

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.13129 of 2002

ORDER:

The petitioner-APSRTC Management filed this writ petition being aggrieved by the Award, dated 25.06.2001, passed in I.D.No.110 of 1998, by the Industrial Tribunal-cum-Labour Court, Warangal, whereby, the Labour Court set aside the removal of the 1st respondent/workman, and directed the petitioner/Management to reinstate the 1st respondent/workman into service as driver with continuity of service, full back wages and attendant benefits, and further directed that the period of suspension of the 1st respondent/workman shall be counted for all purposes.

During pendency of the writ petition, the 1st respondent/workman died on 11.06.2003. Respondents Nos.3 and 4 are brought on record as his legal heirs, vide order dated 16.02.2006, passed in WPMP No.16888 of 2005. The workman was appointed as a Driver in the petitioner's Corporation. On 31.03.1996 while the 1st respondent/workman was driving the bus bearing No.AEZ-2505 on the route Mahabubabad to Khammam, the workman caused accident, resulting in death of one person and injuries to two persons who were traveling in the Jeep. Based on the report of the Senior Traffic Inspector, the workman was kept under suspension and he was issued a charge sheet on 08.04.1996, framing the following charge:

“For having driven the vehicle No.AEZ-2505 in rash and negligent and lack of anticipation on route MHBD-KMM (via) Kurivi, and hit against Jeep No.AAV-387 resulting death of a person and injured two other persons traveling by Jeep No.AAV-387 which constitutes

misconduct under Regulation No.28(ix)(a) & (b) of A.P.S.R.T.C Employees (Conduct) Reg. 1963.”

The workman submitted his explanation to the charge sheet on 15.04.1996. Not convincing with the explanation of the workman, the disciplinary authority had conducted enquiry. The workman was given full and fair opportunity in the enquiry, and the enquiry officer submitted his report, holding that the charge against the 1st respondent/workman was proved. The disciplinary authority, based on the enquiry officer's report, issued a show cause notice to the 1st respondent/workman on 11.07.1996 along with enquiry officer's report, dated 28.06.1996, asking him to explain why he should not be removed from service. The 1st respondent/workman submitted his explanation to the show cause notice on 03.08.1996. The disciplinary authority, considering the report of the enquiry officer, dated 28.06.1996 along with the explanation of the 1st respondent/workman, independently came to the conclusion that the charge is proved and the 1st respondent/workman was removed from service by order, dated 05.08.1996. The 1st respondent/workman preferred appeal and revision on 25.08.1997 and 25.03.1998 unsuccessfully. Thereafter, the 1st respondent/workman raised an industrial dispute in I.D.No.110/1998 before the Industrial Tribunal-cum-Labour Court at Warangal under Section 2-A(2) of the Industrial Disputes Act seeking to set aside the removal order, dated 05.08.1996 and to direct the petitioner-Management to reinstate him into service with all benefits. The Labour Court, having considered the evidence before it Exs.M1 to M18, came to the conclusion that the finding of the enquiry officer that the charge is proved against the workman is perverse, for the reason that the enquiry officer solely relied on the evidence of S.T.I, who conducted

the preliminary enquiry coupled with rough sketch which could not be accepted as legally admissible evidence to fix the liability of the workman for negligent driving. The rough sketch drawn by the S.T.I cannot be taken as primary evidence for fixing the negligence of the workman when the accident was in the nature of head-on collision between the bus and the jeep. The Labour Court passed the award, setting aside the removal order of the workman and directed the petitioner-management to reinstate the workman into service with continuity of service, full back wages and attendant benefits and also directed to count his suspension period for all purposes. Being aggrieved by the same, the petitioner-management has filed the present writ petition.

Sri B.Mayur Reddy, counsel, appearing for the petitioner Corporation, would contend that the workman was removed from service on 05.08.1996, based on the enquiry officer's report, holding that the charge is proved against the petitioner. The 2nd respondent-Labour Court having held that the enquiry was validly conducted in fair and proper manner, grossly erred in holding that the finding of the enquiry officer that the charge is proved against the workman is perverse. The Labour Court also grossly erred in re-appreciating the evidence before the enquiry officer and come to a different conclusion is illegal. The learned counsel further contended that the Labour Court on re-appreciating the evidence, erroneously came to the conclusion that the charge is not proved against the workman and passed the award directing reinstatement of the workman into service with continuity of service, full back wages and attendant benefits and in addition, directed to count the suspension period of the workman for all purposes, which is arbitrary, illegal and contrary to the law laid down by this court.

The learned counsel for the petitioner-management also contended that the Labour Court grossly erred in passing the award relying on the acquittal of the workman in the criminal case. He further contended that the Labour Court cannot rely on the acquittal of the workman in the criminal case, as the departmental proceedings and the criminal proceedings are different, and in support of his contention, the learned counsel relied on a judgment of the Hon'ble Supreme Court in *Karnataka SRTC v M.G. Vittal Rao*¹ wherein the Apex Court held as under at para-17:

“....Proceedings in a criminal case and departmental proceedings can go on simultaneously except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common. In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Where the charge against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case. In case the criminal case does not proceed expeditiously, the departmental proceedings cannot be kept in abeyance for ever and may be resumed and proceeded with so as to conclude the same at an early date. The purpose is that if the employee is found not guilty his cause may be vindicated, and in case he is found guilty, the administration may get rid of him at the earliest.”

As seen from the Award of the Labour Court, the Labour Court has not relied on the acquittal of the workman in the criminal case and it has observed that the enquiry officer erroneously based on the evidence of

¹ (2012) 1 SCC 442

S.T.I, who conducted preliminary enquiry, coupled with rough sketch submitted his report finding that the charge is proved against the workman, and based on such enquiry report, the disciplinary authority removed the workman from service, which is illegal and arbitrary. Therefore, the judgment cited by the learned counsel for the petitioner-management is not helpful to the facts of the present case.

Sri A.K.Jayaprakash Rao, counsel, appearing for the 1st respondent/workman, would contend that while the workman is driving the bus on 31.03.1996 on the route Mahabubabad to Khammam, after crossing Korivi stage, as there was a turning between Korivi and Mothugulagudem, the workman drove the bus slowly by blowing horn, at that time one Jeep came in opposite direction in high speed and in negligent manner and dashed the bus at second turning, which resulted accident. The workman was acquitted in criminal case. The charge against the workman was not proved in the domestic enquiry based on any legally admissible evidence. The Enquiry Officer, solely relying on the evidence of S.T.I, held that the charge is proved. But the Enquiry Officer conveniently omitted the evidence of conductor in arriving the conclusion that the charge is proved. The learned counsel further contended that the Labour Court rightly came to the conclusion that at the time of accident, the bus was running in a speed of 20 to 25 kms per hour at the time of accident because of a curve. The evidence of S.T.I, who conducted preliminary enquiry coupled with a rough sketch cannot be accepted and there is no irregularity or illegality committed by the Labour Court in coming to a conclusion that the charge is not proved. The learned counsel further contended that the Labour Court has power to re-appreciate the evidence under Section 11A of the Industrial Disputes

Act and held that the enquiry report is based on no evidence and is perverse, for the reason that the workman's evidence and acquittal of the workman in the criminal case was not considered and hence, the learned counsel contends that there is no error of fact or law warranting interference of this court with the award of the Labour Court.

Having considered the rival contentions of both the counsel, this Court, having perused the available record, found that the enquiry officer came to the conclusion that the charge is proved solely based on the evidence of S.T.I, who conducted preliminary enquiry coupled with rough sketch, as held by the Labour Court, cannot be accepted as legally admissible evidence to fix the liability on the workman for negligent driving. At the time of accident, the speed of the bus is about 20 to 25 kms per hour approximately and the workman is negotiating the curve and due to sheer negligence on the part of the driver of the Jeep, the accident occurred. Re-appreciation of the evidence by the Labour Court cannot be said to be illegal, as the Labour Court has power to re-appreciate the evidence to exercise its power under Section 11(A) of the Industrial Disputes Act as held by this Court in the case of *Depot Manager, APSRTC vs. E.Ram Reddy*² and whether there is any perversity in the finding of the enquiry officer. On re-appreciating the evidence before the enquiry officer, the Labour Court came to the conclusion that the charge is not proved based on any legally admissible evidence. The enquiry officer brushed aside the evidence of the workman. Having considered the evidence under Exs.M1 to M18, the Labour Court has rightly come to the conclusion that the charge against the workman is not proved and accordingly passed the award, which is

² 1995 (5) ALD 735

not suffered from any irregularity or error of fact or law, warranting interference of this Court.

The workman is no more and his legal representatives were brought on record. Considering the financial position of the petitioner-Corporation and the payment of compensation to the deceased person, this court felt that the award of the Labour Court to the extent of granting of full back wages requires modification and grant of 50% of back wages would meet the ends of justice. Accordingly, the Award of the Labour Court, Warangal, dated 25.06.2001, passed in ID No.110 of 1998, to the extent of grant of full back wages is modified to that of grant of 50% back wages, in other respects, the award needs no modification.

Pursuant to the interim directions of this court, dated 24.07.2002, 1/4th of back wages were already deposited by the petitioner-management. Respondents Nos.3 & 4, who are legal representatives of the deceased workman are at liberty to withdraw the said 1/4th of back wages without furnishing any security. The petitioner-management is directed to settle all the benefits including the remaining 1/4th of back wages, payable to respondents Nos.3 & 4, on behalf of deceased workman, within a period of two months from the date of receipt of a copy of this order.

The Writ Petition is partly allowed to the extent indicated above.
No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 03.08.2018
Dsr

M.GANGA RAO,J