

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.8225 OF 2001

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ORDER:

The writ petitioner, Md. Masiuddin, filed the writ petition under Article 226 of the Constitution of India to issue writ of Certiorari to quash the Order passed by the first respondent in I.D. No.5 of 1997 dated 11.02.2000 published on 06.04.2000 upholding the Order passed by the disciplinary authority i.e second respondent on 28.12.1989 and Order for reinstatement with all consequential benefits.

02. During pendency of the writ petition, the writ petitioner, Md.Masiuddin, died and his legal heir Butul Begum was brought on record as second petitioner to prosecute further proceedings. It is the case of the original writ petitioner that he was appointed as driver by the second respondent in the year 1970 and his services were regularized in the year 1971. During the period from 27.04.1989 to 19.09.1989 he was sick. Therefore, he could not report duty with the 2nd respondent. Thereupon an *ex parte* enquiry was conducted and found him guilty, imposed penalty of removal from service. Thus, the Order passed by the Enquiry Officer without affording reasonable or sufficient opportunity is illegal, arbitrary and prayed to set aside the same before the Industrial Tribunal, but the Tribunal confirmed the Order recording the fact finding.

03. Learned counsel for the 2nd respondent denied the alleged failure of the 2nd respondent affording reasonable and sufficient opportunity to contest in the enquiry and that the petitioner was intentionally absent for the period from 27.04.1989 till 19.09.1989. Therefore, he is not entitled to claim any relief before the Industrial Tribunal. However, the Industrial Tribunal, after elaborate consideration of the material evidence on record concluded that the

Order passed by the 2nd respondent is in accordance with the law.

04. Challenging the same, the present writ petition is filed on the ground that no notice of enquiry was served during enquiry and the reason for his absence was that he was sick and produced a certificate for extension of leave from 28.03.1989 onwards, but the same was not accepted and thus the Order passed by the 2nd respondent and confirmed by the first respondent is illegal and arbitrary, prayed to exercise the power under Section 11-A of the Industrial Disputes Act, 1947 and to issue writ of Certiorari quashing the Order.

05. During hearing, learned counsel for the petitioner, Sri G.Praveen Kumar, contended that the petitioner though submitted a Medical Certificate marked as Ex.M.2 before the Tribunal, the same was not considered for extension of leave by the 2nd respondent. However, the reason for his absence was his sickness and he was unable to discharge his duties as Driver during the said period. Therefore, the authorities of the 2nd respondent and the Industrial Tribunal would have taken liberal view in view of the ailment, the original petitioner suffered.

06. Apart from that during enquiry no opportunity was afforded to the original petitioner and thereby the enquiry held against the original petitioner is against the principles of natural justice, on this ground alone the Order passed by the second respondent and confirmed by the first respondent in I.D.No.5 of 1997 are liable to be set aside and prayed to set aside the same, order for reinstatement with all consequential benefits. However, due to the death of the original petitioner question of reinstatement does not arise and prayed to grant consequential financial benefits to the legal heir of the first petitioner.

07. *Per contra*, learned counsel for the second respondent advanced argument in support of the award passed by the Tribunal and contended that the petitioner approached the Industrial Tribunal belatedly, almost after expiry of 6 years, but the reason for such delay

was that an appeal was pending before the appellate authority under the regulations. He further contended that the fact finding recorded by the Tribunal cannot be interfered, while exercising jurisdiction under Article 226 of the Constitution 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].

08. Considering the contentions of the counsel for the petitioner as well as the second respondent, the point that arise for consideration is,

Whether the fact finding recorded by the Tribunal with regard to misconduct of the petitioner can be interfered exercising jurisdiction under Article 226 of the Constitution of India and that whether the Order passed by the Tribunal is in violation of any statutory rule or provision. If so, the Order is liable to be quashed?

POINT:

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09. Undisputedly the original petitioner was absent from duty from 27.04.1989 till 19.09.1989. However, prior to 27.04.1989 he was sick and applied for leave and the same was sanctioned, initially and

later submitted a letter for extension of leave on the ground of sickness. The original petitioner submitted Medical Certificate marked as M.W.2 issued by Dr. Narayana Babu at Medak, but the certificate is silent about the ailment of the original petitioner. The Tribunal did not accept Ex.M.2 Medical Certificate dated 28.03.1989. Hence, the fact finding recorded by the Tribunal that the petitioner was absent willfully and failed to attend duty cannot be interfered while exercising jurisdiction under Article 226 of the Constitution of India.

10. 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 counsel appearing for the first respondent would contend that the jurisdiction of this Court under Article 226 of the Constitution of India is limited and this Court cannot interfere with the fact findings recorded by the Tribunal.

11. 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.

12. 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.

13. 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.

14. 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.”

15. 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 page136, 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 analogues 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.”

16. 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.

17. The learned counsel appearing for the first 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.

18. 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.

19. One of the major contentions raised before this Court is that the enquiry was held in his absence without affording reasonable opportunity is in violation of principles of natural justice. The voluminous material produced before this Court disclosed that at every stage the proceedings were communicated by registered post, but they were returned with certain endorsement. Therefore, the alleged failure to afford reasonable opportunity in violation of principles of natural justice cannot be accepted. The 2nd respondent sent notice at every stage as per Exs.M.4 to M.13.

20. In view of the above, it is clear from the record that the

original petitioner did not report duty even after extension of leave and explanation for his absence is not justifiable or reasonable cause. Therefore, by exercising the power of judicial review under Article 226 of the Constitution of India, this Court cannot interfere with the fact finding recorded by the Tribunal. In view of conduct of deceased petitioner the Tribunal rightly declined to exercise power under Section 11-A of the Industrial Disputes Act, as such this court find no error in the award passed by the first respondent. Hence, I find no grounds to quash the proceedings issued by the 2nd respondent.

21. Accordingly, I find that the petition is devoid of merits and is deserves to be dismissed as the petitioner failed to prove any violation of statutory rule or provision to exercise discretionary power under Article 226 of the Constitution of India to issue a writ of Certiorari. Accordingly, the point is answered against the petitioner in favour of the 2nd respondent

22. In the result, the writ petition is dismissed. No costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.21.01.2016

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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