

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

WRIT PETITION No.8459 of 2016

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the award passed by the Labour Court-II, Hyderabad in Industrial Dispute No.45 of 2011, dated 18-02-2014.

Heard, Sri N. Vasudeva Reddy, learned Standing Counsel for A.P.S.R.T.C. for the petitioner and learned Government Pleader for Labour for respondents.

The 1st respondent herein worked as a Driver in the petitioner corporation. A charge sheet, dated 29-09-2003 was issued, framing the following charge against the 1st respondent:

"For having driven the vehicle 14-45 hrs Karimnagar service No.AP 11Z 1124 rashly and negligently without taking precautionary measures near out gate of bus station Kamareddy as a result of which a pedestrian came under the right side wheels of the vehicle and died on the spot which constitutes misconduct in terms of Reg.28 (ix)(a)(b) of A.P.S.R.T.C. Employees' (Conduct) Regulations, 1963."

Subsequently, he was removed from service by way of an order, dated 16-03-2004. Thereafter the 1st respondent herein raised I.D.No.45 of 2011 before the Labour Court-II, Hyderabad questioning the order of removal. Pending Industrial Dispute, the 1st respondent passed away, leaving behind the respondents 2 to 4 as his legal representatives. The Labour Court-II, Hyderabad by way of an award, dated 18-02-2014 modified the order of

punishment of removal to that of the stoppage of two increments with cumulative effect and the Tribunal also allowed continuity of service, attendant benefits and monetary benefits to the heirs of the deceased

1st respondent.

Challenging the said award, dated 18-02-2014 passed in I.D.No.45 of 2011, the present writ petition has been filed by the petitioner corporation.

It is submitted by learned counsel for the petitioner that the award passed by the Labour Court is erroneous, contrary to law and opposed to the very spirit and object of Section 11-A of the Industrial Disputes Act. It is further submitted that there is absolutely no justification on the part of the Labour Court to modify the order of removal and the Tribunal also erred in awarding attendant benefits.

A perusal of the impugned award clearly discloses that the Tribunal took into consideration the order of acquittal passed by the Court of Judicial Magistrate of First Class, Kamareddy in C.C.No.36 of 2004 and also found negligence on the part of the pedestrian. The Tribunal also categorically recorded a finding that it would not be possible to say that the Driver alone was responsible and found error of judgment on the part of the Driver. The Tribunal eventually found that the punishment of removal inflicted on the 1st respondent would be highly excessive and disproportionate to the misconduct alleged. Obviously, the Tribunal recorded the said finding in the light of the provisions of Section

11-A of the Industrial Dispute Act and passed the impugned order. The Tribunal also took into consideration the death of the employee.

In this context it is relevant to refer to the judgment of the Hon'ble Apex Court in case of **SYED YAKOOB V. K.S. RADHAKRISHNAN AND OTHERS**^[1], wherein it is held in paragraph No.7 as follows:

“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 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 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, [1955] 1 S.C.R. 1104: ((S) AIR 1955 SC 233); Nagendra Nath v. The Commissioner of Hills Division, 1958 SCR 1240: (AIR 1958 SC 398) and Kaushalya Devi v. Bachittar Singh, AIR 1960 S.C. 1168.

It is very much clear from the ratio laid down in the above referred judgment that unless there exists perversity in the impugned order, lack of jurisdiction and violation of principles of natural justice, a writ in the nature of writ of certiorari cannot be issued.

It is also submitted by learned counsel for the petitioner that in view of the delay on the part of the workman in approaching the Court the order impugned ought not to have been passed by the Tribunal. Having regard to the facts and circumstances of the case and as the Tribunal below exercised its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 this Court does not find

any reason to meddle with the same.

Since the Tribunal exercised its jurisdiction in accordance with the provisions of Section 11-A of the Industrial Disputes Act, 1947 this Court does not find any valid reason to meddle with the said award passed by the Tribunal having regard to the facts and circumstances of the case.

For the aforesaid reasons, the writ petition is dismissed.
There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

A.V. SSHA SAI, J

March 16, 2016

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

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March 16, 2016

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