

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

W.P.No.3524 of 2007

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the show-cause notice of removal issued by the Depot Manager, Narayanpet, Mahabubnagar District vide proceedings Proc.No.P1/2(10)/06-NRPT, dated 24.1.2007.

2. Heard Sri V.Narasimha Goud, learned counsel for the petitioner and Sri Mayur Reddy, learned Standing Counsel for the respondents.

3. While working as a Driver in the respondent Corporation disciplinary proceedings were initiated against the petitioner herein. The disciplinary authority appointed an enquiry officer, who conducted enquiry and submitted a report on 04.11.2006 holding the charges proved beyond reasonable doubt. Subsequently, the Depot Manager vide proceedings No.P1/2(10)/06-NRPT, dated 24.1.2007, issued a show-cause notice, calling upon the petitioner to show-cause as to why penalty of removal from service should not be imposed besides treating the petitioner as suspended as on date for all purposes. The said show-cause notice is under challenge in the present writ petition.

4. It is contended by the learned counsel for the petitioner that since the very charge levelled against the petitioner is vague and as the enquiry officer found in favour of the petitioner, no further disciplinary proceedings are permissible for the purpose of imposing penalty.

5. On the contrary, it is contended by the learned Standing Counsel for the respondent Corporation that the very writ petition filed by the petitioner herein is not maintainable as the show-cause notice issued by the disciplinary authority is under challenge. It is further submitted that since the enquiry

officer submitted his report against the petitioner, it is open for the petitioner herein to submit explanation for the said show-cause notice of removal.

6. In the above backdrop, now the issue that emerges for consideration of this Court is_ “Whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India?

7. Admittedly, in the present writ petition a show-cause notice of removal dated 24.01.2007 issued by the disciplinary authority is under challenge. It is a settled and well established proposition of law that unless the show-cause notice suffers from inherent lack of jurisdiction, writ petition is not maintainable under Article 226 of the Constitution of India. In the instant writ petition, it is not the case of the petitioner that the impugned show-cause notice of removal suffers from inherent lack of jurisdiction. The authority which issued the show-cause notice in the instant case is the disciplinary authority/Depot Manager. Therefore, by any stretch of imagination, it cannot be said that the Depot Manager has no jurisdiction to issue show-cause notice.

8. Coming to the order in W.P.No.17994 of 1989 on which the learned counsel for the petitioner sought to rely upon in support of his case, it is to be noted that in the said case an order of termination as confirmed by the appellate authority was under challenge, but not the show-cause notice. It is also required to be noted that in the said case the criminal prosecution launched against the petitioner therein ended in acquittal. In the instant case, no such information is forthcoming though the police initiated prosecution against the petitioner herein. In fact, the enquiry officer in the enquiry report came to a conclusion with regard to the liability of the petitioner basing on the statement of Superintendent Engineer (T) on the complaint lodged by the wife of the deceased and the rough sketch of the

accident spot. In the instant case, petitioner is praying for a Writ of Certiorari.

In this context, it may be contextual to refer to the judgment of the Hon'ble

Apex Court in *SYED YAKOOB VS K.S. RADHAKRISHNAN AND ORS.*¹. In

the said judgment, at paragraph No.7, the Hon'ble Apex Court 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 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

¹ AIR 1964 SC 477

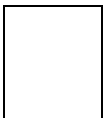
drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam ([1958] S.C.R. 1240.), and Kaushalya Devi v. Bachittar Singh.“

9. The Writ in the nature of Certiorari, as per the above referred ratio, lies only in the cases where the proceedings suffer from inherent lack of jurisdiction and patent perversity. In the instant case, the existence of no such contingency could be brought to the notice of this Court by the petitioner. In view of the above reasons, this Court is not inclined to scuttle the disciplinary enquiry initiated against the petitioner herein.

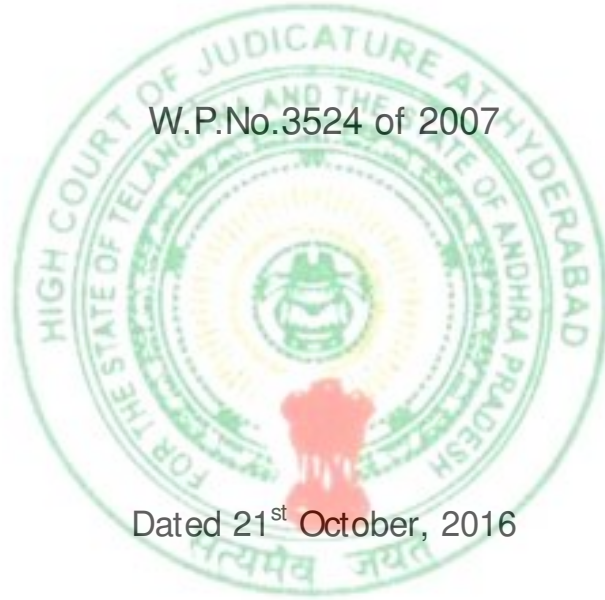
10. For the aforesaid reasons, writ petition is dismissed. However, the petitioner is given an opportunity to submit his explanation to the impugned show-cause notice of removal within a period of one month from the date of receipt of a copy of this order. If any such explanation is submitted within the time stipulated above, the same be considered and appropriate orders be passed in accordance with law. As a sequel, pending miscellaneous petitions, if any, shall stand disposed of. No costs.

A.V.SESHA SAI, J

Date:21.10.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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