

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, to issue writ of Certiorari, calling for the records pertaining to the impugned award dated 19.2.2004, made in I.D.No.180 of 2002 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam, published in G.O.Rt.No.561 dated 02.4.2004, and quash the same as being illegal.

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

The first respondent was appointed as a driver in the APSRTC in November 1987 and posted in Narsipatnam Depot. He absented to his duty from 02.3.1997 to 30.8.1997. He submitted a medical certificate dated 03.3.1997 issued by a private Doctor covering the period from 02.3.1997 to 31.5.1997 only. The Traffic Inspector Gr.II of Narsipatnam Depot submitted a report to the petitioner i.e., the Depot Manager, Narsipatnam Depot on 30.8.1997 about the absence of the first respondent and his irregular attendance to duty. The petitioner initiated disciplinary proceedings and issued charge sheet to the first respondent with the following charges:

1. For having absented to your duties from 02.3.1997 to till date without prior permission or sanction of leave which constitutes misconduct on your part in terms of Reg.No.29(xxvii) of APSRTC Employees' (Conduct) Regulations, 1963.
2. For having left the Headquarters without prior permission of your immediate supervisor, which constitutes misconduct under Reg.No.5 of APSRTC Employees' (Conduct) Regulations, 1963.
3. For having poor attendance during the period from May, 1996 to till date and irregular in duties by way of leave/sick/absent for 274 days, which constitutes misconduct on your part in terms of Reg.No.28(xxvii) of APSRTC Employees' (Conduct) Regulations, 1963.

For one reason or the other, the first respondent did not attend the enquiry till 23.10.1997. After completion of enquiry, the Enquiry Officer submitted his report on 25.10.1997. The petitioner issued a notice to the first respondent asking him to show cause why he should not be removed from service. The first respondent submitted his explanation on 08.11.1997. Basing on the explanation of the first respondent, the petitioner permitted him to discharge his duties as driver. The first respondent again reported sick from 13.5.1999 to 11.6.1999. The petitioner has passed the final order of removal on 17.1.2000 basing on the previous show cause notice dated 25.10.1997. The first respondent raised industrial dispute by filing petition under Section 2A(2) of the Industrial Disputes Act, 1947, which was numbered as I.D. No.180 of 2002 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam (hereafter referred to as, the Tribunal). After completion of the enquiry, the Tribunal passed the Award on 19.2.2004 directing the petitioner to reinstate the first respondent-employee into service with continuity of service but without backwages and also directed to treat the absented period of the employee as dies non. Feeling aggrieved by the Award of the Tribunal, the petitioner filed the present writ petition.

3. The contention of learned standing counsel for the petitioner is three fold: (1) the findings recorded by the Tribunal are perverse as the same are not based on material much less legally admissible material; (2) the finding of the Tribunal that the petitioner has violated the principles of natural justice, while conducting the enquiry, is factually incorrect; and (3) the Tribunal having arrived at a conclusion that the first respondent is a chronic absentee, ought not to have allowed the I.D. ***Per contra***, learned counsel for

the first respondent submitted that this court cannot interfere with the findings recorded by the Tribunal unless there is an error of law apparent on the face of the record. The findings recorded by the Tribunal are supported by oral and documentary evidence. The final order of removal dated 17.1.2000 itself clearly demonstrates that the petitioner had violated the principles of natural justice.

4. In order to appreciate the rival contentions, this Court places reliance on the ratio laid down in 1)

Syed Yakoob vs. K.S. Radhakrishnan^[1], 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*^[2] *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam*^[3] and *Kaushalya Devi v. Bachittar Singh*^[4].)"

2) **Swaran Singh vs. State of Punjab**^[5] 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**^[6] 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 reappreciation 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.

5. Let me consider the facts of the case on hand in the light of the above legal principles. A perusal of the record reveals that the first respondent has been working as a driver in Narsipatnam depot from 1987 onwards. The first respondent unauthorisedly absented to his duty from 02.3.1997 to 30.8.1997. He submitted the medical report issued by a private Doctor covering the period from 02.3.1997 to 31.5.1997.

The first respondent attended the enquiry on 23.10.1997 and the matter was adjourned to 25.10.1997 on which date the evidence of the Traffic Inspector was recorded on behalf of the Corporation. The Enquiry Officer submitted his report on 25.10.1997, which clearly establishes that no opportunity was given to the first respondent to produce witnesses. The petitioner issued show cause notice of removal to the first respondent on 25.10.1997. A perusal of the record reveals that entire enquiry was conducted on a single day i.e., on 25.10.1997. The first respondent submitted his explanation on 08.11.1997 in response to the show cause notice and the petitioner permitted the first respondent to discharge his duties as driver impliedly dropping the action on that charge.

6. On 13.12.1999, the Traffic Inspector Gr.II submitted a report stating that the first respondent has not attended to the duty from 05.12.1999 to 13.12.1999. Basing on that report, the petitioner passed the final order of removal on 17.1.2000. If really the petitioner is not satisfied with the services of the first respondent, what prevented him to take action basing on the enquiry report dated 25.10.1997. While allowing the first respondent to continue in service the petitioner, though not directly, by necessary implication not intended to take any action in pursuance of the enquiry report dated 25.10.1997. Surprisingly, the petitioner passed the final order of removal basing on the report of the Traffic Inspector even without giving an opportunity to the first respondent to submit his explanation. Even assuming, but not admitting, that the first respondent was absented to his duty with effect from 05.12.1999 to 13.12.1999, what prevented the petitioner to issue show cause notice to the first respondent. The petitioner issued final order of removal on 17.1.2000 without following due procedure. In the instant case, the final order was passed without giving opportunity to the first respondent, which amounts to violation of principles of natural justice.

7. The contention of learned counsel for the petitioner is that the order dated 17.1.2000 was passed in pursuance of the show cause notice dated 25.10.1997 and not with regard to subsequent period of absence. When the petitioner allowed the first respondent to continue for a period of more than 2 years after issuance of first show cause notice of removal dated 25.10.1997, he ought to have issued another show cause notice of removal to the first respondent. A perusal of the final order clearly reveals that the petitioner has taken into consideration the undertaking of the first respondent dated 14.6.1999 and the report of the Senior Traffic Inspector dated 16.1.2000. Thus, the final order of removal dated 17.1.2000 clearly indicates that the petitioner has taken into consideration the conduct of the first respondent subsequent to the show cause notice of removal dated 25.10.1997. If the petitioner wants to take action basing on the subsequent events of the enquiry, he ought to have given reasonable opportunity to the first respondent. Without giving any such opportunity, the petitioner straightaway passed the final order of removal dated 17.1.2000.

8. As observed earlier, in a single day i.e., on 25.10.1997 the Enquiry Officer recorded evidence of the witness and submitted report. On 25.10.1997 itself the petitioner perused the enquiry report and got issued show cause notice of removal to the first respondent. This itself indicates how the enquiry was conducted. In paragraph No.13 of the Award, the Tribunal made an observation that the petitioner acted hastily and passed the final order without giving any opportunity to the first respondent to adduce

evidence. It is needless to say that any enquiry conducted in violation of principles of natural justice is non-est in the eye of law. I am fully agreeing with the finding recorded by the Tribunal that the enquiry was conducted in violation of principles of natural justice.

9. As rightly pointed out by the learned counsel for the petitioner, the Tribunal made an observation that the first respondent is a habitual absentee. Merely because the first respondent has not attended to the duty by itself is not a valid ground to terminate his services without following due process of law. The Tribunal set aside the final order of removal dated 17.1.2000 on the ground that the said order was passed in violation of the principles of natural justice. Absolutely there is no material on record to establish that the findings recorded by the Tribunal are not based on material much less the legally admissible material. Viewed from any angle, I am unable to accede to the contention of learned counsel for the petitioner that the findings recorded by the Tribunal are perverse, which warrant interference of this court.

10. 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 it is not a fit case to interfere with the Award of the Tribunal.

11. Accordingly, the writ petition is dismissed. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

Date: 08.06.2016
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T. SUNIL CHOWDARY, J

[\[1\]](#) AIR 1964 SC 477
[\[2\]](#) (1955) 1 SCR 1104
[\[3\]](#) (1958) SCR 1240
[\[4\]](#) AIR 1960 SC 1168
[\[5\]](#) (1976) 2 SCC 868
[\[6\]](#) (2015) 2 SCC 610