

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.25747 OF 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the Andhra Pradesh State Road transport Corporation (hereinafter referred to as, "Corporation") is directed against the order, dated 04.08.2005, passed by the learned Chairman, Industrial Tribunal-II, Hyderabad passed in I.D.No.114 of 2004 (Old I.D.No.19 of 2002 of LC-I/Hyderabad).

2. I have heard the submissions of Sri N.Vasudeva Reddy, learned Standing Counsel for the petitioner-Corporation and Mrs K.Udaya Sri, learned counsel for the first respondent-workman. The second respondent is the Chairman of the Tribunal. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

On 15.02.1988, the first respondent-workman joined as a Driver at Mancherial depot of the Corporation. All through he was having a clean and unblemished record. On 08.04.2001, while he was discharging his duties as Driver on the bus bearing registration No.AP 10Z 6726, on Hyderabad-Udgir route and when the said bus entered the Zaheerabad Bus Station at about 12:15 hours and crossed platforms Nos.1 and 2 for reaching platform No.3, an accident occurred resulting in injuries to a lady passenger. The said lady passenger, who is aged about 50 years, while receiving treatment, succumbed to the injuries sustained in the accident. On a report, a case in Crime No.49 of 2009 was

registered by the Station House Officer, Zaheerabad Police Station, for the offence punishable under Section 304A of the Indian Penal Code. Later, a calendar case in C.C.No.255 of 2001 was taken on file by the learned Judicial Magistrate of First Class, Zaheerabad. At the time of accident, the Depot Manager, Chief Inspector, Controller and mechanical foreman were very much available in the bus station. The petitioner was released on bail by the learned Magistrate. As the preliminary enquiry revealed that the first respondent workman was responsible for the accident, a charge sheet was served on the first respondent workman. As the explanation, dated 04.06.2001, submitted by the respondent-workman was found not satisfactory, an enquiry was ordered into the charges formulated. After due enquiry, the enquiry officer submitted a report finding the respondent-workman guilty of the charges formulated against him. As the first respondent's explanation to the enquiry report was unsatisfactory and not convincing, the disciplinary authority passed orders for his removal from service. His appeal and request for review were rejected by the appellate and review authorities. Thereafter, he raised an Industrial Dispute and filed a claim petition. The same was resisted by the petitioner-Corporation. On merits and by the orders impugned in this writ petition, the Chairman of the Tribunal having found that the charge No.2 is not proved and that charge No.1 is proved and having considered that the first respondent workman was acquitted in the calendar case, recorded a finding that the penalty of removal from service is disproportionate to the gravamen of the charge proved and had accordingly set aside the penalty of removal from service and

directed the petitioner Corporation to reinstate the petitioner into service without back wages but with continuity of service with all notional and attendant benefits. Aggrieved of the said Award of the Tribunal, the present writ petition is filed by the Corporation.

4. The charge, which was held proved reads thus:

“For having failed to avert the fatal accident with a lady passenger at 12:15 hours on 8.4.2001 at Zaheerabad Bus Station while you were operating the bus AP10 Z 6726 on route HYD-Udigr due to your lack of anticipation and rash and negligent driving of the bus which constitutes misconduct under Regh.28(ix)(a) of APSRTC Employees’ (Conduct) Reg.1963.”

4.1 Be it noted, that the second charge, which was held not proved, relates to failure on the part of the driver in reporting the accident to the on duty Controller or Chief Inspector at Zaheerabad bus station till 14:00 hours though the accident had occurred at 12:15 hours on 08.04.2001.

5. Learned counsel for the petitioner Corporation would contend as follows:

The petitioner while discharging his duties as a Driver on the bus of the Corporation drove the bus in a rash and negligent manner and without anticipation and caused the fatal accident in the bus station. The said accident resulted in the death of a lady passenger. The said acts of the driver clearly constituted misconduct under the Regulations of the Corporation. Therefore, the preliminary enquiry was duly conducted and later, a charge sheet with two charges was served upon the first respondent Driver. Though the Tribunal exonerated the respondent Driver from the second charge, the Tribunal rightly found that the 1st

charge, which is the principal and the main charge, which relates to the rash and negligent acts and absence of anticipation on the part of the driver/workman is proved. When once the said charge is held proved, the learned Chairman of the Tribunal ought not to have interfered with the punishment of removal from service and ought not to have modified the punishment only on the ground that the first respondent Driver was acquitted in the calendar case and that it is a mitigating circumstance. When once the learned Chairman of the Tribunal also found, for whatever reasons, that the 1st respondent-workman was responsible for the accident, he ought not to have interfered with the quantum of punishment, which is appropriate, and ought to have confirmed the punishment of removal from service imposed by the disciplinary authority as in the matter of imposing penalty, the view and opinion of the disciplinary authority shall have primacy. When the acts of the 1st respondent-Driver resulted in the death of a lady passenger, and when the charge related to such an incident is held proved, the Corporation was justified in imposing a punishment of removal from service. The said punishment is of neither shockingly disproportionate to the nature of the charge framed and proved nor shocks the conscience of the Court. There is no justification in directing reinstatement of the workman driver into service. The learned Chairman of the Tribunal exceeded his jurisdiction and passed the award modifying the punishment ignoring the rulings of the Supreme Court. The Supreme Court time and again held that when once charge is proved and punishment is awarded keeping in view the proportionality of the charges, the same is not liable for interference. Therefore, the award of the Tribunal modifying the

punishment is liable to be set aside and the punishment imposed by the Disciplinary authority is to be restored.

6. Per contra, learned counsel for the workman/Driver would contend as follows:

The learned Chairman of the Tribunal recorded a categorical finding that the second charge is not proved and further held that the acquittal of the driver in the calendar case is not relevant as the standard of proof in a domestic enquiry is preponderance of probabilities and that the evidence brought before the enquiry officer is sufficient to hold that the first charge is proved. The learned Chairman of the Tribunal also held that the acquittal of the respondent No.1-driver in the calendar case is certainly a mitigating factor and further considered the important circumstance that after the accident, the first respondent-driver had taken the injured to the hospital probably to save her life and appreciated the said conduct. Since one charge is not proved and that the other charge is proved, the Chairman of the Tribunal has rightly taken into consideration the mitigating and extenuating circumstances and also the facts and circumstances of the case and modified the punishment awarded by setting aside the punishment of removal from service and awarded penalty of reinstatement without back wages but with continuity of service with notional and attendant benefits, by denying the back wages, from the date of removal till date of reinstatement. Even that punishment is disproportionate to the charge, which was held proved. However, the workman did not assail the award of the Tribunal. The Tribunal is the first court of appeal and is the last court of fact. The learned Chairman of the Tribunal is having

jurisdiction and power to interfere with the quantum of punishment when the punishment is highly disproportionate to the graveman of the charge levelled and proved. The Driver does not deal with finances and, therefore, does not act in a fiduciary capacity. The case of a Driver is not the same as that of a conductor, who holds a post of Trust and faith, and the case on hand, is not a case of breach of trust. Further, after reinstatement the first respondent Driver is continuously working without any complaint or remark from any quarter and is discharging his duties to the utmost satisfaction of his superiors. The learned Chairman of the Tribunal exercised the discretion judiciously and modified the punishment. Therefore, the order of the Tribunal does not warrant interference and the writ petition which is devoid of merit is liable to be dismissed.

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

8. A careful perusal of the material record including the award of the Tribunal would show that after necessary examination of the facts and the evidence, the learned Chairman of the Tribunal arrived at a conclusion that charge No.2 is not proved but charge No.1 is proved and accordingly confirmed the findings of the enquiry officer related to the said charge. 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 concurrent finding of facts recorded by the enquiry officer and Chairman of the Tribunal. When once the conclusion arrived at by the Chairman of the Tribunal is found to be sustainable on facts, this court will not

normally substantiate its subjective opinion in the place of the one arrived at by the Chairman of the Tribunal.

9.1 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.”**

9.2 Therefore, having regard to the facts and the legal position, this Court accordingly holds that the first contention of the Corporation that charge No.2 is also proved, needs no countenance.

10. Coming to the quantum of punishment, in the case on hand, the learned Chairman of the Tribunal, having found that one of the

¹ (2015) 2 SCC 610

two charges related to the rash and negligent driving of the bus and lack of anticipation, which resulted in the fatal injuries to a lady passenger, is proved, further found that the punishment of removal from service is grossly disproportionate to the graveman of the charge proved and hence, modified the penalty after setting aside the penalty of removal from service. It is undisputed that the petitioner after his reinstatement is continuing in service and is discharging his duties without any remark or complaint from any quarter and to the satisfaction of his superiors. Further, considering the graveman of the charge proved and the acts of misconduct, constituting the charge proved, this court is of the considered view that the penalty imposed by the Chairman of the Tribunal does not call for interference as the learned Chairman of the Tribunal while modifying the punishment having adverted to the facts and circumstances of the case, exercised the discretion judiciously.

11. In the result, the writ petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI