

HON'BLE SMT JUSTICE ANIS
WRIT PETITION No.24753 OF 2003

ORDER :

This writ petition is filed by the petitioner, under Article 226 of the Constitution of India, to issue writ of Certiorari to quash the order dated 30.11.2002 passed in A.P.S.E.No.6 of 2002, which was modified by the order dated 15.09.2003 passed in A.P.S.A.No.3 of 2003 on the file of respondent Nos.1 & 2 respectively.

2. It is the case of the petitioner that the third respondent was elected as the Director of the petitioner Society and later on, he was also elected as Secretary of the petitioner Society. While holding the post of Secretary, the third respondent was appointed as part-time clerk in the petitioner Society and thereafter, he resigned to the post of Secretary in the petitioner Society. As per the records of the petitioner Society, the third respondent has not produced any documentary evidence showing his age and his educational qualifications on the date of appointment. As per the bye-laws of the Society, the age of superannuation is 58 years and bye-laws also prescribed the qualifications for appointment to any post in the petitioner Society. A notice dated 29.09.2000 was issued to the third respondent calling upon him to submit the certificates relating to his age and educational qualifications. In this regard, there were exchange of notices between the Society and the third respondent. According to the petitioner, the third respondent failed to produce the authentic certificates showing his age and educational qualifications in spite of granting sufficient time. The matter was placed before the Board of Directors of the Society on 30.12.2001 and the Board resolved to issue a final notice to the third respondent as to why his services should not be terminated. As per the records of the Society, the third respondent declared his age as 51 years as on 19.06.1993. In the appeal A.P.S.C.No.7 of 1993 filed by him against the Society,

the third respondent also has not submitted any certificates even from the Ramadas Co-operative Training Centre, Rajahmundry. On 30.01.2002, the third respondent gave a reply stating that at the time of his appointment, he gave his date of birth as 11.08.1949 and after fully satisfied with the age and educational qualifications, he was appointed as clerk in the petitioner Society and he need not produce any certificate relating to his age and educational qualifications and he should not be asked to produce any certificate. According to the petitioner, as per the record the age of third respondent was declared as 51 years in the year 1993 and further, he continued beyond the age of superannuation, as such his services were terminated as per the order dated 05.02.2002. Against the said termination order, the third respondent filed appeal under Section 48 of the Andhra Pradesh Shops and Establishments Act, 1988 before the first respondent with false and baseless allegations. The petitioner Society filed a detailed counter. After recording the evidence, appeal was allowed by the Assistant Commissioner of Labour, Kakinada on 30.11.2002 and directed the petitioner to reinstate respondent No.3 into service within 30 days from the date of the receipt of the order without any back wages, but with continuity of service. The third respondent did not file any appeal against the order passed in A.P.S.E.No.6 of 2002 dated 30.11.2002. But, the petitioner Society filed appeal A.P.S.A.No.3 of 2003 on the file of the second respondent. The Appellate Authority i.e., Deputy Commissioner of Labour, Eluru, passed the modified order as follows:

“reinstatement of respondent/workwoman into service with immediate effect, with continuity of service and with 25% back wages.”

Aggrieved by the orders of the Assistant Commissioner of Labour and Deputy Commissioner of Labour passed in A.P.S.E. No.6 of 2002 and A.P.S.A.No.3 of 2003, the petitioner Society filed the present writ

petition for quashing the above orders.

3. During hearing, learned counsel for the petitioner argued that the third respondent failed to prove his date of birth as well as educational qualifications to be appointed in the petitioner Society and the Society already granted sufficient time to prove the educational qualification as well as date of birth, but the petitioner without doing so, dodged the matter, as such the petitioner Society terminated the services of the third respondent. The third respondent filed A.P.S.E.No.6 of 2002 and without any evidence on record, the Assistant Commissioner and also Deputy Commissioner passed the orders reinstating the third respondent into service. It is also argued that the Deputy Commissioner of Labour erroneously passed the order in A.P.S.A.No.3 of 2003 by awarding 25% back wages to the third respondent. The third respondent has not preferred any appeal against the findings passed by the Assistant Commissioner of Labour in A.P.S.E.No.6 of 2002. Therefore, both the orders have to be set aside.

4. On the other hand, the learned counsel for the third respondent argued that at the time of joining into service, the petitioner has furnished necessary information to the Society about his age and qualifications and after satisfying the same only, he was appointed in the petitioner Society. Now, the writ petitioner cannot agitate the said findings. It is also argued that the third respondent attained the age of superannuation and question of reinstatement does not arise and prayed the Court to dismiss the writ petition.

5. Considering the contentions of the learned counsel for the petitioner as well as the third respondent, the point that arise for consideration is,

Whether the fact finding recorded by the Authorities under Section 48 of the Andhra Pradesh Shop and Establishment Act, 1998 by Assistant Commissioner of labour and Deputy

Commissioner of Labour, Eluru can be interfered exercising jurisdiction under Article 226 of the Constitution of India and that whether the Orders passed by the Authorities are in violation of any statutory rule or provision. If so, the Orders are liable to be quashed?

6. **POINT:** Perused the record. There is no dispute that the third respondent was elected as Director of the petitioner Society on 30.03.1979. Later on, he was also elected as Secretary to the society. While holding the post, he was appointed as part-time clerk in the petitioner Society. Thereafter, he resigned to the post of Secretary of the petitioner Society. When the third respondent failed to produce the age and qualification certificates, the petitioner Society after granting sufficient time terminated the services of the third respondent. The third respondent filed an application under Section 48 of the Andhra Pradesh Shops & Establishment Act, 1988 in A.P.S.E.No.6 of 2002. The application was partly allowed, wherein he was reinstated into service without continuity of service and without back wages. Aggrieved by the findings of the Assistant Commissioner of Labour, the petitioner Society filed appeal A.P.S.A.No.3 of 2003 before the Deputy Commissioner of Labour, Eluru. The Appellate Authority confirmed the judgment of the Assistant Commissioner of Labour, but awarded 25% back wages. Aggrieved by both the orders, the present writ petition is filed.

7. The main contention of the writ petitioner is that the third respondent failed to prove his age and qualifications and without verifying all those aspects, both the Authorities ordered reinstatement of the third respondent into service. It is also contended that an appeal was filed by the petitioner Society and in the said appeal, the Deputy Commissioner without any jurisdiction awarded 25% back wages, which was not asked by the third respondent by filing any appeal against the order passed in A.P.S.E.No.6 of 2002.

8. 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 v. K.S. Radhakrishnan and others***^[1] and ***Municipal Council, Sujapur v. Surinder Kumar***^[2]. Thus, In view of the principles laid down by the Apex Court, the jurisdiction of this Court to issue a writ of *Certiorari* under Article 226 of the Constitution of India is limited and this Court cannot interfere with the fact findings recorded by the Tribunal. Therefore, the contention of the writ petitioner that this Court has to quash the orders passed in A.P.S.E.No.6 of 2002 and A.P.S.A.No.3 of 2003 cannot be accepted because under the power of judicial review under Article 226 of Constitution of India, this Court cannot interfere with the orders passed by the competent Authorities. In so far as granting 25% back wages which was not granted by the Assistant Commissioner of Labour, Kakinada is concerned, the same has to be set aside because the third respondent has not filed any appeal claiming back wages against the order passed in A.P.S.E.No.6 of 2002.

9. Thus, In view of the above discussion and in view of the facts and circumstances of the case, the writ petition is partly allowed setting aside the finding of the Deputy Commissioner of Labour, Eluru

passed in A.P.S.A.No.3 of 2003 with regard to the 25% back wages.
The remaining order remains the same. No costs. Consequently,
miscellaneous petitions, if any, pending in this Writ Petition shall
stand closed.

ANIS, J

Date: .04.2016
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[\[1\]](#) AIR 1964 SC 477

[\[2\]](#) 2006 (5) SCC 173