

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No. 22499 OF 2003

&

WRIT PETITION No. 12285 OF 2004

COMMON ORDER:

As both the writ petitions are filed against the award of the Labour Court passed in I.D.No.64 of 2001 dated 08.05.2003, published through G.O.Rt.No.985 dated 02.06.2003, for the sake of convenience, the parties are referred to as 'workman' and 'Management'.

2. The Management-APSRTC filed Writ Petition No.22499 of 2003 and the workman filed Writ Petition No.12285 of 2004. The Labour Court passed the award setting aside the removal order dated 19.08.1998 and directed the Management to reinstate the workman into service with continuity of service and 50% of the back wages but without attendant benefits.

3. The brief facts of the case are that the workman was appointed as a Driver in the month of May, 1987. While he was conducting the Bus bearing No.AP9Z 2954 on route Bachapoor to Devarkonda on 17.01.1998, involved in a fatal accident, as a result one person died on the spot. Basing on the preliminary enquiry report submitted by the Traffic Supervisor, the workman was suspended and issued a charge sheet on 07.03.1998 framing the following charge:

“For having driven the bus No.AP.9Z 3954 in a rash and negligent manner without taking proper care while driving it from Bachapoor to Devarkonda on 17-1-98 as a result, the bus hit a cyclist Eslavath Shankar, at about 9.10 hrs. near Kothapally who is coming in opposite direction causing his instantaneous death, which constitutes misconduct in terms of Regulation 28 (ix-a) and (xxi) of APSRTC Employees (Conduct) Reg. 1963.”

The Management having not satisfied with the explanation submitted by the workman, got conducted departmental enquiry. The Enquiry Officer submitted his report holding that the charge was proved. A show-cause notice of removal was issued on 01.08.1998 along with the Enquiry Officer's report. Not being satisfied with the explanation of the workman, the Management removed the workman from service on 19.08.1998. Then, the workman preferred an appeal and review, but they were rejected on 21.12.1998 and 03.11.2000 respectively. Thereby, the workman raised an industrial dispute in I.D.No.64 of 2001 before the Labour Court-III at Hyderabad. The Labour Court, on re-appreciation of evidence before it and as the validity of the enquiry was not disputed by the workman, came to the conclusion that the Enquiry Officer submitted his report contrary to the evidence available on record and that the finding of the Enquiry Officer that the charge was proved is not supported by any evidence. The Labour Court having held that the enquiry report is perverse and not supported by

any evidence, set aside the removal order and directed the reinstatement of the workman with continuity of service and 50% back wages but without attendant benefits. Being aggrieved by the same, both the workman as well as the Management filed the above writ petitions.

4. Sri A.Ravi Babu, learned Standing Counsel for APSRTC, would contend that the petitioner while conducting the bus on 17.01.1998 on route Bachapoor to Devarkonda caused fatal accident. Based on the Enquiry Officer's report submitted by the Traffic Supervisor, the charge was framed against the workman that due to rash and negligent driving of the workman, the bus hit a cyclist and caused instantaneous death and thereby committed misconduct. The departmental enquiry was conducted in strict adherence to the principles of natural justice and that the workman was given full and fair opportunity as per the regulations of the Corporation. The Enquiry Officer submitted his report based on the evidence available before him holding that the charge was proved. The petitioner was removed from service after considering his explanation to the charge sheet by the disciplinary authority. The Labour Court, on mere surmises and conjectures, held that the charge was not proved; that the finding of the Enquiry Officer was not supported by any documentary evidence; and that the appeal and revisions were not considered properly and rejected. The Labour Court has no authority to re-appreciate the evidence and coming to a

different conclusion to that of the Enquiry Officer. Hence, the award of the Labour Court is illegal, arbitrary and liable to be set aside.

5. Sri V.Narasimha Goud, learned counsel appearing for the workman, would contend that the workman was removed illegally based on the perverse finding of the Enquiry Officer that the charge was proved. The finding of the Enquiry Officer is not supported by any evidence and contrary to the evidence available on record. The Enquiry Officer as well as the disciplinary authority have not taken into consideration the evidence of the workman, his explanation to the charge sheet and the show-cause notice, stating that while he was driving the bus bearing No.AP9Z 2954 on 17.01.1998 from Bachapoor to Devarkonda, one cyclist was coming in opposite direction and some cattle were going on the road, and hence, he reduced the speed of the vehicle and when the bus passed, the cyclist who was coming in opposite direction has fell down and immediately he stopped the bus and found him on the road with bleeding. The cyclist sustained injuries due to the road impact. As per the preliminary enquiry report (Ex.M.6) and spot explanation of the workman (Ex.M.5), no wheel of the bus was run over the cyclist and the cycle was not damaged and there were no scratches on the bus. The Enquiry Officer has not considered Exs.M.14, M.17 and M.13 in its proper perspective and hence the finding of the Enquiry Officer is not proper. Based on the Enquiry Officer's report,

the disciplinary authority, without independent application of mind, passed the removal order, which is illegal. The workman raised an industrial dispute in I.D.No.64 of 2001. The Labour Court having re-appreciated the entire evidence on record, came to the conclusion that the finding of the Enquiry Officer was perverse and removal of the workman was illegal, and the same was set aside. Hence, there is no illegality or irregularity in the award of the Labour Court. The Labour Court, having come to the conclusion that the removal order is illegal and not based on any evidence, ought to have granted the full back wages with continuity of service and attendant benefits. After removal, the workman was not gainfully employed. In support of his contention, the learned counsel relied on a decision reported in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyala and others*¹, wherein the Hon'ble Supreme Court held that in case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

6. In the facts and circumstances of the case and in considered view of this Court, the workman was joined in the Management-Corporation in the month of May, 1987. While he was conducting the bus on 17.01.1998, he caused a fatal accident and the cyclist was died, for which a charge sheet was issued to him. The Management, having not satisfied with the explanation to the charge sheet, got conducted

¹ (2013) 10 SCC 324

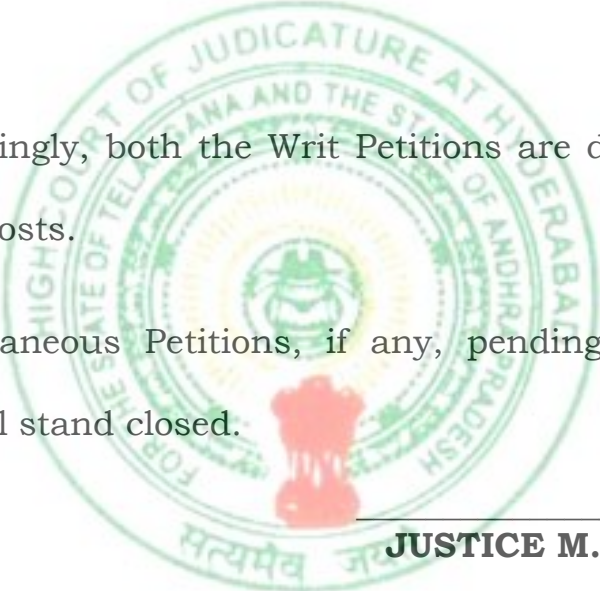
enquiry. Based on the Enquiry Officer's report, the disciplinary authority removed the workman from service on 19.08.1998 having not satisfied with the explanation submitted to the show-cause notice. The workman preferred appeal and review unsuccessfully. The workman raised an industrial dispute in I.D.No.64 of 2001. The Labour Court, on re-appreciation of evidence before it and as the validity of the enquiry was not challenged, came to the conclusion that the finding of the Enquiry Officer that the charge was proved against the workman was not supported by any evidence and held that the finding of the Enquiry Officer was perverse stating that the Enquiry Officer had not considered the documents, viz., Exs.M.13, M.14 and M.17. Ex.M.14 is the statement of the Chief Inspector, Devarakonda, wherein he stated that he drawn the accident rough sketch and there was no damage to the cycle and no witnesses available at the accident spot. He further stated that there were no marks on the bus body or the bumper and there were no visible marks and that the bus has not run over the cyclist. Further, no damage was caused to the cycle and it indicates that the front portion of the bumper has not come into contact with the bus body. In the post-mortem report (Ex.M.13), it is stated that the deceased died due to head injury, but the Management-witness stated that he was crushed to death, which is not correct. The Labour Court having considered the evidence before it came to the conclusion that the finding of the

Enquiry Officer was perverse and not supported by any documentary evidence and that the petitioner was removed illegally, set aside the removal order dated 19.08.1998 and rightly directed the Management to reinstate the petitioner into service with continuity of service and with 50% back wages but without attendant benefits.

7. This Court, having perused the record, found that there is no error of fact or error of law which warrants interference of this Court to set aside the award passed by the Labour Court.

8. Accordingly, both the Writ Petitions are dismissed. No order as to costs.

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



JUSTICE M.GANGA RAO

09-08-2018
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