

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.6486 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner-Depot Manager of RTC (hereinafter 'Corporation') is directed against the Award, dated 26.09.2006, of the learned Chairman and Presiding Officer of the Industrial Tribunal-cum-Labour Court at Warangal, passed in ID.no.7 of 2004.

2. I have heard the submissions of *Sri B. Mayur Reddy*, learned Standing Counsel appearing for the writ petitioner-Corporation, and of Ms. N. Malathi Naidu, learned counsel appearing for the 1st respondent-workman. I have perused the material record.

3. The core facts and the chronology of events, in brief, are as follows:

On 01.10.1998, the 1st respondent-driver was discharging double duty as a driver on the bus bearing No.AP 10 Z 4335 on route Parkal-Hanamkonda. During the return trip from Hanamkonda-Parkal, at about 00:30 hrs., on the intervening night of 1/2.10.1998, after the bus crossed Kamareddipalli stage and reached near Parkal, a private lorry being driven by its driver at a high speed and in a rash and negligent manner came from the opposite side with full focus of head lights without employing dipper. Therefore, the 1st respondent swerved the bus to the extreme left side of the road and applied brakes in order to avoid a major accident. According to the 1st respondent, on such application of brakes, the bus got pulled to the left side and the left front side tyre bursted and the bus dashed a tree on the road side. On a report, the Station House Officer, Parkal, registered a crime against the 1st respondent for the offences punishable under Sections 337 and 338 of the Indian Penal Code. After full fledged trial, he was acquitted in the criminal case, on 27.06.2000.

In view of the fact that the bus driven by the 1st respondent was involved in the accident and that in the said accident three passengers sustained injuries and heavy damage was caused to the bus and as a crime was also registered against the 1st respondent, the traffic Inspector, Grade III, who attended to the accident spot submitted a report, on 06.06.1998, with the sketch and statements of the service conductor and others. Thereafter, a charge sheet was served on the 1st respondent with verbatim the following charge:

‘For having driven the bus No.AP 10 Z 4335 in a rash and negligent manner on the route Parkal-Hanamkonda on 1.10.1998 resulting in an accident to the vehicle with a tree at Kamareddypalli, at about 23-40 hours causing grievous injuries to two legs of one passenger and injuries to two other passengers besides heavy damage to the vehicle estimated as Rs.40,000/- which amounts to gross misconduct under Reg.28(ix) (a & b) of APSRTC Employees (Conduct) Reg.1963.’

The driver of the bus gave a detailed explanation immediately after the accident and also in response to the charge sheet served upon him. As the officer of the Corporation was not satisfied with the said explanations, an enquiry was initiated by appointing an enquiry officer. After due enquiry, the enquiry officer held that the charge was proved. By proceedings, dated 08.02.1999, a penalty of deferment of annual increment for a period of two years with cumulative effect was imposed. Aggrieved thereby the 1st respondent-workman raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. On merits and by the Award, impugned in this writ petition, the learned Chairman of the Tribunal noted that there is no material to say that there is lack of anticipation on the part of the driver and partly accepted the explanation of the 1st respondent-driver and eventually held in the operative portion of the award as follows: - ‘In the result reference is ordered holding that the punishment imposed by the respondent-Corporation under Ex.W-2 is appropriate and also the recovery of Rs.1,000/- towards the damages as per rules is also justified. But the punishment of deferment of annual grade increment for a period of two

years with cumulative effect is not justified and is set aside. The reference is answered accordingly.' Aggrieved thereby the Corporation preferred this writ petition.

4. Learned standing counsel while bringing the facts and chronology of events to the notice of this Court would contend as follows:

The 1st respondent-driver by his rash and negligent driving of the bus and lack of anticipation caused the accident. In the accident, three passengers sustained grievous injuries and heavy damage was caused to the vehicle and the cost of damage was estimated at Rs.40,000/- . The Joint Accident enquiry committee consisting of two depot managers examined the report of the station manager, Parkal bus station, statements of crew and passengers besides the sketch of the accident spot and submitted a report for proceeding departmentally against the 1st respondent. Accordingly, a charge was formulated; and, in the domestic enquiry one of the depot managers was examined as WL1. After a detailed enquiry, the enquiry officer held that the charge was proved. Thus, after due process, for proved misconduct, a punishment of deferment of annual increment for a period of two years which will have effect on his future increments was imposed by proceedings, dated 08.02.1999. Four years thereafter, the 1st respondent approached conciliation authority without availing the internal remedies. After the conciliation officer's report, the Government in turn referred the matter to the Tribunal. Minor penalty imposed by the disciplinary authority ought not to have been set aside by the Tribunal. After considering all the aspects, the disciplinary authority inflicted the punishment of postponement of annual increment with cumulative effect by taking a lenient view. That punishment was imposed after considering the joint action enquiry committee report. When once the 1st respondent noticed from a distance that the lorry was coming at high speed from the opposite direction, that too, without applying dimmer and dipper to the headlights, he ought to have taken the bus to a side and applied brakes and

averted accident as observed by the joint action enquiry committee in its report. The learned Chairman of the Tribunal ought to have seen that the accident occurred due to lack of anticipation on the part of the bus driver and that in the accident three passengers sustained grievous injuries and the bus suffered heavy damage. The Tribunal has not properly exercised its discretion. The award is liable to be set aside and the penalty imposed by the Management is to be restored.

5. Per contra, learned counsel for the 1st respondent while supporting the award of the Tribunal would submit as follows: "The 1st respondent gave a detailed explanation for the cause of accident. However, the enquiry officer did not properly appreciate the said explanation. But, the learned chairman of the Tribunal, having examined the facts carefully and correctly and the evidence in proper perspective, came to the correct conclusion that there is no material to say that the accident was on account of lack of anticipation on the part of the driver. The Tribunal considered the fact that the petitioner was compelled to perform double duty and also the previous blemishless service of the 1st respondent. The Tribunal rightly held that the perusal of the spot statements of the conductor and the injured passengers would clearly show that the accident occurred only due to the rash and negligent driving of the driver of the lorry. The Tribunal also noted that the 1st respondent tried his level best to avert the accident by taking the bus to the left side, but, suddenly the tyre bursted; and, therefore, the bus dashed the tree which was only at a distance of one foot from the road side. The Tribunal also noted that as per rules annual increment was deferred for six months as the petitioner failed to verify the tyre before starting the service. In view of the facts and circumstances and the findings recorded, no punishment ought to have been imposed by the Tribunal. However, the 1st respondent did not challenge the Award of the Tribunal. There is no merit in the writ petition and the writ petition is devoid of merit and is liable to be dismissed.

6. I have carefully perused the material record. I have bestowed my attention to the facts and the submissions.

7. The bus was involved in an accident is not in dispute. The criminal case against the 1st respondent-driver ended in acquittal is also undisputed. The standards of proof in criminal trials and the domestic enquiries are different is also undisputed. Immediately after the accident, the driver gave a detailed explanation about the manner and method of accident. In the explanation, the 1st respondent stated as follows: - 'On 01.10.1998 he was booked to drive the vehicle on the route Godavarikhani of 05:40 service and returned to Parkal at 15.30 hours; as it was a festival day all the hotels remained closed; therefore, he could not take a meal or tiffin; he was very tired after the last trip; it was a special off duty for him; at that time, he was requested by the Officer of the Corporation to perform double duty to Hanamkonda; though he explained his inability, he was compelled to attend to the duty in his second trip; during return trip from Hanamkonda-Parkal at about 00:30 hrs., he noticed a lorry, being driven by its driver at a high speed and in a rash and negligent manner, coming from the opposite side with its headlights in on condition and without applying dimmer and dipper; to steer clear of intense headlights' glare and avoid a head on collision, he took the bus to the left side and applied brakes; however, the bus got pulled to the left side as the left front side tyre burst and the bus dashed a nearby tree; there is no negligence on his part; the conductor and the injured passengers clearly stated that the accident was a result of the negligence of the driver of the lorry; during his entire tenure he did not cause any accident.' Learned Chairman of the Tribunal having carefully analysed the evidence came to the conclusion that the material on record does not support the contention of the Corporation that the accident was due to lack of anticipation on the part of the driver and further noted that on application of brakes, the front left side tyre of the bus burst and that the bus was pulled to its left and dashed a tree, which was only at a distance of one foot from the

road margin/ road side. The learned Chairman finally held that the punishment of deferment of annual grade increment for a period of two years with cumulative effect treating the suspension period as not on duty is not justified and is disproportionate to the misconduct proved and that the said penalties are liable to be set aside. Further, while imposing a lesser punishment the learned Chairman of the Tribunal also took into consideration the fact that the petitioner who joined in service in the year 1983 rendered blemishless service and that in his entire service, prior to the subject accident, he did not cause a single accident.

8. On the above analysis, 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 findings recorded by the learned Chairman of the Tribunal. Further, the law is fairly well settled that this Court shall not go into the adequacy or the reliability of the evidence and shall not interfere with the findings of the Tribunal, if there is some legal evidence, which supports the findings. When once conclusions arrived at by the Chairman of the Tribunal are found to be sustainable on facts and the evidence, this Court will not normally substitute its subjective opinion in the place of one arrived at by the Tribunal.

9. In the decision in Union of India v. P. Gunasekaran¹ 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;

¹ (2015) 2 SCC 610

(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."

10. Having regard to the finding recorded supra and the legal position obtaining, this Court finds that there is no acceptable merit in the contentions of the writ petitioner/ Corporation and that the writ petition is liable for dismissal.

10. In the result, the Writ Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

13th April, 2017
Vjl