

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

WRIT PETITION No.13424 of 2003

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the award, dated 07.12.2002, passed by the Industrial Tribunal-cum-Labour Court, Ananthapur (hereinafter called as 'the Tribunal') in I.D.No.33 of 2000.

Heard learned Standing Counsel for the petitioner-Corporation and Smt.K.Udaya Sri, learned counsel for respondent No.2-workman.

By virtue of proceedings, dated 27.07.1999, the petitioner-Corporation retired respondent No.2-workman on medical grounds. On the ground that the Corporation ought to have offered him with an alternative job, instead of retiring him on medical invalidation, respondent No.2 filed an application before the Tribunal under Section 2(A) 2 of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act') with a request to reinstate him with continuity of service, back wages and all other attendant benefits.

The Tribunal framed the following point for consideration:

“Whether the petitioner is entitled to the post previously held by him and whether an opportunity should be given to him?

Before the Tribunal, no evidence, oral or documentary, was let in.

The Tribunal duly taking into consideration Regulation 6 (A) (4) of APSRTC Employees Service Regulations (hereinafter called as 'the Regulations'), while setting side the order, dated 27.07.1999, directed the petitioner to send the workman for re-examination to ascertain as to whether he is fit to work as Sweeper or not and pass orders accordingly in terms of Regulation 6(A) of the Regulations. The Tribunal also directed payment of back wages and all attendant benefits till reconsideration of the case of the workman in terms of the said Regulations.

The Tribunal recorded a categorical finding that there is nothing on record to show that the workman was offered a post of Sweeper nor he was informed that he had opportunity to opt for the post of Sweeper. The Tribunal also opined that the employer, who is in advantageous position and who is well-versed with the Regulations, has a duty cast upon him to inform the employee about his rights.

Though learned Standing Counsel for the petitioner-Corporation submitted that by way of letter, dated 22.07.1999, the workman requested to retire him and to settle the claims, since the said letter was not produced before the Tribunal, this Court is not inclined to consider the said submission.

In this context, it is appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **Syed Yakoob**

Vs. K.S.Radhakrishnan¹. In paragraph 7 of the said judgment, the

Hon'ble Apex Court held as under:

“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 is 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 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 [Art. 226](#) to issue a writ of certiorari can be legitimately exercised (vide [Hari Vishnu Kamath v. Syed Ahmad Ishaque](#), 1955-1 SCR 1104: (((S) AIR 1955 SC 233): [Nagendra Nath v. Commr. of Hills Division](#), 1958 SCR 1240: (AIR 1958 SC 398) and [Kaushalya Devi v. Bachittar Singh](#), AIR 1960 SC 1168.”

In the instant case also, no jurisdictional error nor any perversity in the impugned award could be pointed out by the petitioner-Corporation. In the absence of the same, the petitioner herein is not entitled for indulgence under Article 226 of the

¹ AIR 1964 SC 477

Constitution of India. It is also to be noted that pursuant to the impugned award, the workman was reinstated into service and he also retired from service on attaining the age of superannuation.

Having regard to the above facts and circumstances of the case and the reasons indicated supra, this Court does not find any valid reason to meddle with the award passed by the Tribunal.

The writ petition is accordingly dismissed.

Consequently, Miscellaneous Petitions, if any pending in this writ petition shall stand disposed of. No order as to costs.

Dt: 23.11.2016.
kdl



A.V.SESHA SAI, J