
(2003) 03 AP CK 0103
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4745 of 1999

Md. Hasson

APPELLANT

Vs

Presiding Officer, Labour Court-I and Another

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 ALD 545 : (2003) 4 ALT 450

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : V. Vishwanatham, for the Appellant; Government Pleader for Labour for Respondent No. 1 and K. Harinath, SC for APSRTC, for the Respondent

Final Decision : Partly Allowed

Judgement

C.V. Ramulu, J.—This Writ Petition is directed against the Award dated 4-11-1998 passed by the Labour Court-I, Hyderabad in I.D. No. 22 of 1997 confirming the order of removal passed by the 2nd respondent -Depot Manager, Andhra Pradesh State Road Transport Corporation, Mehdiapatnam Depot, Hyderabad against the petitioner.

2. According to the petitioner, he was appointed as a Driver with the APSRTC in the year 1990. While so, when he was driving the bus bearing registration No. AAZ 4492 on the route 66G at 20.15 hours and proceeding to Charminar from Moazamzahi Market, at Siddiambar Bazar Mosque an accident occurred. A dead body of a lady was found lying at a distance of about 12" on the right side of the road and on seeing the same, he swerved the bus to the left and stopped it. The area Constable came there and asked him about the accident. He stated that his bus did not involve in the accident and he does not know anything about the accident. The service Conductor also stated that the Driver suddenly stopped the bus and took the bus to the left side of the road and the bus did not involve in the accident. Thereafter, the Accident Enquiry Committee visited the spot, by which time neither the bus nor the dead body was there it being a very busy

road in a very very busy business area. The Enquiry Committee seems to have, on mere presumptions and assumptions, reported that he is responsible for the accident. Neither there was any eye-witness nor anybody spoke about the accident. However, the 2nd respondent issued a charge-sheet dated 8-4-1994 framing the following charge:

"For having failed to apply your presence of mind in stopping the bus and failed to avert the fatal accident with an unknown lady pedestrian at 2015 hours on 1-2-1994 near Siddiamber Bazar mosque while you were operating the bus AAZ 4492 on route No. 66-G which constitutes misconduct in terms of Reg.28(ix)(a) of APSRTC Employees (Conduct) Regulations, 1963."

He submitted his explanation to the charge-sheet denying the allegations made therein. Without properly considering his explanation, the Management appointed an inquiry Officer and conducted enquiry into the matter. No enquiry notice was served on him and an ex parts enquiry was conducted violating the principles of natural justice. Further, a notice dated 10-4-1995 was issued by the 2nd respondent to show-cause as to why he should not be removed from service. He submitted his explanation on 15-4-1995 reiterating his stand as was taken while submitting explanation to the charge-sheet and expressing his innocence about the unfortunate accident that occurred on 1-2-1994. The 2nd respondent without properly considering his explanation, has passed an order dated 25-4-1995 removing him from service. Aggrieved by the same, he filed an appeal before the Senior Manager (Operations), Charminar, Hyderabad. The appellate authority confirmed the order of removal and rejected the appeal by Order dated 20-6-1995. He also filed a review petition before the Regional Manager, Hyderabad, which was also rejected by Order dated 17-7-1996. Aggrieved by the same, he raised an industrial dispute in I.D. No. 22 of 1997 before the Labour Court-I, Hyderabad.

3. Before the Labour Court, the petitioner filed an application u/s 2-A(2) of the Industrial Disputes Act, 1947 and the Management - 2nd respondent herein - filed a detailed counter- affidavit. On the basis of the pleadings of both the parties, the Labour Court framed the following point for consideration:

"Whether the order of removal of the petitioner is justified ? If not, to what relief the petitioner is entitled ?"

No oral evidence was adduced on either side. On behalf of the workman - petitioner herein - Ex. W1, Xerox copy of the judgment in C.C. No. 6 of 1995 on the file of the III Metropolitan Magistrate, Hyderabad was marked and for the Management, Exs. M1 to M29 were marked. The Labour Court, after elaborate consideration of the matter, observed as follows:

".....In the petition itself, the petitioner has stated clearly that, lady pedestrian, who was crossing the road from right to left, hit the bus, fall on the road and died on the spot. Then, it remains to us to consider whether the petitioner has not applied his presence of mind in stopping the bus and thereby failed to avert

the accident.

Had the petitioner, as stated by him, happened to see the body lying at a distance of 12 feet, even it is taken that the vehicles going ahead of him hit the lady beggar and ran away, there would have been blood and brain matter of the beggar woman ahead of the bus of the petitioner. This aspect clinches the entire matter. The petitioner could not have seen a dead body lying at a distance of 12 feet when the vehicles are going in a row at that place. Secondly, it cannot be said, that at the time of the accident, there was heavy traffic, for, at that speed of 30 to 35 K.M.P.H., and that even according to the petitioner, he has seen the body at a distance of 12 feet. In other words, there was no much traffic on the road and, therefore, the city bus was going at a speed of 30 to 35 K.M.P.H., and there were no vehicles ahead to a distance of at least 12 feet. Added to this, the presence of blood stains and dragging marks to a distance of 12 feet on the road to the front right side tyre of the bus would clearly go to show that the petitioner alone dashed against the beggar lady and dragged her to a distance of 12 feet. The impact was so violent, the brain matter was found 10 feet away from the place of impact and further a piece of brain matter was found stuck to the right side front tyre of the bus and a little more brain matter was found just by the side of the right side of the tyre. There could not be a better case of lack of presence of mind by the Driver than the present one and only due to sheer failure on the part of the petitioner, the accident could not be averted..... .There is absolutely no material for the Driver to throw blame on some other vehicle and Driver. To repeat, the absence of any blood marks on the road caused by the vehicles that ran ahead of the petitioner's bus, would clearly go to show that the accident was caused by the petitioner and petitioner alone...."

While holding so, the Labour Court came to the conclusion that the punishment of removal imposed against the petitioner is quite just and proper in the circumstances of the case and dismissed the I.D.

4. Learned Counsel for the petitioner submitted at the Bar that the findings of the Labour Court are perverse. On the other hand, it can be seen that the petitioner had witnessed a lady falling at a distance of about 12 feet. In fact, the vehicle, which met with the accident, will not be having any blood marks and only the vehicles, which pass through thereafter would be having the blood marks. These are all pure questions of fact. May be two views are possible and the disciplinary authority had taken one view. The appellate authority, reviewing authority and the Labour Court have concurred with the findings of fact arrived at by the disciplinary authority. This Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India will not venture to go into the questions of fact.

5. The entire record of the Labour Court has been placed before this Court. On a close examination of the same, it is seen that the 2nd respondent herein, who is the disciplinary authority and the authority who removed the petitioner from services of the Corporation was a party to the Ex. M5 -Accident Enquiry

Committee report. It is noticed that purely on the basis of Ex. M4 -preliminary enquiry report - and Ex. M5, the entire case was built up against the petitioner-workman. Admittedly, an ex parte enquiry was conducted holding that though three notices were sent to the petitioner, they were returned unserved and, therefore, the enquiry was conducted ex parte. Ex. M5 -Accident Enquiry Committee Report was submitted by the Depot Manager, Rajendar Nagar Depot and the Depot Manager, Mehdipatnam Depot (disciplinary authority in the instant case) and basing on the said report, the disciplinary proceedings against the petitioner were set in motion. The said Depot Manager, Mehdipatnam Depot himself issued the charge sheet to the petitioner on 8-4-1994 and suspended the petitioner from service on the same day i.e., 8-4-1994. As stated above, thereafter the enquiry was conducted ex parte. The whole enquiry against the petitioner proceeded only on the basis of Exs. M4 and M5. The findings of the Enquiry Officer are in pari materia with that of Ex. M5 - Accident Enquiry Committee report.

6. The entire enquiry into the matter is vitiated for the reason that the Depot Manager, Mehdipatnam Depot, who is the disciplinary authority in the instant case, could not have been a member of the Accident Enquiry Committee. This totally prejudices the cause of the petitioner. Though this aspect was not raised specifically in the affidavit filed by the petitioner, the Counsel for the petitioner submitted at the Bar that the entire case is built-up only on the basis of Ex. M5 - Accident Enquiry Committee report, to which the Depot Manager, Mehdipatnam, disciplinary authority was a party. As such, basing any enquiry on the report submitted by the disciplinary authority is wholly vitiated and has to be set aside.

7. The requirement of natural justice is 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. It applies with equal vigor and rigor to all those who are responsible for fair play. It is a firmly established principle that justice should not only be done, but should seem to be done and justice can never be 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. It is construed that one who has interest in the litigation, is already biased against the party concerned. 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 case on hand, the Depot Manager of APSRTC, Mehdipatnam Depot himself was a member of the Accident Enquiry Committee and gave a report holding, primarily, that the petitioner herein was at fault in the occurrence of the accident. Thus, the disciplinary authority could not have taken

up the enquiry as a member of the Accident Enquiry Committee and thereafter initiated the proceedings wherein reliance was placed upon the said Enquiry Report, is deeply vitiated of the principles of natural justice and as such, null and void.

8. However, the learned Standing Counsel for APSRTC strenuously contended that the petitioner cannot raise the issues, which were not earlier taken up either before the departmental authorities or the Labour Court.

9. 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, Mehdiapatnam) 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.

12. In the result, the Writ Petition is allowed to the extent indicated above. No order as to costs.