

T.Babji Vs. the A.P.S.R.T.C Rep. by Its Managing Dir

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Court : Andhra Pradesh

Decided On : Sep-06-2012

Judge : Nooty Ramamohana Rao

Appellant : T.Babji

Respondent : The A.P.S.R.T.C Rep. by Its Managing Dir

Advocate for Def. : Sri. S.M.Subhan Counsel

Advocate for Pet/Ap. : Sri. S.M.Subhan

Judgement :

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO WRIT PETITION NO.

16496 OF 200.06-09-2012 T.Babji The A.P.S.R.T.C rep.

by its Managing Director, Musheerabad, Hyderabad Counsel for the Petitioner:Sri S.M.Subhan Counsel for the Respondents: Sri Satyanarayana Murthy, Standing Counsel : ?CITATIONS:

1. 2006(4) ALD 69.(DB)

JUDGMENT

: This writ petition is preferred by a driver of the Andhra Pradesh State Road Transport Corporation challenging the correctness and validity of the proceedings dated 25.7.2000 passed by the 2nd respondent herein declining to interfere with

the orders of the Deputy Chief Traffic Manager, Eluru and thus refusing to exercise the power of review of the punishment imposed on the petitioner.

The petitioner appears to have been recruited to the service of the APSRTC as a driver in the year 1987.

It was his claim that he was recognized as one of the careful and cautious drivers of the corporation.

But, however, all due to sheer bad luck, while he was operating one of the buses on 4.3.1995 on route Bhimavaram to Penugonda in West Godavari District, an accident had occasioned involving the bus in which an old lady fell down on the road and later on succumbed to the injuries.

Though the petitioner has claimed that he is not responsible in any manner for the accident and that it had occasioned all due to the carelessness and contribution of the old lady, however, the APSRTC has proceeded against the petitioner construing it as a mis-conduct and ordered for disciplinary proceedings to be initiated against him.

Based upon the adverse findings recorded by the domestic tribunal, the petitioner who was held guilty of the charge of rash and negligent driving of the bus and thus causing the death of an individual, the Depot Manager, Bhimavaram Depot of APSRTC passed orders on 10.10.1995 inflicting the punishment of removal from service on the petitioner.

Since an appeal would lie there against to the Deputy Chief Traffic Manager, the petitioner has preferred such an appeal.

Convinced by the explanation offered by the petitioner that the bus was already carrying passengers to its full capacity and that after it negotiated a narrow bridge at Marteru village and the bus has not yet been stopped and without any regard for the heavy vehicular traffic flowing on either side, several passengers started making efforts to gain entry into the bus even before it was brought to a complete halt and in that process, one of the old lady prospective passenger who is accompanied by her son-in-law could not get proper hold of the bus to gain entry

therein and consequently slipped and fell on the road.

Therefore, the petitioner is nowhere responsible for causing the accident.

This contention of the petitioner was also vouch safed by the son-in-law of the said old passenger.

After taking all these facts into account and consideration, the Deputy Chief Traffic Manager, West Godavari District at Eluru ordered for reinstatement of the petitioner into service and modified the punishment to that of postponing the next annual grade increment which falls due for a period of two years which shall have effect of postponing his future increments besides treating his period from the date of removal to the date of rejoining to duty as not on duty.

He was posted to Narsapur Depot.

Accordingly, the writ petitioner reported to duty before the Deputy Manager, Narsapur Depot and he was also medically examined for ascertaining his fitness.

Since he was found fit for A1 category on 22.4.1996 and has also undergone the necessary training between 4.5.1996 to 23.5.1996 at the Zonal Staff Training College, Gannavaram, the Depot Manager, Narsapur Depot started entertaining him to duty from 27.5.1996 onwards.

However, the petitioner has not filed any review petition in accordance with the Regulation 23 of the APSRTC Employees before the Regional Manager within the time limit specified.

For the first time, he submitted a review petition only on 29.4.2000.

The reason ascribed for taking so much of time for preferring the review petition, was that he was simultaneously prosecuted before the competent criminal court in CC No.

193 of 1995 for causing death by accident.

The criminal court by its judgment dated 17.2.2000 has acquitted him on merits and held the petitioner as not guilty of the criminal charge laid against him.

As soon as he has obtained a certified copy of the judgment dated 17.2.2000, he submitted the Review Petition on 29.4.2000 to the Regional Manager.

However, by his order dated 25.7.2000, the Regional Manager has rejected this review petition only on the ground that the same has been submitted after a lapse of four (4) years one month after the appellate authority has passed orders on 10.4.1996.

Challenging this order of the Regional Manager, the present writ petition is filed.

Heard Sri S.M.Subhan, learned counsel for the petitioner as well as Sri K.Satyanarayana Murthy, learned Standing Counsel at great length.

Sri Subhan would contend that Marteru bridge is a very narrow bridge and it was also an accident prone area inasmuch as unauthorisedly shops and fruit vendors have occupied whatever little road margin that was available on either side immediately after the bridge ends.

Consequently all motor vehicle drivers were experiencing great difficulty to negotiate not only the narrow bridge, but even thereafter.

All motor vehicle drivers were hence driving their vehicles at greatly reduced speeds.

Hence, the petitioner has not yet completely brought the bus to a halt.

It was already carrying passengers beyond its capacity, but still several passengers who have been flocking on the road margin started making efforts to gain entry into the bus as the bus was moving at a very low speed.

In the process, if an old person either could not get complete grip or lost control over her or has fallen down on the road, the cause for the death cannot be attributed to the driver of the bus.

In fact, upon appreciating these facts, the criminal court has come to a conclusion that the petitioner is not guilty of causing death by negligence.

When once a competent criminal court upon appreciating the entire evidence has come to a conclusion that the petitioner is not guilty of causing the death of the old woman, the question of penalizing him by Deputy Chief Traffic Manager would not arise at all.

Instead of considering the matter in a proper perspective, the Regional Manager proceeded in the matter mechanically and computed the period of time for preferring review petition from the date the order was passed by the appellate authority and rejected his case.

Therefore, Sri Subhan would contend that it is a clear case of non application of mind on the part of the Regional Manager.

Per contra, Sri Satyanarayana Murthy, learned Standing Counsel would contend that the standard of appreciation of evidence by a domestic tribunal would be entirely different from that of a criminal court.

A criminal court would look for proof of the charge beyond all reasonable doubt whereas, it is the preponderance of probability what would weigh with the domestic tribunal.

So long as the petitioner does not make an issue out of the appreciation of the evidence brought before the domestic tribunal, he cannot seek re-consideration of the entire matter wholly based upon the judgment rendered by the criminal court.

However, if the petitioner is truly aggrieved of the punishment handed down to him by the appellate authority, nothing prevented him from preferring a review petition in time or at least with reasonable expedition thereafter.

He could not have waited for more than 4 years to prefer a Review Petition.

Hence, the order passed by the Regional Manager rejecting the review petition as a belated attempt cannot be found fault with.

Further, the learned Standing Counsel would place heavy reliance upon the judgment rendered by the Division Bench of this court in Depot Manager, APSRTC, Parvathipuram, Vizianagaram and others v.

D.Vykuntarao and another¹ and contend that mere acquittal by the criminal court of the workmen subsequent to the conclusion of the departmental enquiry in imposition of punishment would not afford an opportunity for reopening the entire matter.

It is true that the petitioner all through has been maintaining that while he was driving the bus he has not hit the old lady in any manner and consequently he cannot be held accountable for her sustaining injuries which resulted ultimately in her death.

As a cautious and careful driver, if he is driving his bus very slowly, it is no invitation for the prospective passengers to seek to enter the running bus.

Every passenger who seeks to gain entry into a running vehicle is inherently running a risk.

It is he who must hold himself completely accountable for doing so.

In the instant case, the deceased was an old woman and further taking judicial notice of the fact that the attire normally put on by such persons in these parts of the country is least conducive for securing entry into running vehicles.

This aspect of the matter does not appear to have weighed with the appellate authority at all.

In the process of gaining entry into a running vehicle, if a person either loses hold or slips away and falls on the road, it must be held that such a person has contributed completely to his injuries and no portion of the blame can lie at the door step of the driver.

Further, the nature and place where the accident had occurred has also to be taken note of.

If the accident had occasioned near about the platform of a bus stand, different criteria for consideration may emerge.

However, when it has emerged that the accident in question had occasioned immediately after the bus has negotiated a narrow bridge and the said place was not very conducive for use as a bus terminal, particularly in view of the large portion of the road margin gets occupied by petty vendors, the matter deserves consideration from a different perspective.

The learned Standing Counsel could not have been more right in his submission that the standards of proof in a criminal court would vastly be different from that of a domestic tribunal.

He is also right in his submission that acquittal by a criminal court later on even on merits cannot afford an opportunity for one to seek to reopen a punishment which he has already been undergone long before thereto.

However, the reviewing authority was required to take into account and consideration all the relevant factors for the purposes of arriving at a conclusion.

He is only a quasi judicial authority.

While dealing with workmen, he should not adopt a very rigid attitude.

In matters of condonation of delay, discretion vested with the authority must be exercised properly and carefully.

If there are valid and substantial reasons warranting interference, for securing the ends of justice, a liberal approach should be adopted for condonation of delay.

Though the APSRTC Employees CCA Regulations have statutory enforceability, but nonetheless the standard of a very strict approach adopted by a competent court which deals with a similar request for condonation of delay arising out of proceedings under special enactments, need not be followed.

Normally, when third party interests are involved or one of the parties to a lis has already altered his position in the interregnum period, condonation of huge delay

would not be encouraged, as a prudent principle.

In the instant case, there are no third party interests involved.

The Regional Manager is required to take into account and consideration all relevant factors and make an assessment as to whether the petitioner has contributed in any manner to the accident and if so as to what should be the appropriate punishment that should be imposed in such circumstances.

Withholding of an increment for two years per se, in certain given circumstances would have met the ends of justice, as it produces the necessary discipline amongst the employees.

But, however, when it was made into a cumulative one, the impact would be far graver and would even travel beyond ones retirement, inasmuch as the quantum of terminal benefits will get affected in the process.

Therefore, I am of the opinion that the reason assigned by the Regional Manager for declining to condone the delay is not a satisfactory one.

In my opinion, a strong case is made out for condonation of delay.

The failure of the Regional Manager to apply his mind properly to the relevant factors while coming to the conclusion to reject the review petition preferred by the writ petitioner has only reflected a mechanical attitude.

Hence, the matter deserves to be remanded for consideration afresh.

Accordingly, the writ petition is allowed in part.

The Regional Manager, West Godavari Region at Eluru is directed to entertain the review petition filed by the petitioner on 29.4.2000 on its merits and consider whether a case is made out for further reducing the punishment imposed by the Deputy Chief Traffic Manager on 10.4.1996 in the case of the petitioner.

Let appropriate decision be taken within a period of two months from the date of receipt of this order.

Accordingly, the writ petition stands disposed of.

No costs.

----- NOOTY RAMAMOHANA RAO, J 6th September
2012

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