

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**THURSDAY, THE SEVENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SMT JUSTICE T.MADHAVI DEVI

WRIT PETITION NO: 10430 OF 2021

Between:

1. D. Bhadru, S/o. Savula, aged 58 years, Occ.Ex-DriVer, E. No. 175434, Post and Village, Yendhpally, Mandal. Suryapet, District.Suryapet.
2. Smt. D. Badramma, Aged about 60 years, Occ Household, R/o. Post and Village Yendhpally, Mandal Suryapet, District Suryapet.
3. D. Sreenu, S/o Late D. Bhadru, Aged about 43 years, Occ Lorry Driver, R/o. Post and Village Yendhpally, Mandal Suryapet, District Suryapet
4. D. Vijay, S/o. Late D. Bhadru,, Aged about 35 years, Occ Agriculture, R/o. Post and Village Yendhpally, Mandal Suryapet, District Suryapet.

(As per the Court Order dated 19-6-2024 vide I.A.No.1 of 2022 in WP.No.10430 of 2021 petitioners Nos.2 to 4 are impleaded)

.....PETITIONERS

AND

1. TSRTC, Rep. by its Managing Director, Bus Bhavan, RTC X Road, Hyderabad.
2. The Executive Director (Administrative), TSRTC, O/o. Managing Director, TSRTC, Musheerabad, Hyderabad.
3. The Regional Manager, TSRTC, Nalgonda Region, Nalgonda District.
4. The Depot Manager, TSRTC, Suryapet Bus Depot, (Old Nalgonda District).

.....RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ or direction particularly one in the nature of WRIT OF CERTIORARI, quash the impugned award dated 25.09.2020 made in I.D. No. 23 of 2017, published on 23.11.2020 on the file of Labour Court-III, Hyderabad in not granting any relief as arbitrary, unjust, and in violation of Art.

14, 16 and 21 of the Constitution of India and consequently direct the respondents to reinstate the petitioner into service along with all consequential benefits in the interest of justice.

I.A.NO:1 OF 2021

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to reinstate the petitioner into service as the petitioner having only two years of leftover service pending disposal the above writ petition in the interests of justice

Counsel for the Petitioners : SRI V.NARASIMHA GOUD

Counsel for the Respondents : SRI A.RAVI BABU (SC FOR TSRTC)

The Court made the following ORDER

THE HONOURABLE SMT. JUSTICE T. MADHAVI DEVI

WRIT PETITION NO.10430 OF 2021

ORDER:

This Writ Petition is filed seeking a Writ of Certiorari to quash the impugned award dated 25.09.2020 in I.D.No.23 of 2017, published on 23.11.2020 on the file of Labour Court-III, Hyderabad, in not granting any relief to the petitioner as illegal and arbitrary and consequently to direct the respondents to reinstate the petitioner into service along with all the consequential benefits in the interest of justice.

2. Brief facts leading to the filing of the present writ petition are as under:-

Petitioner No.1 was appointed as a driver in Respondent-Corporation and he joined in service on 17.05.1997 after undergoing due process of selection. His services were subsequently regularized w.e.f. 01.01.2000. Petitioner Nos.2 to 4 are the legal heirs of petitioner No.1. On 25.07.2015, while petitioner No.1 was driving the bus service bearing vehicle No. AP 29Z 2147 between Vijayawada and Bhadrachalam, a pedestrian suddenly came on to the road

from the left side near L.V. Prasad Eye Hospital, Nava Bharat Village, from the back side of the stationed auto, and instead of crossing the road, he got confused and again came back; in the process, he came into contact with the left side corner of front bumper of the bus and he died on the spot. Respondent No.4 conducted the preliminary enquiry and on the basis of such report, he placed the petitioner under suspension on 11.08.2015 and charge sheet was issued to petitioner No.1. Thereafter, by order dated 18.03.2016, the petitioner No.1 was removed from service and against the same, he preferred an appeal, revision and mercy appeal, but all were rejected *vide* orders dated 19.04.2016, 22.07.2016 and 06.02.2017 respectively. Assailing the said orders, petitioner No.1 raised I.D.No.23 of 2017 before the Labour Court-III, Hyderabad. However, the Labour Court upheld the validity of the domestic enquiry and also the order of removal *vide* award dated 25.09.2020. Challenging the same, the present writ petition has been filed.

3. Learned counsel for the petitioners submitted that petitioner No.1 has worked with unblemished record of

service from 17.05.1997 till the date of his removal from service i.e., 18.03.2016. Learned counsel submitted that except for the sole incident where the pedestrian came into contact with the bus and sustained injuries resulting in his death on the spot, there was never, any other accident that occurred while petitioner No.1 was in service. Learned counsel for the petitioners submitted that the charge sheet dated 11.08.2015 was issued to the petitioner No.1 alleging that petitioner No.1 has driven the vehicle with gross negligence without taking any precautionary measures and hit the pedestrian, who was crossing the road from right side to left side, resulting in the death of the pedestrian on 25.07.2015 and that it amounts to serious misconduct under Regulation 28 (ix)(a) of APSRTC Employees (Conduct) Regulations, 1963. Learned counsel further submitted that petitioner No.1 submitted his explanation stating that there was no fault on his part and that the spot inspection report clearly revealed that due to confused state of mind of the pedestrian, the accident has taken place. It is also the submission of the learned counsel for the petitioner that in the enquiry, the conductor K.B. Reddy, the ADC of

Kothagudem Depot Sri Jamaluddin, who made spot inspection, and the Assistant Manager (P) Sri N.V.Reddy, who conducted the preliminary enquiry, were examined in support of the charges and petitioner No.1 was examined in defence and that the evidence adduced in the enquiry, in support of charges, was not sustainable. Therefore, according to learned counsel for the petitioners, the Enquiry Officer has committed an error, as is evident from the enquiry report, and based on the same, the petitioner No.1 was removed from service mechanically by the higher authorities. It is submitted that the Labour Court has committed an error in throwing the burden of proof on petitioner No.1 to show, under what circumstances the incident took place and has not taken into consideration the fact that Jamaluddin, ADC of Kothagudem, who went to the incident spot, has not examined any other witnesses on the spot, which would have revealed that the accident has occurred due to the confused state of mind of the pedestrian. Learned counsel further submitted that the burden of proving the charge is on the employer and not on the delinquent employee. It is further submitted by learned counsel for the petitioner, that in the enquiry all the three

management witnesses have deposed that due to the confused state of mind of the pedestrian, the accident was occurred. It is submitted that the Labour Court has given a finding on mere assumptions and presumptions and committed an error, in confirming the punishment order as is evident from the face of the record. Learned counsel placed reliance upon the judgment of the Hon'ble Supreme Court in ***Nirmala J. Jhala v. State of Gujarat and another***¹ and submitted that when the charges are made by the employer, the onus is on the employer to prove the charges made against the delinquent employee and not otherwise.

4. Learned Standing Counsel for Respondent-Corporation relied upon the averments made in the counter affidavit in support of the impugned orders and submitted that a detailed enquiry was conducted into the matter and there were no infirmities pointed out by petitioner No.1 in the said enquiry and that petitioner No.1 had also cross-examined the management witness and offered his explanations before the Enquiry Officer, wherein he requested to treat his explanation

¹ (2013) 4 SCC 301

to the charge sheet as his evidence in the enquiry. Learned Standing Counsel further submitted that petitioner No.1 did not produce any evidence or witness in his support. Thus, a fair and proper enquiry was conducted into the charges against him. Learned Standing Counsel further submitted that the Labour Court upheld the validity of the domestic enquiry and also the punishment of removal from service after considering all the relevant facts. Therefore, according to him, the order of the Labour Court needs no interference by this Court under Article 226 of the Constitution of India.

5. Having regard to the rival contentions and the material on record, this Court finds that there was death of a pedestrian while petitioner No.1 was driving a bus from Vijayawada to Bhadrachalam. The only question to be decided in this Writ Petition, is whether the Labour Court was right in confirming the punishment order of removal. Learned counsel for the petitioner has not been able to point out any infirmity in the enquiry conducted and therefore, the Labour Court has upheld the validity of the domestic enquiry. The only reason, if any, for interference would be if the accident

has occurred due to the negligence of the pedestrian. This Court finds that the Labour Court has gone into the evidence adduced by the management and has observed that the bus was moving at a high speed while the pedestrian was walking slowly and that the driver has not taken proper precautions in driving the vehicle slowly in the village, that too in front of the hospital and when the pedestrian almost crossed the road and on hearing the horn, turned back to return, there was no possibility of his returning back to the middle of the road without going towards the margin as stated by the petitioner No.1 and conductor. The Labour Court has also taken into consideration the fact that the body of the deceased was almost at the extreme end of the road and therefore, the contention of the petitioner No.1 that the pedestrian has returned back from the middle of the road was not correct and it was only a self-serving statement given by the petitioner. The Labour Court has come to the conclusion that the accident could be possible only when the pedestrian was moving slowly and the bus was at high speed and the driver wrongly estimated that the pedestrian would have crossed the road by the time the bus reached the said place, but due to

the slow movement of the pedestrian and the high speed of the bus, the driver, even after applying sudden brake and blowing the horn, could not have stopped hitting the pedestrian and the left bumper of the bus hit the pedestrian, causing grievous head injury, resulting in pedestrian's death. In view of these circumstances, the Labour Court has held that the management has proved the charges of negligence on the part of the petitioner No.1 and therefore the onus shifts on to the delinquent employee to establish that the accident happened due to some other cause than his own negligence. In view of this finding, the decision of the Hon'ble Supreme Court in **Nirmala J. Jhala** (cited supra) would not apply to this present case. In the said case, the onus was on the department to prove the circumstances of the charge sheet whereas in the present case, the management has already proved the case; therefore, the burden was shifted to the petitioner to prove his innocence. However, it is also noteworthy that in his service of 19 years from 1997 to 2016, there was no incident of any negligence on the part of the petitioner No.1. By the order of removal from service, the petitioner No.1 is deprived of all the benefits of his

unblemished service from 19 years. Therefore, this Court, in the interest of justice, deems it fit and proper to set aside the order of removal from service and remand the issue to the file of respondent No.4 for reconsideration of imposing a punishment other than removal from service. The respondent No.4 shall pass appropriate orders of lesser punishment within a period of three months from the date of receipt of a copy of this order.

6. Accordingly, the Writ Petition is disposed of. No order as to costs.

7. Pending miscellaneous petitions, if any, in this Writ Petition shall also stand dismissed.

SD/- P.Ch. NAGABHUSHAMBA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Managing Director, TSRTC, Bus Bhavan, RTC X Road, Hyderabad.
2. The Managing Director, Executive Director (Administrative), TSRTC, TSRTC, Musheerabad, Hyderabad.
3. The Regional Manager, TSRTC, Nalgonda Region, Nalgonda District.
4. The Depot Manager, TSRTC, Suryapet Bus Depot, (Old Nalgonda District).
5. One CC to SRI V.NARASIMHA GOUD, Advocate [OPUC]
6. One CC to SRI A.RAVI BABU (SC FOR TSRTC) Advocate [OPUC]
7. Two CD Copies

SA
GJP



HIGH COURT

DATED:07/11/2024

ORDER

WP.No.10430 of 2021



DISPOSING OF THE W.P
WITHOUT COSTS.

9
NMO
31/12/2024