

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Appeal No.356 of 2019

Date: 25.04.2019

Between:

The Depot Manager, TSRTC
(Prior to bifurcation, known as APSRTC),
Siddipet, Medak District.

...Appellant

And

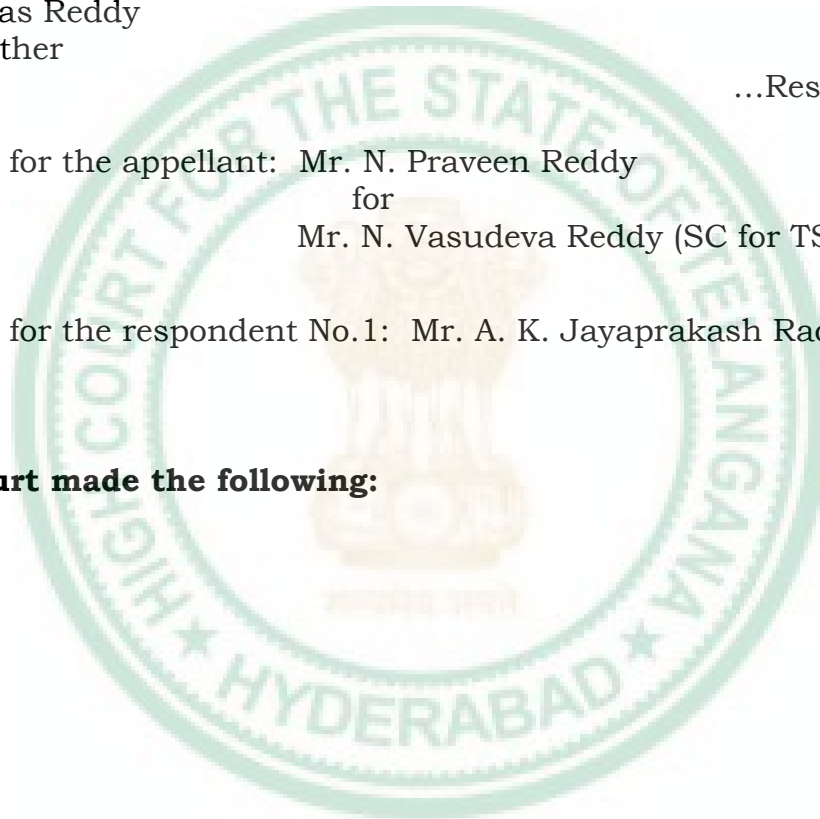
B.Srinivas Reddy
and another

...Respondents

Counsel for the appellant: Mr. N. Praveen Reddy
for
Mr. N. Vasudeva Reddy (SC for TSRTC)

Counsel for the respondent No.1: Mr. A. K. Jayaprakash Rao

The Court made the following:



JUDGMENT: (Per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)

The Telangana State Road Transport Corporation, earlier known as the Andhra Pradesh State Road Transport Corporation (APSRTC), has challenged the legality of the order dated 13.11.2018, passed by the learned Single Judge in W.P.No.18156 of 2005, whereby the learned Single Judge has dismissed the Writ Petition filed by the Corporation, and has confirmed the award dated 29.01.2005, passed by the Labour Court – II, Hyderabad, wherein the Labour Court had set aside the punishment order of removal, and had directed the reinstatement of the respondent – workman, along with the payment of 80% of backwages.

Briefly, the facts of the case are that the respondent – workman, was appointed as a casual driver on 12.12.1989 with the APSRTC. His services were regularized on 01.08.1992. On 29.06.2000 while the workman was driving a bus belonging to the Corporation on the route from Siddipet to Ellanthakunta, around 3:45 pm the bus met with an accident with a cyclist. Due to the injuries received in the accident, the cyclist eventually succumbed to his injuries. Consequently, the police registered a criminal case against the workman for the offence under Section 304-A of the Indian Penal Code. On 26.07.2000, the workman was suspended from his work. Eventually, a charge-sheet was furnished to him. On 06.02.2001, the enquiry officer submitted the enquiry report, wherein it was opined that the charges framed against the workman have been established.

The second show cause notice was issued on 10.04.2001. The workman submitted his explanation on 27.04.2001. But, by order dated 02.05.2001, the workman was removed from service. Since the workman was aggrieved by the said removal order, he preferred an appeal before the Divisional Manager. The said appeal was rejected by the Divisional Manager by order dated 29.09.2001. Therefore, he filed a further appeal before the Regional Manager. However, the same was also rejected by order dated 28.01.2002. Thereafter, the petitioner raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act before the learned Labour Court. By award dated 29.01.2005, the learned Labour Court, as mentioned hereinabove, set aside the punishment order, and directed the reinstatement along with payment of 80% of the backwages. Since the Corporation was aggrieved by the said award, it filed a Writ Petition before the learned Single Judge. However, by the impugned order dated 13.11.2018, the learned Single Judge has dismissed the Writ Petition, and confirmed the award passed by the learned Labour Court. Hence, this appeal before this Court.

Mr. N. Praveen Reddy, the learned Counsel for the Corporation, has raised the following contentions before this Court:-

Firstly, the learned Labour Court has ignored the fact that the width of the road was 12 feet. Even if the cyclist came from the left side and suddenly turned to the right side, the workman should have been vigilant while driving the bus. Hence, he was

required to take precautionary measure to avoid the occurrence of the accident. Secondly, due to the death of the cyclist, the Corporation is financially burdened, as the Corporation is expected to pay a compensation to the dependants of the cyclist in the motor accident claim matter initiated by the legal representatives of the deceased. Thirdly, therefore, the learned Labour Court is not justified in directing that 80% of the backwages should be paid to the workman. Hence, the learned Single Judge is unjustified in confirming the award passed by the learned Labour Court. Therefore, the impugned order passed by the learned Single Judge deserves to be set aside by this Court.

On the other hand, Mr. A. K. Jayaprakash Rao, the learned counsel for the workman, submits that both according to the workman, and according to the conductor, the cyclist had suddenly turned to the right side without giving any signal. Therefore, the negligence was entirely that of the cyclist, and not of the workman, the driver of the bus. Therefore, the learned Labour Court was justified in concluding that since no negligence could be attributed to the workman, the punishment order of removal from service was legally unsustainable. Secondly, ever since the date that the workman was removed, he continued to be unemployed. Therefore, the learned Labour Court was justified in granting 80% of the backwages to the workman for the period of his unemployment. Hence, the learned counsel has supported the impugned award. Therefore,

according to him, the learned Single Judge is justified in confirming the award passed by the learned Labour Court.

Heard the learned counsel for the parties, and perused both the impugned award and the impugned order passed by the learned Single Judge.

A bare perusal of the impugned award passed by the learned Labour Court clearly reveals that both according to the conductor and according to the workman, the cyclist had suddenly turned right without giving any indication, that too on a narrow road having a width of 12 feet. Thus, obviously, the negligence was that of the cyclist, and not that of the workman. Hence, the learned Labour Court was justified in concluding that since there was hardly any negligence on the part of the workman, the punishment order of removal from service was legally unjustified. Therefore, both the learned Labour Court as well as the learned Single Judge were justified in directing the reinstatement of the workman.

However, the issue is whether the workman is entitled to receive the backwages for the period that he did not work with the Corporation or not? According to the learned counsel for the respondent – workman, the workman was not employed during the period ever since the punishment order has been passed. Since the workman was unemployed ever since 2001, he would certainly be entitled to receive part of the backwages. However, considering the fact that he did not work for the

Corporation from 2001 till the passing of the award in 2005, and since the learned Labour Court has rightly concluded that the negligence was not his, in the interest of justice and in order to balance the conflicting interest of the Corporation and the workman, it would be fair and reasonable to reduce the payment of backwages from 80% to 50%.

Therefore, the impugned award and the impugned order are modified to the extent that the workman would be entitled to receive only 50% of the backwages from the Corporation.

Hence, the appeal is partly allowed.

The miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

A.RAJASHEKER REDDY, J

25.04.2019
vs