

**HON'BLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION No. 6591 of 2011**

Date: 19.08.2016

**Between:**

K.Saya Reddy s/o Saya Reddy  
The Nizamabad Surar Factory Ltd,  
Sarangapur, Nizamabad district

Petitioner

And

Managing Director,  
The Nizamabad Coop Sugar Factory Ltd  
Sarangapur,  
Nizamabad and another

.....Respondents

The Court made the following:

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**ORDER:**

Petitioner joined service of the respondent sugar factory in the year

1964 and at the relevant point of time, he was working as Seasonal Clerk and attending the work of procurement of sugar cane during the crushing season. On 27.1.2003 he was served with charge memo containing three charges. Allegation, in substance is falsification of the records of supply of sugar cane and even though no sugar cane was supplied, records were manipulated as if huge quantity of sugar cane was received in the factory. Enquiry Officer conducted detailed enquiry and submitted his report. Enquiry Officer held that the involvement in the fraudulent act, raising of fake and falsified weighment card No. 25559 dated 15.1.2003 as proved. He further held that the allegation of particulars entered in the weighment Card No. 25559 and also the weighment Log No. 9789 dated 15.1.2003 are proved to be concocted and falsified and petitioner being the Lorry Weigh Bridge Clerk on duty was held responsible for the same. He has also noticed that the allegation that the petitioner initialed on the fake and falsified weighment card, was admitted by the petitioner. However, involvement of the petitioner in collusion and indulging in fraudulent act with other employees willfully with ulterior motives for pecuniary gain and thereby causing loss to the factory as not proved. The disciplinary action resulted in imposing punishment of dismissal from service. Questioning the same, petitioner raised Industrial Dispute in I.D. No. 68 of 2005 before the Labour Court-II, Hyderabad. By award dated 17.2.2009, the claim of the petitioner was rejected and Labour Court concurred with the findings recorded in the disciplinary proceedings.

2. Learned counsel for petitioner submits that in the light of the findings recorded by the Enquiry Officer, what was held to be proved was only to the extent of signing one weighment card. Learned counsel would submit that at that particular point of time, petitioner was sent out of the duty and supervisor made the relevant entries and petitioner was asked to sign on the dotted lines; petitioner was not aware of the consequences of said signature. Since the allegations of the collusion and involvement with other employees and involvement in pecuniary gain and causing loss to the factory were not proved and therefore the allegation leveled against the petitioner as held proved by the enquiry officer would not be a grave misconduct resulting in

imposing punishment of dismissal from service. He would submit that petitioner has rendered almost 40 years of satisfactory service. There was no misconduct all-through the service and this incident also happened in the circumstances stated above. Petitioner was having hardly four months of service before impugned punishment was imposed. He would therefore submit that such harsh punishment ought not to have been imposed on the petitioner and since misconduct alleged against the petitioner is not so grave, it did not warrant dismissal from service, just before his actual retirement.

3. Sri Vedula Srinivas, learned counsel representing first respondent submits that the allegation as proved is grave. Petitioner knowingly falsified the relevant records to show as if heavy quantity of sugar cane was received by the factory. It was concerted effort of the petitioner, other employees and cane growers and those cane growers admitted that they did not supply sugar cane but the records were falsified as if to show that sugar cane was supplied. This allegation, as proved, cannot be said as minor misconduct and punishment of dismissal was validly imposed.

4. It is not in dispute that detailed enquiry was conducted and Enquiry Officer held the main charge of falsification of the records showing as if huge quantity of sugar cane was received by the factory is held proved. Whether petitioner colluded with other employees or such action ultimately did not result in any monetary gain to the petitioner is of least consequence as compared to the principal allegation. There is no dispute that detailed procedure was followed and reasonable opportunity was afforded to the petitioner by the employer and Labour Court also conducted proceedings in accordance with law and on detailed analysis of the evidence on record, findings were recorded. The findings of fact recorded by the Labour Court and in the domestic enquiry cannot be interfered with by this Court in exercise of power of judicial review. This Court does not sit in appeal against such findings. Once the charge held as proved, it is for the employer to impose appropriate punishment. In the facts of this case, it cannot be said that punishment is disproportionate/ excessive.

5. It is not in dispute that petitioner is not in pensionary establishment. For the services rendered by him, he would only get gratuity. The payment of gratuity is regulated by Payment of Gratuity Act, 1972. In case of dismissal of an employee before attaining the age of superannuation, only consequence is employer can forfeit the gratuity payable to him. On reading of Section 4 (6) of the Act, it is clear that before exercising such power, employer has to cause notice on the employee and after affording due opportunity only employer can pass orders forfeiting gratuity. In the instant case, as fairly submitted by Sri Vedula Srinivas, no such proceedings were initiated against the petitioner.

6. Since for more than 11 years, no such power was invoked, it is clear that employer did not intend to forfeit the gratuity. Thus, no adverse consequence is caused on the petitioner on account of the orders impugned. Thus, leaving it open to the petitioner to workout his remedies to claim gratuity, the writ petition is dismissed. Miscellaneous petitions, if any, stand disposed of. No costs.

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**P.NAVEEN RAO, J**

Date: 19.8.2016  
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