

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.21835, 21856 & 23710 OF 2004

COMMON ORDER:

Heard Mr.Sai Gangadhar Chamarthy for petitioners and Mr.Aravala Rama Rao for 3<sup>rd</sup> respondent.

These three writ petitions are directed against the common award dated 31.07.2004 in I.D.Nos.129, 130 and 133 of 2002 on the file of the Chairman, Industrial Tribunal-cum-Presiding Officer, Labour Court, Anantapur. The Depot Manager, Kadiri Bus Depot, APSRTC/3<sup>rd</sup> respondent through proceedings dated 29.08.2000 removed the petitioners from service for the proven misconduct of assaulting and doing away with the life of a passenger.

The circumstances preceding removal order are briefly stated:

On 11.08.1999, the petitioners herein were on duty. One K.Badulla (hereinafter referred as 'deceased') along with his brother K.Babu came to bus stand at about 07.00 P.M. The deceased and his brother were waiting to catch a night out bus to go to Pulakuntapalli. One SBabu, Conductor and K.Prabhakar, Driver were on duty on Pulakuntapalli night out bus bearing No.AP 9Z 8062. The bus was not departing on time. The deceased around 08.00 P.M., questioned the Conductor for the delay in departure of AP 9Z 8062. The enquiry for delay, it appears, resulted in an altercation between the deceased and SBabu, the Conductor of bus No.AP 9Z 8062. The petitioners herein came in support of SBabu. The quarrel further aggravated and it is the charge of

3<sup>rd</sup> respondent against the petitioners herein that the Conductor and Driver of the night out bus and the petitioners herein beat the deceased. A few passengers after seeing the brawl have alighted the bus. Thereafter, the bus was driven towards garage asking the remaining passengers and K.Babu, the brother of deceased, to alight from the bus. The deceased was dragged from the bus to the ground. S.Babu, Conductor and K.Raghunatha Reddy, Driver, joined by other staff, beat the deceased indiscriminately. The deceased died on the spot. The police, on the F.I.R lodged by K.Babu, brother of deceased, registered Cr.No.118 of 1999 under Sections 147, 148, 302 read with Section 149 IPC against petitioners and the Conductor and Driver of AP 9Z 8062. The unruly behaviour of petitioners herein and also the Conductor and Driver of the bus, resulting in death of a passenger, amounts to misconduct. Hence, the 3<sup>rd</sup> respondent issued the charge sheet dated 08.11.1999.

For appreciating the statement of allegations and the charges, I consider it appropriate to reproduce both the statement of allegations and the charges hereunder:

**“STATEMENT OF ALLEGATIONS:**

“It is alleged and reported by the Security Head Guard, Kadiri vide reference (1) cited that you have involved in a quarrel with a passenger by name Sri K.Badulla an intending passenger who was sitting in Bus No.AP9Z 8062 which was scheduled to leave at 19-30 hrs., towards Poolakuntapalli and beaten him thereby resulting in suspicious death of the said passenger at 20-00 hrs., on 11.8.99 on the way from bus station to garage of Kaidiri Depot. Further, as per the report of the Sr.Traffic Inspector, Kadiri and FIR of the Police along with remand report, it was revealed that you have beaten the passenger indiscriminately resulting in death of the passenger and

also you have been arrested by the Police and a case was also registered against you vide Crime No.118/99 under Sec.147, 140, 302 r/w IPC and sent for remand and released on bail on 18.9.99. In the preliminary enquiry also it is established that you have involved in the murder case that occurred on 11.8.99 and also failed to report of your arrest to your immediate supervisors. Thus, your act of involvement in a criminal case of murder of a passenger and arrest of you by the police has created an ugly scene and tarnished the image of the corporation before the Public”.

**CHARGES:**

- 1) For having involved in a criminal case of murder of a passenger by name Sri K.Badulla and intending passenger of Bus No.AP 9Z 8062 which is scheduled to leave to Pulakuntapalli from Kadiri Bus station at 20-00 hrs on 11.8.99 on the way from bus station to garage of Kadiri Depot which led to your arrest and remand by the police of Kadiri Urban Circle, which constitutes serious misconduct under Reg.No.28(xi) and 28(xv) of APSRTC Employees Conduct Reg.1963.
- 2) For having failed to report of your arrest by the Police of Kadiri Urban Circle on 12.8.99 to your immediate Supervisors in connection with your involvement in a criminal case registered vide Crime No.118/99 under Section 147, 148, 302 r/w 149 IPC which constitutes misconduct under Reg.No.26 of APSRTC Employees Conduct Reg.1963”.

The petitioners submitted explanation to the charges leveled against them. The 3<sup>rd</sup> respondent conducted departmental enquiry and the enquiry report dated 19.02.2000 was submitted. After issuing second show cause notice and receiving the representations from petitioners herein, the order dated 29.08.2000

removing the petitioners from service was passed. The petitioners raised industrial disputes referred to above.

It is an admitted circumstance that during the pendency of the departmental enquiry, the criminal case filed against petitioners ended in acquittal. It is also admitted by learned counsel for petitioners that the petitioners were given benefit of doubt and were acquitted in the criminal case, but not an honourable acquittal. The above admitted statement is prefaced to briefly consider the submissions canvassed by the learned counsel for petitioners.

The 2<sup>nd</sup> respondent framed the following points for consideration:

1. Whether the findings of the Enquiry Officer are based on record?
2. Whether the punishment imposed is justified in the circumstances of the case?

and within its jurisdiction under Section 11A of the Industrial Disputes Act has re-examined each one of the circumstances and has recorded the following points:

“It is the version of S.Fakroddin controller that S.Babu conductor noted out going time as 7-15 P.M and that at 7-30 P.M he noticed the bus proceeding towards garage and it was stopped at a distance of 200 ft., and that then S.Babu Conductor informed him that the deceased fell down from the bus and died”.

It is also not in dispute that the criminal case ended in acquittal. Syed Babu petitioner in I.D.No.131/2002 J.Prabhakar petitioner in I.A.No.129/2002, K.Raghunatha Reddy petitioner in I.D.No.130/2002 and R.Gangaiah petitioner in I.D.No.133/2002 and A.Venkata Ramana

petitioner in I.A.No.91/2002 are the accused in the said case along with one G.Nageswara Reddy”.

“Before discussing charge No.1 I would like to discuss on charge No.2

Charge No.2 is that the petitioners failed to report about their arrest by the police to their immediate superiors in connection with his involvement in Cr.No.118/99 which constitutes misconduct under Regulation 22 of APSRTC Employees (Conduct) Regulations, 1963”.

“.....In the above circumstances, I hold that the findings of the Enquiry Officer on this charge are based on record and there is no need to interfere with the same”.

The learned Judge has taken note of the ratio laid down by the Hon'ble Supreme Court reported in HIGH COURT OF JUDICATURE OF BOMBAY v. SINGH AND OTHERS<sup>1</sup> and to the extent the law permits has examined whether in the departmental enquiry conducted against the petitioners, the preponderance of proof on the alleged misconduct is made out or not. The counsel appearing for the parties do not take objection to the re-consideration of the entire material on the issue and particularly having regard to the view of this Court in DIVISIONAL MANAGER, APSRTC AND ANOTHER v. ERAJA REDDY AND ANOTHER<sup>2</sup> it is admitted that the 2<sup>nd</sup> respondent is well within his jurisdiction to re-appreciate each one of the circumstances leading to misconduct, the preponderance of evidence and quantum of punishment. The gist of the conclusions recorded by the 2<sup>nd</sup> respondent reads thus:

“It is the case of S.Babu conductor of the bus AP 9Z 8062 that on the date of offence, he was conductor of the bus and that the bus was scheduled to departure on 7.30 p.m. and that there were 7 passengers in the bus, out

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<sup>1</sup> 1997(4) LLR 77 SC

<sup>2</sup> 1999 (5) ALT 450

of whom one was in drunken state and that the said person questioned about the delay and that he was informed that the driver had gone for meals pocket and that the said person was abusing and in the meanwhile the bus was taken towards garage and that he ran behind the bus and that the said person jumped out of the bus through window of the bus. It is not in dispute that the said person i.e, deceased died subsequently. **Therefore, it is not in dispute that the deceased was in the bus at the time when the bus was being taken to garage from the bus stand. It is also not in dispute that S.Babu was the conductor of the bus and J.Prabhakar was driver of the bus No.AP9Z 8062”.**

*(Emphasis added)*

“.....Now it has to be seen whether the version of the petitioners is true. Admittedly, the Conductor of the bus has not reported the matter to the Controller when the deceased alleged to have used abusive language. However, the evidence of Controller shows that the bus was being taken to garage and was stopped after covering a distance of 200 ft., and that then S.Babu conductor came to him at about 7-30 P.M and informed that the deceased fell down from the bus and died”.

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The doctor who conducted post-mortem opined that the deceased would appear to have died by shock due to intraenaneal haemorrhage and injury to brain system and injury to vital organs like Rt.Lung and liver.

From the nature of injuries it is clear that the deceased sustained injuries to lung, liver, brain system above the right eye brow, right thumb, upper part of front chest, right upper arm, right knee, over medial aspect 1/3 of right leg underlying bone fractured, irregular fracture of occipital bone, left temporal bone, fracture of right clavicle near lateral 2/3 and medial 1/3 fracture, 1<sup>st</sup> and 2<sup>nd</sup> ribs on the right side and 8<sup>th</sup> rib on right side. Fracture of right side ribs, injuries on over all body both sides of the body, head, chest, legs, fracture of clavicle”.

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However, as seen from the record, particularly from the evidence of Suryanarayana STI and the statement of K.Babu recorded in the preliminary enquiry, there cannot be any doubt about the involvement of S.Babu, J.Prabhakar, K.Raghunath Reddy, R.Gangaiah in the murder case of the deceased. However, since the name of A.V.Ramana do not find place in the statement of K.Babu brother of the deceased recorded in the preliminary enquiry and also in the statement of Suryanarayana, STI, it appears that he is entitled for benefit of doubt on charge No.1, however it is clear that the charge No.2 is proved against him. In all probabilities the findings of Enquiry Officer appears to be based on record and it cannot be said that they are perverse”

Mr.Sai Gangadhar Chamarthy has confined his submission to the findings recorded by the 2<sup>nd</sup> respondent on point No.2 i.e., whether the punishment imposed is justified in the circumstances of the case or not. The learned counsel contends that with the acquittal of petitioners by the competent criminal court, even assuming that the petitioners were in judicial custody for more than 48 years and the same was not informed to the management, still the punishment of removal from service ought to shock the conscience and according to him, the same is disproportionate. Therefore, he prays for modifying the punishment.

Mr.Rama Rao vehemently contends that the departmental enquiry is different from the criminal case and in the case on hand, having regard to the gravity of charge, the conduct of employees of 3<sup>rd</sup> respondent Corporation, if what happened in the bus stand and in the bus is not treated as a grave misconduct and more particularly when sufficient material from stage of deceased

entering the bus till the state of deceased falling dead on the ground is brought on record by 3<sup>rd</sup> respondent, the removal is justified and no exception to the findings recorded by the 2<sup>nd</sup> respondent can be taken.

I have perused the material and the categorical findings recorded by the 2<sup>nd</sup> respondent. It is no doubt true that the law on the scope of judicial review on the quantum of punishment is well settled. It is not that in every case on account of one circumstance or the other which weighs with the employee, the quantum of punishment is re-examined and decided by this Court. The punishment imposed by 3<sup>rd</sup> respondent has more than one facet viz., punishing for an act of commission or omission of an employee, ensuring discipline in the employees working under an employer and also instill confidence in the mind of people when serious and palpable offences are noticed against the employees. Instead of reiteration of each one of the circumstances from the time the deceased getting into the bus till he was found dead on the ground in the bus stand, is a matter of grave concern. After perusing the findings and independent consideration by 2<sup>nd</sup> respondent under Section 11-A of the Act, I am not persuaded by the argument that the punishment is disproportionate. The evidence on record demonstrates the culpability of petitioners and if the contention of petitioners is accepted, then the evidence brought on record or proving misconduct loses its importance. Once the grave charge of doing away with the life of a passenger is held as proved, the consequence follows is major punishment and

nothing short is commensurate to the established guilt. The criminal court has acquitted the petitioners by giving benefit of doubt. The petitioners failed to make out ground for interference.

The writ petitions fail and are, accordingly, dismissed. Except the above, no other point is argued. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

23<sup>rd</sup> March, 2017  
*Lrkm*



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*S.V.BHATT,*