

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.31721 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners requesting to issue a writ of Certiorari calling for records relating to the Award in ID.No.51 of 2014, dated 12.05.2015, on the file of the Industrial Tribunal-cum-Labour Court, Anantapuram, which was published in Gazette *vide* G.O.Rt.No.423, dated 23.07.2015, and quash the same.

2. I have heard the submissions of Sri Aravala Rama Rao, learned counsel appearing for the petitioners, of the learned Government Pleader for Labour appearing for the 2nd respondent, and of Sri S.M. Subhan, learned counsel appearing for the 1st respondent. I have perused the material record.

3. This Court, on 22.09.2017, while admitting the writ petition granted the following interim order in WPMP.No.39489 of 2017:

“It is stated that vide proceedings No.PA/20A(36)/2003-RM ‘C’, dated 30.09.2003, the petitioner-Corporation reinstated respondent no.1.

In view of the same, there shall be stay of impugned award except to the extent of reinstatement.’

4. Requesting to vacate the afore-said interim order, the 1st respondent-Employees Union filed WVMP.No.4181 of 2017.

5. However, a joint request was made to dispose of the writ petition on its merit instead of the vacate petition.

6. The facts, in brief, are as follows: 1st respondent Employees Union of APSRTC rep., by its Depot Secretary, Rajampet, is espousing the cause of the workman – driver, N. Manohar. The said driver while driving the bus of the Corporation caused an accident resulting in injuries to a girl aged about 10 years. Later the said girl succumbed to the injuries. On the allegation that the said driver - workman while discharging his regular duties on the bus bearing registration no.AP11Z 1104 on 31.12.2002 did not follow the traffic rules and drove the bus at a high speed and in a rash and negligent manner while proceeding on route Tirumala – Badvel and caused a fatal accident at 14.30 hours, a charge was framed and a regular departmental enquiry was held. The charge reads verbatim as under:

'For having failed to follow the traffic rules and driven the bus with high speed and also rash and negligent of your duty caused fatal accident to bus No.AP11Z1104 on 31.12.2002 at about 14.30 hrs., on route Tirumala – Badvel which constitutes misconduct under Reg.28(xxix)(ix)(a) of APSRTC Employees (Conduct) Reg.1963.'

The workman having submitted his explanation participated in the enquiry conducted by the Assistant Manager (Enquiry), R.M's Office, Kadapa. After due enquiry, the Enquiry Officer submitted a report to the Disciplinary Authority stating that the charge leveled against the workman was proved. After receiving the objections of the workman, the Disciplinary Authority issued a show cause notice proposing to impose a penalty of removal from service of the Corporation with immediate effect. The workman submitted an explanation to the said show cause notice. Having not been satisfied with the said explanation, the Disciplinary Authority passed final orders, dated

05.05.2003, imposing the afore-stated proposed punishment. The appeal preferred by the workman was rejected by the appellate authority - Divisional Manager, Proddatur *vide* his proceedings, dated 28.06.2003. The workman's review petition was considered by the review authority, Regional Manager, Kadapa. And, the said authority, having observed that the said authority is inclined to give the workman one more chance only on humanitarian grounds with the hope that he will never give room for such type of accidents in future, ordered that the workman – ex-driver be appointed as driver Grade-II afresh with immediate effect and that on such appointment as driver Gr.II afresh he be posted to Rayachoti Depot. The workman was further advised to report to the Depot Manager, Rayachoti, within a period of seven days from the date of receipt of the review proceedings and that failing compliance by the workman, the appointment afore-stated shall stand cancelled. Aggrieved thereof, the 1st respondent Union which is espousing the cause of the workman raised an industrial dispute. The said dispute was referred by the Joint Commissioner of Labour, Kurnool, *vide* proceedings no.D1/529/2014, dated 19.03.2014, under Section 10(1) of the Industrial Disputes Act, 1947. On such reference, the case in ID.No.51 of 2014 was taken on file by the Chairperson-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapuramu. The 1st respondent Union filed a claim statement and the Corporation filed its counter. The learned Chairperson of the said Tribunal having noticed the facts and considered the submission that the modified punishment imposed by the review authority, that is, appointment of the workman as Driver Gr.II afresh with immediate effect is not one of the punishments stated in the regulations namely A.P.S.RTC. Employees (Classification, Control and Appeal)

Regulations, 1967, (Regulations', for brevity) and further having taken note of the subsequent event that the workman was acquitted of the charges in CC.No.310 of 2005, by judgment, dated 16.09.2006, of the learned Judicial Magistrate of First Class, Railway Kodur, and having examined the merits of the matter answered the reference holding that the workman is justified in demanding revocation of punishment imposed upon him and that the workman is thus entitled to be treated as reinstated into service with all consequential benefits, which included continuity of service and attendant benefits except back wages, as the workman did not render any service to the Corporation from the date of his suspension from service. Aggrieved of the said Award, the Corporation through its officers preferred this writ petition.

7. The case of the Corporation is this: - 'The charge leveled against the workman is established in an enquiry that was duly conducted. His appeal was rejected. His request in the review application that he is entitled to reinstatement with all attendant benefits after setting aside the orders passed by the officers of the Department was not considered; however, on humanitarian grounds and with the hope that he will not give any room for accidents in future a direction was given for his appointment as driver-Grade II afresh with immediate effect. Therefore, the order of the Regional Manager, who passed the orders in the review application, consists of two parts. First part relates to the confirmation of the order of removal. Second part relates to direction for appointment as a fresh candidate that too on humanitarian grounds. The order of removal is no bar for appointment as a fresh candidate. The Regional Manager, on humanitarian grounds and with the hope that the workman will not cause similar accidents, in future, gave a direction to appoint the workman

as a Driver Grade II afresh. The Tribunal failed to maintain a distinction between an order of the review authority which consists of two parts and an order of the review authority which interfered with the punishment imposed and modified the same. The learned Chairperson of the Tribunal ought to have noticed the distinction and ought to have noted that the review authority's order in the case on hand is in two parts and that the said authority did not modify the punishment, but, confirmed the punishment imposed by the Disciplinary Authority and confirmed by the Appellate Authority. So long as the order of punishment stands, it cannot be said that the punishment is interfered or modified and, therefore, the direction issued for appointment of the workman afresh, as a fresh candidate, cannot be construed as modification of the order of punishment or interference with the punishment. Hence, the question of raising a contention that the punishment viz., 'appointment as Driver Gr.II afresh' is not covered by the regulations does not arise for consideration. The punishment of removal from service is confirmed by the review authority; however, on humanitarian grounds, the workman, who was an ex driver, was directed to be appointed afresh as Driver Gr.II. In those circumstances, the Award of the Tribunal and the consequential GO are unsustainable and are liable to be set aside.

7.1 In support of the said contentions, reliance is placed on a Division Bench decision of this Court in **P. Habeeb Saheb v. APSRTC, Hyderabad**¹.

7.2 It is also contended that the industrial dispute was raised and the Tribunal was approached after a long lapse of eleven years from the date of the order of the review authority and that the Tribunal ought to have considered

¹ 1995(1) ALT 553 (DB)

the said long delay in raising the industrial dispute and in approaching the Tribunal and ought not to have passed the impugned Award.

8. Per contra, learned counsel for the 1st respondent Union contended as follows:

Accidents occur some times for no fault of the drivers of the vehicles. It is common knowledge that simply because the bus driven by the workman was involved in an accident and the victim of the accident later succumbed to the injuries, the inference that the workman – driver was responsible for the accident is unfair. Whether the workman caused an accident or not is a question of fact. In the case on hand, a young girl suddenly darted across the road and solely contributed to the accident. The fact that the workman – driver was found not guilty and was acquitted of the charge of rash and negligent driving under Section 304-A of the IPC *vide* judgment, dated 16.09.2006, in CC.No.310 of 2005, of the learned Judicial Magistrate of First Class, Railway Kodur, clearly demonstrates that the workman is not responsible for the accident. The said subsequent event which is sufficient to exonerate the workman from the charge leveled against him is taken into consideration by the learned Chairperson of the Tribunal and hence, the Award of the Tribunal does not warrant interference. Though the departmental enquiry and the prosecution are two different proceedings; yet, the judgment of the learned Magistrate has its own bearing and cannot be ignored. The workman is not able to prove his innocence during the pendency of the proceedings before the officers of the Department as the judgment in the Calendar Case was rendered subsequently in the year 2006. On the acquittal of the workman in the

Calendar Case, no appeal has been preferred by the State and the said judgment has become final. Being not worldly wise, the workman obtained a copy of the judgment in the Calendar Case after some delay and then approached the Union and the Union espoused his cause. In the said circumstances, delay shall not defeat justice. Further, though the review authority directed fresh appointment as Driver Gr.II, after confirming the punishment imposed in the the orders of the officers of the Department, if the impugned order of the Tribunal is set aside at the instance of the Corporation, the workman suffers serious and irreparable loss for no fault of him, as there is ample evidence now before the Court that he is not responsible for the accident and that the accident is not a result of his rash and negligent driving. Further, admittedly, the service of the workman – driver is not a pensionable service. By virtue of the order of the Tribunal, no financial burden will be cast upon the Corporation and in the event the writ petition is dismissed confirming the order of the Tribunal, the only benefit the workman – driver would get is one increment and nothing more. Further, this is not a case where the workman-driver is completely out of service after the imposition of punishment of removal from service. After the review order passed by the Review Authority, the workman-Driver was given appointment and is working as a driver since a long time and he is discharging duties to the satisfaction of his superiors and without any remark. Hence, the case of the workman stands on a better footing. Therefore, the Award impugned does not call for any interference.

9. I have given earnest consideration to the facts and submissions.

10. As rightly contended by the learned standing counsel appearing for the Corporation, it is no doubt true that the order passed by the Regional Manager/review authority consists of two parts: First part relates to confirmation of the punishment imposed against the workman viz., removal from service; Second part relates to a direction for appointment as a fresh candidate viz., Grade II driver, on humanitarian grounds. Therefore, it is no doubt true that the punishment of removal from service is not interfered with and is not modified by the review authority; however, considering the workman as an ex-driver, a direction was given on humanitarian grounds for his fresh appointment as Driver Gr.II, with the hope that the workman will not cause similar accidents, in future. Therefore, it is not a case where the punishment of removal from service is interfered with and modified by the review authority. Therefore, the contention that the punishment imposed is not one covered by the regulations of the Corporation is not open to the workman. Hence, this Court finds that the Award of the Tribunal doesn't deserve to be sustained on the ground that the review authority imposed a punishment of fresh appointment which is not within the regulations. The above view of this Court finds support from the decision in **P.Habeeb sahib** (1 supra) rendered by a Division Bench of this Court.

11. In the light of the factual matrix, the important question now is as to whether the impugned Award passed by the learned Tribunal-cum-Labour Court calls for interference.

12. Dealing now with the aspect of delay, it is to be noted that the learned standing counsel for the Corporation contended as follows: - 'The review

authority passed orders on 30.09.2003. However, the 1st respondent Union raised an industrial dispute in the year 2014; and, a reference was made by the Joint Commissioner of Labour by his orders, dated 19.03.2014. Therefore, the Union which is espousing the cause of the workman assailed the order of the review authority after a lapse of more than 11 years. Without considering such long delay, the Labour Court/Tribunal erroneously modified the order passed by the review authority though on the ground of delay alone, the workman's cause ought to have been rejected.' In support of the said contention, he placed reliance on the decision in **P.V. Narayana v. APSRTC and others**² rendered by a Full Bench of this Court and also a few decisions rendered by learned single Judges of this Court.

13. Per contra, learned counsel for the 1st respondent Union, which is espousing the cause of the workman, pointed out that in the case on hand pursuant to the Award of the Labour Court, the Gazette publication was made *vide* G.O.Rt.No.423, dated 23.07.2015 and that this writ petition is filed by the Corporation in September, 2017, that is, more than two years after the Gazette publication and that having invoked the jurisdiction of this Court after lapse of two years the Corporation is not entitled to canvass their case on the ground of delay on the part of the workman and the Union. He further contended as follows: - 'The workman – driver was acquitted in the Calendar Case by the judgment rendered in the year 2006. The workman is not in a position to prove his innocence during the pendency of the proceedings before the officers of the Department as the judgment in the Calendar Case was rendered subsequently in the year 2006. On the acquittal of the workman in the Calendar

² 2013 (4) ALD 386 (FB)

Case, no appeal has been preferred by the State and the said judgment has become final. Therefore, on such acquittal, the workman was armed with a judgment of acquittal to prove his innocence. However, being not worldly wise, the workman obtained a copy of the judgment in the Calendar Case after some delay and then approached the Union and on that the Union espoused his cause. In the said circumstances, delay shall not defeat the justice. Moreover, if the Award of the Tribunal is confirmed, no monetary burden will be cast upon the Corporation as the workman would stand entitled to one increment and nothing more than one increment. Further, this is not a case where the workman-driver is completely out of service after the imposition of punishment of removal from service. After the review order passed by the Review Authority, the workman-Driver was given appointment and is working as a driver since a long time and he is discharging his duties to the satisfaction of his superiors and without any remark. Hence, the case of the workman stands on a better footing.'

14. Before proceeding further, it is necessary to note that in the Full Bench decision in **P.V. Narayana** (2 Supra), the facts are as follows: - 'In the batch of writ petitions, on certain cash and ticketing irregularities or on certain other charges proceedings were initiated against the workmen/ conductors of the Corporation and the said proceedings ended in imposition of penalties. The appeals and revisions preferred by some of the workmen were rejected on the ground of delay. Some of the workmen have not preferred appeals or revisions and filed writ petitions with inordinate delay. In some cases, it was contended that no orders are passed on the appeals/revisions. On examination of record, it was found that in all the cases the delay ranges from five years to eighteen

years either in preferring appeal or revision or filing a writ petition under Article 226 of the Constitution of India. In this backdrop of facts, the question involved in the batch cases for resolution by the Full Bench referred to by a learned single Judge was – ‘Whether the appellate or revisional authority of the Andhra Pradesh State Road Transport Corporation (for short ‘the Corporation’) is justified in declining to entertain an appeal or revision preferred by an employee of the Corporation against the order imposing punishment of stoppage of annual grade increment(s) with cumulative effect on the ground of inordinate delay in preferring the appeal or revision notwithstanding that such punishment which was held to be a major penalty as per the law laid down by the Supreme Court in KULWANT SINGH GILL v. STATE OF PUNJAB (1991 Suppl.(1) SCC 504) cannot be sustained in law as no detailed procedure contemplated under the APSRTC Regulations for award of a major punishment has been followed. Question also arises for consideration whether the Writ Court can decline to entertain a writ petition in similar circumstances?’

14.1 The Full Bench, having referred to the case law on the point held as follows:

‘An analysis of the case law discussed above would amply make it clear that issue of a writ of a mandamus or certiorari is largely a matter of sound discretion and will not be granted if there is negligence or omission on the part of the person to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. Therefore, burden lies on the workman who has to establish that in spite of his best efforts and diligence he was prevented from approaching the authority within the period of limitation provided for or the Writ Court within a reasonable period of

time. If the workman is not able to satisfactorily explain with cogent reasons for the delay he is not entitled to seek for condonation of the delay. It is true that the punishment imposed cannot be sustained in law because of the illegality crept in it in not conducting a prior enquiry. But, still the workman is under a statutory obligation to challenge the same within the time provided by the statutory rules or regulations or within a reasonable period of time before the Writ Court. If delay of 5 to 18 years is condoned, for no reason or fault on the part of the authority, the proceedings which had attained finality are to be set aside. Setting aside of such order at a belated stage and allowing of a stale claim, may, as rightly held by the Division Bench in Esa Ali's case, inspire the workman to seek for consequential benefits of promotion as well, in which event, the rights of the third parties would adversely be affected for no fault of theirs. A workman who is tardy and not diligent for years in availing a statutory remedy or in approaching the Court of law, in our view, cannot be encouraged or permitted to contend that in view of the decision of the Supreme Court the punishment cannot be sustained in law, therefore, delay to any extent is to be condoned automatically in exercise of the power conferred on the appellate or revisional authorities or by the writ courts in exercise of the discretionary powers under Article 226 of the Constitution of India. Courts can come to the aid of a person who is diligent and vigilant but unable to approach the authority or court of law for redressal of his grievance in spite of his best efforts and reasons beyond his control but not to a person who is tardy and negligent or slept over the matter in availing the statutory or legal remedies.'

15. In the case on hand, the appeal as well as the review were filed within time. Only the industrial dispute was raised after a long delay, that is, in the year 2014, however, after the judgment of acquittal was rendered in the Calendar Case in the year 2006. The Union representing the workman, aptly points out that in the case on hand, pursuant to the Award of the Labour Court/Tribunal, the Gazette publication was made *vide* G.O.Rt.No.423, dated 23.07.2015, and that this writ petition was filed by the Corporation in

September, 2017, that is, more than two years after the Gazette publication and that the Corporation which filed the instant writ petition after a delay of two years is not entitled to canvass its case on the ground of delay on the part of the workman. Be that as it may. Be it noted that Sections 2A and 10(1) of the Act do not prescribe any period of limitation for raising industrial dispute. As per the decision in **Ajaib Singh v. the Sirhind Co-operative Marketing-cum-Processing Service Society Limited** [AIR 1999 SC 1351], Article 137 of the Indian Limitation Act has no application; the Act does not postulate that delay extinguishes the right conferred on the workman by the industrial law; the Labour Court-cum-Industrial Tribunal is having very wide discretion under Section 11-A of the Act and is not precluded from considering the delay on the part of the workman while granting the relief to the workman. Therefore, on the mere ground of delay, the relief granted by the Labour Court-Industrial Tribunal to the workman - driver cannot be set at naught, more particularly, when having regard to the delay and the period of suspension, a moulded relief, as already mentioned supra, was granted to the workman – driver, by the learned Chairperson who passed the impugned award. Further, as rightly urged on behalf of the Union, after the review order was passed by the Review Authority, the workman-Driver was given appointment and is working as a driver since a long time; and, it appears that he is discharging his duties to the satisfaction of his superiors and without any remark. No material is produced by the Corporation to show that his services after such appointment are not satisfactory. Thus, this is not a case where the workman-driver is out of service. Hence, the instant case of the workman-driver which stands on a better footing is a distinct case distinguishable on facts peculiar to it. In this

backdrop, it is pertinent to also note that by the Award impugned, the petitioner was not granted any monetary benefits; and, that after setting aside the punishment of removal from service, it was held by the Tribunal that the workman is justified in demanding revocation of punishment imposed upon him and that the workman is thus entitled to be treated as reinstated into service with all consequential benefits, which included continuity of service and attendant benefits except back wages, as the workman did not render any service to the Corporation from the date of his suspension from service. As also rightly contended, since the service is not a pensionable service, there will not either be any financial burden on the Corporation and corresponding financial benefit to the workman, except for the fact that the workman would at best be entitled to only one increment. It is appropriate to also note that the learned Chairperson of the Tribunal has not set aside the punishment of removal from service merely on the ground that the review authority either interfered with the punishment or imposed a punishment of fresh appointment, which is not prescribed by the Regulations. A perusal of the Award of the Tribunal reflects that the Tribunal considered the merits of the matter before granting the relief to the workman. It is apt to note that in the impugned Award, it was held verbatim as follows: - 'The documents that are exhibited by the respondents themselves goes to show that there is no cogent and convincing material to hold due to negligence on the part of the workman the accident occurred'. Thus, the Tribunal for reasons recorded in the impugned award came to the conclusion that the punishment confirmed by the review authority by the proceedings, dated 30.09.2003, is unsustainable on facts as well. It is well settled that the Labour Court-cum-Tribunal is the last Court

of fact. In the decision in **K.V.S. Ram v. Bangalore Metropolitan Transport Corporation**³, the Supreme Court held that when the Labour Court exercises its discretion keeping in view the facts of a case and cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court more particularly when the Award of the Labour Court does not suffer from any flaws. It is also held that it is settled proposition of law that while considering the management's decision to dismiss or terminate services of a workman, the Labour Court can interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned and that once the Labour Court has exercised the discretion judiciously, the High Court can interfere with the Award only if it is satisfied that the Award of the Labour Court is vitiated by any fundamental flaws and that while interfering with the Award of the Labour Court, the High Court has to keep in view the parameters laid down by the Supreme Court for exercise of jurisdiction by the High Court under Article 226 and/or 227 of the Constitution of India. Further, in the decision in **Union of India v. P. Gunasekaran**⁴ 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;

³ AIR 2015 SC 998

⁴ (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.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

16. Having regard to the facts of the instant case and the legal position obtaining, this Court finds that the decisions relied upon by the learned standing counsel for the Corporation, appearing for the writ petitioners, do not advance the case of the writ petitioners and that there is no acceptable merit in the contentions of the writ petitioners/Corporation.

17. On the above analysis and for the reasons afore-stated, this Court holds that this is not a fit case calling for interference with the impugned Award.

18. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

30.08.2018
Vjl



