

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.3378 of 2007

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the award in I.D.No.4 of 2003 dated 6.7.2006 passed by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Ananthapur.

2. Heard and perused the material available before the Court.

3. The A.P. State Road Transport Corporation is the petitioner in the present writ petition. The 1st respondent is a Conductor in the petitioner Corporation. Followed by a surprise check conducted by the checking officials of the petitioner Corporation, a charge sheet was issued by the disciplinary authority on 14.9.1998, framing as many as four charges against the 1st respondent. In response to the said charge sheet and the charges contained therein, the 1st respondent-workman submitted his explanation on 21.9.1998. Thereafter, a regular enquiry officer was appointed, who conducted enquiry and submitted his report on 5.3.1999. Thereafter, a show cause notice of removal was issued by the disciplinary authority on 9.4.1999 and eventually, the 1st respondent herein was removed from service on 27.4.1999. Thereafter, unsuccessfully availing the remedies of appeal and review before the appellate and reviewing authorities, the 1st respondent herein raised Industrial Dispute No.4 of 2003 on the file of the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Ananthapur under Section 2-A(2) of the Industrial Disputes Act, 1947. The Industrial Tribunal-cum-Labour Court, Ananthapur by way of an award dated 6.7.2006 partly allowed I.D.No.4 of 2003, setting aside the order of removal. The Tribunal granted continuity of service and attendant benefits in favour of 1st

respondent-workman, but refused to grant back wages. Calling in question, the validity and legal sustainability of the said award to the extent of reliefs granted in favour of workman, the present writ petition came to be filed by the petitioner Corporation.

4. This Court, while ordering rule nisi on 22.2.2007, in W.P.M.P.No.4313 of 2007 granted interim suspension of the impugned award, except reinstatement of the workman into service. It is submitted by the learned Standing Counsel for the petitioner Corporation that pursuant to the said order, Corporation reinstated the 1st respondent into service. It is contended by the learned Standing Counsel that the award passed by the Industrial Tribunal to the extent it went against the Petitioner Corporation is erroneous, contrary to law and probabilities of the case. It is the further submission of the learned Standing Counsel that the Industrial Tribunal grossly erred in ordering reinstatement of the workman on the ground of violation of principles of natural justice. He further submitted that the Labour Court failed to see that the employer lost faith/confidence on the workman, as such the Labour Court erred in passing the award on technicalities.

5. In the above background, the issue that boils down for consideration is whether the award passed by the Labour Court which is impugned in the present writ petition suffers from any infirmity and whether the Labour Court is justified in ordering reinstatement of the 1st respondent-workman with continuity of service and attendant benefits.

6. The material available before this Court manifestly discloses that the disciplinary authority on 14.9.1998 framed the following charges against the workman:

- (i) For having violated the rule of issue and start while performing duty on route Rajampet – Bangalore on 29.8.1998 which constitutes misconduct as per Regulation 28(xxxi) of APSRTC Employees (Conduct) Regulations 1963.
- (ii) For having re-issued E-2 tickets bearing Nos.760/173104 and 195 of Rs.10/- den. and E.1 ticket bearing No.182/030210 of Rs.8/- den. in a batch of two passengers who boarded the bus at Madanapalli and bound for Chintamani Ex.stages 10 to 11 which were already issued and accounted at stage No.12 on 22.8.1998 vide SR.No.A4/0000739 dated 22.8.1998 while performing duty on route Rajampet – Bangalore on 29.8.1998 which constitutes misconduct as per Reg.28(x) of APSRTC Employees (Conduct) Regulations 1963.
- (iii) For having reissued E.1 ticket bearing Nos.104/995388 of Rs.6/- den. to a batch of two passengers (along with other tickets) who boarded the bus at Madanapalli and bound for Chintamani Ex.stages 10 to 11 which was already issued and accounted at stage No.6 vide SR.No.A5/0089715 dated 29.9.1998 while performing duty on route Rajampet – Bangalore on 29.8.1998 which constitutes misconduct as per Reg. 28(x) of APSRTC Employees (Conduct) Reg. 1963.
- (iv) For having failed to close the SR from Rs.6/- denomination and closed the SR only upto Rs.5/- denomination which constitutes misconduct as per Reg. 28(xxxi) of APSRTC Employees (xxxix) of APSRTC Employees (Conduct) Regulations 1963.

7. In fact, denying the said charges, the 1st respondent workman submitted his explanation on 21.9.1998 and pursuant to the report submitted by the enquiry officer, the disciplinary authority inflicted the punishment of removal on the 1st respondent workman. Before the Labour Court, the petitioner Corporation filed Exs.M1 to M21 documents. Basing on the material available, the Labour Court framed the point for consideration with regard to sustainability of the order of removal passed by the disciplinary authority. A perusal of the impugned award vividly discloses that the Labour Court took into consideration the explanation offered by the workman and

also the aspect of non-receipt of show cause notice under Ex.A18 dated 9.4.1999. The Labour Court also found lack of any evidence to demonstrate that the show cause notice was sent by registered post. The learned Presiding Officer also discussed about the proportionality of the punishment imposed on the workman and found the same as disproportionate to the misconduct alleged, while exercising discretion under Section 11-A of the I.D. Act. Eventually, the learned Presiding Officer, while setting aside the order of removal, directed reinstatement of the workman with continuity of service and attendant benefits, but refused to grant back wages.

8. In the instant writ petition, the petitioners are seeking a Writ of Certiorari. In this context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in Syed Yakoob v. K.S.Radhakrishnan and others¹, wherein the Hon'ble Supreme Court at paragraph 7 held as under:

“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

¹ AIR 1964 SC 477

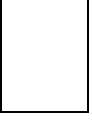
grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which 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* : [1955]1SCR1104), *Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam* : [1958]1SCR1240 , and *Kaushalya Devi v. Bachittar Singh* : AIR1960SC1168.”

9. In the instant case, this Court does not find any infirmity as pointed out in the above referred judgment. Since the Tribunal exercised its discretion and modified the punishment, in the absence of any perversity in the impugned award, this Court does not find any valid reason to meddle with the order under challenge in the present writ petition in exercise of jurisdiction under Article 226 of the Constitution of India.

10. For the aforesaid reasons, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 14.10.2016
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