

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.17350 OF 2001

ORDER:

Petitioner, who worked as a driver in the second respondent-Corporation, filed this Writ Petition being aggrieved by the award dated 23.12.1993 passed in I.D.No.257/1991 by the Chairman, Industrial Tribunal-cum-Labour Court, Godavarikhani, whereby the petitioner was ordered to be appointed as a 'Fresh driver', but for purposes of pension and attendant benefits, continuity of his previous service and with back wages i.e. salary of emoluments or remunerations or attendant benefits to the extent of 25% only but from 01.10.1991 onwards.

Brief facts of the case are that the petitioner was attached to the second respondent-Depot. On 15.10.1987 while he was driving the bus bearing No.AEZ 1754 on route Kagaznagar to Vijayawada near KM No.4, caused an accident resulting in injuries to an old lady, for which a charge sheet was issued framing the following charge:

“For having caused an accident to the vehicle No.AEZ 1754 on 15-10-1987 resulting into serious injury to a lady due to rash and negligent driving, which constitutes mis-conduct under Regulation 28 IX (a) of APSRTC Employees (Conduct) Regulations, 1963.”

Petitioner submitted his explanation explaining the circumstances under which the accident was occurred and requested to drop the enquiry proceedings. Having considered the explanation and not being satisfied with the same, the Disciplinary Authority got conducted enquiry. The Enquiry Officer submitted Enquiry report holding that the charge is proved. Based on the Enquiry Officer's report and on independent application of mind,

the Disciplinary Authority having provisionally come to the conclusion that the charge is proved, issued a show cause notice to the petitioner to explain as to why he should not be removed from service. Petitioner submitted his explanation to the show cause notice. The Disciplinary Authority having not satisfied with the explanation submitted by the petitioner to the show cause notice, passed the order of removal dated 12.03.1988 removing the petitioner from service. Being aggrieved by the same, the petitioner raised an Industrial Dispute in I.D.No.257/1991 before the first respondent-Labour Court. The Labour Court having considered the evidence before it in Exs.M.1 to M.13 and on re-appreciation of the evidence, came to the conclusion that there is no sufficient evidence before the Enquiry Officer to hold that the charge is proved and passed award partly allowing the petition by setting aside the removal order dated 12.03.1988 by directing the respondents to appoint the petitioner as fresh driver, as stated supra. Aggrieved by the Award of the Labour Court to the extent of denying 75% back wages and continuity of service for the purpose of seniority, promotion, etc., the present writ petition came to be filed.

Sri B.Sudhakar Reddy, learned counsel appearing for the petitioner, would contend that the petitioner submitted his explanation to the charge sheet stating that on 15.10.1987 while the petitioner was driving the bus on route Kagaznagar-Vijayawada near K.M.4, when the petitioner reached the narrow bridge, a cyclist, who was going on left side suddenly turned right side, due to sudden turning and imbalance and confusion, the old lady sitting on the carriage of the cycle fell down along with the cyclist

and another girl sitting in the front portion of the cycle, fell down on the middle of the road, due to which the accident occurred. Meanwhile, the old lady came under the rear wheel of the bus and the bus rear wheel ran over on the legs of the fallen lady, resulting into accident. In spite of petitioner's best efforts by slowing down the bus and taking it aside, petitioner could not avert the accident as the bus was near a narrow bridge. However, without considering the explanation of the petitioner to the charge sheet, the Disciplinary Authority ordered for enquiry. The Enquiry Officer has not considered the evidence of the petitioner and brushed aside the same and based on the passengers' statements, on mere surmises and conjectures, held that the charge is proved. The Disciplinary Authority solely based on the Enquiry Officer's report, without independent application of mind to the evidence before the Enquiry Officer and mechanically came to the conclusion that the charge is proved. A show cause notice was issued to the petitioner, to which petitioner submitted his explanation. But, the Disciplinary Authority, without considering his explanation in its proper perspective, passed the removal order. The petitioner raised I.D.No.257/1991 before the Labour Court. The Labour Court had come to the conclusion that the charge is proved, without there being any legal evidence, on re-appreciating the evidence before the Enquiry Officer and held that the Enquiry Officer has not considered the evidence of the petitioner before him and brushed aside the same without any reason and thereby the Enquiry Officer has committed grave error of fact, which amounts to non-consideration of the relevant evidence before the Enquiry Officer, which amounts to perversity of finding of the Enquiry

Officer. The Enquiry Officer solely based on the statements of the passengers given in the spot, without being any legal evidence on mere surmises and conjectures came to the conclusion that the petitioner has caused accident and came to the conclusion that the charge is proved, but the said statements of the passengers are not filed before the Labour Court. However, the Enquiry Officer's report is filed. The Labour Court having considered the material evidence available before it came to the conclusion that there is no legal evidence before the Enquiry Officer to hold that the petitioner caused accident negligently and thereby he committed misconduct. The Labour Court having exercised the power under Section 11-A of the I.D. Act held that the charge is not properly proved, grossly erred in passing the award directing the respondents to appoint the petitioner as a fresh driver without continuity of service and without back wages, is illegal. As the charge is not proved, the petitioner is entitled for reinstatement with continuity of service and all other benefits.

Per contra, Sri A.Ravi Babu, learned counsel appearing for the second respondent-Corporation, while reiterating the averments of the counter affidavit, states that the petitioner has caused an accident due to his rash and negligent driving. The Disciplinary Authority having not satisfied with the spot explanation of the petitioner, got conducted enquiry. The Enquiry Officer after conducting the enquiry and giving full and fair opportunity to the petitioner, based on the evidence available before him held that the charge is proved. The Enquiry Officer submitted enquiry report to the Disciplinary Authority. The Disciplinary Authority having considered the Enquiry Officer's

report independently, provisionally came to the conclusion that the petitioner is liable to be removed from service. Accordingly, a show cause notice was issued to the petitioner asking his explanation as to why he should not be removed from service. The petitioner submitted his explanation. The disciplinary authority having not satisfied with the explanation and considering the evidence available on record, passed the removal order, against which the Petitioner raised an Industrial Dispute. The Labour Court has not properly considered the evidence before it and erred in holding that the charge is not proved. The Labour Court has committed error of law by re-appreciating the evidence before the Enquiry Officer to come to a different conclusion to that of the Enquiry Officer and passed the impugned award in exercise of power under Section 11-A of the I.D. Act directing the respondents to appoint the petitioner as a fresh driver and pay other benefits, there is no error of fact and law, which calls for interference of this Court under Article 226 of the Constitution of India. If this Court comes to the conclusion that the award of the Labour Court in ordering the respondents to appoint the petitioner as a fresh driver and denying back wages is severe punishment and disproportionate to the proved misconduct, this Court has to remand the matter to the Disciplinary Authority for fresh consideration and imposing a lesser punishment. But, this Court could not substitute the punishment awarded to the petitioner.

In the facts and circumstances of the case and having considered the rival contentions of the counsel, this Court finds that the petitioner caused an accident on 15.10.1987 while driving the bus bearing No.AEZ 1754 on route Kagaznagar-Vijayawada.

The accident occurred at the narrow bridge. Petitioner submitted spot explanation denying the rash and negligent driving stating that while the bus was reaching narrow bridge at KM No.4 cyclist suddenly turned the cycle from left side to right side. In the process of sudden turning and jerk, the old lady sitting on the back side of the cycle got afraid and tried to get down from the cycle, in the result, she fell down on the road along with the girl aged about 9 years, who was sitting on the front side of the cycle, also fell on the road. The old lady, who fell on the road due to sudden jerk and imbalance of cyclist, came under the rear wheel of the bus and the rear wheel ran over the legs of the old lady causing injuries. Petitioner has stick to the spot explanation through out the enquiry and explanation submitted to the show cause notice but the same was not considered. The Enquiry Officer has also not considered the deposition of the petitioner given in the enquiry. But, the Enquiry Officer solely based on the statements of the passengers recorded at the spot and without noticing that the old lady fell on the left side of the road due to sudden jerk of the cyclist and came under the rear wheel of the bus and sustained injuries to her leg. The Enquiry Officer also not considered the accident report of the Senior Traffic Inspector, which says that there are no skid marks to reach to the conclusion that the driver drove the bus in a rash and negligent manner with high speed. If so, he could have applied brakes and avoided the accident. As the conclusion of the Enquiry Officer holding that the charge is proved is not based on proper appreciation of the evidence before him and conclusion of the Enquiry Officer is perverse for the reason that he has not considered the deposition of the petitioner and also the

accident report submitted by the Senior Traffic Inspector and nature of the accident, but he solely relied on the spot explanation of the passengers in concluding that the charge is proved, the Labour Court rightly re-appreciated the evidence before the Enquiry Officer to see whether the report of the Enquiry Officer is based on any reasoning and the Enquiry Officer considered the evidence before him properly, as the Labour Court is empowered to do so under Section 11-A of the I.D.Act. In these facts and circumstances, re-appreciation of the evidence before the Enquiry Officer by the Labour Court cannot be said to be erroneous. The Labour Court having held that the charge is not proved in a petition under Section 2-A (2) of the I.D.Act where the validity of the enquiry was not challenged but only the finding was challenged, ordering fresh appointment of the petitioner, is found to be severe punishment imposed on the petitioner without there being any proved misconduct.

Hence, the writ petition is partly allowed setting aside the removal order passed by the Disciplinary Authority as well as the award passed by the Labour Court. Further, to meet the ends of justice, the award of the Labour Court is modified directing the respondents to reinstate the petitioner into service with continuity of service by granting notional increments, however without any monetary benefits but with 25% of back wages.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

24.08.2018
sur