

HON'BLE SRI JUSTICE M. SATYANARAYANA
MURTHY

W.P. No. 5179 of 2001

DATE: 05.02.2016

Between:

P. Ravi Kumar
Petitioner

□ □

And

The Commissioner and another Respondents

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ORDER:-

This writ petition is filed for issue of Writ of Certiorari, quashing the order dated 31.10.2000 passed in I.D.No. 489 of 1995 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam.

The petitioner joined as NMR vide RC.No.17022/88/F-4, dated 01.09.1988 and worked till 15.08.1993 continuously. Subsequent to 15.08.1993, he also continued on daily wage basis. This fact was admitted by MW1 – D. Ramakrishna Reddy in his cross-examination that as per Note File dated 03.02.1994 of the office of the 1st respondent-Commissioner, the petitioner has been taken to duty from October, 1993 as per the instructions of the Commissioner and Special Officer issued in the last week of September, as such, he has been continued in service before the 1st respondent beyond five years.

Later, the petitioner made several representations dated 16.09.1993, 21.02.1994, 04.04.1994, 06.06.1994,

03.08.1994, 28.08.1994 and 26.09.1994 for his absorption in regular vacancy and for payment of salary, but no purpose was served. However, the petitioner filed I.D.No. 489 of 1995 seeking reinstatement into service with back wages since 15.08.1993. During pendency of this I.D., he also filed O.A.Nos.2954 & 2948 of 1995 and 2995 of 1996, and the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity "the Tribunal"), while disposing of O.A.No. 2954 and 2948 of 1995, dismissed O.A.No. 2995 of 1996 by order dated 20.03.1998. Thereafter, he filed a Review M.A.No.1380 of 1998 in O.A.No. 2995 of 1996, and the same was also dismissed on 19.04.1998. It is further stated that the 1st respondent regularized the services of 67 NMRs. worked along with the petitioner but the petitioner's services were not regularized. During pendency of this I.D., the petitioner filed additional material paper obtained under Right to Information Act including the Office Note. As per the Office Note, he was continued in service on daily wage basis even after his termination and the same is to be counted as service and he is eligible for regularization in permanent vacancy, but the 2nd respondent-Labour Court, by Award dated 31.10.2000, without appreciating this evidence, dismissed the I.D. negating the claim of the petitioner.

The 1st respondent filed counter affidavit denying the material allegations *inter alia* contending that the

services of the petitioner were terminated on 15.08.1993, as such, he has not completed five years of service and is not entitled to claim any relief of regularization and back-wages and supported the order passed by the 2nd respondent in the I.D. Therefore, the petitioner is not entitled to claim benefits under G.O.Ms.No.212, dated 22.04.1994 as he had not completed five years of service as on 25.11.1993 and prays to dismiss the writ petition on this ground.

The learned counsel for the petitioner contends that as per the Office Note, the petitioner's services were engaged continuously without any order in writing and the Office Note is sufficient to establish that even after his termination, he was allowed to continue to serve in the Department of the

1st respondent and prays to take into consideration the services rendered by him subsequent to his termination and regularize his services as per G.O.Ms.No.212.

The learned counsel for the respondents contends that the Office Note is without any legal sanction and on the strength of the Office Note, service of the petitioner cannot be counted, apart from the fact that, he did not complete his five years of service as on the cut-off date i.e. 25.11.1993, and thereby, he is not eligible for regularization and prays to dismiss the writ petition.

Considering rival contentions and perusing the

material available on record, the point that arises for consideration is:

“Whether the petitioner had completed five years of service as on 25.11.1993, and if so, whether his services are liable to be regularized as per G.O.Ms.No. 212, dated 22.04.1994?”

Undisputedly, the petitioner's services were terminated on 15.08.1993 by which time he had not completed five years of service so as to claim benefit under G.O.Ms.No.212. But, the main grievance of the petitioner is that his services were continued even after termination and if the later service is taken into consideration, he completed five years of continuous service and he relied on the certified copy of Office Note obtained under Right to Information Act. It shows that he continued in service and completed four years 11 months and finally, he was continued orally without any order in writing. No doubt, the Office Note shows that without any reason, his services were terminated, but the Office Note is without any legal sanction and on the strength of the Office Note, the party is not entitled to claim any benefit. Similar question came before the Apex Court in the case of **Union of India and Others v. Vartak Labour Union**^[1] wherein it is held that Office, Memo was merely in the nature of an inter-department communication between the appellant-organizations' headquarters and its officials. Inter-departmental communications and notings in

departmental files did not have sanction of law. Therefore, on the basis of the office notings, the petitioner is not entitled to claim regularization. If this principle is applied to the facts of the present case, the office notings on which the petitioner relied on are of no avail to claim benefit of completion of five years of continuous service under G.O.Ms.No.212.

Further, it is to be noted that the Tribunal clearly recorded a finding that the petitioner did not complete five years of continuous service as on the cut-off date and even on the office notings, he was terminated from service on 15.08.1993 whereas the cut-off date in accordance with G.O.Ms.No.212 was 25.11.1993. Thus, he completed four years 11 months and 15 days of service by the date of his termination in the department, and therefore, he is not eligible for regular appointment in pursuance of G.O.Ms.No.212. One of the contentions of the petitioner is that as per the law laid down by this Court in **D.Sesharani Vs. Managing Director, A.P.Women's Co-operative Finance Corporation**^[2], the employees either daily wage or temporary or NMR, who had completed 5 years of service and employees appointed and continuing as such as on the cut-off date i.e. 25.11.1993 as and when they complete 5 years of service shall be regularized. It is also held that implementation of Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay

Structure) (Amendment) Act, 1998 specifying the cut-off date as on 19.08.1998 for regularization of persons working on daily wage basis or nominal muster roll or consolidated pay or as contingent worker on full time basis, is contrary to Fundamental Rights and Directive Principles of State Policy and the State Government was obliged to create posts for regularization of services of daily wagers, etc. from the date of completion of their 5 years of service. But the Division Bench of this Court, set aside the order of the learned Single Judge by placing reliance on the decisions of the Apex Court in **Bola Vs.**

B.D. Sardana^[3], **Gujarat Agricultural University Vs.**

Rathod Labhu Bechar^[4] and **Indra Sawhney Vs. Union**

of India^[5] and also reversed the direction given by the learned Single Judge to the State Government for creation of posts for regularization of the services of daily wagers, etc., but declared that the ban imposed on regularization would be effective from the date of enforcement of Amendment Act No.27/1998 and all persons who have completed 5 years of service as on the date of implementation of Amendment Act No.27 of 1998 would be entitled to be considered for regularization of their services. On the strength of the order of Division Bench of this Court, the learned counsel for the petitioner contends that completion of 5 years of service subsequent to issuance of G.O.Ms.No. 212 is sufficient to regularize the

services of the employees and he further contends that the 1st respondent cannot insist completion of 5 years service of the petitioner as on the cut-off date i.e. 25.11.1993 and completion of the remaining service after issuance of G.O.Ms.No. 212 is sufficient but this contention cannot be accepted since policy of regularization contained in the first proviso to Section 7-A of the Act No.27 of 1998 is one-time measure intended to benefit only those daily wage/NMR, temporary employees etc., who completed 5 years of continuous service on or before 25.11.1993 and the employees who have completed 5 years of service after 25.11.1993 cannot claim regularization as a matter of right in view of the law declared by the Apex Court in **A.Manjula Bhashini and others Vs. Managing Director, A.P. Women's Co-operative Finance Corporation Limited and another**^[6].

In any view of the matter, jurisdiction of this Court in judicial review under Article 226 of the Constitution of India is limited and the Court cannot interfere with the fact finding recorded by the Tribunal unless it is perverse. Before the Tribunal, the petitioner did not produce the Office Notings which he has relied on before this Court and even if the office notings are taken into consideration, they are without any legal sanction as per the decision referred to supra.

The jurisdiction to issue a writ of *certiorari* is

supervisory one and in exercising it, the Court is not entitled to act as a Court of Appeal. That necessarily means, 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 vs. K.S.Radhakrishnan and Others***^[7].

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 findings of fact.

In ***Municipal Corporation, Faridabad vs. Siri Niwas***^[8], 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.”

In *Municipal Council, Sujanpur vs. Surinder Kumar*^[9], 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 page 136, 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 analogous 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.”

Similarly, in ***Nagendra Nath Bora and another vs. The Commissioner of Hills Division and Appeals, Assam and Others***^[10], 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 will not be justified.

In ***Parry and Company Limited vs. P.C.Pal, Judge of the Industrial Tribunal-II, Calcutta and others***^[11], the Full Bench of the Apex Court reiterated the same principle.

Thus, it is settled that the Courts, while exercising power of judicial review under Article 226 of the Constitution of India, to issue writ of *certiorari*, cannot interfere with the fact findings and, at best, if the Court finds that there is an error of law, it can interfere with such

findings recorded by the Tribunal.

In the present facts of the case, the Tribunal recorded the finding of fact that the petitioner did not complete five years of service as on the cut-off date and the finding needs no interference since it is based on the material available on record. Hence, I am not inclined to interfere with the fact finding recorded by the Tribunal, and consequently, the petitioner is not entitled to any benefit under G.O.Ms.No. 212, dated 22.04.1994, and the writ petition is liable to be dismissed.

Accordingly, the point is answered against the petitioner and the writ petition is dismissed. No order as to costs.

As a sequel to the dismissal of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

M. SATYANARAYANA

MURTHY,J

05.02.2016

bcj

[\[1\]](#) 2011(2) SLR 414

[\[2\]](#) 2001(2) ALT 607

[\[3\]](#) AIR 1997 SC 3127

[\[4\]](#) 2001 ILLJ 710 SC

- [\[5\]](#) AIR 2000 SC 498
- [\[6\]](#) AIR 2010 SC 3143
- [\[7\]](#) AIR 1964 SC 477
- [\[8\]](#) 2004 (8) SCC 195
- [\[9\]](#) 2006(5) SCC 173
- [\[10\]](#) AIR 1958 SC 398
- [\[11\]](#) AIR 1970 SC 1334