

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No7227 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 orders dated 27.02.2004 in M.P.No.124 of 1996 on the file of the Presiding Officer, Labour Court, Guntur and quash the same.

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

The petitioner joined the respondent firm i.e., Cotton Ginning Mill in the year 1973 as a Clerk on a monthly payment of Rs.400/-. His salary was enhanced from Rs.400/- to 600/- in the year 1985. The respondent is having branch offices at different places. In the month of April, 1994, the respondent firm at Pattipadu was leased out to M/s. Jaya Cotton Owners. At that time, the petitioner was posted as Godown Keeper by respondent. The respondent paid salary to the petitioner upto the year 1992. The respondent terminated the services of the petitioner orally on 01.02.1996 without following the procedure contemplated under Section 25(F) of the Industrial Disputes Act, 1947 (for short, 'the I.D. Act'). The petitioner is entitled for a sum of Rs.2,55,257/- for the period from 1992 to 1996. Hence, the petition. The respondent filed counter denying all the averments made in the petition *inter alia* contending that the petition is not maintainable under Section 33-C(2) of the I.D. Act. From 1993, the firm was run by M/s. Jaya Cotton Owners. Therefore, the question of payment of amount to the petitioner would not arise. The claim made by the petitioner is barred by limitation. Hence, the petition may be dismissed. The Labour Court after affording reasonable opportunity to both parties, dismissed M.P.No.124 of 1996. Hence, the present writ petition.

3. The contention of the learned counsel for the petitioner is two

fold: (1) the finding of the Labour Court that the petitioner failed to prove the employer and employee relationship between the respondent and the petitioner is not based on any material; and (2) the finding of the Labour Court that the petition is not maintainable under Section 33-C(2) of the I.D. Act is not legally sustainable.

4. Before the Labour Court, on behalf of the petitioner, PWs.1 to 3 were examined and Exs.P.1 to P.9 were marked. On behalf of the respondent, RWs.1 to 3 were examined and Exs.R.1 to R.8 were marked.

5. In order to appreciate the contentions of the learned counsel for the petitioner, 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 improperly, 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.

6. The contention of the petitioner is that he worked in the respondent firm upto 01.02.1996; therefore he is entitled for salary from 1992 to 1996. It is needless to say that the petitioner has to establish that he worked in the respondent firm from 1992 to 1996. It is a settled principle of law that in order to file a petition under Section 33-C(2) of the I.D. Act, the employee has to establish the pre-existing right. Let me consider the facts of the case in the light of the above legal principles.

7. As per the testimony of PWs.1 to 3, the petitioner worked as a Godown Keeper from 1992 to 1996 in the respondent firm. To substantiate the same, the petitioner relied on Exs.P.1 to P.9. As per the testimony of RWs.1 to 3, the respondent sold the firm to one M/s. Jaya Cotton Owners. The petitioner also taken a specific stand that the respondent sold the firm to M/s. Jaya Cotton Owners in the year 1993. Basing on the oral and documentary evidence, it can be safely presumed that the respondent is not the owner of the Cotton and Ginning Mill in question from 1993 onwards. If really the petitioner worked as a Godown Keeper at Pattipadu, what prevented him to implead M/s. Jaya Cotton Owners as a party to the proceedings. For the reasons best known, the petitioner did not choose to implead M/s. Jaya Cotton Owners. As per the recitals of Exs.P.1 to P.9, the petitioner worked in the respondent firm upto the year 1982 to 1983. Absolutely there is no material on record to establish that the petitioner worked in the respondent firm from 1983 to 1993 or in M/s. Jaya Cotton Owners from 1993 to 1996. If really the respondent terminated the services of the petitioner without following the procedure as contemplated under Section 25(F) of the I.D. Act, the remedy available to the petitioner is to

approach the Labour Court by raising an industrial dispute as postulated under Section 2A(2) of the I.D. Act. Whatever may be the reason, the petitioner did not choose to raise an industrial dispute challenging the termination order dated 01.02.1996. The oral termination order dated 01.02.1996, as alleged by the petitioner became final. As observed supra, existence of pre-existing right in favour of an employee is a *sine qua non* to file a petition under Section 33-C(2) of the I.D. Act. The Labour Court has considered the oral and documentary evidence meticulously and arrived at a conclusion that there is no employer and employee relation between the respondent and the petitioner. On the other hand, the oral testimony of RWs.1 to 3 coupled with Exs.R.1 to R.8 clearly establishes that the petitioner never worked in the respondent firm after 1983. The petitioner failed to establish his pre-existing right in order to file a petition under Section 33-C(2) of the I.D. Act. The Labour Court has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Labour court. This Court can interfere with the findings recorded by the Labour Court, if they are perverse, or, if there is any error apparent on the face of the record. In the absence of those two things, this Court cannot lightly interfere with the orders of the Labour Court.

8. 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 there are no grounds much less valid grounds to interfere with the orders of the Labour Court by exercising the power under Article 226 of the Constitution of India. The writ petition lacks merits and *bona fides*.

9. Accordingly, the Writ Petition is dismissed. No costs.

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

Date: 23.06.2016
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[\[1\]](#) 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