petitioner would submit that the Labour Court exceeded its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 (for short, 'the I.D.Act'); the Labour Court committed serious irregularity in interfering with the well reasoned order, which is based on a report of the enquiry officer; the Labour Court erred in applying strict principles of evidence to a domestic enquiry, which is contrary to the decisions of the Hon'ble Supreme Court; respondent No.1-driver of RTC bus ought to have taken precautions and would have averted the accident and huge damage to the front side and rear side of the bus; the learned Single Judge had failed to appreciate all the facts and circumstances and ought to have set aside the order passed by the Labour Court without competence and jurisdiction and ultimately erred in confirming the said order; and finally, prayed to set aside the impugned order and the order passed by the Labour Court and restore the removal order passed against respondent No.1-driver of the RTC bus.

7. On the other hand, the learned counsel appearing on behalf of respondent No.1 would submit that there is ample evidence on record to believe that the accident was caused due to rash and negligent driving of the driver of the lorry bearing registration No.AP 16T 4348; under Section 11-A of the I.D.Act, the Labour Court has jurisdiction to re-appreciate the facts and circumstances and set aside the removal order passed against respondent No.1; there are no infirmities in the orders passed by the learned Single Judge and also the Labour Court; and ultimately, prayed to dismiss the appeal.

8. In view of the submissions made by the counsel on record, the following points have come up for determination:

- (1) Whether the Labour Court has jurisdiction under Section 11-A of the I.D.Act to re-appreciate the evidence on record and set aside the removal order passed against respondent No.1?
- (2) Whether there is infirmity in the impugned order?
- (3) To what result?

9. **Point No.1:** The Labour Court, while dealing with the subject matter of this appeal, held that the finding of removal of respondent No.1 from service is not based on evidence and record and set aside the same, vide award dated 20.01.2006. There is no dispute that respondent No.1 was driving the bus bearing registration No.AP 11Z 507 on 19.02.2002, which was plying between Vijayawada and Hyderabad, on the way at 7-00 a.m., an accident occurred which resulted in heavy damages to the bus on front side and rear side, about seven passengers traveling by the bus made an endorsement on the SR, which is marked as Ex.M.6, acknowledging their travel by the said bus and occurrence of the accident near Ibrahimpatnam, and they have categorically stated that the driver of the bus observing a lorry stationed in front of it, applied brakes, one oil tanker bearing registration No.AP 09W 5299 hit the bus from back side, due to that impact, the bus moved in front of the road, then one lorry bearing registration No.AP 16T 4340 coming in opposite direction was hit by the bus and the driver of the bus was not at fault. The Labour Court considered the other oral and documentary evidence on record, re-appreciated the entire evidence, assigned elaborate reasons and ultimately, set aside the order of removal from service, dated 26.08.2002, passed against respondent No.1 and directed

the writ petitioner to reinstate respondent No.1 into service with all benefits including back wages.

10. In the circumstances, it is appropriate to extract Section 11-A of the I.D.Act, which reads as hereunder:

"11-A. Power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of Workmen:- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

11. Under the above circumstances, it is apt to refer the decisions rendered by the Hon'ble Supreme Court in **Workmen v. Fire Stone Tyre and Rubber Co.**¹, wherein it is held that after the insertion of Section 11-A of the I.D.Act, an industrial adjudicator has not only the jurisdiction to set aside the order of the discharge or dismissal of a workmen and direct his reinstatement but it has also the discretion to mould that relief including the award of the lesser punishment in lieu of discharge or dismissal as may be warranted by the circumstances of the case; in **Rajinder Kumar Kindra v. Delhi**

¹ (1973) 1 SCC 813

Administration², it is held that under Section 11-A of the I.D.Act, the Tribunal can set aside the dismissal order passed in a domestic enquiry, which is perverse and granted consequential relief of reinstatement with full back wages in appropriate case and the Tribunal can re-appreciate the evidence on the basis of which employer passed the order of dismissal; in **Senapathy Whiteley Ltd. v. Karadi Gowda**³, it is held that the Labour Court under Section 11-A of the I.D.Act has wide power to convert an order of dismissal passed by the employer in to one of reinstatement and any other lesser punishment; and in **Bharath Heavy Electricals Ltd. v. M. Chandrasekhar Reddy and others**⁴, it is held that there is no such thing as unlimited jurisdiction vested in Labour Court/Tribunal and has no power to exercise discretion vested in it unless the same is based on justifiable grounds supported by acceptable material and reasons thereof.

12. In view of the provisions of Section 11-A of the I.D.Act and the above decisions, it can be safely concluded that the Tribunal-cum-Labour Court has power to re-appreciate the evidence and further it can interfere with the quantum of punishment, provided the punishment is shockingly disproportionate. Further, when the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal, as the circumstances of the case may require, relying on the material available on record and not taking any fresh evidence in relation to

² (1984) 4 SCC 635

³ (1999) 9 SCC 259

⁴ (2005) 2 SCC 481

the matter. All contentions raised by the learned counsel for appellant in this regard do fail and the point No.1 is answered accordingly against the appellant-writ petitioner.

13. **Point No.2:** It is evident from the record that the findings of the Tribunal are based on record and not perverse. The order passed by the Tribunal is within its limitation and as per the powers conferred under Section 11-A of the I.D.Act. The learned Single Judge, while dealing with the impugned order of the Labour Court, had given a categorical finding that the said order was passed relying on a domestic enquiry, the order of Labour Court is neither perverse nor unwarranted. The direction, to the petitioner-APSRTC to reinstate respondent No.1 into service with all benefits, is sustainable. The impugned findings are based on the material available on record and no different opinion can be substituted. In an intra-Court Appeal, under Clause 15 of the Letter Patent, interference is justified only if the order under appeal suffers from a patent illegality and no such illegality is found. There are no merits in the appeal and the same fails.

14. **Point No.3:** In the result, the order under appeal is confirmed and the Writ Appeal is dismissed.

15. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J.)

Date: 12-04-2017
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