

HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.4050 OF 2003

Dated 1-6-2016

Between:

Hindustan Coca-Cola Beverages Private Limited.

..Petitioner.

And:

Presiding Officer, Labour Court-II, Hyderabad and
another.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.4050 OF 2003

ORDER:

This petition is filed questioning order dated 18-11-2002 in I.D.No.212 of 1999 on the file of Labour Court-II, Hyderabad.

Petitioner herein is a company incorporated under the Companies Act and second respondent herein was a Checking Supervisor. According to writ petitioner, second respondent committed certain serious acts of misconduct for which he was issued a charge sheet dated October, 16, 1998 and that he was placed under suspension pending enquiry in view of gravity of misconduct. According to writ petitioner, second respondent submitted his explanation, as the same was found not satisfactory, an enquiry was ordered and an independent person was appointed as Enquiry Officer who conducted enquiry and after due appraisal of the material, the Enquiry Officer submitted his report dated 19th May, 1999 holding that the second respondent is guilty of the charges leveled against him in the charge sheet and thereafter, a show cause notice was issued to second respondent while enclosing copy of Enquiry Report suggesting dismissal from service and on a consideration of explanation submitted by second

respondent and the report of the enquiry Officer, the writ petitioner dismissed the second respondent from service through order dated 4th August, 1999. Second respondent challenged the dismissal order before the Industrial Tribunal and the Labour Court-cum-Industrial Tribunal on a consideration of contentions and rival contentions and material on record, ordered reinstatement of second respondent into service with all back wages, attendant benefits and continuity of services and questioning the same, present Writ Petition is filed.

Heard arguments.

Advocate for writ petitioner submitted that the impugned award is liable to be set aside due to patent errors committed by Labour Court. He further submitted that Labour Court grossly erred in applying the yardstick of criminal trial contrary to the settled proposition of law that the guilty of charge sheeted employee need not be established like a criminal prosecution and that hearsay evidence is also admissible in domestic enquiry. He further submitted that Labour Court erroneously observed that the findings of the Enquiry Officer are perverse and such an observation is totally unsustainable. He further submitted that when a finding is recorded on some evidence, such finding cannot be termed as perverse. He further submitted that when the writ petitioner took a specific plea that it lost confidence in the second respondent herein as his acts are dishonest, directing reinstatement of such employee with back wages is contrary to settled law. He further submitted that from the oral and documentary evidence placed before the Enquiry Officer, it is clear that second respondent committed grave misconduct by fabricating the figure of empty crates in the declaration form and by ignoring such material, observing that the findings of the Enquiry Officer are perverse are unsustainable. He further submitted that the material on record and the acts of the second respondent per say established, fraudulent nature and dishonest intention. He further submitted that when the management lost confidence

in an employee who indulged in act of fraud or dishonesty, the question of reinstatement would not arise is the principle laid down by Supreme Court in number of decisions, but the labour court ignoring all these, ordered for reinstatement and the said order has to be quashed by exercising the powers under Article 226 of Constitution.

No arguments are advanced on behalf of second respondent.

Now the point that would arise for my consideration in this writ petition is whether the award of the Labour Court, is legal, correct and proper?

POINT:

As seen from the record, second respondent is a Checking Supervisor at Panjagutta Unit of Petitioner Company and his duty is to receive empty crates of Coca-Cola bottles from various salesmen and each crates consists of 24 bottles and to put those crates in the godown. It is also clear from the record that some security services were also taken on contract basis to assist second respondent Supervisor at the time of checking. It is also clear from the evidence that apart from second respondent, there were also other Checking Supervisors attached to the Unit building to the unit at Punjagutta. The allegation against second respondent is that on 20th May, 1998, at about 9 P.M., while he was on duty as Checking Supervisor at Punjagutta unit, one salesman by name S.R.K.Choudary of Srilakxmi agency brought 243 empty crates in vehicle No.5346, handed over the same to the second respondent by which time, Sd.Gousuddin was the security guard at the said unit. According to petitioner herein, second respondent while receiving the said 243 crates of empty bottles, prepared a declaration to the effect that 253 crates of empty bottles were received and made security guard also signed on the said declaration and this act of second respondent is a grave misconduct, which caused loss to the petitioner company to a tune of Rs.2,902/- for which a domestic enquiry was ordered. The main documents relied on by the

petitioner to prove the charges against second respondent are report of Sri M.S.N. Choudary Assistant Manager, Shipping marked as Ex.M.7 and letter of security guard Sd.Gousuddin, marked as Ex.M.8 during enquiry. It is not the case of petitioner that the second respondent involved in such mis-deeds prior to the alleged incident.

As seen from the material, M.S.N. Choudary conducted stock verification but no irregularities were found.

As seen from the record, a letter is received from Laxmi Agencies on 5-1-1999 and the same is marked as Ex.M.1 also marked as Ex.M.11 which is in respect of empty crates. Learned Presiding Officer has elaborately discussed about this letter and recorded a finding that there is no meaning in the account preferred to in the said letter and it would no way support the charge leveled against second respondent herein. On that ground, learned Presiding Officer observed that the findings of the Enquiry Officer holding that the charges are proved against the second respondent herein are perverse in nature and therefore, held liable to be set aside.

Now the main grievance of the writ petitioner is that the observations of the Labour Court are contrary to the settled principles of law and therefore, the findings of the Labour Court are to be set aside.

Learned advocate has referred to certain rulings in respect of his submissions.

In *J.D.JAIN vs. MANAGEMENT OF STATE BANK OF INDIA AND ANOTHER* (^[1]), Honourable Supreme Court held as follows:

“In an application for a writ of certiorari under Article 226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, inter alia, when the Tribunal has committed error of law apparent on the face of record or when the finding of fact of the Tribunal is perverse.”

In *BANK OF INDIA AND ANOTHER vs. DEGALA SURYANARAYANA* (^[2]), Honourable Supreme Court

observed as follows:

“Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority.”

In *DIVISIONAL CONTROLLER, KSRTC (NWKRTC)*
vs. *A.T.MANE* (^[3]), Honourable Supreme Court observed
as follows:

*“From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of *Rattan Singh* (1977) 2 SCC 491 is not a condition precedent. We may herein note that the judgment of this Court in *Rattan Singh* (1977) 2 SCC 491 has since been followed by this Court in *Devendra Swamy v. Karnataka SRTC*.(2002)9 SCC 644)”*

In *AMRUT RAO PATIL v. CHIEF SECURITY COMMISSIONER, RAILWAY PROTECTION FORCE, SOUTH CENTRAL RAILWAY, SECUNDERABAD AND OTHERS* (^[4]), this court observed as follows:

“It is evident from the order of the disciplinary authority that the petitioner, in his own handwriting, had admitted that

he had taken the liquor bottle from the lady passenger. The fact that he had so admitted in writing is not denied. The only contention urged is that the said letter of admission was at the dictates of the Sub-Inspector, and the contents of the statement are wrong. The disciplinary authority observed that the petitioner could not have been so naïve as to sign on a written statement without understanding it; his statement was further supported by the written statement of another Constable, and both the Constables had failed to attribute motives to the Sub-Inspector or to have stated why he should force them into giving a wrong statement, or to take their signatures thereon. The appellate authority, in his order dated 27.1.1998, noted that the service record of the petitioner revealed that he was qualified in Pre-University Course (I Year), and his plea of illiteracy was false and baseless. The appellate authority also observed that the petitioner had failed to furnish any reason why a wrong statement was dictated by an officer. The reviewing authority, in his order dated 15.2.1999, observed that the petitioner, in a signed statement recorded on 9.3.1997 in English by the Sub-Inspector which was read over to him and explained to him in Hindi, had admitted to the facts and the said statement clearly indicated that he, along with his colleague Sri M.Kumaraswamy, had taken one liquor bottle and hid the same in the lavatory of the coach. The reviewing authority further observed that, since the petitioner had admitted to have taken a liquor bottle from the lady passenger and as a disciplined educated Constable could not have signed the statement without knowledge of its implications, no interference was called for with regards imposition of penalty.”

IN G.BHARADWAJ vs. HINDUSTAN SHIPYARD LTD.,

VISAKHAPATNAM AND ANOTHER (^[5]), this court observed as follows:

“It is well settled that the certiorari jurisdiction of this Court, against orders of Tribunals, is supervisory and not appellate. This Court would not, normally, sit in appeal over the findings recorded by Tribunals and quasi judicial authorities unlike an appellate authority and even if this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, comes to the conclusion that another view is possible on the issue, so long as the conclusion of the Tribunal is a possible view, it would still not interfere, even if it is satisfied that other view espoused by the party challenging the award is also a possible view. The Tribunal herein has come to the conclusion that until the delegation of power under Ex.M.1 was revoked by an express and specific order, it would continue to remain in

force. This conclusion of the Tribunal cannot be said to be a view which could not have been taken at all. The contention that Clause 11 of the delegation of powers is a penal provision and must be strictly constructed does not merit acceptance. The said clause in the order of delegation of powers, has been interpreted by the Tribunal. It cannot be said that the construction placed on Clause 11 by the Tribunal is an interpretation which could not have been arrived at all. The finding of the Tribunal in this regard does not call for interference, by this Court, in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India. The conclusions reached by the Tribunal in holding that the order of punishment was imposed by a competent authority, does not, therefore, call for interference.”

In ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION VS. ADDITIONAL LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, HYDERABAD AND ANOTHER
(^[6]), this court observed as follows:

“In the instant case, the 2nd respondent filed a memo before the Labour Court stating that he was not questioning the validity of the domestic enquiry conducted against him. It was not, therefore, open to the Labour Court to interfere with the findings recorded at the domestic enquiry on the several charges framed against the 2nd respondent. Thus, the 2nd respondent was precluded from challenging the validity of the enquiry or the findings recorded on the charges framed against him or the material on which the said findings were recorded at the domestic enquiry. The only limited question that could be gone into by the Labour Court was, whether on the findings, recorded on the charges framed, the punishment of removal was unwarranted or unjustified? The 2nd respondent’s explanation that he was sick due to stomach pain and sensation of motion, was held to be not established at the domestic enquiry and the charges were held to be proved. In view of the memo filed by the 2nd respondent, the Labour Court could not go into the validity of the findings recorded on the charges. As already mentioned, the main and principal duty of a conductor is to collect the fares and issue tickets, and the charges framed against the 2nd respondent relate only to his failure to discharge the said main and principal duty cast on him by the Conduct Regulations, and failure to discharge the same would amount to misconduct and the punishment or removal can validly be imposed in accordance with the C.C.A. Regulations. When once the charges are found to be

established by the material on record and the explanation of the 2nd respondent was rejected, and the 2nd respondent has filed a memo before the Labour Court that he was not challenging the validity of the domestic enquiry conducted against him, it was not open to the Labour Court to go into the validity of the findings recorded on the charges or act upon the explanation of the 2nd respondent which was held to be not proved at the domestic enquiry. It so, it follows that it was not open to the Labour Court to act or accept the explanation of the 2nd respondent that on account of sickness on the day of check he was not able to discharge his normal duties and that constituted reasonable cause for not imposing the penalty or removal on him. The Labour Court, in the circumstance of the case, committed a patent error in holding that the penalty of removal was shockingly disproportionate or that it was illegal, as the 2nd respondent failed to perform the primary and basic duty cast on him with regard to issue of tickets and collecting the fares.”

In *CENTRAL BANK OF INDIA LTD., VS. PRAKASH CHAND JAIN* (^[7]), Honourable Supreme Court held as follows:

“These decisions make it clear that, when an Industrial Tribunal is asked to give its approval to an order of dismissal under Section 33(2) (b) of the Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all. This principle was further affirmed in a different context in State of Andhra Pradesh v. S.Sree Rama Rao (1964) 3 SCR 25) where this court had to consider whether a High Court, in a proceeding for a writ under Article 226 of the Constitution, could interfere with the findings recorded by departmental authority in disciplinary proceedings taken against a Government servant. The court held:

“But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

In *DEPOT MANAGER, APSRTC, HANAMAKONDA DEPOT, WARANGAL DIST. v. G.RAJAIAH AND ANOTHER* (^[8]), this court observed as follows:

“The Labour Court cannot be permitted to act according to its own whims and fancies. Justice is required to be administered in accordance with law and on the basis of the material available on record in a given case. Justice according to law is to be administered between the parties. The Labour Court cannot act like a bull in a China shop and interfere with the orders of the disciplinary authority merely because it likes to interfere in a given case. Such interference would lead to chaos and disorder and may ultimately result in causing irreparable damage to the very system of administration of justice. Such interference may as well hamper the development and progress of the Industry itself and ultimately the welfare of work force which depends upon the survival of the Industry in which they are employed.”

In *V.RAMANA v. A.P.S.R.T.C. AND OTHERS* (^[9]), Honourable Supreme Court held as follows:

“Case-law shows that the court should not interfere with the administrator’s decision unless it was illogical or suffered from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or moral standards. The court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.”

In *KERALA SOLVENT EXTRACTIONS LTD., v. A.UNNIKRISHNAN AND ANOTHER* (^[10]), Honourable Supreme Court observed as follows:

“We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive

judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.”

In *WEST BOKARO COLLIERY (TISCO LTD.) v. RAM PRAVESH SINGH* ([\[11\]](#)), Honourable Supreme Court observed as follows:

“In U.P.SRTC v. Vinod Kumar (2008) 1 SCC 115), this Court again observed that in the absence of a challenge to the legality or fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the enquiry officer or the punishment awarded by the punishing authority.”

Observations or principles laid down in the above decisions cannot be disputed but those pronouncements are in different facts and circumstances. Here in our case, solitary incident of showing 10 empty excess crates in declaration form was complained as grave mis-conduct in causing loss to the company to a tune of Rs.2,902/-.

Learned Presiding Officer of the Labour court while analyzing the evidence i.e., placed before the Enquiry Officer held that there is no sufficient material to prove the charges leveled against delinquent officer and the findings of the Enquiry Officer are perverse. As seen from the record, an advocate is appointed as Enquiry Officer who without properly analyzing the material on record simply accepted the version of the employer and recorded a finding that the charges are duly proved. No doubt, proof unlike in a criminal case is a necessary in a domestic enquiry but at least prima facie proof is required particularly, when charges or misconduct are alleged. When the letter issued by Laxmi Agencies is not indicating clear account, the Labour Court is right in discarding the enquiry report.

In *DIVISIONAL CONTROLLER, KARNATAKA STATE ROAD TRANSPORT CORPORATION vs. M.G.VITTAL RAO* ([\[12\]](#)), Honourable Supreme Court observed as follows:

“Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.”

In that case, the allegations against employee was that he opened the door of the blacksmith section with the aid of a duplicate key and pulled the gas cylinder trolley and equipment from blacksmith section to the cash room along with four other employees of the appellate corporation and opened the inner door of the cash room by cutting the padlock and used the gas cylinder equipment for committing theft from the cash chest. This allegation was proved against employee therein and when the employer contended that he lost confidence in the employee, Honourable Supreme Court made the above observation.

The above referred Supreme Court decision has no application to the facts of this case because in the case before Supreme Court, the allegations against employee were very serious of committing theft of cash from the iron chest which cannot be equated with the allegations made in the present case.

On a scrutiny of the material on record, I do not find any perversity in the findings of the Labour Court as held by Honourable Supreme Court in *J.D.JAIN vs. MANAGEMENT OF STATE BANK OF INDIA AND ANOTHER* (1st cited), and the award can not be quashed unless there is material to show that tribunal has committed an error of law apparent on the face of record or the findings of facts recorded by tribunal are perverse.

Here neither there is any error of law apparent on the face of record nor any findings contrary to the facts, therefore, the contention of the writ petitioner that the Labour Court exceeded to its jurisdiction in granting relief of reinstatement with back wages and continuity of service cannot be accepted.

For these reasons, the writ petition is dismissed as

devoid of merits. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 1-6-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dated 1-6-2016

Dvs

[\[1\]](#) (1982) I SCC 143
[\[2\]](#) 1999(5) SCC No.762
[\[3\]](#) (2005) 3 SCC 254
[\[4\]](#) 2010 (5) ALD 714

[\[5\]](#) 2006 (4) ALD 335

[\[6\]](#) (1984)ILLJ 128AP

[\[7\]](#) AIR 1969 page SC 983

[\[8\]](#) 1999 (6) ALD 505.

[\[9\]](#) (2005) 7 SCC 338

[\[10\]](#) (2006) 13 SCC 619

[\[11\]](#) (2008) 3 SCC 729

[\[12\]](#) (2012) 1 SCC 442