

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Writ Petition No.16506 OF 2001

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari and quash the order passed by the Industrial Tribunal-cum-Labour Court, Godavarikhani in I.D.No.141 of 1997 dated 27.12.2000 as illegal, arbitrary and consequently direct the 1st respondent to reinstate the petitioner into service with all consequential benefits.

It is the case of the petitioner that he was appointed as a Vessel Cleaner on 10.04.1992 in the canteen situated in Zonal Workshop of the 1st respondent at Karimnagar. The petitioner and four others worked as Vessel Cleaners in the same canteen but they were removed from service on 04.10.1993 illegally. Questioning his removal, the petitioner filed I.D.No.141 of 1997 before the Industrial Tribunal-cum-Labour Court, Godavarikhani.

The 1st respondent filed a counter before the Tribunal denying the relationship of workman and employer. However, the Tribunal-cum-Labour Court, Godavarikhani by order dated 27.12.2000 dismissed the I.D. holding that the petitioner failed to prove that he was engaged as a Labourer by the 1st respondent and was removed by the 1st respondent.

Challenging the said order, the present writ petition is filed raising several grounds and it is mainly contended that the Labour Court did not consider the evidence of W.Ws.1 to 3 in proper perspective so also the changed version of management from time to time as evident from the evidence of M.Ws.1 and 2. It is also contended that the Industrial Tribunal-cum-Labour Court did not even advert to the documents i.e. Exs.W.1 to W.3 and the order of the Labour Court is bereft of any reasons and is, therefore, liable to be set aside.

The 1st respondent filed a counter affidavit referring to the earlier proceedings initiated by the petitioner for the very same relief and the consequential rejection of his claim. The relationship of employer and employee between the 1st respondent

and the petitioner is denied. It is also stated that the allegation of the petitioner that the Labour Officer referred his name also for minimum wages along with the other four employees viz., V.Kumaraswamy, B.Bikshapathi, Y.Hari and K.Ranga Swamy is baseless and incorrect and the impugned order does not warrant any interference.

Sri T.S.Rayalu, learned counsel for the petitioner, during the course of hearing, has drawn the attention of this Court to the order passed in W.P.No.17859 of 1993 filed by V.Kumara Swamy and three others, who were alleged to have been engaged by the said Contractor, wherein the 1st respondent was directed to regularize their services with all consequential benefits, and to the order passed by the Assistant Commissioner of Labour, Karimnagar in M.W.Case No.141 of 1992, wherein it was held that V.Kumaraswamy, B.Bikshapathi, Y.Hari and K.Ranga Swamy were working under the 1st respondent and they were entitled for minimum wages as per the various Circulars and G.Os issued by the Government. Learned counsel contends that when they were absorbed regularising their services, the petitioner herein is also entitled to be absorbed into the Department regularising his services. It is further contended that even though in Ex.W.1, the petitioner was found working on monthly salary of Rs.400/- and his name was shown at serial No.15 at the last line of page No.1 thereof but the names of the petitioners in W.P.No.17859 of 1993 were not shown in the attendance register maintained by the 1st respondent, it was not considered by the Labour Court in proper perspective and if the same is taken into consideration, the service of the petitioner is liable to be regularised and finally prayed to reinstate the petitioner and regularise his services.

None appears for the 1st respondent and no arguments are advanced on its behalf.

In view of the arguments advanced by the learned counsel for the petitioner, the only point to be considered by this Court is that

“Whether the petitioner was engaged by the 1st respondent on daily wage basis, and if so, whether the alleged removal of the petitioner is illegal, arbitrary and liable to be set aside by exercising power of judicial review under Article 226 of the Constitution of India?”

While the petitioner contends that he was working as a Vessel Cleaner in the canteen situated in Zonal Workshop at Karimnagar, the 1st respondent states that he

was working under a Contractor, to whom the work of cleaning vessels and sweeping was entrusted; he was never engaged by the 1st respondent on daily wage basis or consolidated pay of Rs.400/- per month as contended by the petitioner; and thus denied the relationship of workman and employer between the petitioner and the 1st respondent.

During the course of enquiry before the Labour Court, the petitioner himself deposed as W.W.1, besides examining Y.Hari as W.W.2, and marked Exs.W.1 to W.3 to support his case, whereas on behalf of the Management, M.Ws.1 and 2 were examined and Exs.M.1 and M.2 were marked.

The Tribunal, based on the admission made by W.W.1, concluded that the petitioner was not working directly under the 1st respondent and he was only a Labourer engaged by a Contractor. Now, it is relevant to advert to the cross-examination of W.W.1 and the same is extracted herein:

"The cleaning, sweeping and other works in RTC canteen, Karimnagar, was given to contractor from 1991 to 1993. Myself and others worked under a contractor. Contractor paid wages to me. It is not true to suggest that I worked only for four days under the contractor."

This admission clinches the issue and no further proof is required to establish that the petitioner was not engaged as a Labourer by the 1st respondent. Even in the re-examination, nothing was elicited by the learned counsel for the petitioner before the Tribunal. If the evidentiary admission of the petitioner as W.W.1 is taken into consideration, the case of the petitioner that he was engaged as a Labourer by the 1st respondent cannot be accepted.

Coming to the evidence of W.W.2 - Y.Hari, one of the petitioners in W.P.No.17859 of 1993, it is clear that V.Kumara Swamy and three others, who worked along with him in the canteen, were removed from service and they filed the writ petition before the High Court and got reinstatement. In the cross-examination, W.W.2 admitted that he paid salary to the petitioner V.Kumara Swamy and Bikshapathy. M.W.2 did not state anything about payment of salary to the petitioner herein by him or by the 1st respondent and did not disclose anything about the relationship between P.Kumara Swamy (petitioner herein) and the 1st respondent

In the evidence of management witness (M.W.1), he totally denied the engagement of the petitioner as Vessel Cleaner in the Zonal Workshop at Karimnagar and produced Exs.M.1 and M.2. In the cross-examination, nothing was elicited to rebut the testimony of M.W.1 or to prove that the petitioner was working as Labourer directly under the 1st respondent. In the evidence of M.W.2, he asserted that there is a canteen in Zonal Workshop at Karimnagar and the petitioner worked under a contractor in that canteen in 1992-93, but the witness was not cross-examined atleast to deny the testimony of M.W.2 regarding the relationship between the petitioner and the contractor.

Coming to the documentary evidence, Ex.W.1 is not even helpful to prove that the petitioner was found working in the canteen on 27.10.1992 at 12:45 p.m., when the Labour Inspector had inspected the premises. However, the said document does not disclose whether he was engaged by the 1st respondent or by the contractor. Even if his services were engaged by the contractor, he is certainly found to be in the premises being a Vessel Cleaner or Sweeper. Ex.W.2 is a copy of order passed by this Court in W.P.No.24455 of 1996, filed by the petitioner earlier for the very same relief, directing the respondents therein to hold enquiry into the matter and to complete the exercise within three months, in pursuance of which the claim of the petitioner was thoroughly examined and rejected by the 1st respondent. Similarly, the other document i.e. proceedings issued by the Department (Ex.W.3) dated 22.05.1997 does not disclose anything that the 1st respondent engaged the petitioner herein but asserted that he was engaged by a work contractor i.e. V.Kumara Swamy S/o. Venkataiah or Y.Hari.

No doubt, there is little discrepancy in the stand, in view of the contents in the documents marked as Exs.W.1 to W.3. However, the evidentiary admission made by the petitioner himself totally goes against his claim that he was directly engaged by the 1st respondent. Therefore, the Tribunal found that the petitioner miserably failed to establish that there was relationship of workman and employer between the petitioner and the 1st respondent and declined to pass an award in favour of the petitioner. Merely because an order was passed for reinstatement of V.Kumara Swamy, B.Bikshapathi, Y.Hari and K.Rangaswamy in W.P.No.1785 of 1993 by this Court, the petitioner is not entitled to claim relief in this writ petition for the reason that he failed to prove the relationship of workman and employer between himself

and the 1st respondent. In any view of the matter, the jurisdiction of this Court under Article 226 of the Constitution of India is limited and normally this Court, while exercising power of judicial review under Article 226 of the Constitution of India, would not interfere with the fact finding of the Tribunal.

The jurisdiction to issue a writ of *certiorari* is a supervisory one and in exercising it, the Court is not entitled to act as a Court of Appeal. That necessarily means that 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***.

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 fact findings.

In ***Municipal Corporation, Faridabad vs. Siri Niwas***, 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, Sujapur vs. Surinder Kumar***, 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 page136, 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 analogues 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***, 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 not justified.

In ***Parry and Company Limited vs. P.C.Pal, Judge of the Industrial Tribunal-II, Calcutta and others***, 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 error of law, it can interfere with such findings recorded by the Tribunal.

The main endeavour of the petitioner before this Court is that the four other similarly situated persons were already reinstated as per the orders of this Court, which is of no avail to the petitioner, in view of his evidentiary admissions as W.W.1 supporting the contentions of the 1st respondent. Therefore, it is difficult to exercise discretionary jurisdiction of judicial review to issue a direction to the 1st respondent to reinstate the petitioner and regularize his services, since the petitioner himself

admitted that he was engaged by a contractor to clean vessels. In those circumstances, I find no ground to pass any order in favour of the petitioner. Accordingly, the point is held against the petitioner and in favour of the 1st respondent.

In the result, the writ petition is dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

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M.SATYANARAYANA MURTHY, J

21st January 2016.

JSU

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Date: 21.01.2016

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