

HON'BLE SMT JUSTICE ANIS
WRIT PETITION No.3744 OF 2003

ORDER :

This writ petition is filed by the petitioner, under Article 226 of the Constitution of India, to issue writ of Certiorari to quash the Order passed by the second respondent in I.D.No.49 of 1999 dated 07.01.2002, published on 18.04.2002, in so far as in denying the back wages and deferring five increments permanently as arbitrary and unjust and consequently direct the first respondent's Corporation to pay the back wages for the removal period along with all consequential benefits.

02. It is the case of the petitioner that he was appointed as a conductor in Andhra Pradesh State Road Transport Corporation in the year 1983 and his service was regularized in the year 1987. He was removed from service on the allegation that he was absent from duty from 17.11.1995 till 01.02.1996. Two charges were framed vide charge sheet dated 01.02.1996 against the petitioner and he submitted his explanation to the said charges, and denied the allegations. The respondent without considering his explanation, ordered for domestic inquiry and during the course of inquiry, the petitioner explained the circumstances under which he was absent to his duties and without considering his explanation, the Inquiry Officer held that the charges were proved and removed the petitioner from service. The petitioner preferred an appeal and also review and the same were rejected mechanically. therefore, the order of removal passed by the first respondent is illegal and untenable and hence, filed the present writ petition.

03. The first respondent Corporation filed a counter in the writ petition, contending that by an order dated 09.07.1997 passed by it, the petitioner was removed from service for having been

unauthorisedly absent from his duties after conducting due enquiry into the charges levelled against him by giving reasonable opportunity to defend himself by following the principles of natural justice. The order of removal was confirmed in the appeal and also in the review on 21.12.1998 and 05.03.1999 respectively. The petitioner filed an application I.D.No.49 of 1999 before the Labour Court-II, Hyderabad against the Depot Manager, questioning the order of removal from service. The petitioner filed the memo before the Tribunal stating that he is not disputing the procedural aspects of the domestic inquiry conducted against him and the Labour Court rightly upheld the inquiry of the domestic inquiry. Considering the material on record, the Labour Court rightly held that the charges were proved and passed the impugned award dated 07.01.2002 setting aside the order of removal and directing reinstatement of the petitioner into service with continuity of service but without back wages and imposing penalty of stoppage of five annual increments with cumulative effect. The petitioner unconditionally accepted the award and reported duty on 18.11.2002 and he was reinstated into service and his pay was fixed accordingly on his reinstatement, as such, the petitioner is estopped from questioning the validity of the order. According to the first respondent, the annual increment of the petitioner was deferred eight times, censured three times and he was also removed once for having committed cash and ticket irregularities. Further, he was reinstated into service by reducing two increments with cumulative effect and treating the period from the date of removal till the date of reinstatement as not on duty for all purposes and his services were terminated once on 16.09.1983 for his unauthorised absence, but he was reinstated into service by virtue of the orders of the Regional Manager and he was reported

duty on 19.09.1986. The respondent stated that the quantum of punishment imposed by the learned labour Judge is not disproportionate to the gravity of the misconduct committed by the petitioner. In fact, the learned labour Judge has showed sympathy to the petitioner and ordered reinstatement of the petitioner into service subject to aforesaid terms and conditions and finally prayed the Court to dismiss the writ petition.

04. During hearing, learned counsel for the petitioner argued that the petitioner due to compelling conditions of sickness not attended to the duties and his sick leave was allowed. Further, he was absent for 95 days during the year 1995 and the said period also includes sick leave for 40 days and this fact was considered by the Tribunal and the reinstatement was rightly ordered. But, while doing so, the Tribunal has not granted back wages on such reinstatement and also stopped annual increments for about five years with cumulative effect. Thus, the second respondent committed error apparent on record and prayed the Court to quash the impugned award made in I.D.No.49 of 1999 dated 07.01.2002 and relied upon the case law reported in ***Chairman-cum-Managing Director, Coal India Limited and another v. Mukul***

Kumar Choudhuri and others^[1], wherein it is held as follows:

15. *The question, however, remains : is the punishment of removal grossly disproportionate to the proved charge of unauthorized absence for more than six months? In order to answer the aforesaid question, it would be appropriate to refer to a few of decisions of this Court wherein doctrine of proportionality has been considered.*

....

19. *The doctrine of proportionality is, thus, well-recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the*

allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. *One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.*

21. *In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.*

The learned counsel finally prayed the Court to allow the writ petition.

05. On the other hand, the learned counsel for the first respondent Corporation argued that after considering the evidence on record, the Inquiry Officer passed the orders on 09.07.1997 and the said order was passed by giving reasonable opportunity to the petitioner by following the principles of natural justice. Further, the petitioner preferred appeal as well as review and the same were dismissed by the competent authorities. Aggrieved by the orders passed in the domestic inquiry, the petitioner filed I.D.No.49 of 1999 before the Labour Court-II, Hyderabad. After considering the evidence on record, the Tribunal set aside the removal order and directed the reinstatement of the petitioner into service with continuity of service, but without back wages and also stopped five annual increments. The learned counsel also argued that the

petitioner was not having a clean record. Previously, his increments deferred eight times and he was censured three times. Further his pay was reduced by two increments and his services were also terminated on 16.09.1983 for his unauthorized absence. Therefore, the quantum of punishment imposed by the labour Court is not disproportionate and petitioner has not made out any reasons to interfere with the award in I.D.No.49 of 1999 and prayed the Court to dismiss the writ petition, and relied on an unreported judgment in W.P.No.8225 of 2001 passed by this Court.

06. Considering the contentions of the counsel for the petitioner as well as the first respondent, the point that arise for consideration is,

Whether the fact finding recorded by the Tribunal with regard to misconduct of the petitioner can be interfered exercising jurisdiction under Article 226 of the Constitution of India and that whether the Order passed by the Tribunal is in violation of any statutory rule or provision. If so, the Order is liable to be quashed?

07. **POINT:** A perusal of the record shows that the petitioner joined in service of the first respondent Corporation as conductor in the year 1983. On 01.07.1987, his services were regularized. The petitioner was absent from his duties from 17.11.1995 till 01.02.1996. The petitioner was charge sheeted on 01.02.1996 with two charges. After due inquiry, petitioner was removed from service vide impugned order dated 09.07.1997. He filed the appeal and also review before the competent authorities. But, the same were rejected on 21.12.1998 and 05.03.1999 respectively. Aggrieved by the orders passed in the domestic inquiry, the petitioner filed I.D.No.49 of 1999 before the Labour Court-II, Hyderabad. The Tribunal after considering the evidence on record

held that the first respondent Corporation is not justified in removing the petitioner from service and reinstated the petitioner into service with continuity of service, but without back wages and with denial of annual increments for five years with cumulative effect.

08. In view of the specific contention, it is relevant to advert to the law laid down by the Apex Court to examine the scope of judicial review in a Writ Petition filed before the High Court under Article 226 to issue a writ of *Certiorari* against the Order passed by the Tribunal.

09. The jurisdiction to issue a writ of *Certiorari* is a supervisory one and in exercising it, the Court is not entitled to act as a Court of Appeal. That necessarily means that the findings of fact arrived at by the inferior Court or the Tribunal are binding. An error of law apparent on the face of the record could, however be corrected by a writ of *Certiorari*, but not an error of fact. Thus, a writ of *Certiorari* could also be issued if it is shown that in recording a finding of fact, admissible and material evidence has not been admitted, or inadmissible evidence affecting the impugned finding has been admitted but finding of fact could not be challenged in such proceedings on the ground that the relevant material evidence was insufficient to sustain the finding as held by the Apex Court in ***Syed Yakoob Vs. K.S. Radhakrishnan and others***^[2].

10. In the facts of above decision, Order refusing to grant permission under the Motor Vehicles Act, 1939 was challenged. However, in view of the law declared by the Apex Court, the jurisdiction of this Court to issue a writ of *Certiorari* is limited and

the Court while exercising power of judicial review under Article 226 to issue a writ of *Certiorari* cannot interfere with the fact findings.

11. In ***Municipal Corporation, Faridabad Vs. Siri Niwas***^[3], the Apex Court held as follows:

16. *No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational.*"

12. In ***Municipal Council, Sujanpur Vs. Surinder Kumar***^[4], the Apex Court held as follows:

"8. *The High Court's jurisdiction to issue a writ of certiorari though is limited, a writ of certiorari can be issued if there is an error of law apparent on the face of the record. What would constitute an error of law is well known. In the Judicial Review of Administrative Action, IV Edition page 136, S.A De Smith has summed up the position-*

"(5). The concept of error of law includes the giving of reasons that are bad in law or (if there is a duty to give reasons) inconsistent, intelligible or, it would seem, substantially inadequate. It includes also the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, exercising a discretion on the basis of any other incorrect legal principles, misdirection as to the burden of proof, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence."

9. *The Labour Court and the High Court also proceeded wrongly on the premise that the burden of proof to establish non-completion of 240 days of work within a period of twelve months preceding the termination, was on the management. The burden was on the workman. Equally well settled is the principle that the burden of proof, having regard to the principles analogous to Section 106 of the Evidence Act that he was not gainfully employed, was on the workman. It is also a trite law that only because some documents have not been produced by the management, an adverse inference would be drawn against the management."*

13. Similarly, in ***Nagendra Nath Bora and another Vs. The Commissioner of Hills Division and Appeals, Assam and others***^[5], the constitutional Bench of the Apex Court reiterated the same principle and held that issue of *Certiorari* on findings that the impugned Order had been vitiated by errors of fact and not of law apparent on the face of the record is erroneous since the power of interference may extend to quashing of impugned Order on ground of mistake apparent on face of records but under Article 227 power of interference is limited to seek that the Tribunal functions within limits of its authority.

14. So far as the facts of this case is not in dispute, the Tribunal considered the record and set aside the removal order and passed the reinstatement of the petitioner into service with continuous service, but without back wages. Since the petitioner has not discharged his duties during that period, the Tribunal rightly held that the petitioner is not entitled for back wages, but continuation of service is given. The Tribunal also passed the order that petitioner is not entitled for annual increments for about five years with cumulative effect. It is not the case of the petitioner that the respondent Corporation violated the principles of natural justice. Admittedly, petitioner was absent from his duties from 17.11.1995 till 01.02.1996. After due enquiry, petitioner was removed from service. His appeal and review were rejected by the competent authorities. Therefore, by exercising the power of judicial review under Article 226 of the Constitution of India, this Court cannot interfere with the fact finding recorded by the Tribunal. In view of conduct of the petitioner, the Tribunal rightly passed the award, as such this court find no error in the award passed by the first respondent. Hence, I find no grounds to quash the proceedings issued by the 2nd respondent.

15. In the result, the writ petition is dismissed. No costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

ANIS, J

Date: 01.03.2016
sr

-
- [\[1\]](#) (2009) 15 SCC 620
[\[2\]](#) AIR 1964 SC 477
[\[3\]](#) 2004 (8) SCC 195
[\[4\]](#) 2006 (5) SCC 173
[\[5\]](#) AIR 1958 SC 398