

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on :01.03.2013

Judgment pronounced on :05.03.2013

+ **LPA No.293/2012**

OBEROI FLIGHT SERVICES

..... Appellant

Through : Mr.Parag P. Tripathi, Sr. Adv. with
Mr. Jayant Kumar Mehta, Mr.
Sukant Vikram and Mr. Kunal
Bahri Advs.

versus

SUDESH YADAV

.... Respondent

Through: Ms. Anita Sharoha, Adv. with
respondent in person

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

The respondent before this Court was engaged in preparation and packaging of food for the various airlines, for being served to the flyers. One of the airlines for which packed food used to be prepared by the appellant was British Airways. The preparation and packaging of the food was undertaken in a bonded warehouse at the Airport. The case of the appellant is that on 19th July, 2000, when the respondent was leaving the premises after completing her duty, her hand bag was checked by a

security guard. On checking the bag, some chocolates were found hidden in the umbrella which had been kept in a plastic bag. The chocolate found in the bag were meant for British Airways. The charges served upon the respondent having been denied by her, an inquiry into those charges was instituted by the appellant. The Inquiry Officer held the charges to be proved. The report of the Inquiry Officer was accepted by the Disciplinary Authority which imposed punishment of dismissal from her services upon the respondent. An industrial dispute having been raised by the respondent, a reference was made to the Labour Court to examine the dismissal of the respondent from service. The Labour Court, vide award dated 18th July, 2006, held that the charges against the respondent had been proved. The Labour Court, however, was of the view that to dismiss an employee for having committed theft of this nature was shockingly disproportionate and was not justified. He accordingly directed the appellant to impose another punishment short of dismissal of service, proportionate to the misconduct committed by the respondent, which may not necessarily mean taking her bag on duty. In compliance of the aforesaid order, the appellant vide order dated 5th March, 2007 imposed penalty of discharge with notice upon the

respondent and paid her one month salary as notice pay. The revised penalty, however, was not challenged by the respondent.

2. Aggrieved from the award of the Labour Court, the respondent filed W.P.(C) 4433/2007, the learned Single Judge vide impugned order dated 5th March, 2012 set aside the award and directed reinstatement of the respondent with 40% backwages. Being aggrieved from the said order dated 5th March, 2012, the appellant is before us by way of this appeal.

3. In **Syed Yakoob v. K.S. Radhakrishnan** AIR (1964) SC 477, Supreme Court identified the limitations of Certiorari jurisdiction of the High Court under Article 226 of the Constitution in the following terms:-

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an

opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. [226](#) to issue a writ of certiorari can be legitimately exercised.”

In Swaran Singh v. State of Punjab (1976) 2 SCC 868, Supreme

Court, *inter alia*, held as under:-

“In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.”

4. During the course of the inquiry, the appellant examined three witnesses namely, the Security Guard Shri Vinay Kumar Sharma, Security Supervisor Shri R.S.Yadav and Chief Secretary Officer Shri L.K.Mathew. The Security Guard Mr. Vinay Kumar Sharma stated in his deposition that when he asked the petitioner to show her bag to him, she told him that she was having chocolates in her bag, which she was taking home for her children. According to him when he insisted upon checking the bag, the respondent stated that this would result in her insult in the presence of others. According to him, when he searched the bag, the chocolates of British Airways were found hidden inside the umbrella

which had been kept in the bag. The respondent examined herself as a witness and refuted the charges against her.

5. In view of the emphatic deposition of Shri Vinay Kumar Sharma, it cannot be said that there was no evidence against the respondent or that the findings recorded by the Disciplinary Authority was perverse in the sense that no reasonable person, considering the evidence produced during the inquiry could have held the respondent guilty of the charge against her. The learned counsel for the respondent contended that there was no FIR or complaint alleging theft of chocolates of British Airways and since the respondent was posted in the Packing Department whereas the eatables such as chocolates are stored in another department, she could not have committed theft of the chocolates. The chocolates recovered from the possession of the respondent were not the chocolates available in the market, they being meant only for British Airways which was to serve them to the passengers flying on its aircrafts. Also, this is not the case of the respondent that though the chocolates were found in her bag, those were not chocolates meant for British Airways, but were otherwise purchased by her or were gifted to her. The case of the respondent is that no chocolate at all were recovered from her bag. In

fact, as per the deposition of the security guard, the respondent was aware of chocolates being kept in her bag and felt that she would be insulted, if the bag was opened in the presence of others. In these circumstances, no fault can be found with the findings that the chocolates meant for British Airways were recovered from the possession of the respondent. This is not the case of the respondent that some employee of British Airways or some passenger travelling on British Airways had gifted the aforesaid chocolates to her. In fact, she gave no explanation as to from where these chocolates were received by her. It can therefore hardly be disputed that either the respondent committed theft of these chocolates or she received and retained them despite knowing fully well that the chocolates being meant for British Airways were stolen property having been stolen by the person who had provided those chocolates to her. In these circumstances, the learned Tribunal rightly found no ground to interfere with the findings recorded by the Disciplinary Authority.

6. Considering the limited scope for interference by the Tribunal or the Court in the cases of such domestic inquiries, the learned Single Judge certainly committed error in taking it upon himself to go into a disputed question of facts and rendered a finding contrary to the view

taken by the Disciplinary Authority, which had also found favour with the Labour Court. A perusal of the impugned order would show that the learned counsel for the respondent contended that the only thing established during the inquiry was that the respondent was found in possession of some chocolates at the time her bag was checked by the security guard. He, however, took the view that mere possession of chocolates by the respondent did not mean that those chocolates were stolen by her. In this regard, the learned Single Judge placed reliance upon the deposition of the Security Guard who stated, during the course of inquiry that when he asked the respondent to show the bag to him, she stated that she was having chocolates in her bag. The learned Single Judge in view of this statement accepted the contention of the learned counsel for the respondent that when she herself had told the Security Guard that she was having chocolates in her bag, it became necessary for the Management to led further evidence to show that there was a theft of the chocolates from the store where they were being stored. In our view, the learned Single Judge has gone totally wrong in taking such a view. He did not take into consideration the fact that while replying to the charge-sheet as well as during the course of inquiry, the stand taken by the

respondent was that no chocolates were recovered from her bag. Therefore, the submission made by her counsel, before the learned Single Judge, was contrary to the stand taken by the respondent and, therefore, should not have been accepted. Moreover, as noted earlier, these were not the chocolates which the respondent could have purchased or which an outsider gifted to her, they being the chocolates meant for British Airways and this was not the case of the respondent that the chocolates were gifted to her by some employee of British Airways or a passenger who had travelled on British Airways. Considering the stand taken by the respondent, denying recovery of chocolates from her and in the absence of her claiming that the chocolates were gifted to her by some one or were purchased by her from the market, there was no requirement of leading further evidence to prove theft of the chocolates recovered from the bag of the respondent. In any case, the learned Single Judge, exercising power under Article 226 of the Constitution of India could not have gone into such disputed question of facts and taken it upon himself to reappreciate the evidence, so as to exonerate the respondent.

7. The Labour Court, vide the impugned award dated 19.12.2006 had directed the appellant to reconsider the penalty awarded to the respondent

and impose some penalty short of dismissal from service which might not mean taking her back on duty. In compliance of the said award, the appellant revised the penalty awarded to the respondent and substituted the penalty of dismissal from service by penalty of discharging from service with notice and paid one month's salary to the respondent in lieu of notice. Since the penalty awarded by the appellant in compliance of the award dated 19.12.2006 was not under challenge by the respondent in appropriate proceedings, we cannot examine the legality or otherwise of the said revised penalty.

8. For the reasons stated hereinabove, we are of the view that the impugned order dated 5.3.2012 cannot be sustained. The appeal is, therefore, allowed and the impugned order dated 5.3.2012 is hereby set aside. In the facts and circumstances of the case, there shall be no orders as to costs.

9. During the course of arguments, considering the fact that the respondent had put in about 19 years of service and there was no other previous charge of theft against her, we suggested that the appellant may make a lump sum payment to the respondent in full and final satisfaction of all her claims. The learned Senior Counsel appearing for the appellant

took instructions on the suggestion given by us and agreed to pay upto Rs.5,00,000/- to the respondent in full and final settlement of all her claims. However, this was not acceptable to the respondent. We, therefore, while disposing of the appeal, direct that if the respondent so decides, she can accept a sum of Rs.5,00,000/- from the appellant, in full and final settlement of all her claims, within four weeks from today.



V.K.JAIN, J

CHIEF JUSTICE

MARCH 05, 2013

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