

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 1591 of 2010

Between:

V.Ashok Reddy

... Petitioner

And

Depot Manager APSRTC and another

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

- 1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?**
- 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes**
- 3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 1591 of 2010

% 05.06.2023

Between:

V.Ashok Reddy

..... Petitioner

And

\$ The Depot Manager, APSRTC

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr A.K.Jaya Prakash Rao

^ Standing Counsel for Respondents: Mr N.Praveen Reddy

? Cases Referred:

1. 2003 (3) ALD 545

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 1591 of 2010****ORDER:**

Heard learned counsel for the petitioner and learned standing counsel for the respondents.

2. This Writ Petition is filed praying to issue a Writ of Mandamus declaring the nomination of the subordinate officer as enquiry officer to confirm the Joint Accident Committee report which was given in advance by the 1st respondent and DM/Hyd.-II prior to conclusion of the enquiry and without verifying the log-sheets of the Volvo Vehicle No. APIIZ 4200 with regards to complaints written by the Drivers for improper functioning of the breaks and without obtaining Motor Vehicle Inspector report, issuing a final order no.01/2(9)/08-Hyd-1 dated 10.11.2008 for deferment of increment for a period of 2 years with cumulative effect as illegal and unjust.

3. The case of the petitioner, in brief, is as follows:

a) Petitioner had been appointed as Driver in APSRTC in the year 1996 and petitioner's services had been regularized in the year 1997.

b) The 1st respondent issued Charge Sheet No. 01/02*9)/2008-H1 dated 10.04.2008 and also the suspension order dated 04.04.2008 along with the Joint Accident Committee report no.01/2(9)/2008-H1 dated 10.04.2008.

c) Explanation of the petitioner dated 05.05.2008 had not been considered and held that petitioner is responsible for the cause of accident without conducting Enquiry.

d) The Enquiry Officer (Assistant Manager) appointed by the 1st respondent herein, is a junior and subordinate in rank to the Depot Managers and the Enquiry could not be conducted properly.

e) While the petitioner, who was in duty and driving, was returning from Bengaluru to Hyderabad in Vehicle No. AP 11Z 4200 on 21.03.2008, while trying to avert vehicle (DCM-AP 16W 9731) that were involved in an accident, the petitioner had applied breaks but the retorder breaks which were neglected and were not functioning properly, hit the DCM (AP 16W 9731.) resulting in damages to the vehicle being driven by the petitioner.

f) It is still not clear as to how the cleaner of the DCM succumbed to death, whether being hit by the vehicle (Lorry

involved before the accident with petitioner) or due to being hit by the Respondent corporation bus.

g) The respondent had not discussed the findings and proceedings of the final order no.01/2(9)/08-Hyd-1 dated 10.11.2008 and held that the cleaner had succumbed to death due to petitioner's carelessness and negligence and imposing a punishment of deferring Annual Increment for a period of 2 (Two) years with cumulative effect.

h) Aggrieved, the petitioner preferred an Appeal to the Dy. Chief Traffic Manager R.R. Region but the Dy. Chief Traffic Manager issued proceedings no. ST/19(45)/08-Dy.CTM RR dated 20.05.2009 without giving the petitioner any fair opportunity to submit his explanation and without checking the log records, in which the drivers had passed remarks regarding the failure and non-functioning of retorder brakes.

i) The Review petition filed by the petitioner against the said orders of 1st respondent and Dy. Chief Traffic Manager, was also arbitrarily rejected without assigning any reason. Hence the Writ Petition.

4. The case of the respondents, in brief, is as follows:

- a) Petitioner while driving the bus on 21.03.2008, had caused a fatal accident at Dhone, which resulted in death of the Cleaner of the DCM, which had already been hit by the Lorry near the Dhone bypass road and the respondent had been shifted to the Dhone Government Hospital.
- b) Senior Traffic Inspector of Dhone had gone to the accident spot and opined that the petitioner is also responsible for the death of the cleaner and even the Joint Accident Committee had opined that the petitioner drove the vehicle/bus without observing the traffic rules and taking these into consideration, the petitioner had been issued with the suspension order on 2 charges.
- c) The Explanation of the petitioner submitted on 05.05.2008 was not satisfactory and hence the Enquiry Officer had been appointed to conduct enquiry into the charges against the petitioner and all the documents were supplied to the petitioner.
- d) During the enquiry, the Senior Traffic Inspector, had deposed that the petitioner failed in observing the

precautionary measures to avert the accident and failed to maintain 50 meters distance between the vehicles. During the deposition, where the DCM and Lorry have met an accident, it was stated that the DCM cleaner tried to jump over the vehicle, fell down on the road and died and seeing this, the petitioner had applied breaks which resulted in causing damage to the bus.

e) The petitioner did not cross examine the Senior Traffic Inspector and had not submitted/produced any witness in support of the defence and upon the recordings being read over, the petitioner had vouched that, the petitioner is satisfied with the conduct of the enquiry and hence the charges levelled against the petitioner is in accordance with APSRTC (CC&A) Regulations.

f) Availability of the evidence on record, the enquiry officer held the charges as proved against the petitioner and objection were called by the Disciplinary Authority and the petitioner submitted objections on 09.07.2008 and on perusal of the submission of the petitioners explanation, the disciplinary Authority held that the charges against the petitioner are proved and imposed the penalty of 'deferment

of annul increment for a period of 2 years with affect on future increments besides treating the suspension period as not on duty for all purposes and issued the show cause notice dated 15.07.2008. The Appeal and the review preferred by the petitioner had been rejected. Hence, there are no merits in the Writ Petition and is liable to be dismissed.

PERUSED THE RECORD

5. The counter affidavit filed on behalf of the Respondents, in particular, para 9 is as follows:

“9. It is submitted that based on the evidence available on record, the enquiry officer submitted his report to the disciplinary authority holding that the charges leveled against the petitioner as proved. Later, the disciplinary authority called for objections on the enquiry report from the petitioner through his letter dated 7-7-2008. The petitioner submitted his objections on 9-7-2008. After perusing the enquiry report, the objections submitted by the petitioner and the entire evidence available on record, the disciplinary authority came to a provisional conclusion that the charges levelled against the petitioner are proved and came to provisional conclusion to impose the penalty of "deferment of annual increment for a period of two years which shall have the affect on future increments besides treating the suspension period as not on duty

for all purposes" is fit and proper to be imposed upon him and as such issued a show cause notice on 15-7-2008. The petitioner acknowledged show cause notice and submitted his explanation to the show cause notice. Later the disciplinary authority (1st respondent) again perused the entire evidence available on record and came to conclusion that the charges were proved and as such ordered that "annual increment be deferred for a period of two years which shall have affect on future increments besides treating the suspension period as not on duty for all purposes." Against the said order, the petitioner filed an appeal before Dy.Chief Traffic Manager, Rangareddy Region and the same was rejected on 25-2-2009. The petitioner further filed Review petition before Regional Manager, Rangareddy Region and the same was rejected on 22-7-2009. It is submitted that punishment was imposed on the petitioner for the proved misconduct and the same is valid and this Court cannot go into the factual aspects. Hence W.P. is not maintainable. There are no merits in the W.P. and the same is liable to be dismissed.

6. The final order No.01/2(9)/08-Hyd.1, dated 10.11.2008 issued by the 1st respondent to the petitioner reads as under:

"You were issued with a Charge Sheet for having involved in an Fatal accident vide reference 3rd cited.

You have submitted explanation to the charge sheet vide reference 4th cited. After perusal of the explanation the entire case was sent to EO/RR for conducting a detail enquiry in to the charges levelled against you. The EO/RR has conducted an enquiry and submitted his report vide reference 5th cited. A copy of the enquiry report together with the statements were supplied to you calling your objections/comments vide reference 6th cited. You have submitted your objections/comments on the findings of the enquiry office vide reference 7th cited.

After carefully gone through the records, evidences together with the findings of the enquiry officer and hold you guilty of the charges framed against you, for which penalty of 'deferment of your annual increment for a period of two (2) years which shall have the effect on your future increments besides treating the suspension period as not on duty for all purposes" is fit and proper to be imposed upon you. Accordingly, a show cause notice was issued vide reference 8th cited. You have acknowledged the show cause notice on 23.08.2008 and submitted your explanation to the show cause notice vide reference 9th cited. Perused the explanation submitted to the show cause notice and felt is not convincing.

After giving careful consideration to the explanation submitted by you together with other evidences available on records for both the sides and

circumstances of the case and also carefully gone through the findings of the enquiry officer. I have come to a final conclusion that the charges levelled against you are held proved beyond any reasonable doubt for which penalty of 'deferment of your annual increment for a period of two years which shall have the effect on your future increments besides treating the suspension period as not on duty for all purposes' is fit and proper to be imposed upon you.

I therefore, hereby order that your 'ANNUAL INCREMENT BE DEFERRED FOR A PERIOD OF TWO YEARS WHICH SHALL HAVE THE EFFECT ON YOUR FUTURE INCREMENTS BESIDES TREATING THE SUSPENSION PERIOD AS NOT ON DUTY FOR ALL PURPOSES.'

7. The Joint Accident Committee Report No.01/2(9)/2008-HI, dated 10.04.2008 reads as under:

"Joint Accident Committee Report.

Present: 1.Sri G.S.S.Suresh, Depot Manager, Hyd.I
2. Sri I.Prabhakar Rao, Depot Manager, Hyd.II

It is alleged and reported by STI/Done Depot Vide reference 1st cited, and stating that on 21.03.2008 at about 05.340 hours that AP 11Z 4200 Garuda while incoming from Bangalore the same was hit to the Tipper No.AP 16 TW 9731 which is already hit with an Eicher Mini Lorry No.AP 22U 5103 near Done bye pass road resulted the death of Tipper Cleaner Sri Chinna

Rao, aged 22 years R/o Vijayanagaram District, the Tipper Driver and persons of the Either Van about 6 injured they were shifted to Kurnool Government Hospital. The deceased person shifted to Done Government Hospital. The bus was driven by Sri V.A. Reddy, E.271837, Hyd.I Depot, the 2nd driver is M.M.Reddy, E.272021 of Hyd.I Depot. Further, the STI/Done Depot attended the Accident spot and stated that, the Tipper while proceeding on route of Ananthapur one of the Eicher Lorry dashed to the Tipper in opposite direction at the same time the AP 11Z 4200 dashed to the Tipper with high speed, resulted the following damages to the AP11Z 4200 Volvo.

1. Big Glass Broken
2. Front Portion Damaged
3. Head Lights Damages.

A case registered by police Done vide FIR No.83/2008, dated 21.03.2008 under Section 337, 304 IPC.

Based on the above accident report and evidences available on the records, the Joint Accident Committee opined that the service driver of AP11Z 4200 Garuda driven the vehicle negligently without observing the traffic on the road which resulted in hitting a Tipper Cleaner aged about 22 years on 21.03.2008 at about 5.30 hours near Done Bye-pass road.

Therefore, the service driver Sri V.A. Reddy, E.271837, Driver of Hyderabad I is partially responsible for cause of Accident. Hence, he may be placed under suspension.

DEPOT MANAGER
Hyderabad II Depot

DEPOT MANAGER
Hyderabad I Depot

DISCUSSION AND CONCLUSION

8. The specific charge framed against the petitioner is that the petitioner failed to avoid the accident of Vehicle No.AP 11Z 4200 Volvo driven with negligence and not taken

precautions to avoid the Fatal Accident resulting in the death of Cleaner of Tipper named Sri Chinna Rao, on 21.03.2008 at about 5.30 hours near Dhone, Kurnool District. In addition to it, the 2nd charge framed against the petitioner is that the petitioner drove the vehicle negligently without observing the traffic rules.

9. A bare perusal of the material on record clearly indicates that the Joint Accident Committee Report dated 10.04.2008 was the basis for passing the order impugned and a bare perusal of the report dated 10.04.2008 indicates that a clear finding against the petitioner is recorded that the petitioner is partially responsible for cause of accident. Further the signatories of the Joint Accident Committee Report are Depot Manager, Hyderabad I and the Depot Manager, Hyderabad II.

10. A bare perusal of the charge dated 10.04.2008 issued to the petitioner also indicates that the Depot Manager, Hyderabad I depot called upon the petitioner to submit his explanation within seven days from the

date of receipt of the Charges framed as referred to

above. The order impugned had been passed by the Depot Manager, Hyderabad I Depot, having concluded finally that the charges levelled against the petitioner are held proved beyond reasonable doubt for which penalty of deferment of annual increment for the period of two years which shall have the effect on petitioner's future increments besides treating the suspension period as not on duty for all purposes had been imposed. The petitioner preferred an appeal against the said order of the Depot Manager, Hyderabad I Depot dated 10.11.2008 to the Deputy Chief Traffic Manager, Ranga Reddy Region and the 2nd respondent vide proceedings No.ST/19(45)/2008-Dy.CTM:RR, dated 20.05.2009 rejected the said appeal preferred by the petitioner without applying his mind independently and by simply upholding the order of the Depot Manager, Hyderabad and observing that the offence committed by the petitioner is serious one in nature and the punishment imposed on the petitioner by the Depot Manager, Hyderabad-I is proportionate to the Gravity of offence and therefore, there is no need to interfere into it.

11. A bare perusal of the said proceedings No.ST/19(45)/2008-Dy.CTM:RR, dated 20.05.2009 clearly indicate that it is passed mechanically in a routine manner relying on the final report dated 10.11.2008 of the Depot Manager I Depot. The petitioner preferred a review petition on 01.07.2009 before the regional Manager, RR Region MGBS, Hyderabad and the same was also rejected vide proceedings No.PA/675(54)/09-RM(RR), dated 22.10.2009 simply reiterating that the petitioner drove the vehicle in negligent manner and without observing the traffic on the road and keeping in mind of the gravity of the accident and also the extent of damage to the vehicle No.AP11 Z 4200, the review petition is rejected.

12. A bare perusal of the contents of the petitioner's representation dated 01.07.2009 addressed to the Regional Manager, MGBS, Hyderabad with a request to set aside the order dated 10.11.2008 and the order dated 20.05.2009 clearly indicate that the plea of the petitioner is that the petitioner never hit the Tipper and

that the accident occurred due to non function of retarder Break, and further that there are many complaints in the log sheets about non function of retarder break. But however, in the enquiry the log sheets were totally ignored and that the petitioner had been unnecessarily victimised though he was not guilty of the charge and though the petitioner did not drove the vehicle in rash and negligent manner.

13. This Court takes note of the fact that the disciplinary authority i.e. the Depot Manager, Hyderabad I Depot is also signatory and member of the Joint Accident Committee report dated 10.02.2008 pertaining to the subject accident holding that the petitioner is partially responsible for the cause of accident. This Court opines that initiation of disciplinary proceedings against the petitioner are in bias in view of the fact that Depot Manager I is member of the Joint Accident Committee which furnished the report dated 10.04.2008 pertaining to the subject incident and is himself the disciplinary authority which passed the impugned order. This Court opines that in the instant

case, the very initiation of disciplinary proceedings are vitiated and requires to be viewed seriously.

14. A bare perusal of the Joint Accident Committee report dated 10.04.2008 and the final order dated 10.11.2008 indicates that the same have signatures of Depot Manager, Hyderabad I Depot. The Joint Accident Committee Report to which the disciplinary authority was a party for arriving at the conclusion that the charge sheet levelled against the petitioner is proved had been basis both in the final order dated 10.11.2008 and also in the charge dated 10.04.2008 issued to the petitioner. Therefore, this Court opines that the whole initiation of disciplinary proceedings against the petitioner are vitiated by bias and in violation of principles of natural justice.

15. The requirement of natural justice that a man should not be a Judge in his own cause. If a man is to be a Judge in his own cause, then the decision cannot be in good faith. Justice should not only be done, but should appear to be done and this is not a euphemism

for Courts alone and the same applies with equal vigor and rigor to all those who are responsible for fair play. This Court opines that the justice never seem to be done, if a man acts as a judge in his own cause and he is himself interested in its outcome. This principle of natural justice also equally applies to the exercise of quasi judicial powers. The fundamental principle of natural justice applicable to quasi judicial proceedings, is that the authority empowered to decide must be one without bias towards one side or the other in the dispute. In quasi judicial proceedings, if the disciplinary authority himself enquired into the matter at preliminary stage and gave a finding that the delinquent employee was wrong, definitely it is not desirable that such disciplinary authority should initiate the proceedings and take a decision in the matter.

In the present case, as admittedly, as borne on record, the Joint Accident Committee Report dated 10.04.2008 which gave a clear finding that the petitioner is partially responsible for cause of accident and placed the petitioner under suspension, had the

Depot Manager, Hyderabad I Depot as one of its member and the Committee gave report holding preliminarily that the petitioner herein was at fault in the occurrence of the incident though partially, the Disciplinary Authority i.e. Depot Manager, Hyderabad I Depot should not have taken up the enquiry as a member of the Joint Accident Committee and thereafter initiate the disciplinary proceedings against the petitioner. The Single Judge of the High Court of Judicature of Andhra Pradesh dealing with similar situation in W.P.No.4745 of 1999, in its judgment dated 13.03.2003 reported in 2003(3) ALD 545 in Md. Hasson v Presiding Officer, Labour Court-I, Hyderabad and another observed as under:

“Generally speaking, the argument of the learned Standing Counsel for ASPRTC is to be accepted. But, in the instant case, the very initiation of disciplinary proceedings is vitiated and requires to be taken seriously. A plea, which is substantially legal in nature, can be raised at any point of time during the pendency of the litigation. In the instant case, it is seen from Ex.M23 - report of the Enquiry Officer - that his findings are totally based on Ex.M4 - preliminary enquiry report and Ex.M5 - Accident Enquiry Committee Report. It is

apt to extract the relevant observations of the Enquiry Officer in Ex.M23, which read thus:"The Accident Enquiry Committee in its report observed that the service Driver is found responsible for occurrence of the accident which took place due to rash and negligent driving of the bus.....As per the preliminary Enquiry Officer's Report the dead body of the lady pedestrian found lying before the bus i.e., 3' away from the bus..... The Accident committee Report also established the guilts of the driver....In the light of the above discussion and based on the available evidence on the face of the record, the charge is held proved".

10. From the above observations, it is clear that the Enquiry Officer fully depended upon Ex.M4 - preliminary enquiry report = and Ex.M5 - Accident Enquiry Committee - Report, to which the disciplinary authority (Depot Manager, Mehdipatnam) himself was a party for arriving at the conclusion that the =charge levelled against the petitioner is proved. Thus, the whole initiation of disciplinary proceedings against the petitioner was vitiated by bias and violation of principles of natural justice. On this ground alone, the Award of the Labour Court is liable to be set aside.

11. Accordingly, the Order of removal dated 25-4-1995 passed by the 2nd respondent and the consequential orders of the appellate authority and the reviewing authority and also the impugned Award dated 4-11-1998 of the Labour Court-I, Hyderabad in I.D.No.22 of

1997 are set aside. In the circumstances of the case, the petitioner is entitled for being reinstated into service with continuity of service, but without back wages and without any attendant benefits for the period for which he was out of service.

16. Taking into consideration the view taken by this Court under similar circumstances, in W.P.No.4745 of 1999, in its judgment dated 13.03.2003 reported in 2003(3) ALD 545 in Md. Hasson v Presiding Officer, Labour Court-I, Hyderabad and another referred to and extracted above, this Court opines that the petitioner is entitled for the relief as prayed for in the present writ petition and accordingly, the writ petition is allowed setting aside the final Order No. 01/2(9)/08-Hyd-1, dated 10.11.2008 passed by the 1st respondent. The petitioner is entitled to be reinstated into service with continuity of service, and all consequential benefits and the respondents are directed to reinstate the petitioner into service forthwith by passing appropriate orders accordingly. It is however, open to the respondents to proceed against the petitioner if they so desire, but, by duly following principles of natural justice and in

accordance to law. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked
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