

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

W.P.No.6343 of 2010

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, calls in question the award dated 24.09.2009 passed by the Labour Court-I, A.P., Hyderabad in I.D.No.207 of 2005.

2. Heard Sri N.Vasudeva Reddy, learned counsel for the petitioner and Sri G.V.Ravi Mohan, for the respondent workman apart from perusing the material available before the Court.

3. The petitioner is a Conductor. A charge-sheet dated 29.03.2005 was issued to the petitioner framing the following charges:

(1) "You have reduced the target of earnings of service No.MDN/59/1, whenever you have performed duty on service ANo.MDN/59/1, during the period from 01.01.2004 to 17.05.2005 by entering into Computer Masters Files by taking the advantage of your computer knowledge which you have acquired while working in computer section and received the excess incentive amount of Rs.6,083.83 ps., during the said period which constitutes misconduct on your part under Reg.28 (x) of APSRTC Employees (Conduct) Reg.1963.

(2) You have manipulated the statements pertaining to Dayout Batta, Schedule O.T., and standing allowance in Computer and generated the statements for excess amount of Rs.3,371.21 ps., in your favour and made to draw the said amount during the period from 12.03.2004 to 11.04.2004 and 12.04.2004 to 11.03.2005 by taking the advantage of your computer knowledge which you have acquired while working in computer section, which constitutes misconduct on your part under Reg.20 (x) of APSRTC Employees (Conduct) Reg.1963."

4. With reference to the same, petitioner submitted explanation, and thereafter, the petitioner Corporation ordered domestic enquiry and

appointed an Enquiry Officer. The Enquiry Officer submitted a report on 16.06.2005 finding the petitioner guilty of the charges. Basing on the said report, after issuing a show-cause notice, the Petitioner Corporation passed an order removing the respondent workman from service.

5. Questioning the validity of the said order of removal, petitioner raised Industrial Dispute No.207/2005. The Tribunal/Labour Court basing on the material available framed the following issues for consideration:

“1. Whether the domestic enquiry officer and the respondent were justified in holding that the petitioner was guilty under the charges levelled against him?

2. Whether the punishment of removal from service imposed against the petitioner was appropriate?

3. To what relief?”

6. The labour Court after consideration of the material available on record, passed an award dated 24.09.2009 ordering reinstatement of the petitioner into service with continuity of service with 50% of the back-wages while keeping it open for the Corporation to recover the amount paid in excess to the workman.

7. Calling in question, the validity and the legal sustainability of the said award passed by the Labour Court, the present writ petition came to be instituted.

8. It is contended by the learned Standing Counsel for the petitioner Corporation that the award passed by the Labour Court is illegal, erroneous and contrary to law and opposed to the very spirit and object of the provisions of the Industrial Disputes Act, 1947. It is the further contention of the learned Standing Counsel that the Tribunal re-appreciated the evidence and came to a conclusion different from the conclusion arrived at by the Domestic Enquiry Officer.

9. Per contra, it is contended by the learned counsel for the respondent/workman that there is no illegality nor there exists any

procedural infirmity in the impugned award, as such, the present writ petition is not maintainable and the petitioner is not entitled for relief from this Court under Article 226 of the Constitution of India. It is the further submission of the learned counsel that there is absolutely no material on record for the Enquiry Officer to come to a wrong conclusion which is the basis for the order of termination is a report based on assumptions and presumptions and cannot be sustained, as such, the very termination based on such perverse report is unsustainable. It is the further submission of the learned counsel for the workman that in the absence of any perversity, jurisdictional error and violation of principles of natural justice, the interference of this Court under Article 226 of the Constitution of India is impermissible.

10. In the above backdrop, now the issue that emerges for consideration of this Court is “Whether the award under challenge is sustainable and tenable and whether the petitioner is entitled for any indulgence of this Court under Article 226 of the Constitution of India.

11. The material available on record manifestly discloses that the Tribunal, after elaborately and thoroughly considering the material on record, came to a conclusion that the enquiry officer was not justified in coming to the conclusion against the workman.

12. During the course of hearing, the enquiry report bearing No.02/486(1)/2305-MDN, dated 16.06.2005, which is the basis for the order of termination is placed on record and in the unnumbered last paragraph at page No.11 of the said report the enquiry officer recorded as follows:

“Further taking advantage of his work in computers he must have manipulated the service targets of service 0591 which he used to perform on line permanently.”

13. In the considered opinion of this Court, the said finding recorded by the enquiry officer based on assumption and presumption cannot be sustained nor can form the basis and foundation for the disciplinary

authority to dispense with the service of the workman. In fact, the Tribunal also categorically recorded a finding that nowhere in the evidence adduced on behalf of the management there exists any material to show that the petitioner (workman) was aware of the passwords to open the computers and also to open the concerned files.

14. Yet another submission made by the learned counsel for the petitioner is that in the absence of any perversity, the indulgence of this Court under Article 226 of the Constitution of India for issuance of a Writ in the nature of Writ of Certiorari is not available to the petitioner. At this juncture it may be apt to refer to the Judgment of the Hon'ble Apex Court

in ***SYED YAKOOB v. K.S.RADHAKRISHNAN AND OTHERS***^[1]

wherein the Hon'ble Apex Court at paragraph 7, held as follows:

“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 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]1SCR1104), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam : [1958]1SCR1240 , and Kaushalya Devi v. Bachittar Singh : AIR1960SC1168.”

15. In the instant case also this Court finds no jurisdictional error nor any violation of principles of natural justice nor any perversity in the impugned award and in the absence of the same, having regard to the principles laid down in the above referred judgement, this Court neither is inclined to nor persuaded to meddle with well reasoned and well crafted award passed by the Tribunal.

16. In view of the above reasons, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:07.01.2016
grk



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

W.P.No.6343 of 2010

Dated: 07th January, 2016

grk

[\[1\]](#) AIR 1964 SC 477