

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

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- W.P.Nos.7899, 7977, 8046, 8082, 9839, 12087, 12092, 17228,
17786, 17804, 19513 of 2010 &
W.P.No.20511 of 2011

- **COMMON ORDER:**

With the consent of the learned Government Pleader, appearing for the petitioners and the learned counsel for the respondents-workmen, the main writ petitions are heard together and since these writ petitions arise out of a common Award passed by the Industrial Tribunal-cum-Labour Court, this Court deems it appropriate to dispose of this batch of writ petitions by way of this common order.

2. In all these writ petitions, challenge is to the common Award dated 31.1.2009 passed by the Industrial Tribunal-cum-Laboru Court, Warangal in I.D.Nos.35 to 44,51, 52, 54 to 59, 63 of 2006, 55 to 63 and 67 of 2007 as published vide G.O.Rt.No.426, Labour, Employment, Training and Factories (Lab.I) Department dated 28.3.2009.

3. The 2nd respondent (workman) in all these writ petitions raised the respective Industrial Disputes against the petitioners herein assailing the oral terminations dated 31.12.2000 under Section 2A(2) of the Industrial Disputes Act, 1947 and for a direction to reinstate them into service with continuity of service, full back wages and all other attendant benefits.

4. The case of the workmen in all these Industrial Disputes is that they were engaged as NMRs (Gang Mazdoors) under the control of Executive Engineer, Penuballi in the year 1987 and they worked continuously under the Executive Engineer, R & B Division, Khammam and their Principal Employer being Engineer-in-Chief (R&B), Administration, Hyderabad. It is their further case that the

Executive Engineer sent a letter vide E.C.111/98-99/484 dated 29.5.1998 to the Engineer-in-Chief with a request to absorb the workmen in view of the requirement and subsequently, anticipating legal consequences, the workmen were disengaged on 31.12.2000.

5. Complaining contravention of Section 25F of Industrial Disputes Act, 1947 and contending that they completed 240 days preceding termination, the workmen filed the present I.Ds. Resisting the claim of the workmen, the petitioners herein filed counter. Workmen as well as the management adduced oral and documentary evidence. The Industrial Tribunal-cum-Labour Court, by way of common award dated 31.1.2009 allowed the said I.Ds., setting aside the termination, while directing reinstatement of the workmen with continuity of service, but without backwages and other attendant benefits. Calling in question, the validity and legal sustainability of the said common award, these writ petitions came to be filed.

6. Heard the learned Government Pleader for Roads & Buildings Department, appearing for the writ petitioners, Sri M.V.Rajaram, learned counsel appearing for Workmen, apart from perusing the material available on record.

7. Contentions of the learned Government Pleader

7.1 The common award passed by the Tribunal is illegal, erroneous, violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of provisions of the Industrial Disputes Act, 1947.

7.2 The Tribunal erroneously came to the conclusion that the workmen worked for 240 days continuously on daily basis without any basis and without there being any proof.

7.3 The Tribunal erroneously arrived at the conclusions based on Ex.WW1, which the workmen could not prove.

7.4 The Tribunal did not consider the evidence adduced on behalf of the petitioners herein.

7.5 The Tribunal ought to have dismissed the I.Ds. on the ground of delay.

8. Contentions/submission of the learned counsel for Workmen

8.1 There is no illegality nor any infirmity in the impugned common award and the findings of the Tribunal are in conformity with the provisions of the Industrial Disputes Act, 1947.

8.2 Only after considering the entire oral and documentary evidence, the Tribunal arrived at just and reasonable conclusions.

8.3 In the absence of any perversity and jurisdictional error and in the absence of any violation of principles of natural justice, the present writ petitions, seeking Writ of Certiorari are not maintainable.

To bolster his submissions and contentions, the learned counsel placed reliance on the judgments in **Syed Yakoob v. K.S.Radhakrishnan and others**^[1] and **Union of India and others v. P.Gunasekaran**^[2].

9. In the above backdrop, now the issues that emerge for consideration of this Court are;

- a) Whether the questioned Award passed by the Industrial Tribunal-cum-Labour Court is in accordance with law or whether the same warrants any interference of this court ?
- b) Whether the Writ in the nature of Writ of Certiorari can be issued in the facts and circumstances of the case ?

10. The material available on record vividly discloses that the workmen approached the Industrial Tribunal-cum-Labour court by way of filing Industrial Disputes and the petitioners herein contested the same by filing counter. The workmen as well as the petitioners herein

adduced oral and documentary evidence and the Tribunal, by way of impugned award, did set aside the termination and directed reinstatement of the workmen with continuity of service, without back wages and attendant benefits. A perusal of the impugned award shows that the Tribunal framed the following point for consideration;

“Whether the petitioners are entitled for setting aside the oral termination order dated 31.12.2000 and are entitled for re-engagement as NMRs (Gang Mazdoors) with continuity of service, back wages and other attendant benefits as claimed by them or not, if so to what relief?

11. A reading of the impugned award further demonstrates, in clear terms, that WW5-Executive Engineer, Khammam who worked during the period from 1995 to March, 1999 deposed categorically that he addressed a letter under Ex.W1 on 29.5.1998 and submitted the copy of the same to the Superintending Engineer, R & B, Warangal and Engineer-in-Chief, R & B, Hyderabad and also enclosed a separate list of workers to Ex.W1 and he further deposed that he signed Ex.W1 and also on the enclosed list and he prepared the list basing on the sub-divisional records available in the division. The Tribunal also categorically recorded that WW5 deposed that all the workers worked continuously without any break. It is also noteworthy that one Mr.P.Upendra, Executive Engineer, R & B Division was examined as MW1 and he identified the signature of WW5 on Ex.W1 and on the list enclosed to Ex.W1. It is also significant to note that MW1 also admitted the mention of Ex.W1 under Exs.W14 and W17. In view of cogent and unimpeachable evidence on record, the contention advanced on behalf of the petitioners in the present writ petitions that the Industrial Tribunal, without any basis allowed the I.Ds., cannot be sustained and falls to the ground.

12. Yet another submission made by the learned counsel for workmen is that in the absence of any perversity and jurisdictional

error and violation of principles of natural justice, a Writ in the nature of Writ of Certiorari cannot be issued and in support of the said contention, the learned counsel has placed reliance on the judgment in *Syed Yakoob v. K.S.Radhakrishnan* (1 supra), in which the Hon'ble Supreme Court at paragraph 7 held 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 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 : [1955]1SCR1104), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam : [1958]1SCR1240 and Kaushalya Devi v. Bachittar Singh : AIR1960SC1168.”

The learned counsel further relied on the judgment in *Union of India v. P.Gunasekaran* (2 supra), in which the Hon'ble Supreme Court at paragraphs 12 and 13 held as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;

- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

13. In the instant also, this Court does not find any perversity nor any jurisdictional error in the impugned common Award passed by the Tribunal, warranting interference of this Court under Article 226 of the Constitution of India. The contention of the learned counsel for the writ petitioners with regard to delay in approaching the Industrial Tribunal-cum-Labour Court, in the considered opinion of this Court, cannot be a ground for interference in the facts and circumstances of the case, and in fact, the Industrial Tribunal-cum-Labour Court dealt with the said aspect by assigning valid reasons at paragraph 20 of the impugned award.

14. For the aforesaid reasons, the writ petitions are dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:17.12.2015
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