

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5778 OF 2015

Prakash Narayan Shinde,
Age-60 years, Occu-Retired (Pensioner),
r/o Adarsh Colony, Maldad Road,
Sangamner, Tal.Sangamner,
District : Ahmednagar.

PETITIONER

VERSUS

1. The Maharashtra State Electricity Distribution
Company Ltd.,
The Chief General Manager,
Off : Prakashgad, 4th floor, Bandra (E),
Mumbai.
2. The Chief Engineer Officer,
Nashik Circle, Nashik,
Maharashtra State Electricity Distribution
Company Ltd.,
Nashik, Dist.Nashik.
3. The Superintendent of Engineer,
Maharashtra State Electricity Distribution
Company Ltd.,
Station Road, Ahmednagar,
District Ahmednagar.
4. The Executive Engineer,
Maharashtra State Electricity Distribution
Company Ltd., Sangamner Division,
Sangamner, Tal.Sangamner,
Dist.Ahmednagar

RESPONDENTS

WITH
WRIT PETITION NO.5779 OF 2015

Rajashri d/o Madhavrao Kumawat,
Age-46 years, Occu-Service,

R/o C/o M.S.Bhandari,
Galli No.4, Ganesh Nagar, Sangamner
Tal.Sangamner,
District : Ahmednagar.

PETITIONER

VERSUS

1. The Maharashtra State Electricity Distribution
Company Ltd.,
The Chief General Manager,
Off : Prakashgad, 4th floor, Bandra (E),
Mumbai.
2. The Chief Engineer Officer,
Nashik Circle, Nashik,
Maharashtra State Electricity Distribution
Company Ltd., Circle Officer,
Nashik, Dist.Nashik.
3. The Superintendent of Engineer,
Maharashtra State Electricity Distribution
Company Ltd.,
Station Road, Ahmednagar,
District Ahmednagar.
4. The Executive Engineer,
Maharashtra State Electricity Distribution
Company Ltd., Sangamner Division,
Sangamner, Tal.Sangamner,
Dist.Ahmednagar

RESPONDENTS

WITH
WRIT PETITION NO.5781 OF 2015

Jijabhau Shivram Choudhari,
Age-46 years, Occu-Service,
R/o C/o Sub Division No.1 of
Maharashtra State Electricity Distribution
Company Ltd.,
Sangamner, Tal.Sangamner,
District : Ahmednagar.

PETITIONER

VERSUS

1. The Maharashtra State Electricity Distribution Company Ltd.,
The Chief General Manager,
Off : Prakashgad, 4th floor, Bandra (E),
Mumbai.
2. The Chief Engineer Officer,
Nashik Circle, Nashik,
Maharashtra State Electricity Distribution Company Ltd.,
Nashik, Dist.Nashik.
3. The Superintendent of Engineer,
Maharashtra State Electricity Distribution Company Ltd.,
Station Road, Ahmednagar,
District Ahmednagar.
4. The Executive Engineer,
Maharashtra State Electricity Distribution Company Ltd., Sangamner Division,
Sangamner, Tal.Sangamner,
Dist.Ahmednagar

RESPONDENTS

Mr.K.N.Shermale, Advocate for the petitioners.
Mr.S.M.Godsay, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 29/03/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioners are aggrieved by the order of punishment dated 21/05/2012 by which stoppage of annual increment for one year with

cumulative effect has been imposed upon them. They are also aggrieved by the orders passed by the First and the Second Appellate authority rejecting their appeals. They are further aggrieved by the impugned judgment and order dated 08/12/2014 delivered by the Industrial Court, Ahmednagar by which Complaints filed by them have been dismissed.

3. The foremost grievance raised by the petitioners is that the charge sheets issued to them have not been subjected to a full fledged departmental enquiry. Though the petitioners responded to the charge sheets and submitted their explanation, the order of punishment of stoppage of one annual increment has been passed by invoking powers under Regulation 90 of the M.S.E.B. Employees' Service Regulations. The said regulation has been subsequently set aside by this Court by its judgment dated 22/08/2013 in Writ Petition No.3126/2011 in the matter of Praveen S/o Prabhakar Rao Jawale Vs. Maharashtra State Electricity Distribution Company Ltd., and another.

4. Mr.Shermale, learned Advocate for the petitioners, therefore, strenuously submits that quashing of Regulation 90 would have a retrospective effect on the disciplinary action initiated by the

respondents. Pendency of the Special Leave Petition against the judgment dated 22/08/2013 would not be a ground to restore Regulation 90.

5. He further submits that the setting aside of Regulation 90 would apply retrospectively to every case including the petitioners. Consequentially, the respondents would be under an obligation to recall the orders of punishment and initiate departmental enquiries for proving the charges against to the petitioners.

6. He has then drawn my attention to the charge sheets served upon the petitioners to contend that the petitioners were in no way responsible for the lapses that may have occurred. The petitioners cannot be held guilty of negligence. Resultantly, the punishment of stoppage of one increment awarded to them would also have to be set aside.

7. Mr.Shermale has taken me through the petition paper books in details and submits that this court may reconsider the entire documentary evidence and by reassessing the evidence, it can be concluded that the petitioners cannot be said to be guilty of the charges levelled upon them.

8. Mr.Godsay, learned Advocate for the respondents has opposed these petitions. His primary contention is that Regulation 90 had been in vogue for a long time. The MSEB Employees' Service Regulation have been brought into effect and have been followed by the respondents/authorities from 15/08/1962 in Western Maharashtra and Marathwada Region and from 01/10/1962 in Vidharbha Region. It is only on account of the judgment of the learned Division Bench of this Court dated 22/08/2013 that Regulation 90 has been struck down on the ground that it is arbitrary and is prone to unreasonableness.

9. Mr.Godsay further submits that the issue before the learned Division Bench, which delivered the judgment dated 22/08/2013 was as to whether Regulation 90 which empowers the respondents to resort to summary procedure in initiating disciplinary action, should be restricted only to major misconducts inviting major punishment of dismissal or termination from service or whether it would also apply to a minor misconduct and minor punishment. He submits that this Court while delivering the judgment dated 22/08/2013 has struck down the Regulation 90 without considering the aspect as to whether it could be made inoperable only to the extent of major misconducts which would invite major punishment. He adds that the Special

Leave Petition challenging the said judgment has also been disposed of and the respondents/authorities are pondering over the issue for further steps to be taken.

10. He, however, submits that the judgment of this Court striking down regulation 90 would not affect all such cases which have already been concluded and orders of punishment have been issued. He contends that if the submissions of the petitioners are accepted, it would result in setting aside all the actions initiated by the respondents against several employees notwithstanding the fact that those disciplinary proceedings have already been concluded and punishments have already been imposed.

11. With regard to the supervisory jurisdiction of this Court, Mr.Godsay submits that the writ jurisdiction of this Court is akin to revisional jurisdiction and not an appeal jurisdiction. He relies upon the judgment of the Hon'ble Supreme Court in the matter of Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 and Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682. He, therefore, submits that merely because a different view is possible, this Court cannot interfere with the impugned judgment.

12. I have considered the submissions of the learned Advocates.

13. There is no dispute that Regulation 90 was struck down on 22/08/2013 after the disciplinary proceedings against the petitioners herein were concluded. It is also not in dispute that Regulation 90 was in force when the petitioners were subjected to disciplinary proceedings. It is also not in dispute that the first and second appeals filed by the petitioners were dismissed prior to 22/08/2013 and their ULP complaints were filed before Resolution 90 was struck down.

14. I find merit in the submissions of Mr.Godsay that the effect of the setting aside of Regulation 90 cannot lead to reopening of all such disciplinary proceedings which have already been concluded and closed after issuance of orders of punishment.

15. If the contention of the petitioners is accepted, all the cases which were decided under Regulation 90 from the date the Regulation became applicable will have to be dug out and reopened. The effect of the judgment of this Court dated 22/08/2013 will therefore have to be prospective in nature and should not result in reopening of all disciplinary cases which have been concluded and in

which orders of punishment have been issued.

16. In the instant case, the order of punishment is dated 27/11/2012 by which the punishment of stoppage of one increment has been imposed upon the petitioners. Same has already been given effect to in the light of the fact that the appeals filed by the petitioners have also been rejected. The Industrial Court had not protected the petitioners by an interim order and as such the order of punishment was implemented.

17. In so far as the contention of the petitioners that this Court should reassess the entire case threadbare is concerned, I am unable to concur with the same. Unless perversity in the impugned judgment of the Industrial Court is specifically pointed out, this Court in its supervisory and / or writ jurisdiction, cannot cause an interference merely because a different or a better view is possible.

18. The Hon'ble Apex Court has laid down the law in paragraph Nos. 7 and 8 of the Syed Yakoob judgment (supra), which read thus :-

7. 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](#)), [Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam](#) ([1958] S.C.R. 1240.), and [Kaushalya Devi v. Bachittar Singh](#) .

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the

face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of a the legal provision which is alleged to have been misconstrued or contravened.”

19. The Honourable Supreme Court in the following paragraphs in the case of Surya Dev Rai (supra) has observed thus :-

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002

in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction “ by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory

jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of

correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

39. *Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court*

would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge."

20. The Industrial Court has considered the case of the petitioners threadbare. It was noted that the petitioners had submitted their explanations to the charge sheets. One of them had submitted that he had committed mistakes due to inadvertence and he should be pardoned. They were thus given an opportunity to show cause against the charge sheets. Their explanation was considered and since the respondents concluded that they were not guilty of having actually committed any fraudulent act, but had acted negligently, that the respondents decided to inflict a lesser punishment of stoppage of one increment only.

21. I have considered the charge sheets in the light of the strenuous submissions of Mr.Shermale. The issue of wrong bills having been created in favour of a Construction Company had caused the respondents a loss of Rs.4,13,430/-. Though the petitioners were not held to be guilty of having intentionally favoured the Construction Company, the respondents had concluded that incorrect bills were issued and the petitioners' negligence had contributed to the said acts.

22. In the light of the above, I do not find that the impugned judgment delivered by the Industrial Court in upholding the punishment of stoppage of one increment could be said to be perverse or erroneous so as to cause grave injustice to the petitioners.

23. In the light of the above, this petition is devoid of merits and is therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)