

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

W.P.No.3607 of 2007

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the award dated 16.10.2016 passed by the Industrial Tribunal-cum-Labour Court, Anantapur in I.D.No.173 of 2005.

2. Heard and perused the material available before the Court.

3. Followed by a check conducted, the workman/second respondent herein was charge-sheeted on 06.08.2004 by framing the following charges:

- "i) For having collected the requisite fare of Rs.3/- each from a batch of 4 (four passengers at the boarding point itself and failed to issue tickets to them who boarded your bus at Kanala, among them 2 passengers alighting at Chintakunta, request stage and rest of 2 passengers were bound for Jelepalle, which constitutes misconduct in terms of clause (x) of Reg.28 of APSRTC Employees (Conduct) Reg. 1963.
- ii) For having collected the requisite fare of Rs.3/- each from a batch of 4 (four passengers at the boarding point itself, out of four passengers two passengers are alighting at Chintakunta request stage and rest of two passengers bound for Julepalle, but you have failed to issue tickets to them upto Chintakunta i.e., request stage No.8/7, which constitutes misconduct in terms of clause (x) of Reg.28 of APSRTC Employees (Conduct) Reg. 1963.
- iii) For having violated the rule issue and start while you were conducting bus No.5033 on route Nandyal to Koilakuntla on 30.07.2004, which constitutes misconduct in terms of clause (xxxii) of Reg.28 of APSRTC Employees (Conduct) Reg. 1963."

4. The second respondent herein submitted his explanation, denying the charges, and thereafter, an Enquiry Officer was appointed who submitted his report on 01.11.2004 holding the workman guilty of the charges. Followed by a show-cause notice of removal dated 20.11.2002, a final order of removal

was passed on 10.12.2004 by the Disciplinary Authority. After unsuccessfully availing the remedies of appeal and review, the second respondent herein raised I.D.No.173 of 2005 on the file of the Industrial Tribunal-cum-Labour Court under the provisions of Section 2-A (2) of the Industrial Disputes Act, 1947.

5. The Tribunal, by way of an award dated 16.10.2006 allowed I.D.No.173 of 2005 in part, setting aside the order of removal dated 10.12.2004 while ordering reinstatement of the workman into service with continuity of service and attendant benefits but without back-wages.

6. Challenging the validity and the legal sustainability of the said award passed by the Industrial Tribunal, the present writ petition came to be filed.

7. This Court, while ordering *Rule Nisi* on 22.02.2007 in WPMP.No.4603 of 2007 granted interim suspension of the award except reinstatement of the petitioner/workman into service.

8. It is contended by the learned Standing Counsel for the petitioner/Corporation, Sri Aravala Ramarao, that the award passed by the Tribunal is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Industrial Disputes Act, 1947. It is further contended that the Tribunal grossly erred in interfering with the findings recorded by the Enquiry Officer as well as the punishment imposed by the Disciplinary Authority and also erred in exercising discretion under Section 11 A of the Industrial Disputes Act, 1947. It is further submitted that the Court below ought not to have interfered with the punishment in view of the earlier conduct of the workman.

9. In the above backdrop, now the issue that emerges for consideration of this Court is_ "Whether the award passed by the Labour Court is in

accordance with the provisions of the Industrial Disputes Act or Whether the same warrants any interference of this Court under Article 226 of the Constitution of India?"

10. The material available before this Court manifestly discloses that followed by framing of charges and the submission of the report by the Enquiry Officer, the Disciplinary Authority imposed the punishment of removal from service by way of proceedings dated 10.12.2004. Thereafter, the appeal and the review petitions filed by the workman were dismissed by the appellate and reviewing authorities on 31.01.2005 and 22.02.2005. With regard to the past conduct of the workman as sought to be canvassed by the learned counsel for the petitioner/Corporation, there is absolutely no material available before this Court.

11. Basing on the respective pleadings, the Labour Court framed the following point for consideration:

"Whether the petitioner/workman is entitled for setting aside the order of removal from service issued by the Respondent in his proceedings dated 10.12.2004, for reinstatement into service and other consequential benefits as prayed for?"

12. A perusal of the Award under challenge discloses that the Industrial Tribunal-cum-Labour Court thoroughly and meticulously considered the entire material available on record and recorded findings. The Tribunal found fault with the mode and manner in which Ex.M.3/passenger statement was recorded. The Tribunal also found that when the place of destination itself is yet to be known from the batch of passengers, it cannot be said that the petitioner would have collected the fare from them and that he failed to issue tickets. The Tribunal also took note of the aspect that one stage was yet to be completed and even without completing that stage, check was exercised in between where there was a request stage and there was yet some more

time available for the petitioner to complete the tickets and to close the SR by the time of reaching the next stage. While recording the said findings, the Tribunal came to a conclusion that the circumstances prevailing in the case would not warrant removal of the petitioner from service except imposition of minor penalty. While recording the said findings, the Tribunal allowed I.D.No.173 of 2005 in part and did set aside the order of removal and directed reinstatement with continuity of service and attendant benefits, but did not extend the benefit of back-wages. Therefore, the Industrial Tribunal-cum-Labour Court did exercise its discretion under the provisions of Section 11-A of the Industrial Disputes Act. In this Context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of *SYED YAKOOB v. K.S. RADHAKRISHNAN AND ORS.*¹ wherein the Hon'ble Apex Court at paragraph No.7, held as under:

“7. 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 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

¹ AIR 1964 SC 477

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*), *Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam* ([1958] S.C.R. 1240.), and *Kaushalya Devi v. Bachittar Singh*.”

13. In the instant case, this Court does not find any error of jurisdiction. In fact, in exercise of the powers conferred under Section 11-A of the Industrial Disputes Act, 1947, the Tribunal below exercised its jurisdiction and passed the impugned award. Therefore, this Court is not inclined to meddle with the said well reasoned impugned award.

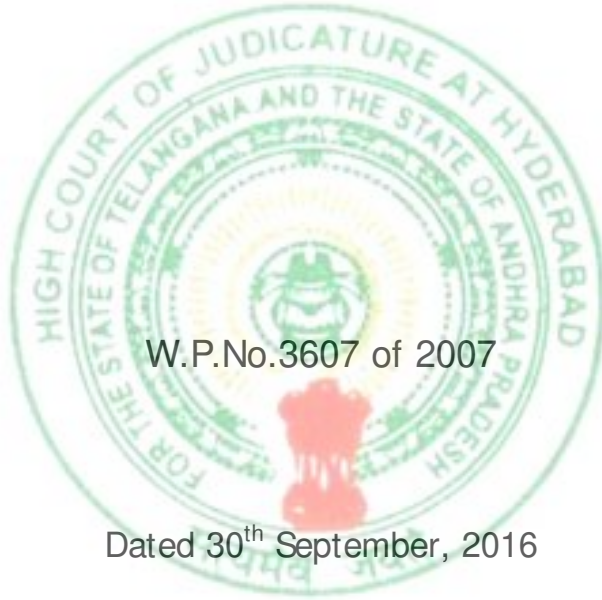
14. For the aforesaid reasons, writ petition is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

Date:30.09.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



Dated 30th September, 2016

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