

Sk. Ahmed vs Labour Court, Guntur And Another on 15 December, 2000

Equivalent citations: 2001(1)ALD180, 2001(1)ALT3, (2002)IVLLJ342AP

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Bench: B. Sudershan Reddy

ORDER

1. The petitioner in the instant writ petition challenges the award dated 8-3-1995 in ID No. 21 of 1990 passed by the Labour Court, Guntur insofar as it is against the petitioner in denying the continuity of service and back wages.

2. Before advertng to the question relating to the legality and validity of the award, it may be necessary to briefly notice the relevant facts: The petitioner herein is a driver in Andhra Pradesh State Road Transport Corporation. He was kept under suspension pending enquiry by an order dated 25-3-1989 alleging that on 9-3-1989 when the petitioner was driving the bus on the route Guntur to Repalle, met with fatal accident at the outskirts of Ponnur due to his rash and negligent driving and due to lack of anticipation. The second respondent accordingly has issued a charge sheet dated 28-3-1989 with the following charges:

1. For your rash and negligent driving the vehicle No. AAZ-8865 on route Guntur - Repalle which was culminated in fatal accident caused to the vehicle in the outskirts of Ponnur dashing against two lady pedestrians one of which succumbed to injuries in the Government General Hospital, Ponnur and later one was shifted to Government General Hospital, Guntur for better treatment which constitutes misconduct under Regulation 28(ix)(b) of APSRTC Employees (Conduct) Regulations, 1963.

2. For having lack of anticipation while driving the vehicle No.AAZ-8865 on the route Guntur - Repalle which met with fatal accident duly dashing two lady pedestrians one of whom succumbed to injuries and later was admitted in Government General Hospital, Guntur which constitute misconduct under Regulation 28 (ix)(a) of APSRTC Employees (Conduct) Regulations, 1963.

3. For having failed to apply breaks and avert the above accident referred to in Charge No.1 and 2, which constitutes misconduct under Regulation 28(ix)(h) of APSRTC Employees (Conduct) Regulations, 1963.

3. The petitioner submitted his explanation to the charge-sheet on 1-4-1989 denying the charges levelled against him and explaining the circumstances under which the accident has occurred. The

second respondent, however, ordered an enquiry by the Chief Inspector (Enquiries), Guntur Division. The Enquiry Officer submitted his report on 26-6-1989 holding the petitioner guilty of the charges. The second respondent accepted the said findings of the Enquiry Officer and accordingly a show-cause notice dated 17th July, 1989 was served upon the petitioner requiring explanation of the petitioner as to why he should not be removed from the service of the Corporation. The petitioner submitted his explanation and reply on 28th July, 1989. The second respondent having considered the explanation, passed orders removing the petitioner from the service of the Corporation by an order 4-8-1989. The appeal preferred by the petitioner to the Divisional Manager was rejected on 26th December, 1989. The petitioner, thereafter, raised an industrial dispute under the Provisions of the Industrial Disputes Act, 1947 (for short 'the Act') by filing a petition under Section 2-A (2) of the Act challenging the order removal.

4. The Labour Court passed an award directing the reinstatement of the petitioner into service without back wages and without continuity of service. The petitioner challenges that part of the award, which went against him. The petitioner claims that he is entitled for continuity of service as well as full back wages from the date of his removal till reinstatement into service.

5. It may have to be noticed that the petitioner herein was charge-sheeted by the Police for the offences punishable under Sections 304-A and 338 of the Indian Penal Code read with Section 39 (a) (b) of Motor Vehicles Act in CC No.67 of 1989 on the file of learned Munsiff Magistrate, Ponnur. The learned Magistrate by the judgment dated 18-6-1991 acquitted the petitioner of the charge of rash and negligent driving. The acquittal was on merits based on appreciation of evidence on record. The petitioner herein placed a copy of the judgment of learned Magistrate before the Labour Court, Guntur.

6. The Labour Court took note of the judgment acquitting the petitioner of the charges framed against him. Having taken the entire material available on record into consideration, the Labour Court passed an Award directing the reinstatement of the petitioner into service without back wages and without continuity of service.

7. Sri G. Ramachandra Rao, learned Counsel for the petitioner submits that the petitioner was denied reasonable opportunity to defend himself by the Enquiry Officer and as such the enquiry was vitiated. It is also submitted that the second respondent herein as a member of the Accident Enquiry Committee visited the spot of the accident on 9-3-1989 and gave his findings that the accident was due to rash and negligent driving on the part of the petitioner herein and the same second respondent issued a charge-sheet after placing the petitioner under suspension pending enquiry. The order of removal is also passed by the second respondent. It is contended that the second respondent predetermined the whole issue against the petitioner and came to the conclusion to remove the petitioner even when he visited the spot of the accident on 9-3-1989 as a member of the Accident Enquiry Committee. In nutshell, it is contended that the whole enquiry leading to order of removal is vitiated for the reason of non-compliance with the principles of natural justice.

8. This issue is raised for the first time in this writ petition. Such a plea is not taken by the petitioner before the Labour Court. There is not even an averment about the same in the claim petition filed by

the petitioner under Section 2-A(2) of the Act. There is no evidence let in on the said issue. No point as such is framed by the Labour Court for its consideration as to whether the enquiry is vitiated for the reason of non-compliance with the principles of natural justice. In my considered opinion, the petitioner cannot be permitted to raise the same for the first time in this writ petition. This Court has to consider the legality and validity of the award passed by the Industrial Tribunal on the basis of the material that was made available for consideration of the Labour Court. This Court may have to judicially review the Award passed by the Labour Court and decide as to whether it suffers from any error apparent on the face of the record. However the question raised in this regard is not res integra.

9. This Court in Depot Manager, APSRTC v. Sri Mohd. Ismail, (DB), observed, "a preliminary enquiry is of very informal character and the methods are likely to vary in accordance with the requirements of each case. The delinquent employees have no vested right in any form or procedure of holding preliminary enquiry." It is observed by this Court, "merely because the Depot Managers, after holding preliminary investigation, recorded prima facie satisfaction that the workman was guilty of negligent driving, it cannot be said that that statement should be considered to be a disqualifying bias or pre-judging the issue, if we keep in our mind the very nature, purpose and the consequences of the preliminary enquiry." It is held by this Court that "the findings recorded by the disciplinary authority in the course of preliminary enquiry, will in no way prejudice the delinquent and those findings will not violate any of the rights of the delinquent. Preliminary enquiry is not intended to determine anybody's right; it is intended for the Disciplinary Authority to form subjective satisfaction regarding the desirability to launch departmental proceedings against a delinquent." It is held by this Court "there is absolutely no scope for applying the rule of official or departmental bias to a preliminary enquiry." This decision is the complete answer to the submission made by the learned Counsel for the petitioner about the bias on the part of the second respondent herein. Therefore, the contention raised in this regard is accordingly rejected.

10. It is also urged by the learned Counsel for the petitioner that the Labour Court failed to properly exercise its discretion under Section 11-A of the Act. It is submitted that in the light of the judgment of acquittal of the petitioner by a competent Court of criminal jurisdiction of the charge of rash and negligent driving, the Labour Court ought to have directed the reinstatement of the petitioner into service with all consequential benefits. It is contended that the Labour Court ought to have taken the effect of the judgment of the Criminal Court into consideration. However, to be fair to the learned Counsel for the petitioner, it is not contended that the judgment of a Criminal Court is conclusive and binding upon the Labour Court. However, it is contended that the judgment of the criminal Court is based upon appreciation of evidence placed before it and the acquittal was on merits, which would go a very long way to hold that the charges framed against the petitioner were untenable and based on no evidence.

11. Therefore, the questions that fall for consideration are: What would be the effect of the judgment of a criminal Court on the departmental enquiry? Whether the judgment of a criminal Court is binding and conclusive? Whether the disciplinary authority or the Labour Court, as the case may be, can take a different view other than the one taken by a criminal Court in case where the charges framed in the criminal case and the disciplinary proceedings are similar in nature?

12. The learned Counsel for the petitioner would place reliance upon a decision of the Supreme Court in *M. Paul Anthony v. Bharat Gold Mines Limited*, , in support of his submission that the departmental enquiry instituted against the petitioner cannot be sustained in the light of the judgment by a criminal Court acquitting the petitioner of the charge of rash and negligent driving, which charge is similar to that of the charges framed in the departmental enquiry. In the said decision, the question as to whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously has arisen for consideration. It was a case where the departmental proceedings as well as the criminal prosecution was simultaneously launched against a Security Officer in Bharat Gold Mines Limited on the same set of facts, and the employee requested for dropping the departmental proceedings initiated against him, or in the alternative, postpone the same till the conclusion of the criminal proceedings against him on the basis of the First Information Report. The request was rejected. The disciplinary authority did not defer the departmental proceedings and continued the proceedings, in which the employee could not attend on account of his ill health and some other reasons. The Enquiry Officer recorded his findings holding the employee guilty of the charges. They were accepted by the disciplinary authority and accordingly the employee was dismissed from the service. The judgment in the criminal case was pronounced after the order of dismissal and employee was acquitted of the charges with categorical findings that the prosecution has failed to establish its case. Thereafter, the employee made a representation to the department with a request that he may be reinstated into the service in the light of the judgment of the criminal Court, but the same was rejected. The Supreme Court after adverting to the particular facts and circumstances in the said case, framed the question for its consideration as to "whether the acquittal coupled with other circumstances, specially ex parte proceedings, of the case, will have the effect of vitiating the departmental proceedings or the order of dismissal passed against the appellant....." (Emphasis is of mine).

The Supreme Court after referring to its various pronouncements observed that "there is a consensus of judicial opinion, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception." The Supreme Court took note that the basis for the said proposition is that "proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings in common without there being a variance." The Supreme Court after referring to its earlier pronouncements deduced the following principles:

- (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.

13. After an analysis of the facts on hand, the Supreme Court noticed that the findings recorded by the Enquiry Officer were based upon the statements and evidence of Police Officers and panch witnesses whose evidence was disbelieved by the Criminal-Court and the whole case of the prosecution was thrown out and the employee was acquitted. It is under those circumstances, the Court observed, "it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand." (Emphasis is of mine). The Supreme Court on the facts and evidence in the case held:

"Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

It is thus clear that on the facts and evidence available on record, the Supreme Court came to the conclusion that the facts and the evidence in both the proceedings, namely, departmental proceedings and criminal case were the same without there being any iota of difference.

14. In the instant case, there is nothing on record to show that same witnesses were examined in the departmental proceedings and as well as in the criminal case. That apart, the charges framed against the petitioner in the criminal case and the departmental proceedings are not one and the same. The

charges might have been framed in both the cases on same set of facts, but the charges are not the same.

15. In *Delhi Cloth and General Mills v. Kushal Bhan*, , the Supreme Court observed that "the principles of natural justice do not require that an employer must wait for the decision of the criminal Court before taking action against an employee in the departmental proceedings initiated even on the similar set of facts." The Supreme Court observed that "if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial Court, so that the defence of the employee in the criminal case may not be prejudiced" (Emphasis is of mine). It is, thus, clear that the postponement of departmental proceedings, if any, is only to avoid the prejudice to the defence of the employee in criminal case.

16. In *Tata Oil Mills v. Workmen*, , the Supreme Court held:

"It is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in criminal Court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal Court. But to say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry inspite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide." (Emphasis is of mine).

17. In *Jang Bahadur Singh v. Baij Nath*, , the law is succinctly laid down by the Supreme Court and it is held in categorical terms that "the issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a Court. But the pendency of the Court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal Court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending Court proceeding."

18. In *Kusheshwar v. M/s. Bharat Coking Coal Limited*, , the Supreme Court observed, "while there could be no legal bar for simultaneous proceedings being taken against the delinquent employee against whom disciplinary proceedings were initiated, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. Whether in the facts and circumstances of a particular case there should not or should be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial." (Emphasis is of mine).

19. In *Nelson Motis v. Union of India*, , it is held by the Supreme Court that "nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding." The Supreme Court in categorical terms held that the disciplinary proceedings can be continued even in the case of acquittal of an employee in the criminal case.

20. The Supreme Court after reviewing all its earlier decisions, in *State of Rajasthan v. B.K. Meena*, , speaking through Mr. Justice B.P. Jeevan Reddy, explicitly laid down the law in clear terms and it would be appropriate to notice the same in some what detail:

".....that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a gives case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability', or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case." (Emphasis is of mine).

It is further held :

"There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

21. In *Stale of U.P. v. Ved Pal Singh*, , an employee who was on temporary service was removed from the service on conviction by criminal Court for offence under Section 409 I.P.C. Later he was acquitted of the charge. The Tribunal on going through the record was not inclined to interfere with

the order of removal even after the acquittal by the Criminal Court. The High Court has interfered with the removal of the respondent from the service. State preferred an appeal against the judgment of the High Court. The Supreme Court, without going into the question of correctness of removal of employee from service after acquittal, held that "in the given circumstances, the employee is not entitled to back wages." Such a view was taken on the basis of confidential reports made available for the perusal before the Tribunal. It is observed, "we are of the view that it is not expedient to direct payment of back wages, though he was acquitted by the criminal Court may be on technical grounds or on merits (Emphasis is of mine), he is not entitled to back wages. As stated earlier the circumstances of the case and conduct of the appellant do furnish justification in denying him the back wages lest it would be a premium on proclivity of corruption."

22. In *Krishnaakant Raghunath Bibhavnekar v. State of Maharashtra*, the Supreme Court observed:

"If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges: Whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits? In our considered view, this grant of consequential benefits with all back-wages etc., cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid consideration is given full back wages as a matter of course, on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty....."

The decision of the Supreme Court in *Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya*, is direct authority that would be applicable to decide the case on hand. The said decision directly deals with the question as to whether the Andhra Pradesh State Road Transport Corporation can proceed simultaneously with the departmental enquiry during the pendency of trial of a criminal case registered against a driver of the Corporation under Sections 304-A and 338 of the Indian Penal Code. The Supreme Court after an elaborate consideration of the matter held:

"There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trials is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the

evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceeding related to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. Where departmental enquiry was launched against a driver on charge of failure to anticipate accident and prevention thereof, same having nothing to do with culpability of offence under Sections 304-A and 338 for which criminal proceedings were also started against the delinquent the High Court should not have stayed departmental proceedings."

This decision of the Supreme Court puts an end to the controversy as to whether the Corporation can simultaneously proceed with the departmental enquiry and trial of a criminal case even when the charges in the departmental enquiry and criminal case relate to rash and negligent driving and lack of anticipation on the part of the driver resulting in an accident. It is held by the supreme Court that the charge framed in the departmental proceedings alleging the failure to anticipate the accident and prevention thereof has nothing to do with culpability of offence under Sections 304-A and 338 of the Indian Penal Code.

23. In *Union of India v. Shri Bihari Lal Sidhana*, 1997 (2) SLR 523, the Supreme Court observed that "an employee is not automatically entitled to be reinstated into the service even after acquittal of the charges by the Criminal Court." It is held that "it would still be open to the competent authority to take a decision whether the delinquent-Government servant can be taken into service or disciplinary action should be taken under the rules."

24. However, the learned Counsel for the petitioner placed strong reliance upon a judgment of this Court *Md. Shabeer Ali v. Managing Director, A.P.S.R.T.C., Hyderabad*, 1989 (2) ALT 560, in which this Court observed, "when the charged officer was acquitted on merits, though ultimately giving benefit, he is entitled to place reliance on the finding recorded in the judicial proceedings by the learned Magistrate." In my considered opinion, this decision really does not support the case of the petitioner. This Court merely observed that the judgment of the Criminal Court in acquitting the charged employee should be taken note of in moulding the relief. It is observed, "when the very

charge of rash and negligent driving is knocked of its bottom in the criminal case then it would be a needless harassment to the petitioner in pursuing the disciplinary proceedings and pass an illegal order or removing the charged officer from service on the self-same ground. Once the finding recorded by the Criminal Court becomes final, it should be given effect to and the consequences should flow from the findings recorded. If it were a case that the acquittal was on mere technical grounds, then it is open to the authorities to pursue the disciplinary proceedings and record its own finding. When the acquittal is on merits, pursuing the disciplinary proceedings or removing on the same charge is illegal and is in excess of power." With great respect, the principle enunciated by the learned single Judge in the said judgment runs counter to the binding precedents and authoritative pronouncements of the Supreme Court referred to hereinabove. In the circumstances, the said judgment cannot be treated as a precedent and the ratio, if any, in the said judgment is required to be confined only to the facts in that case. The judgment does not lay down any law in general terms. It is needless to observe that this Court is bound by the law declared by the Supreme Court.

25. From the decisions referred to herein above, it is clear that an employee can proceed against its employee and initiate departmental enquiry as well as criminal prosecution on the same set of facts. In appropriate cases, even the Civil Proceedings could be initiated. There is no bar in law to initiate all the proceedings simultaneously. In appropriate proceedings, the Court may stay the departmental proceedings, if the Court comes to a conclusion that it may not be 'desirable', 'advisable' or appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. It is not a matter of course, but required to be taken having regard to the facts and circumstances in each case. One of the most important considerations that may have to be taken into account before stalling the departmental proceedings is that the defence of the employee in the criminal case may be prejudiced if the departmental enquiry is simultaneously held. This may be done in cases of grave nature involving complicated questions of fact and law. It is well settled that acquittal in a criminal case by the competent Court of criminal jurisdiction does not confer any automatic right upon the delinquent employee for his reinstatement into the service, even if the prosecution and the departmental enquiry is based on same set of facts. The distinction between the criminal proceeding and the departmental proceeding is clear. The nature of proof required in a criminal case for establishing the charges and the departmental proceedings for proving the misconduct is not one and the same. It cannot be said that the charges in a criminal case and departmental proceedings would be the same, merely because the same set of facts are involved. The question that falls for consideration in a criminal case is as to whether the charged person is guilty of offence punishable under Indian Penal Code or any penal statutes for the time being in force, whereas in a departmental enquiry what is required to establish is as to whether the employee is guilty of misconduct. The misconduct is invariably defined by the rules or regulations, as the case may be, by which an employee's conduct is regulated. The misconduct under rules or regulations is entirely different from that of an offence under Indian Penal Code or any penal statutes, as the case may be. On the same set of facts, the disciplinary authority and the Criminal Court can come to different conclusions with regard to the allegations made against the delinquent officer. The conclusions so reached operate in different fields. The consequences that flow from such conclusions are also different.

26. It may be true that acquittal of an employee of the charges in a criminal case may have some bearing in considering the proportionality of punishment by the Labour Court in exercise of its jurisdiction under Section 11-A of the Act. But the judgment of the Criminal Court cannot be held to be conclusive. The Labour Court is not bound by the judgment of the Criminal Court. The Labour Court is not bound to direct the reinstatement of an employee into service on the sole ground of employee's acquittal even on merits in the criminal case. It may be one of the factors to be taken into consideration in awarding appropriate punishment in exercise of its jurisdiction under Section 11-A of the Act. The same principle would apply to the proceedings before the disciplinary authorities.

27. The Labour Court in the instant case, upon reappreciation of evidence and material available on record, came to the conclusion that the findings of the Enquiry Officer are based on evidence and any reasonable person would draw the same conclusions as drawn by the Enquiry Officer. The Labour Court accordingly held that both the charges framed against the petitioner herein were proved. The Labour Court has also taken into consideration the judgment rendered by the Criminal Court in C.C.No.67 of 1989 for the purpose of deciding the proportionality of punishment in exercise of its power under Section 11-A of the Act. It is under those circumstances, the Labour Court came to the conclusion that the petitioner is entitled for reinstatement into the service without back wages and without continuity of service. The judgment of Labour Court, in my considered opinion, does not suffer from any legal infirmity. The Labour Court had not committed any irregularity whatsoever in passing the Award. The Award is not vitiated by any error apparent on the face of the record requiring any correction as such by this Court in exercise of its certiorari jurisdiction. This Court cannot interfere with the findings of Labour Court. Such a course is not permissible in law. The charges held proved against the petitioner herein are very serious in nature. There is sufficient evidence available on record that the petitioner drove the vehicle in a rash and negligent manner culminating into a fatal accident involving two lady pedestrians, one of them succumbed to injuries in the government General Hospital, Ponnur. In the circumstances, I am of the opinion that the petitioner is not entitled for any back wages and continuity of his service.

28. However, Sri G. Ramachandra Rao, learned Counsel for the petitioner contends that the charges framed against the petitioner do not disclose any misconduct under the Regulations. The learned Counsel submits that the charges do not attract the Regulations 28(ix)(a) and 28(ix)(b) of APSRTC Employees (Conduct) Regulations, 1963. This aspect of the matter need not detain us any longer in view of the authoritative pronouncement of the Supreme Court in *Md. Yousuf Miya* (supra). It was also a case of rash and negligent driving and lack of anticipation on the part of the driver in respect of which departmental proceedings were initiated as well as Criminal case was launched.

29. Regulation 28(ix)(a) clearly says that gross negligence resulting in or likely to result in serious loss to the Corporation or inconvenience to the public or both shall be treated as misconduct. The charge against the petitioner in the instant case relates to rash and negligent driving, which has resulted in serious loss to the Corporation. Such accidents do result in inconvenience to the public as well as loss to the Corporation. In every accident, if proved, the Corporation would be liable to pay the compensation to the victims. To that extent, the Corporation is made to suffer loss on account of negligent act on the part of driver resulting in the accident.

30. Regulation 28(ix)(b) in its turn declares that neglect of duty resulting in or likely to result in danger to the lives of employees or of their persons or both shall be treated as misconduct. Driving of a bus in a rash and negligent manner without proper care would certainly attract the said regulations amounting to misconduct.

31. In the circumstances, I do not find any merit in the submissions made by the learned Counsel for the petitioner.

32. The Labour Court, in my considered pinion, has not committed any irregularity in recording its findings. The Labour Court properly exercised its discretion vested in it under Section 11-A of the Act and accordingly considered the question relating to proportionality of punishment and in exercise of the same modified the punishment of removal award by the disciplinary authority and directed the reinstatement of the petitioner into service without any back wages and without continuity of service and other attendant benefits. The Award does not suffer from any legal infirmity.

33. For all the aforesaid reasons, I do not find any merit in this writ petition and the same shall accordingly stand dismissed. There shall be no order as to costs.