

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.7414 of 2005

ORDER:

This writ petition is filed under Article 226 of Constitution of India seeking a writ of certiorari to call for the records in final order No.LCI/372(1)97-RM-(MB), dated 10.2.2005 on the file of the second respondent and quash the same as illegal and arbitrary.

2. The petitioner joined in Andhra Pradesh State Road Transport Corporation as a clerk in the year 1973. He worked as Senior Assistant in Personnel Department of Mahabubnagar Region from 1995 to August, 1999. One K.B. Goud, an employee of the Corporation, filed I.D. No.497 of 1993 on the file of the Labour Court-III, Hyderabad challenging his termination order. The Labour Court, while allowing the I.D., directed reinstatement of K.B. Goud into service with continuity of service, attendant benefits and 50% of back wages. The second respondent ordered reinstatement of the petitioner subject to filing of the writ petition by the Corporation against the order of the Labour Court. In pursuance of the orders of the second respondent, the petitioner issued proceedings reinstating K.B. Goud on 04.2.1997. K.B. Goud filed MP No.20 of 1999 in I.D. No.497 of 1993 seeking a direction to the Corporation for payment of 50% back wages as awarded by the Labour Court. Then it came to light that writ petition as ordered by the second respondent was not filed; therefore, the Corporation was constrained to pay Rs.1,03,741/- towards 50% of backwages to K.B. Goud. On 19.5.2003, the second respondent issued a charge sheet directing the petitioner to submit explanation within seven days from the date of receipt of the charge sheet. On 03.7.2003, the petitioner submitted his explanation. Being not satisfied with the explanation of the petitioner, the second respondent initiated disciplinary proceedings by appointing enquiry officer. After completion of the enquiry, the enquiry officer submitted report holding that one Adesh Mohanlal, Immanuel and the petitioner were

responsible for causing financial loss to the Corporation and fixed their responsibility in the ratio of 10%, 30% and 60% respectively. Hence, the writ petition.

3. The contention of the learned counsel for the petitioner is three fold: (i) the petitioner was not the custodian or in-charge of the file relating to I.D. No.497 of 93 on or after 05.02.1997 and the same was not considered by the enquiry officer in right perspective, (ii) the enquiry was conducted in violation of principles of natural justice; therefore, the impugned order is not sustainable in law and (iii) The order of the respondent retaining the retiral benefits of the petitioner is not in accordance with law. ***Per contra***, learned Standing Counsel for respondents-Corporation submitted that the petitioner, being custodian of the file, ought to have sent the same to the legal department in view of the endorsement of the Regional Manager. He further submitted that the petitioner failed to assign reasons much less cogent and valid reasons for not sending the file to the legal department.

4. For better appreciation of the rival contentions, it is apposite to refer the charges levelled against the petitioner:

1. For having failed to comply the instructions of Regional Manager, MBNR while processing the case of ID No.497/93 under D disposal on 20.10.97 though there are orders in the case that writ to be filed by the Corporation against the ID, which constitutes mis-conduct under Reg.28(xxxi) of APSRTC., Employees (Conduct) Reg.1963.

2. For having caused financial loss of Rs.1,03,741.00 to the Corporation with your negligence while closing the ID case No.497/93 on 20.10.97, which constitutes mis-conduct under Reg.28(xxxii) of APSRTC., Employees (Conduct) Reg. 1963.

5. The gist of the charges levelled against the petitioner is that he failed to comply with the orders of the second respondent, which resulted in financial loss to the Corporation to the tune of Rs.1,03,741/- . The petitioner issued the proceedings in pursuance of the orders of the second respondent on 04.2.1997. It is not out of place to extract the relevant portion of the explanation submitted by the petitioner on

03.7.2003 in response to the charge sheet.

The above allegation made against me is not correct since the orders/endorsement of the then Regional Manager (In-charge officer), the condition of subject to result of writ petition to be filed by the Corporation was incorporated in para No.2 of the Office Order, dated 4.2.97 while implementing the court orders.

The above explanation clearly indicates that the petitioner was very much aware that K.B. Goud was given reinstatement in view of the orders of the Labour Court in I.D. No.497 of 1993 subject to writ petition to be filed by the Corporation. For one reason or the other, the file relating to I.D. No.497 of 1993 was not sent to legal department for filing the writ petition. Surprisingly, Sri Immanuel, Superintendent (P), closed the file under D disposal on 20.10.1997.

6. The crucial question that falls for consideration is where the file is lying from 05.2.1997 to 19.10.1997. In the explanation dated 03.7.2003, the petitioner did not say anything about the file. Relevant questions put by the Enquiry Officer during the course of enquiry and the answers given by the petitioner for such questions read as follows:

3) Q. Please peruse your Notings at Para No.10 wherein you have endorsed posting orders on reinstatement in respect of Sri K.B.Goud E.076205. Further what action you have taken on the Notings of RM/MBNR at Para No.08 & 09 wherein it is clearly endorsed by RM/MBNR as "Implement the award and post him to MBNR subject to WP to be filed from Corporation?"

A) I humbly submit that the in charge RM/MBNR has endorsed only the Para No.08, and accordingly I have prepared Office Order posting him to MBNR Depot. The endorsement at Para No.09 was not available at the time of processing the case for posting orders. The clause that subject to result of WP to be filed by the Corporation is made in usual course as the same is typed in all I.D implementation orders. Further, I submit that after processing for posting orders there is an endorsement that party paid and amount of Rs.1,000/- towards Security Deposit vide M.R.No.0399583 dt.05.02.97 by another clerk. Therefore the case was not came to me after signing the order, till I received the charge sheet. Further I submit that the case was dealt by Supervisor for further course of action. I worked as SA(P) in legal section MBNR RM's Office from 1995 to August 1999.

4) Q. As seen from the Note File the posting orders were given on 05.2.97 and whereas the case is recommended for disposal on 20.10.97 i.e., almost after lapse of 8 months, what is your role in not acting upon the notings of RM for 08 months?

A) I submit that after processing for posting orders there is an endorsement in the office order dt.04.02.97 that the party has paid an amount of Rs.1,000/- towards Security Deposit vide M.R. No.0399583 dt.05.02.97 by another clerk. Therefore the case was not come to me after signing the order, till I received the charge sheet.

7. From a perusal of the above answers, it is clear that the petitioner has not given specific answers to the questions put by the Enquiry Officer with regard to the lapses on his part while dealing with the file relating to I.D. No.497 of 1993. He simply stated that the file was dealt with by another clerk on 05.2.1997 without disclosing the name of "*another clerk*". The petitioner was very much aware that the second respondent directed the Personnel department to send file to the Legal department for filing writ petition. Being the clerk, who issued the proceedings in pursuance of the note file, the petitioner should have sent the file to the Legal department. In the answers given to the questions, during the course of the enquiry, the petitioner has not taken the stand that the file was not in his custody as on 05.2.1997 and when he handed over the said file subsequently. The fact remains that the file was kept under dark for a period of nearly 8 months i.e., from 05.2.1997 to 19.10.1997.

8. As observed earlier, on 20.10.1997 Sri Immanuel, Deputy Superintendent (P) made an endorsement of D disposal and closed the file. A perusal of the record clearly reveals that for one reason or the other, the petitioner has not taken appropriate steps to send the file to the Legal department. The disciplinary authority and the Enquiry Officer have given opportunity to the petitioner at every stage of the enquiry. The material placed before the court clinchingly establishes that the respondents have conducted the enquiry by strictly adhering to

the procedure. Therefore, I am unable to accede to the contention of the learned counsel for the petitioner that the enquiry was conducted in violation of principles of natural justice.

9. The Enquiry Officer put necessary questions to the petitioner in order to find out who is at fault for non-sending of the file to the Legal department. The Enquiry Officer, after considering the material available on record arrived at a conclusion that Adesh Mohanlal, Immanuel and the petitioner were responsible for non sending of the file and apportioned the responsibility in the ratio of 10%, 30% 60% respectively. The findings recorded by the Enquiry Officer are supported by oral and documentary evidence. The Enquiry Officer has assigned cogent and valid reasons to his findings. The findings recorded by the Enquiry Officer are based on material much less legally admissible material.

1) ***Syed Yakoob vs. K.S. Radhakrishnan***^[1], wherein the Hon'ble apex Court held at para No.7 as follows:

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 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 jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, 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 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 Article 226 to issue a writ of certiorari can be legitimately exercised (*vide Hari Vishnu Kamath v. Syed Ahmad Ishaque*^[2] *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam*^[3] and *Kaushalya Devi v. Bachittar Singh*^[4].)”

2) ***Swaran Singh vs. State of Punjab***^[5] wherein the Hon’ble apex Court held at para No.13 as follows:

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.

3) ***Union of India vs. P Gunasekaran***^[6] wherein the Hon’ble apex Court held at para No.12 as follows:

12. 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 Articles 226/227 of the Constitution of India, shall not venture into reappraisal of the evidence. The High Court can only see whether:

10. As per the principle enunciated in the cases cited supra, this Court, while exercising jurisdiction under Article 226 or 227 of the Constitution of India, can interfere with the findings recorded by the enquiry officer or the Labour Court/Tribunal, if they are perverse, or, if there is any error apparent on the face of the record. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that the findings recorded by the Enquiry Officer are perverse.

11. It is a settled principle of law that the punishment imposed shall commensurate with the gravity of the proved misconduct. The petitioner retired from service in the year 2007 after attaining the age of superannuation. He served the Corporation for a period of 34 years

without any blemish. No motive can be attributed to the petitioner for non-placing of the file before the concerned authority. Due to oversight or some other reason, he could not take steps at appropriate time. Taking into consideration the total length of service of the petitioner and his family background, I am of the considered view that recovery of Rs.31,122.30 is just and reasonable instead of Rs.62,244.60.

12. In the result, the writ petition is allowed in part, modifying the punishment and reducing the recovery amount of Rs.62,244.60 to Rs.31,122.30 from the retiral benefits of the petitioner. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 29.6.2016.

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[\[1\]](#) AIR 1964 SC 477

[\[2\]](#) (1955) 1 SCR 1104

[\[3\]](#) (1958) SCR 1240

[\[4\]](#) AIR 1960 SC 1168

[\[5\]](#) (1976) 2 SCC 868

[\[6\]](#) (2015) 2 SCC 610