
(2014) 07 OHC CK 0026
In the Orissa High Court
Case No : W.P. (Civil) No. 8912 of 2003

Guru Prasad Bose

APPELLANT

Vs

District Magistrate (ADM) Administration, OSRTC

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2015) 119 CLT 164 : (2014) LabIC 4420 : (2014) 2 OLR 627

Hon'ble Judges : Dr. B.R. Sarangi, J

Bench : Single Bench

Judgement

Dr. B.R. Sarangi, J.—Late Guru Prasad Bose, who was working as a Driver under the Orissa State Road Transport Corporation Ltd. (hereinafter referred to as "the Corporation) a Government of Orissa Undertaking, had filed this writ petition seeking the following reliefs:

"It is therefore, most humbly prayed that this Hon''ble Court be graciously pleased to admit the writ application, call for the records from the opposite parties, issue rule NISI calling upon the opp: parties to show cause, as to why the prayers made hereunder, be not allowed and upon showing insufficient/no cause, make the said rule absolute by issuing writ/writs/no cause, make the said rule absolute by issuing writ/writs, in the nature of:

- (i) Certiorari quashing the enquiry report under Annexure-7 and the order of punishment under Annexure-9;
- (ii) Mandamus directing the opp. parties to release the retiral dues of the petitioner forthwith;
- (iii) Mandamus directing the opp. parties to an exemplary cost for dragging the petitioner to unnecessary litigations;
- (iv) xx xx xx xx xx"

2. During pendency of the writ petition, Late Guru Prasad Bose expired and his legal heirs have been substituted as petitioners pursuant to the order dated 15.09.2006 to pursue the remedy sought by the deceased petitioner as stated above.

3. The short facts of the case in hand are that the writ petitioner while was on steering of a bus bearing Registration No. OR-02A-3035 (Bhubaneswar-Motu) with full care and caution, met with an accident on 12.09.2003 by which a girl namely, Niyati Satpathy, died as the left rear wheel of the bus ran over her. The deceased petitioner was placed under suspension on 15.09.1993, vide Annexure-2 but no disciplinary proceeding was initiated against Late Guru Prasad Bose for quite a long time. The Personal Manager of the Corporation wrote a letter to the District Transport Manager (A), opposite party No. 1 intimating him to make sincere efforts to draw disciplinary proceeding and finalize the same as expeditiously as possible on 8.9.1994, vide Annexure-3. As a result, Late Guru Prasad Bose had been reinstated in service on 21.9.1995 vide Annexure-4. After the incident occurred on 12.9.1993, the brother of the deceased girl, namely, Rakesh Satpathy lodged and FIR in B.N. Pur Police Station at Berhampur and on the basis of the said FIR, police registered the case being G.R. Case No. 799 of 1993 in the Court of learned J.M.F.C. (T), Berhampur for alleged offences under Sections 279/ 304A, IPC against late Guru Prasad Bose. On consideration of the materials available on record, the learned Magistrate acquitted Late Guru Prasad Bose of the charges vide judgment dated 01.05.1999, Annexure-5.

4. The parents of the deceased girl also filed an application under Section 166 of the Motor Vehicles Act, 1988 before Second M.A.C.T. (SD), Berhampur, registered as MAC Case No. 357/94 (53/94) claiming compensation on account of the death of their daughter in the accident in which learned Tribunal awarded a compensation of Rs. 90,000/- with interest thereon @ 9% per annum from the date of application till realization from the Corporation, vide order dated 30.3.1996, Annexure-6.

5. Against the aforesaid award of compensation under Annexure-6, the Corporation did not choose to prefer an appeal, but after a long lapse of nine years, initiated a disciplinary proceeding vide DDP No. 2825 dated 10.7.2002 and framed the following charges:

"(1) due to accident of bus bearing registration No. OR-02-A 3035 on 12.9.1993 while on steering in Bhubaneswar-Motu line resulting the death of one college girl namely Niyati Satpathy; and

(2) Due to his such negligent conduct the second MACT Court, Berhampur awarded Rs. 90,000/- towards compensation which is a loss."

6. In reply to the aforesaid charges, Late Guru Prasad Bose filed his explanation on 24.7.2002 denying the allegations and categorically stated that he was neither negligent in performing his duty nor was driving the bus rashly, but it was due to the fault and misfortune of the girl, she fell under the left rear wheel of

the bus which he had no occasion to know. On 31.7.2002 Late Guru Prasad Bose retired from service on attaining the age of superannuation, vide Annexure-1.

7. In the disciplinary proceeding, the Enquiry Officer without considering the materials available submitted a report on 22.9.2002, vide Annexure-7, wherein it was categorically held that the deceased petitioner was guilty of the charges of misconduct due to accident of the bus and further held that had the vehicle not met with the accident, the Corporation would not have been made liable to pay the compensation amount of Rs. 90,000/- with interest, while declining to accept the plea taken by the deceased driver stated that it was an afterthought.

8. Against the said finding of the Enquiry Officer, Late Guru Prasad Bose made a representation to the authority on 9.1.2003, vide Annexure-8. Without considering such representation, the disciplinary authority imposed punishment which reads as follows:

"(1) Period of sustenance is treated as such.

(2) The compensation of amount of Rs. 90,000/- (Rupees Ninety thousand) only with 9% interest amounting to Rs. 1,61,550/- (Rupees One Lakh Sixty One thousand Five Hundred Fifty) only is ordered to be recovered from the dues of Late Guru Prasad Bose, Driver, OSRTC, Bhubaneswar."

9. Against the order imposition of penalty by the disciplinary authority, vide Annexure-9, Late Guru Prasad Bose had preferred an appeal before Divisional Manager (T) of the Corporation under Annexure-10 under Regulation 160 of OSRTC employees (ER & ES) Regulation, 1978 on 7.4.2003.

10. Since there was delay in disposal of appeal, Late Guru Prasad Bose filed this writ petition on 27.8.2003. While issuing notice vide order dated 24.5.2004, this Court passed an interim order in Misc. Case No. 8592 of 2003 which reads as follows:

"as an interim measure this Court directs that no coercive action shall be taken against the petitioner till next date (20.3.2004) pursuant to Annexure-9".

However, vide order dated 20.7.2004 this Court directed that the interim order dated 24.5.2004 would continue till the next date. During pendency of this writ petition Late Guru Prasad Bose died for which his legal heirs filed Misc. Case No. 12261 of 2005 to implead as petitioners. This Court allowed the Misc. Case vide order No. 7 dated 15.9.2005. Thereafter, this Court vide order dated 3.10.2007 directed to pay the admitted dues of the deceased petitioner to his legal heirs deducting Rs. 1,61,550/- which is subject matter of dispute in the present writ petition.

11. Mr. S. Ghosh, learned counsel for the petitioners strenuously urged that the deceased petitioner having been acquitted by the learned J.M.F.C., Berhampur in G.R. Case No. 79 of 1993 and was found not guilty of the charges under Section 279/ 304A of IPC by order dated 1.5.1999 the departmental proceeding as

aforesaid could not have been initiated against him on 10.7.2002 i.e. after three years of acquittal in the criminal case, 9 years after the cause of action i.e. 12.9.1993, and after the judgment dated 30.3.1996 passed by Second MACT(SD), Berhampur in MAC Case No. 357/94 (53/94).

12. The MACT on consideration of the application under Section 166 of M.V. Act, 1988, had directed the Corporation to pay a compensation on account of death of the girl of Rs. 90,000/- with 9% interest per annum from the date of application i.e. 9.4.1994 till payment.

13. Relying upon paragraph-3 of the judgment in Annexure-6, Mr. Ghosh submitted that there was complete denial of the allegation made by the petitioners in the MAC case, wherein it was specifically stated:-

"according to the respondent their driver was driving the offending vehicle with due care and caution with low speed. At that time the deceased girl along with her friends were going close to each other. The deceased girl had put her left hand on the shoulder of another girl. At the spot the deceased girl could not control herself and fell down on the road and the bus ran over her. Therefore, according to the respondent the driver of the bus is not liable for accident and thus the respondent is not liable to pay any compensation."

He further submitted that the Enquiry Officer without considering this aspect of the matter in proper perspective in Annexure-7 held that, charge No. 2 had been fully established and that had not the vehicle met with the accident, the OSRTC would not have paid the compensation amount with interest as awarded by the MACT court and therefore, the plea taken by the charged driver was after thought and was not acceptable.

14. Aforesaid observation of the Enquiry Officer was an outcome of sheer non application of mind. While before the Claims Tribunal the stand of the Corporation was that the driver was plying the offending vehicle with due care and caution with low speed and the death of the deceased was due to her own negligence, on the other hand, in the disciplinary proceeding a contrary stand was taken, which was not permissible in law. The disciplinary authority also relying upon the report of the Enquiry Officer without application of mind imposed the penalty treating the period of suspension of the deceased Driver as such and directed recovery of the compensation amount of Rs. 90,000/- with interest @9% per annum amounting to Rs. 1,61,550/- from the dues of the deceased driver.

15. It is further submitted that by Mr. Ghosh that even though the deceased petitioner was acquitted in the criminal case, and the stand of the Corporation was that he was driving the vehicle with care and caution, by initiating a proceeding against the deceased petitioner the amount could not have been directed to be recovered from him. That apart even though the deceased-petitioner had preferred an appeal, the result thereof has not been communicated to his legal heirs and the availability of alternative remedy is not a

bar to consider the case of the writ petitioner in the peculiar facts and circumstances of the present case as the case involves the only question of law to be considered by this Court.

16. To substantiate his case, Mr. Ghosh has relied upon the judgment of the Apex Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, .

17. Mr. U.C. Mohanty, learned counsel for opposite party-Corporation states that the disciplinary authority has acted in consonance with the provisions of law and the order is wholly and fully justified which may not be interfered with by this Court invoking the jurisdiction under Article 226 of the Constitution of India. To substantiate his contention, Mr. Mohanty has relied upon the judgment of the Apex Court in the case of The Managing Director, Northeast K.R.T.C. Vs. Devidas Manikrao Sadananda, and Divisional Controller, G.S.R.T.C. Vs. Kadarbhai J. Suthar, .

18. In the background of these facts, now it is to be considered (i) whether after acquittal in a criminal case, on the self-same charge, a disciplinary proceeding can be initiated to the detriment of the interest of the delinquent driver; and (ii) whether compensation amount payable by the Corporation can be recovered as a measure of punishment from the pensionary dues of the deceased petitioner while a stand was taken by the Corporation before the M.A.C.T. Court that he was driving the bus with due care and caution and in low speed.

19. So far point (i) is concerned, such question was considered by the Apex Court time and again and referring to various judgments, the Apex Court in Capt. M. Paul Antony case (supra) in paragraph 22 had held as follows:

"The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation

to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

20. Subsequently the judgment in the said M. Paul case was considered by the Apex Court in various judgments.

In G.M. Tank Vs. State of Gujarat and Another, it has been held as follows:

"30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal Court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of

the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case 1 will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

21. In *The Managing Director State Bank of Hyderabad and Another Vs. P. Kata Rao*, , the Apex Court held as follows:

"x x x x there cannot be any doubt whatsoever that the jurisdiction of the superior Courts in interfering with the finding of fact arrived at by the enquiring officer is limited and that the High Court would also ordinarily not interfere with the quantum of punishment and there cannot be any doubt or dispute that only because the delinquent employee who was also facing criminal charge stands acquitted the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated, to continue therewith."

In the said judgment, the Apex Court in paragraph 20 further held as follows:

"20. The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* however, remains unshaken although the applicability thereof had been found to be dependent on the fact situation obtaining in each case."

22. In *The Deputy Inspector General of Police and Another Vs. S. Samuthiram*, , the meaning of the expression "Honourable acquittal" in paragraph 24 of the said judgment, which reads as follows:

"The meaning of the expression "honourable acquittal" came up for consideration before this Court in *The Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal*, . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquittal of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

23. On analysis being made to the above judgment of the Apex Court, it may be conclusively held that mere acquittal of an employee by a criminal Court has no impact on disciplinary proceeding initiated by the Department. It is settled law that strict burden of proof required to establish the guilt in a Criminal Court is not required in a disciplinary proceeding and preponderance of probabilities is

sufficient. Therefore, the reliance placed by the learned counsel for the petitioners may not have any assistance to the present context.

24. In view of the above, the evidence in the criminal case initiated against the deceased driver could not be overlooked in the domestic inquiry. The judgment in the criminal case being a judicial pronouncement acquitting the deceased driver, initiation of a departmental proceeding without any cogent materials therefor against the deceased driver and recording a finding of guilt was a serious error of law. In the MACT case also the Corporation itself came forward with its stand that the deceased driver was not negligent in driving and was rather taking due care and caution and the vehicle was in low speed. The Corporation could not have blown hot and cold together and by holding the deceased driver guilty could not have saddled the compensation payable to the claimants in the MACT case on him. The Corporation having not preferred appeal against the award in the MACT case that ipso facto had no other alternative but to carry out the judgment. It appears that the Corporation in order not save itself from paying the compensation amount, has made the deceased driver a scapegoat directing recovery of the compensation amount from his retiral benefits.

25. So far as the judgment relied upon by the opposite parties, i.e. the North-East KRTC case (supra) is concerned this Court is of the view that the said judgment was in an industrial dispute case where the dismissal from service of the petitioner in that case as called in question. In that case, the Apex Court remitted the matter back to Labour Court as the latter failed to apply the correct standard of proof in relation to the domestic inquiry, which was preponderance of the probability, and the apex Court directed to examine whether on the facts and circumstances of the case, the maxim "res ipsa liquitur" applied or not.

26. In Divisional Controller, Gujarat SRTC case (supra) the workman had been dismissed from service on the ground of causing accident resulting in death of an eight years" old child. The labour Court had directed reinstatement of the workman concerned without back wages. The workman challenged the direction for denial of back wages before the High Court and the High Court granted the back wages without considering the fact that he was earlier involved in more than two dozens of proceedings for misconduct and therefore, refused to grant back wages.

27. As it appears, the facts of the judgments referred to above by learned counsel for the opposite parties are not similar to the facts and circumstances of the present case.

28. A plea is taken on behalf of the opposite parties that because of availability of alternative remedy, this Court should not entertain this writ application invoking its jurisdiction under Articles 226 and 227 of the Constitution of India. Admittedly, the deceased petitioner did prefer an appeal challenging the Order in the disciplinary proceeding. In the meantime long ten years have passed. The person who preferred the appeal is no more. His legal heirs are before this Court

claiming his legitimate dues. Relegating the legal heirs of the deceased to move the appellate forum attracts the oft quoted expression "delay defeats justice" and amounts to miscarriage of justice. The Apex Court in a plethora of judgments have held that even if there is availability of alternative remedy, in appropriate cases, there is no bar to exercise jurisdiction under Article 226 and 227 of the Constitution of India to prevent miscarriage of justice.

29. Considering the above facts and circumstances of the case, as also the dictum of the Apex Court *supra*, the writ petition is allowed. The opposite parties are directed to release the dues of the deceased-petitioner withheld by them with interest at the Bank rate from the period the same accrued to the deceased driver till release in favour of his legal heirs in the ends of justice within a period of four months hence. There shall be no order as to costs.