

HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 20480 OF 2011

ORDER :

This Writ Petition is filed to quash the proceedings dated 27.01.2006 by which the petitioner was imposed the punishment of reducing the pay by two incremental stage for a period of two years which should have the effect on future increments as confirmed by the 2nd respondent *vide* proceedings dated 24.04.2008.

2. Petitioner is stated to have joined the service of the respondent's Corporation as driver in August 1989 through due process of selection and his services were regularised with effect from 18.08.1991. While so, the 3rd respondent suspended the petitioner from service on 08.02.2004 for having driven the vehicle bearing No AP 9Z 4771 in a rash and negligent manner with lack of anticipation at 16.50 hours on 26.10.2004 and caused fatal accident to a lady pedestrian aged 50 years near Women's College on route No. 104-R which constitutes misconduct on his part under Regulation 28(ix)(b) of APSRTC Employees' (Conduct) Regulations, 1963. The petitioner is stated to have submitted explanation on 25.02.2005 stating that he was not at fault and he was taking 'U' turn at Women's College, the deceased came in contact with the bus. However, the 3rd respondent ordered enquiry

into the charges and thereafter, passed the final order dated 27.01.2006 imposing the punishment of reduction of pay by two incremental stages for a period of two years which would have permanent effect. It is stated that the petitioner preferred an Appeal to the Divisional Manager, Hyderabad who dismissed the Appeal *vide* order dated 22.08.2006. The Review Petition preferred thereagainst before the 2nd respondent was also rejected on 24.04.2008. Hence, this Writ Petition.

3. In the counter, the Law Officer of the Corporation stated that the STI of Midhani Depot conducted preliminary enquiry and concluded that the petitioner had driven the vehicle negligently with lack of anticipation and he was held responsible for causing fatal accident to the lady pedestrian. It is stated that the Enquiry Officer conducted the enquiry in accordance with law and procedure as contemplated in CC & A Regulations and held the charge proved. According to the respondents, in view of the gravity of the case, he was issued a show cause notice dated 17.11.2005 proposing to impose the punishment which is proportionate to the gravity of proven misconduct of the petitioner. Finally, it is stated that there is no violation of principles of natural justice by the respondents.

4. Learned counsel for the petitioner Sri V. Narsimha Goud submits that the petitioner is not at fault and the deceased

herself had come in contact with the bus. According to the learned counsel, the Enquiry Officer conducted the enquiry in a biased manner and is guilty in observing that the petitioner did not anticipate the movement of public particularly that of the pedestrian and did not take any preventive measures. It is submitted that the passengers are being informed by the Station Manager and Traffic officers not to rush in the bus station to catch the running bus as the motor vehicle movement would be more, therefore, for the fault of others, he was penalised and it is against the principles of natural justice. It is submitted that the respondent Corporation has issued Circle OPD 91/91 dated 21.10.1991 wherein it is held that *'where the passenger tried to catch the running bus and invite the accident, such vehicle's driver should not be charge-sheeted'*, hence, the petitioner should not have been charge-sheeted. Lastly, he contends that the punishment imposed by the 3rd respondent is not enumerated within the meaning of chapter dealing with 'discipline and penalty' because there is a provision for reduction of pay alone but not otherwise like the punishment imposed in the instant case.

5. Heard learned Standing Counsel for TS RTC Sri Thoom Srinivas.

6. The Corporation had issued Circle No. PD-91/1991, dated 21.10.1991, clause (d) of which clearly postulates that in

city / town services, if accidents occur due to passengers boarding or alighting at unauthorised places or in moving buses, the drivers shall not be charge-sheeted. Evidently, the statement of Sri S. Koteswara Rao, STI, in his preliminary enquiry report, stated that *'the bus while approaching the bus stop dashed the pedestrian who was trying to catch another bus behind this bus and the matter that the lady in question was ambiguously catching the bus and believed to have been pushed by the crowd moving hectic was the main cause for her to come in tact of the bus and the skid marks are clear at the spot'*. Further, the statement of Service Conductor i.e Smt. R.V.R. Lakshmi is that on the day while the bus was approaching Women's college point, one lady pedestrian made an hectic move to cross the bus from behind and that she might have been pushed by the crowd which made her to come in tact of the bus.

7. In view of the above evidence and also in view of the Circular issued by the Corporation, though the Enquiry Officer held the driver responsible for not anticipating the movement of the lady in question, this Court is of the opinion that the petitioner driver shall not be charge-sheeted. The impugned order is therefore, liable to be set aside.

8. The Writ Petition is accordingly, allowed, setting aside the order dated 27.01.2006 of the 3rd respondent as

confirmed by the order dated 24.04.2008 of the 2nd respondent.

No costs.

9. Pending miscellaneous petitions, if any, shall stand closed.

NAGESH BHEEMAPAKA, J

05th September 2023

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