

THE HON'BLE SRI JUSTICE A.V. SESA SAI

**WRIT PETITION Nos.18653, 18654, 18655, 18656, 18657, 18671, 18676 and
18677 of 2010**

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COMMON ORDER:

Since these writ petitions arise out of a common order passed by the Labour Court, Anantapur in E.Ps. filed by the unofficial respondents herein/Workmen this Court deems it appropriate to dispose of these writ petitions by way of common order.

Heard the learned Advocate General for the petitioners, Smt. Jagarlamudi Koteshwari Devi, learned Standing Counsel and Sri Vedula Srinivas, learned counsel for the respondents, apart from perusing the material available before this Court.

The unofficial respondents/workmen raised Industrial Disputes under Section 2-A(2) of Industrial Disputes Act before the Industrial Tribunal, Anantapur, challenging the termination orders as illegal and for consequential reinstatement and for payment of back wages. The Industrial Tribunal –cum- Labour Court, Anantapur passed award on 30-12-1996 in I.D.Nos.253 of 1992 and batch, directing reinstatement of the Workmen into service with continuity of service but refused to grant relief of back-wages and attendant benefits.

Assailing the said orders, the petitioners herein filed writ petitions before this Court and the said writ petitions also ended in dismissal on 28-03-2005. As against the same, Writ Appeals were filed with delay and the same were also dismissed. Assailing the same, Special Leave Petitions were also filed before the Hon'ble Apex Court and the same were also dismissed.

Seeking enforcement of the award passed by the Labour Court, workmen filed E.P.No.51 of 2005 to E.P.No.58 of 2005. The Industrial Tribunal – cum – Labour Court, Anantapur passed a common order in the said E.Ps., on 10-12-2009, directing the petitioners herein to issue fresh orders of appointment as per the Award and pay the amount as claimed by them forthwith. The said orders passed by the Labour Court, Anantapur are under challenge in this batch of writ petitions.

This Court while ordering *rule nisi* granted interim orders.

The contentions of learned Advocate General and learned Standing Counsel are two in number:

1. *The impugned orders are beyond the scope of orders passed in the Award.*
2. *Since Workmen were earlier under a Contractor now they may be entitled for same status and the question of appointment on regular basis does not arise.*

Per contra, it is contended by learned counsel for the un-official respondents/Workmen that there are absolutely no merits in these writ petitions and since the awards of Tribunal attained finality in view of the orders passed by the Hon'ble Apex Court, there is absolutely no justification in not implementing the orders passed by the Industrial Tribunal – cum – Labour Court, Anantapur. It is also submitted by learned counsel that there is no illegality nor there is infirmity nor any perversity in the orders, as such, the writ petitions are liable to be dismissed.

In the above background now the issues that emerge for consideration are:

1. *Whether the questioned orders are beyond the scope of the Awards passed by the Tribunal?*
2. *Whether the Workmen are required to be continued on contract basis under a Contractor?*
3. *Whether the petitioners have made out a case, warranting any interference under Article 226 of the Constitution of India to issue Writ of Certiorari?*

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ISSUES 1 AND 2:

It is an admitted reality that the awards passed by the Industrial Tribunal – cum – Labour Court have attained finality in view of the orders passed by the Hon'ble Apex Court, dismissing the Special Leave Petitions filed by the petitioners herein. In order to adjudicate these issues it may be appropriate to refer to the concluding and operative portion of the awards, which read as under:

“Thus, in the light of the discussion above, I hold that the petitioners

have been employees of the first and 2nd respondents and as such they are entitled for reinstatement.

Now coming to the relief of backwages, neither it is pleaded in the claim statement nor it is spoken to by the respective petitioners that ever since their terminations, they could not secure any alternative jobs. In fact, unless and until it is so pleaded and proved, the workman shall not be entitled for backwages. For this view, I find support from 1975 APLJ page No.78 (M/s Coramandal Fertilizers Ltd., Secunderabad rep. by its Manager Vs., the Labour Court, Hyderabad by its Presiding Officer and others respondents wherein it has been held that “to enable an employee who was dismissed or discharged from service to claim backwages, it is obligatory on his part to show that he remained unemployed during the relevant period”. Hence I hold that the petitioners are not entitled for the backwages. Accordingly, the points are answered.

In the result awards are passed in I.D.Nos.257/92 to 258/92 directing the respondents to reinstate the petitioners into service with continuity of service, but the relief of backwages and attendant benefits are rejected.”

Therefore, it is quite limpid that the Labour Court, in clear and unequivocal terms, directed the petitioners herein to re-instate the Workmen with continuity of service but turned down the request of back wages and attendant benefits. It is also significant and vital to note that the Tribunal categorically held that the Workmen have been the employees of the 1st and 2nd respondents who are petitioners herein while ordering reinstatement.

It is also important to note that on an application filed by the petitioners herein vide E.A.No.8 of 2004 wherein the petitioners herein sought clarification with regard to the mode of implementation of the Award, the Industrial Tribunal – cum – Labour Court held as under:

“In the light of the proposals of the Petitioners, Petitioners are directed to implement the Award by engaging Respondents in the posts proposed by the Petitioners. If the posts of Record Assistants are not available the Petitioners (Respondents) should appoint the Respondents as Attenders, Watchmen. However, but as and when the posts of Record Assistants or LDCs are available the Petitioners (Respondents) should immediately convert, the Respondent (Petitioners) into those posts. As far as case of P.Hussain is concerned the Petitioners (Respondent) may verify his educational qualifications and appoint him in the post to which he is entitled till such time he may be appointed as Watchmen. The petitioners (Respondents) should report compliance within a period of one month i.e., from the date of receipt of this order. It is made clear that the Respondents/Petitioners

are entitled for all the benefits as per the Award.”

It is also brought to the notice of this Court that assailing similar orders in other Execution Petitions, the petitioners herein filed W.P.No.23256 of 2003 and this Court by way of an order dated 27-11-2003 dismissed the said writ petition and the said order was carried in Writ Appeal and the same also ended in dismissal. The said fact is not in dispute.

The Tribunal, after taking into account various aspects only, passed the impugned orders. It is also to be noted that the petitioners herein are praying this Court to issue a Writ of Certiorari and in this connection it is appropriate to refer to the judgment of the Hon'ble Apex Court in case of **SYED YAKOOB V. K.S. RADHAKRISHNAN AND OTHERS**, wherein paragraph No.7 reads as under:

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 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 is 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 (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3). (1) [1955] 1 S.C.R. 1104. (2) [1958] S.C.R. 1240. (3) A.I.R. 1960 S.C. 1168.”

In view of the above reasons and having regard to the judgment referred to above, this Court is of the considered opinion that there are absolutely no merits in these writ petitions.

For the aforesaid reasons, these writ petitions are dismissed. The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

A.V. SESA SAI, J

November 19, 2015

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