

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.10452 of 2005

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ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records relating to the impugned Award dated 19.07.2004 made in I.D.No.121 of 2002 on the file of the second respondent i.e., Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short, 'the Tribunal') and quash the same as illegal and arbitrary.

2. The facts leading to filing of the present writ petition are briefly as follows:

The first respondent was appointed as a Watchman/NMR in Tribal Welfare Engineering Sub Division at Seethampeta on daily wages on 01.03.1987 and continued in the same post upto 28.02.1994. The first petitioner terminated the services of the first respondent on 28.02.1994 without following the procedure as contemplated under Section 25F of the Industrial Disputes Act, 1947 (for short, 'the I.D. Act'). The first respondent filed I.D.No.121 of 2002 On the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam challenging the termination order. The Tribunal, after considering the material available on record, allowed the petition directing the petitioners to reinstate the first respondent in service with continuity of service and back wages. Feeling aggrieved by the award dated 19.07.2004, the petitioners filed the present writ petition.

3. On 29.04.2005, this Court passed the following interim order:

“.....

W.P.M.P.No.13519 of 2005

There shall be interim suspension subject to compliance

of Section 17(B) of I.D. Act.”

Learned counsel for the first respondent submitted that the petitioners have not complied with the interim orders of this Court. In all fairness, the learned Government Pleader for Social Welfare also submitted that the petitioners have not complied with the interim orders of this Court.

4. The contention of the learned Government Pleader is three fold: (1) the Tribunal has not taken into consideration that the first respondent filed the petition under Section 2A(2) of the I.D. Act after a lapse of nearly eight years; (2) the first respondent was gainfully employed in some other organisation and that fact was not considered by the Tribunal.; and (3) the Tribunal ought not to have awarded back wages to the first respondent from 1994 to till filing of the I.D.

5. *Per contra*, the learned counsel for the first respondent submitted that mere delay in approaching the Tribunal by itself is not a valid ground to dismiss the I.D. without going into the merits of the case; (2) the petitioners have failed to adduce oral or documentary evidence to establish that the first respondent was gainfully employed in any other organisation; and (3) this Court cannot interfere with the findings of the Tribunal unless they are perverse.

6. Even as per the case of the petitioners, the services of the first respondent were terminated on 28.02.1994. The material placed before this Court clinchingly establishes that the first respondent filed I.D.No.121 of 2002 in the year 2002 after lapse of eight (8) years from the date of his termination.

7. Now the question that arises for consideration is whether the delay in approaching the Tribunal itself is a valid ground to dismiss the I.D. or not.

8. To substantiate the argument, the learned counsel for the first respondent has drawn my attention to the ratio laid down in **Ajaib Singh v The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd**^[1] and **U.P.SRTC LTD. v Sarada Prasad Misra**^[2].

9. As per the principle enunciated in the cases cited supra, mere delay in approaching the Labour Court or Industrial Tribunal by itself is not a valid ground to dismiss the petition in view of the provisions of the I.D. Act.

10. The petitioners filed counter before the Tribunal in I.D. No.121 of 2002. The petitioners have not taken a specific plea before the Tribunal that the I.D. is not maintainable in view of abnormal delay. The petitioners having failed to take such a plea before the Tribunal ought not to have entitled to make such submission, for the first time, before this court.

11. As per the contention of the first respondent, the petitioners terminated the services of the first respondent as some of his colleagues have approached the Administrative Tribunal and obtained favourable orders in O.A.No.4996 of 1993. The possibility of terminating the services of the first respondent in view of G.O.Ms.No.212 (Finance) dated 22.04.1994 cannot be ruled out completely. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that mere delay in approaching the Labour Court by itself is not a valid ground to dismiss the I.D.

12. In order to appreciate the rival contentions, this Court is placing reliance on the ratio laid down in 1) **Syed Yakoob vs. K.S. Radhakrishnan**^[3], 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* ^[4]
Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam ^[5] and *Kaushalya Devi v. Bachittar*

Singh^[6].)”

2) ***Swaran Singh vs. State of Punjab***^[7] 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***^[8] 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:”

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.

13. It is the case of the first respondent that he worked as Watchman in Tribal Welfare Engineering Sub Division at Seethampeta on daily wage basis with effect from 01.03.1987 to 28.02.1994. The petitioners filed a counter before the Tribunal admitting that the first respondent worked in their organisation with effect from 01.03.1987 to 28.02.1994. The fact remains that the first respondent worked as Watchman in the Engineering Sub Division at Seethampeta for more than 240 days

before the termination of his services. The contention of the first respondent is that the petitioners have terminated his services without following the procedure as contemplated under Section 25F of the I.D. Act. The contention of the petitioners is that they discontinued the services of the first respondent as per the procedure. It is the further contention of the petitioners that the first respondent joined in some other organisation and continued therein upto 2001 and discontinued voluntarily. The burden of proof lies on the employer to establish that the employee was gainfully employed in some other organisation after termination of the services. The petitioners failed to establish that the first respondent employed in some other organisation from 1994 to 2001. Mere pleading in the counter by itself would not amount to proof of the stand taken by the petitioners. If really the first respondent worked in any other organisation, what prevented the petitioners to examine the employer of that other organisation or to file any document to substantiate its stand. Absolutely there is no material on record to establish that the first respondent worked in some other organisation from 1994 to 2001.

14. The Tribunal has rightly considered this aspect and arrived at a conclusion that the petitioners have failed to prove the same. The very object of Section 25F of the I.D. Act is to protect the interest of employees. The management is not entitled to terminate the services of an employee, who worked in the organisation continuously for a period of 240 days without following the procedure. Absolutely there is no material on record to establish that the petitioners have meticulously followed the procedure as contemplated under Section 25F of the I.D. Act before termination of the services of the first respondent. In the absence of such evidence, the Tribunal can safely presume that the petitioners have terminated the services of the first respondent without following the procedure as contemplated under Section 25F of the I.D. Act. The Tribunal also arrived at a conclusion

that the petitioners have terminated the services of the first respondent without following the procedure as contemplated under the I.D. Act. The findings recorded by the Tribunal are not perverse. On the other hand the findings recorded by the Tribunal are based on material much less legally admissible material. In such circumstances, this Court has no other option except to endorse the findings recorded by the Tribunal. Having regard to the facts and circumstances of the case, I am of the considered view that the petitioners have terminated the services of the first respondent without following the procedure as contemplated under Section 25F of the I.D. Act.

15. The learned Government Pleader submitted that while passing the orders, the Tribunal at least ought not to have granted back wages to the first respondent basing on the principle of 'no work no pay'. The fact remains that the first respondent had approached the Tribunal nearly eight years after the termination of his services. The first respondent has not assigned reasons much less cogent and valid reasons for non-approaching of the Tribunal for a period of eight years. For the fault of the first respondent, the petitioners cannot be penalised by way of granting back wages. The Tribunal has not considered this core issue and allowed the petition by granting back wages. In order to resolve this issue, this Court is placing reliance on the decisions cited by the learned counsel for the first respondent. In **Ajaib Singh's** case (supra 1), the Hon'ble Apex Court held at paragraph No.12 as follows:

“12. We are, however, of the opinion that on account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying the appellant-workman some part of the back wages. In the circumstances, the appeal is allowed, the impugned judgment is set aside by upholding the award of the Labour Court with modification that upon his reinstatement the appellant would be entitled to continuity of service but back wages to the extent of 60 per cent with effect from 8.12.1981 when he raised the demand for Justice till the date of award of the

labour Court i.e. 16.4.1986 and full back wages thereafter till his reinstatement would be payable to him. The appellant is also held entitled to the costs of litigation assessed at Rs.5,000/- to be paid by the respondent-management.”

16. The same principle is reiterated by the Hon’ble Apex Court in **U.P.SRTC LTD.’s** case (supra 2) at paragraph Nos.12 and 17, which as follows:

“12. In our opinion, however, the limited grievance of the learned counsel for the Corporation is well founded. Admittedly, the order of termination was passed on 6-9-1975. Admittedly, an application was made to the Conciliation Officer, Allahabad by the workman on 17-7-1982, that is, after about seven years from the date of termination. In the circumstances, therefore, the Corporation is justified in raising legitimate objection as regards payment of wages for the said period. Since the respondent had invoked jurisdiction of the labour forum after seven years, it would not be appropriate to direct the appellant Corporation to pay wages for the intervening period.

.....

17. Considering the case-law on the point and applying the principles laid down therein to the facts of the present appeal, we are of the view that the respondent workman is not entitled to back wages from 1975 when his services were terminated. The award was passed in the instant case on 17-9-1984 but was stayed by the High Court vide interim order dated 25-3-1985. The interim order was modified on 4-2-1988 and the first respondent was reinstated immediately on 9-2-1988. In our opinion, therefore, ends of justice would be met if the workman is allowed back wages to the extent of 50% from the date of the award till he was reinstated in service.”

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the first respondent is not entitled for back wages from 28.02.1994 to 18.07.2004. However, the first respondent is entitled for back wages with effect from 19.07.2004.

18. In the result, the Writ Petition is allowed in part setting aside the Award dated 19.07.2004 made in I.D.No.121 of 2002 on the file of the second respondent i.e., Industrial Tribunal-cum-Labour Court,

Visakhapatnam to the extent of granting of back wages to the first respondent from 28.02.1994 to 18.07.2004. No costs.

19. Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 15.07.2016

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[\[1\]](#) AIR 1999 SC 1351

[\[2\]](#) (2006) 4 SCC 733

[\[3\]](#) AIR 1964 SC 477

[\[4\]](#) (1955) 1 SCR 1104

[\[5\]](#) (1958) SCR 1240

[\[6\]](#) AIR 1960 SC 1168

[\[7\]](#) (1976) 2 SCC 868

[\[8\]](#) (2015) 2 SCC 610