

**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**WRIT PETITION No.11552 OF 2002**

**ORDER:**

The petitioner, who worked as a Driver in the 2<sup>nd</sup> respondent-Corporation, filed this writ petition being aggrieved by the award passed in I.D.No.146 of 2000 dated 12.09.2000 by the 1<sup>st</sup> respondent-Labour Court, whereby his claim petition was allowed in part and the removal order dated 28.12.1992 was altered into reduction to a lower post and reinstate him into service with continuity of service but without back wages and attendant benefits and it was sought to be declared as illegal and arbitrary.

2. The brief facts of the case are that the petitioner was appointed as a driver in the respondent-Corporation. When the petitioner was performing his duties on 16.08.1992 on route No.211 and proceeding from Secunderabad station to Devarayamjal at about 8.30 p.m. near Jhummikunta village, an accident took place, which resulted in the death of one bull and two persons succumbed to injuries. Basing on the said accident, the petitioner was issued charge sheet dated 15.09.1992, framing the following charges:

“1) For having failed to observe the bullock cart which was going in front of the bus on the left of the road near Jhummikunta village met with an accident with the bullock cart, who was hit by the front portion of the bus, due to which the bullock cart sustained damage and riders of the bullock cart sustained grievous injuries

and succumbed on 19-8-92 at about 20.30 hours on 14-3-92, due to the rash and negligent driving while driving the passenger vehicle, which constitutes misconduct under Reg. 28(ix)(a) and (b) of APSRTC Employee's (Conduct) Regulations, 1963.

2. For having the damages caused to the vehicle (a) Bumper dented in (b) Radiator got damaged and (c) left head light broken, name plate got out of the bumper resulted loss of Rs.6000/- to the Corporation which constitutes mis-conduct under Reg. 28(xxxi) of APSRTC Employees (Conduct) Reg. 1963.”

The petitioner submitted his explanation to the charge sheet on 25.09.1992 denying the charges. The disciplinary authority, having not satisfied with the explanation, appointed an Enquiry Officer. The Enquiry Officer conducted the enquiry and submitted his report holding that the charges were proved. The disciplinary authority, basing on the report of the Enquiry Officer, issued a show-cause notice of removal dated 25.11.1992. The petitioner submitted his explanation. The 2<sup>nd</sup> respondent, considering the explanation of the petitioner and the Enquiry Officer's report, passed an order dated 28.12.1992, removing the petitioner from service. Aggrieved by the said termination, the petitioner filed an appeal, but the same was rejected. Then, the petitioner raised an industrial dispute in I.D.No.146 of 2000 before the 1<sup>st</sup> respondent-Labour Court. The 1<sup>st</sup> respondent-Labour Court, having considered the evidence before it, came to a conclusion that the charges were not fully proved, passed award reinstating the petitioner in the lower post with continuity of service but without back

wages and attendant benefits. Aggrieved by the same, the petitioner-workman filed this writ petition.

3. Sri G.Ravi Mohan, learned counsel appearing for the petitioner, would contend that the petitioner was issued the charge sheet alleging that the petitioner had caused an accident on 16.08.1992 due to rash and negligent driving, which resulted the bull and two persons succumbed to injuries on 16.08.1992. The petitioner submitted his explanation to the charge sheet on 25.09.1992 denying the charges. However, the 2<sup>nd</sup> respondent, disciplinary authority, got conducted a farce enquiry and the Enquiry Officer submitted his report holding that the charges were proved without properly considering the deposition of the petitioner and the evidence available on record. The 2<sup>nd</sup> respondent, without an independent application of mind to the facts of the case and the evidence on record, issued a show-cause notice of removal on 25.11.1992. The petitioner submitted his explanation to the show-cause notice, but the 2<sup>nd</sup> respondent, on an erroneous appreciation of the evidence before him, passed the termination order vide proceedings dated 28.12.1992. Being aggrieved by the termination order dated 28.12.1992, the petitioner had preferred an appeal to the appellate authority, but the appellate authority, discharging quasi judicial functions, without considering the grounds of appeal in its proper perspective, has rejected the appeal. The

petitioner raised an industrial dispute in I.D.No.146 of 2000 before the 1<sup>st</sup> respondent-Labour Court under Section 2-A(2) of the Act, claiming reinstatement with continuity of service, all attendant benefits and back wages. The Labour Court, on re-appreciation of the evidence before it, came to the conclusion that there is a perversity in the finding of the Enquiry Officer as it is not based on legally admissible evidence. The Labour Court found that the Enquiry Officer has not properly considered the defence of the petitioner and his deposition in the enquiry and thereby observed that the finding of the Enquiry Officer was perverse. The Labour Court, on re-appreciation of the evidence, came to the conclusion that the charges were not proved against the petitioner. The Labour Court found that the Enquiry Officer did not consider the plea of the petitioner that the bullocks were frightened due to blow of horn and moved to the right side of the road and that the accident was caused. The Labour Court observed that on perusal of the records discloses that the petitioner might have seen the bullock cart when he came very close and at that time it was not possible to avoid the accident since a lorry was proceeding in between the bus and the D.B. cart, and immediately after the lorry crossed the D.B. cart, then only the petitioner found that the D.B. cart was in front of the bus. It is also not stated about the signal given by the driver of the lorry to the petitioner before it was overtaking the D.B. cart. The petitioner did not

receive any signal from the driver of the lorry and suddenly found D.B. cart in front of the bus and at that moment, the chances are remote to avoid the accident. The Labour Court, by exercising the power under Section 11-A of the Act and having held that the charges were not proved against the petitioner, altered the punishment of removal to that of the reinstatement of the petitioner in the lower post with continuity of service and without back wages and attendant benefits. Therefore, prayed to quash the award of the Labour Court by directing the 2<sup>nd</sup> respondent to reinstate the petitioner as a driver with back wages and all attendant benefits.

4. Sri Y.N. Anjaneya Chare, learned Standing Counsel for R.T.C. would contend that the petitioner caused fatal accident while driving the bus on 16.08.1992 near Jhummikunta village resulting the death of one bull on the spot and two persons succumbed to injuries. The petitioner was issued a charge sheet on 15.09.1992, for which he submitted explanation on 25.09.1992 denying the charges. The disciplinary authority, having not satisfied with the explanation, appointed the Enquiry Officer. The Enquiry Officer conducted the enquiry giving full and fair opportunity to the petitioner. The Enquiry Officer, basing on the evidence, submitted enquiry report holding that the charges were proved. The 2<sup>nd</sup> respondent, disciplinary authority, basing on

the Enquiry Officer's report and considering the evidence and having come to a provisional conclusion that the punishment of removal was deemed to be fit and proper, issued a show-cause notice as to why punishment of removal could not be imposed against him. The disciplinary authority, having considering the explanation of the petitioner to the show-cause notice and on an independent application of mind to the Enquiry Officer's report, terminated the petitioner from service by order dated 28.12.1992. The appellate authority dismissed the appeal holding that there are no grounds for interference and the Enquiry Officer's report could not be found fault with. But, the Labour Court on an erroneous appreciation of fact and law and on re-appreciating the evidence before the Enquiry Officer, came to a different conclusion that the charges were not proved. The Labour Court by exercising the power under Section 11-A of the Act and by taking a lenient view, passed the impugned award reinstating the petitioner in the lower post with continuity of service without back wages and attendant benefits. The Labour Court has already exercised its discretionary power under Section 11-A of the Act and passed the award. There is no error of law and error of fact warranting interference of this Court under Article 226 of the Constitution of India. This Court, under Article 226 of the Constitution of India and under judicial review, has no power to substitute the

punishment which was imposed by the Labour Court to that of the lesser punishment.

5. In the facts and circumstances of the case and considering the rival contentions of the learned counsel, this Court found that there is no illegality committed by the Labour Court in re-appreciating the evidence before the Enquiry Officer in order to find out as to whether the finding of the Enquiry Officer is based on any legally admissible evidence; whether the Enquiry Officer considered the entire evidence; and whether the finding is perverse. The Labour Court on re-appreciating the evidence came to the conclusion that the finding of the Enquiry Officer is contrary to the evidence available on record and held that the charges are not proved by holding that the Enquiry Officer did not consider the plea of the petitioner that the bullocks were frightened due to blow of horn and suddenly moved to the right side of the road and that the accident was caused. Further, the petitioner did not receive any signal from the driver of the lorry and suddenly found D.B. cart in front of the bus and at that moment the chances are very remote to avoid the accident. There is no rash and negligence on the part of the petitioner in driving the bus. This Court found that there is no perversity in the finding of the Labour Court in that aspect.

6. The Labour Court having exercised its discretionary power under Section 11-A of the Act, held that the charges were not proved, ought to have reinstated the petitioner as a driver with continuity of service and notional benefits without back wages instead of altering the punishment of removal into reduction to a lower post with continuity of service but without back wages and attendant benefits. The denial of reinstatement of the petitioner as a driver with continuity of service amounts to disproportionate punishment to the proved misconduct. It is found that the Labour Court having considered as to under what circumstances the petitioner caused accident and charges are not proved fully, while exercising power under Section 11-A of the Act, denying back wages with all attendant benefits and reinstating the petitioner into a lower post is a serious punishment.

7. This Court having felt that reinstating the petitioner into a lower post with continuity of service without back wages and attendant benefits is disproportionate to the proved misconduct in the circumstances in which the accident was occurred, to sub-serve the interest of justice, the respondent-Corporation is directed to reinstate the petitioner as a driver with continuity of service and notional increments but without back wages.

(Contd...)

8. Accordingly, the Writ Petition is allowed modifying the award of the Labour Court as indicated above. No order as to costs.

9. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

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**JUSTICE M.GANGA RAO**

21-08-2018  
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**THE HON'BLE SRI JUSTICE M.GANGA RAO**



**WRIT PETITION No. 11552 OF 2002**

**21-08-2018**

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