

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.8325 OF 2001

ORDER:

The workman, who lost his case before the Industrial Tribunal-II, Hyderabad, filed this Writ Petition challenging the Award in I.D. No.174 of 1998 dated 23.12.1999 (Old I.D. No.57 of 1995 of Labour Court-III, Hyderabad), which is published under Section 17 of the Industrial Disputes Act, 1947 (for short, 'the Act') *vide* G.O.Rt. No.395 dated 21.02.2000, and quash the same and order for his reinstatement in the 2nd respondent company.

The case of the petitioner, in brief, is that he joined in the 2nd respondent-company on 13.07.1989 as Helper and worked there till April, 1990; thereafter, he was transferred to the 3rd respondent-company, joined there on 12.04.1990. The 3rd respondent, used to pay salary of Rs.700/- p.m. till February, 1994 and, apprehending involvement of the petitioner in trade union activities for securing benefits of the workmen employed therein, again transferred the petitioner to 2nd respondent-company with an intention to suppress the trade union activities; therefore, the action of the 3rd respondent is illegal.

In the month of May, 1994, the 2nd respondent called the petitioner to his chamber and insisted him to resign under the threat to terminate his services but the petitioner did not accede to his request; thereupon, the 2nd respondent reduced his salary to Rs.790/- p.m. from Rs.1,600/- as the petitioner refused to tender resignation; therefore, the action of the 2nd respondent is illegal.

While the matter stood thus, on 16.07.1994, the petitioner went

to the company of the 2nd respondent to report to duty but he was prevented by the security personnel at the gate on the ground that his services were terminated. In spite of requests made by the petitioner, the security personnel of the 2nd respondent-company did not permit him to discharge his duties; thereupon, he issued a legal notice to the respondents 2 and 3 questioning his termination but no purpose was served. Subsequently, the petitioner filed a petition under Section 2-A(2) of the Act, *vide* I.D. No.57 of 1995 on the file of Labour Court-III, Hyderabad, which was subsequently transferred to the Industrial Tribunal-II, 1st respondent herein, renumbered as I.D. No.174 of 1998 and, upon adjudication, the 1st respondent dismissed the I.D. No.174 of 1998 on the ground that the petitioner failed to prove that he is a workman under 2nd respondent-company; which order is arbitrary and contrary to the principles laid down by the Apex Court. The 1st respondent failed to appreciate the evidence on record more particularly the documentary evidence to establish that he was a workman initially joined in the 2nd respondent-company; transferred to the 3rd respondent-company and again transferred to the 2nd respondent-company. Thus, the Tribunal totally ignored the voluminous documentary evidence without proper appreciation and dismissed the I.D. erroneously. Finally prayed to set-aside the order under challenge and reinstate him into service by 2nd respondent with all consequential benefits.

The respondents did not file any counter-affidavit; however, the 2nd respondent herein filed a counter before the Tribunal denying employment of the petitioner with the 2nd respondent at any time and contended that there was no relationship of workman between the petitioner and 2nd respondent and prayed for dismissal of the petition.

During course of hearing, Sri K. Lakshman, learned counsel for

the petitioner, contended that the Tribunal did not consider the voluminous documentary evidence including the entry passes, which would clinchingly establish that the petitioner was a workman with the 2nd respondent-company and thereby termination of his services without following the procedure is illegal but the Tribunal did not consider this evidence in proper perspective, erroneously dismissed the petition, and prayed to allow the petition granting the aforesaid reliefs.

Per contra, Sri C.R. Sridharan, learned senior counsel appearing for the 2nd respondent-company, would contend that the fact finding recorded by the Tribunal cannot be interfered, while exercising jurisdiction under Article 226 to issue a writ of *certiorari* and, at best, the Court can interfere with the Award passed by the Tribunal only when this Court satisfies that there is a legal error, placed reliance on several decisions of the Apex Court in ***Syed Yakoob Vs. K.S. Radhakrishnan and others***^[1], ***Nagendra Nath Bora and another Vs. The Commissioner of Hills Division and Appeals, Assam and others***^[2], ***Sadhu Ram Vs. Delhi Transport Corporation***^[3], ***Parry and Company Limited Vs. P.C. Pal, Judge of the Industrial Tribunal-II, Calcutta and others***^[4], ***Shankar Chakravarti Vs. Birtannia Biscuit Company Limited and another***^[5], ***Municipal Corporation, Faridabad Vs. Siri Niwas***^[6], ***Municipal Council, Sujanpur Vs. Surinder Kumar***^[7] and ***DGM, Oil and Natural Gas Corporation Limited and another Vs. Ilias Abdul Rehman***^[8].

In view of the rival contentions, the point that arises for consideration is:

Whether the petitioner is a workman within the definition

of Section 2(s) of the Industrial Disputes Act? If so, whether the relationship of workman with the 2nd respondent is established by the petitioner adducing any evidence? If not, whether this Court can interfere with the fact finding recorded by the Tribunal exercising jurisdiction under Article 226 of the Constitution, the order is liable to be set-aside?

POINT: According to the petitioner, the petitioner initially joined with the 2nd respondent on 13.07.1989 as Helper and, later, he was transferred to the 3rd respondent and reported there on 12.04.1990; again, he was transferred to the 2nd respondent and discharged his duties in the same cadre till 15.07.1994 but on 16.07.1994 he was not allowed to enter into the premises of the 2nd respondent by the security personnel on the ground that his services were terminated. Thus, the contention of the petitioner is that he was a workman within the definition of Section 2(s) of the Act.

At this stage, I feel it apposite to extract the definition of 'workman' as defined under Section 2(s) of the Act, which is as follows:

“workman’ means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or, as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an Officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions, mainly of a managerial nature).”

The 2nd respondent totally denied working of the petitioner at any time and denied the very relationship of the workman of the petitioner with the 2nd respondent. When the 2nd respondent denied the relationship of the petitioner as workman, it is for the petitioner to establish that he worked with the 2nd respondent and that his services were terminated, illegally.

To substantiate the petitioner's contentions, the petitioner himself was examined as WW.1 and marked Exs.W.1 to W-58 and to disprove the same, the 2nd respondent examined one G. Mohana Rao as MW.1, marked Exs.M-1 to M-4.

After considering the material available on record, the Tribunal disbelieved the evidence produced by the petitioner, more particularly Exs.W-5 to W-44 on the ground that they are only tea passes, duty passes, gate passes and outgoing passes, assigning specific reasons. Similarly, the other documents were also disbelieved recording specific reasons.

The main endeavour of the learned counsel for the petitioner is that if the documentary evidence produced by the petitioner is appreciated, the Tribunal ought not to have dismissed the petition and requested this Court to re-appreciate entire evidence on record; whereas, the learned senior counsel appearing for the 2nd respondent would contend that the jurisdiction of this Court under Article 226 is limited and this Court cannot interfere with the fact findings recorded by the Tribunal.

In view of 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.

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*¹**.

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.

In ***Municipal Corporation, Faridabad*⁶**, 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.”

In ***Municipal Council, Sujanpur***⁷, 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.”

Similarly, in ***Nagendra Nath Bora***², 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. Therefore, interference by this Court either under Article 226 or under Article 227 not justified.

The learned senior counsel appearing for the 2nd respondent drawn the attention of this Court directly to a case pertaining to an Award passed by the Industrial Tribunal which went up to Supreme

Court in ***Parry and Company Limited***⁴, wherein the Full Bench of the Apex Court reiterated the same principle.

In view of the principles laid down by the Apex Court, the jurisdiction of this Court to issue a writ of *certiorari* under Article 226 is limited and this Court cannot interfere with the fact findings recorded by the Tribunal.

In the present case, the basis for claim of the petitioner is only the documents produced before the Tribunal and the Tribunal verified the documents produced before it and did not accept those documents and held that the petitioner failed to establish that he joined with the 2nd respondent-company as Helper (workman) in the 2nd respondent-company on 13.07.1989 as Helper and worked there till April, 1990; thereafter, he was transferred to the 3rd respondent-company, joined there on 12.04.1990.

Thus, the challenge before this Court is only a fact finding recorded by the Tribunal and not any error of law committed by the Tribunal which called for interference of this Court while exercising power of judicial review under Article 226 to issue writ of *certiorari*.

Since I find no error of law in the order passed by the Tribunal warranting interference of this Court, while exercising power of judicial review under Article 226, to issue writ of *certiorari*, I am not inclined to interfere with the order passed by the Tribunal, the 1st respondent herein. Hence, I hold that the petitioner failed to establish the relationship that he is a workman within the definition of Section 2(s) of the Act and that the Tribunal did commit no error of law to issue of writ of *certiorari*. Hence, the Writ Petition is liable to be dismissed.

The Writ Petition is, accordingly, dismissed.

In consequence, miscellaneous petitions, if any, pending in this Writ Petition shall stand dismissed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 21-01-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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- [\[1\]](#) AIR 1964 SC 477
 - [\[2\]](#) AIR 1958 SC 398
 - [\[3\]](#) AIR 1984 SC 1467
 - [\[4\]](#) AIR 1970 SC 1334
 - [\[5\]](#) 1979 (3) SCC 371
 - [\[6\]](#) 2004 (8) SCC 195
 - [\[7\]](#) 2006 (5) SCC 173
 - [\[8\]](#) 2005 (104) FLR 300