

**HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT APPEAL No.1123 OF 2018

JUDGMENT: (ORAL) (Per Hon'ble the Chief Justice Sri Thottathil B.Radhakrishnan)

We have heard the learned counsel for the appellant -
Telangana State Road Transport Corporation. We have considered
the contents of the impugned order of the learned single Judge.

2. Respondent No.1 viz., Shanker was a driver of Telangana
State Road Transport Corporation; hereinafter referred to as
'Corporation'. He was appointed on 01.03.1991. He was driving bus
bearing No.AEZ 5141 on 12.04.1999 on Route No.15 from
Kushaiguda to Secunderabad. At about 3:45 p.m., that bus stopped at
Lalapet near Ram Theatre stage and thereafter, it started moving
slowly. The passengers shouted to stop the bus and the bus came to
halt. A lady was found lying on the road. It turned out that the lady
attempted to alight the bus through the left front door and she fell off
the bus leading to her death. That incident led to respondent No.1
being prosecuted for the offence punishable under Section 304-A of
Indian Penal Code, 1860 (for short 'IPC'). It led to an order of
acquittal, which, as can be seen from the award of the Industrial
Tribunal, was one rendered fundamentally, because the eyewitnesses
turned hostile. The Corporation carried disciplinary proceedings

against respondent No.1. He was dismissed from service. The Industrial Tribunal upheld the decision of the employer and passed an award affirming the dismissal. This was challenged by respondent No.1 before the learned single Judge. The learned single Judge has gone into the proceedings in the enquiry by the Corporation and concluded that the delinquent ought not to have been punished as such, and, accordingly, the learned single Judge set aside the findings in the enquiry as well as the dismissal and ordered reinstatement with full back-wages. Hence, this appeal by the Corporation.

3. Supporting the appeal, the learned standing counsel for the appellant - Corporation referred to the decision of the Apex Court in **State of Andhra Pradesh v. Chitra Venkata Rao**¹ to buttress his argument as to the scope of jurisdiction under Article 226 of the Constitution of India in dealing with departmental enquiries. That position notwithstanding, we are of the view that the award of the Tribunal has been rendered looking into the material evidence and concluding that the result of the domestic enquiry by the Corporation did not warrant interference at the hands of the Tribunal under the provisions of the Industrial Disputes Act, 1947 (for short 'ID Act'). That being so, the visitorial jurisdiction under Article 226 of the Constitution of India cannot be exercised in such a manner as to meet the entire materials to hold that the disciplinary proceedings and that the quality and quantity of evidence, which were dealt with by the

¹ (1975) 2 SCC 557

disciplinary authority and the enquiry officer, deserves to be interfered with. We say this because the learned single Judge has held that in the absence of eyewitnesses being examined in the disciplinary proceedings, it was not permissible to conclude that the delinquent was at fault. We are dealing with the disciplinary proceedings on certain admitted facts. The delinquent does not dispute the incident, which resulted in the death of a person. There is no gainsaying that the deceased attempted to board the bus. There is also no gainsaying that the delinquent was not prosecuted for the offence punishable under Section 304-A IPC. As noted by the Tribunal, the order of acquittal by the criminal Court was apparently on the ground that those who are cited as eyewitnesses turned hostile to the prosecution. That does not purge the delinquent of the responsibility to explain as to how the motor vehicle, which was under his control as driver, had resulted in the incident. The disciplinary authority's findings based on the enquiry report were not dislodged before the Tribunal. Obviously, therefore, there was absolutely no reason to visit the findings in the enquiry on a *de novo* consideration of the evidence on record. Such approach by interfering with the evidence would have happened only in exceptionally exceptional cases where the writ Court is not satisfied with the findings of the disciplinary authority in having concluded on the guilt of the delinquent. Having examined the materials on record and the award of the Tribunal, we do not see any ground to sustain the interference made by the learned single Judge

under Article 226 of the Constitution of India with the finding of guilt of the delinquent in the disciplinary proceedings.

4. Be that as it may, we have examined the award of the learned Tribunal. We do not see that the provisions of Section 11-A of the ID Act have been appropriately viewed and applied, particularly, when the culpability of the person is also a matter to be assessed on the basis of the nature of the accident. We may take into consideration that he immediately stopped the bus on hearing the shouting of the passengers in the bus. The immediate reaction of the delinquent is shown to have been one where he acted as is required from a person, who had been found driving the vehicle at the given point of time when the incident occurred. Such diligence as is expected from the driver has been duly exercised by him at that point of time. Therefore, we are of the view that it is abundantly a fit case where the Tribunal ought to have exercised jurisdiction under Section 11-A of the ID Act and modified the punishment of dismissal to be one of compulsory retirement since that would satisfy the ends of justice on the totality of the facts and circumstances of the case in hand.

5. For the aforesaid reasons, we set aside the impugned order of the learned single Judge to the extent that it sets aside the award in I.D. No.112 of 2001 dated 09.12.2004 of the Industrial Tribunal - I, Hyderabad, and also hereby modifies the said award by converting the penalty of dismissal ordered by the disciplinary authority to be one of

compulsory retirement. All consequences on this would follow in accordance with law.

6. The Writ Appeal is ordered accordingly. No order as to costs.

As a sequel thereto, Miscellaneous Applications, if any pending, in the writ appeal stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

February 28, 2019.

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