

***THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

+ WRIT PETITION No.24091 OF 2006

% 30—01—2019

The Depot Manager, APSRTC,
Yadagirigutta Bus Depot, Nalgonda District.

...Petitioner

vs.

\$ M.N.Reddy and Another

... Respondents

!Counsel for the Petitioner: Sri A.Ravi Babu, S.C. for RTC

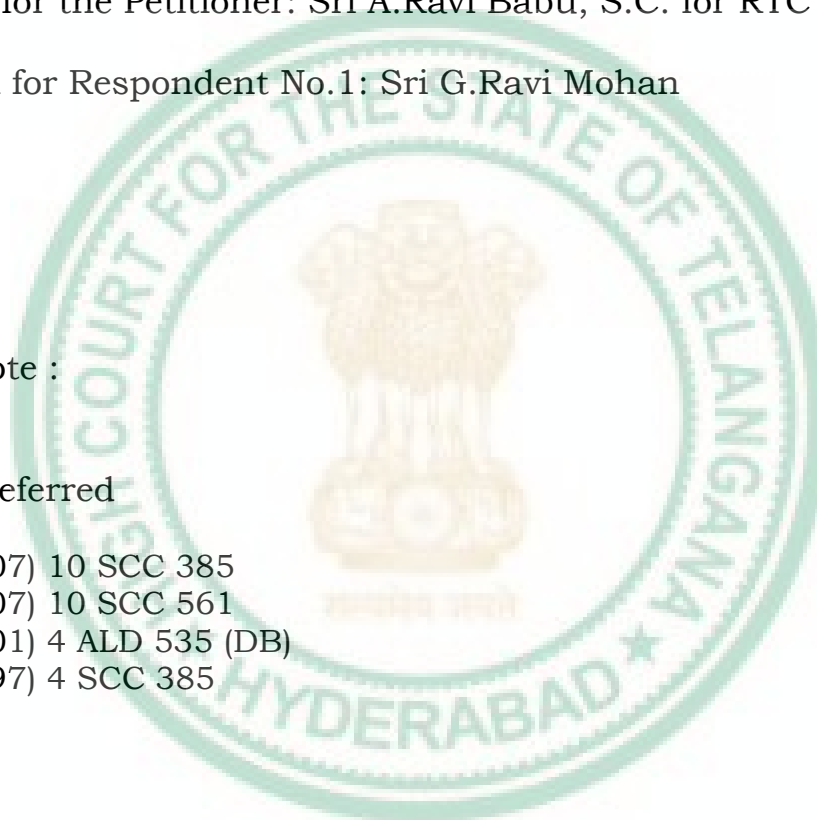
^Counsel for Respondent No.1: Sri G.Ravi Mohan

<Gist :

>Head Note :

? Cases referred

1. (2007) 10 SCC 385
2. (2007) 10 SCC 561
3. (2001) 4 ALD 535 (DB)
4. (1997) 4 SCC 385



IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

WRIT PETITION No.24091 OF 2006

Between:

The Depot Manager, APSRTC,
Yadagirigutta Bus Depot, Nalgonda District.

...Petitioner

And

M.N.Reddy and Another

... Respondents

JUDGMENT PRONOUNCED ON: 30.01.2020

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

T.AMARNATH GOUD, J

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.24091 OF 2006

ORDER:

This writ petition is filed challenging the Award of the Labour Court-III, Hyderabad (for short, Labour Court) in I.D.No.71 of 2002, dated 23.09.2004, which was published in G.O.Rt.No.364, Labour Employment Training & Factories (Lab.I) Department, dated 09.02.2005.

2. The brief facts of the case which led to file the present writ petition are as follows:

(a) The first respondent was appointed as Driver G.II on 17.08.1990 in RTC. While operating bus bearing No.AP9Z 5351 on 08.09.2000, the first respondent caused an accident in which a person standing beside Sharajpet main road died. The Police, Alair, registered a case in Crime No.55 of 2000 against the first respondent under Section 304-A of IPC for causing death of a person by driving the bus in a rash and negligent manner and the same was numbered as C.C.No.853 of 2000 before the Court of Judicial First Class Magistrate, Bhongir (for short, criminal Court). The criminal Court, on merits, dismissed C.C.No.853 of 2000, by order dated 06.08.2001, acquitting the first respondent from the charges levelled against him, after conducting trial.

(b) Simultaneously, the petitioner-RTC issued a charge memo to the first respondent with the following charges:

“(i) For having driven the vehicle No.AP 9Z 5351 of Yadagirigutta Depot in rash and negligent manner on

8-9-2000, resulting your bus dashed against a person who stood besides Sharajpet main road and succumbed to injuries, which constitutes misconduct under Reg.28(ix) (a) of APSRTC Employees' (Conduct) Reg. 1963.

(ii) For having failed to stop the vehicle on the spot where the accident took place and brought the vehicle to Alair Bus Station and allowed all the passengers to get down from the bus, which constitutes misconduct under Reg.28(xxx) (a) of APSRTC Employees' (Conduct) Reg. 1963."

(c) In pursuance of the charge memo, an enquiry was ordered and the Chief Inspector (Enquiries), Nalgonda, was appointed as Enquiry Officer. As the first respondent failed to attend the enquiry despite receipt of notice, the Enquiry Officer conducted *ex parte* enquiry on 05.03.2001 and submitted his report to the petitioner-RTC holding that the charges are proved. Thereafter, a show cause notice of removal dated 10.08.2001 was issued to the first respondent, for which, he submitted explanation. After perusing the explanation, the petitioner-RTC passed orders of removal dated 13.09.2001, removing the first respondent from service. The appeal filed by the first respondent was considered and rejected by order dated 22.03.2002. Challenging his removal, the first respondent filed I.D.No.71 of 2002 before the Labour Court.

3. After considering the oral and documentary evidence on record, the Labour Court, by its Award dated 23.09.2004, came to the conclusion that the charges levelled against the first respondent are not proved and the same are not maintainable. Accordingly, the Labour Court, set aside the removal order dated 13.09.2001 and directed the petitioner-RTC to reinstate the first

respondent into service with continuity of service and back wages, however, without attendant benefits.

4. Sri A.Ravi Babu, learned Standing Counsel for the petitioner-RTC, submits that even in a case where the criminal trial ends in acquittal in favour of the delinquent employee, there does not exist any embargo on the part of the disciplinary authority in initiating disciplinary proceedings on the self same charges, as the nature of evidence and proceedings in a departmental enquiry and criminal case are distinct and different and the findings of criminal case are not binding on the disciplinary authority. Therefore, the finding of the Labour Court that the petitioner-RTC has no right to take disciplinary action for the same offence consequent of acquittal in C.C.No.853 of 2000, is liable to be set aside. In support of his arguments, he relied on decisions of the Apex Court in **Noida Entrepreneurs Assn. V. Noida**¹ and **Gujrat SRTC V. Kadarbhai J.Suthar**².

5. Sri G.Ravi Mohan, learned counsel for the first respondent, submits that the criminal trial and the departmental proceedings are based on the same set of facts and the evidence adduced before the criminal Court and the disciplinary authorities being the same without any variance and that since the first respondent was acquitted in the criminal case, a contrary view in the departmental proceedings was not permissible. Therefore, he prays to dismiss the writ petition.

¹ (2007) 10 SCC 385

² (2007) 10 SCC 561

6. A perusal of the order of the Labour Court, it is evident that it has allowed the ID basing on the law laid down in **S.K.Ramju V. Regional Manager, APSRTC, Nalgonda, Nalgonda District**³. In the said case, the delinquent employee therein was not charged with the commission of any misconduct. He by reason of the alleged act of rashness and negligence of driving of the vehicle, as a result whereof a valuable life of a person was lost, is said to have damaged the reputation of the Corporation. This Court, though observed that there is absolutely no bar for initiation of disciplinary proceedings despite acquittal in criminal case, in the circumstances of that case, held that *‘in any event, as it has been held by the criminal Court that the appellant was not guilty of the charge of causing death, and he had not been acquitted on the ground of benefit of doubt, we fail to understand as to how despite the said finding of competent Court of law, the reputation of the respondent-Corporation has been damaged’*. Basing on the above, the Labour Court set aside the removal order dated 13.09.2001.

7. In **Noida Entrepreneurs Assn.**’s case (supra), the Apex Court held as follows:

"16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings."

8. In the said decision, the Apex Court referred its earlier decision in **Union of India V. Bihari Lal Sidhana**⁴, wherein the

³ (2001) 4 ALD 535 (DB)

⁴ (1997) 4 SCC 385

Apex Court had an occasion to deal with the position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service and held as follows:

"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be re-instated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

9. In **Noida Entrepreneurs Assn.**'s case (supra), the Apex Court, in para 11, held as under:

"11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See **Tata Cellular V. Union of India**⁵ and **Teri Oat Estates (P) Ltd. V. U.T.**,

⁵ (1994) 6 SCC 651

Chandigarh⁶.] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to **Kendriya Vidyalyaya Sangathan V. T.Srinivas⁷, Hindustan Petroleum Corpn. Ltd. V. Sarvesh Berry⁸ and Uttaranchal RTC V. Mansaram Nainwal⁹.**

8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act, 1872. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.”

⁶ (2004) 2 SCC 130

⁷ (2004) 7 SCC 442

⁸ (2005) 10 SCC 471

⁹ (2006) 6 SCC 366

10. As held by the Apex Court in the judgment cited supra, the question of fact to be considered in each case depending upon its own facts and circumstances. Coming to the facts of the present case, there was absolutely no *iota* of difference between the criminal case and the departmental proceedings. The first respondent was not charged with the commission of any misconduct, except the charges framed in the criminal case. Where the charges are same in both departmental enquiry and criminal case, and where the witnesses and the evidence is the same, acquittal on merits in the criminal case, would bar further departmental proceedings. In the present case, though two charges were framed in the charge memo in the departmental proceedings, the allegations therein is the same that of the criminal case, and after perusal of evidence and witnesses, the first respondent was acquitted by the criminal Court.

11. The learned Standing Counsel for the RTC though read both charges, but argued only on the charge of rash and negligent driving and causing death of a person and concluded his arguments. Since the criminal Court has appreciated the evidence and acquitted the accused/first respondent, a different opinion contradicting to the Court of law on the same set of facts, evidence and charge cannot be appreciated, though departmental enquiry is independent in nature. It becomes immense necessary to appreciate each case on its facts in the light of judicial and departmental proceedings, and in the present facts of the case, this

Court has no hesitation to hold that judicial order should prevail over disciplinary order.

12. Coming to the decisions referred to supra, the Apex Court, in **Noida Entrepreneurs Assn.**'s case (supra) though held that even if there is an acquittal in the criminal proceedings, the same does not bar departmental proceedings, the present set of facts stand on a different footing from that of the above case. In the present case on hand, the criminal case and the disciplinary case are on the same set of facts and same cause of action. In that scenario, when the competent criminal Court, after conducting due trial, acquits the accused, there cannot be any contra finding in the departmental proceedings so as to award punishment to the accused. Therefore, the facts in **Noida Entrepreneurs Assn.**'s case (supra) are distinguishable and not applicable to the present case. Likewise, the facts in **Kadarbhai J.Suthar**'s case (supra) are also easily distinguishable with the facts of the present case and hence, the said decision also is not of any help to the case of the petitioner.

13. It is to be noted that the facts in **S.K.Ramju**'s case (supra), relied upon by the Labour Court, are similar to the facts of the present case and hence, this Court is inclined to follow the law laid down in the said case. Therefore, the Award of the Tribunal cannot be found fault and this Court see no ground to interfere with the same and hence, the writ petition is liable to be dismissed.

14. Accordingly, the writ petition is dismissed, confirming the Award of the Labour Court-III, Hyderabad in I.D.No.71 of 2002, dated 23.09.2004. No costs. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 30.01.2020
Note: L.R. Copy to be marked.
B/o. TJMR

