

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

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W.P.No.4133 of 2010

ORDER:

This writ petition filed under Article 226 of the Constitution of India, challenges the award dated 17.7.2009 passed by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Ananthapur in I.D.No.339 of 2004.

2. Heard Smt.K.Aruna, learned counsel appearing for the petitioner, learned Government Pleader for Labour appearing for Respondent No.1 and Sri Chandraiah Sunkara, learned counsel for Respondent No.2, apart from perusing the material available on record.

3. According to the 2nd respondent-workman, he was engaged as skilled labour in the petitioner organization in the month of August 1996 along with some other workmen and though they were engaged as contract labourers, they were directly under the control of Board officials and discharging duties on par with permanent employees. The Government of A.P. issued G.O.Ms.No.41 dated 23.9.1996, prohibiting engagement of contract labour in 33 categories in generating stations of State Electricity Board and according to the 2nd respondent, despite the Government Order, he was engaged as contract labour and had worked in the category at Sl.No.31 in the said Government Order. It is the further case of the respondent-workman that pursuant to the above G.O.Ms.No.41 dated 23.9.1996, the respondent Board issued proceedings B.P.(P&G-PER) Ms.No.37 dated 18.5.1997 for absorption of labourers who were working under 33 categories. It is the further case of the workman that he worked in the months of August, September and October, 1996 under the contractor M/s Eswar Electricals under Agreement No.37 and was paid wages at Rs.51-50 ps. per day. It is also pleaded that the workman was taken as a contract labour and was diverted to project hospital as

Pharmacist vide Memo NO.CE/Elecl/RTPP/PO/F.13/1010/97 dated 2.8.1997 and continued in the said post till 31.3.1998. According to the petitioner, his services were terminated despite his eligibility for regularization.

4. In the above background, the 2nd respondent herein raised I.D.No.339 of 2004 on the file of the 1st respondent herein. Before the Tribunal, the 2nd respondent workman filed Exs.W1 to W13 and the petitioner-management did not file any documents. Basing on the material available, the Tribunal below framed the following points for consideration.

- (1) Whether the petitioner is liable to be reinstated as prayed for by him by setting aside the termination order dated 31.3.1998.
- (2) To what relief the petitioner is entitled?

5. The Tribunal passed award dated 17.7.2009 in I.D.No.339 of 2004, ordering reinstatement of the workman within 15 days and refused to grant back wages on the ground of “no work no pay”, but the Tribunal directed the management to consider the period from termination till reinstatement as on duty for the purpose of pensionary benefits and also granted incremental benefit. Calling in question, the validity and legal sustainability of the said award passed by the 1st respondent, the present writ petition came to be filed.

6. It is contended by the learned counsel for the petitioner that there is absolutely no evidence on record to show that the workman worked during the relevant period and there is no termination order issued. It is the further case of the learned counsel for the petitioner that the findings of the 1st respondent-Tribunal are erroneous and the absence of counter signature of Superintending Engineer on Ex.B3, it

is fatal to the case of the workman. It is the further submission of the learned counsel for the petitioner that the impugned award is erroneous and contrary to the material available on record.

7. Per contra, it is contended by the learned counsel for 2nd respondent-workman that there is no illegality nor there is any procedural infirmity in the impugned award, as such, the present writ petition is not maintainable and the writ petition is liable to be dismissed. It is also the emphatic submission of the learned counsel for 2nd respondent that only after elaborate consideration of the evidence available on record, the Tribunal below passed the impugned award.

8. Assailing the termination with effect from 31.3.1998, the 2nd respondent herein raised the instant I.D.No.339 of 2004 before the 1st respondent. The workman filed Exs.W-1 to W-13 in support of his case and the writ petitioner herein did not file any documents to substantiate their stand.

9. A perusal of the impugned award, in clear and unequivocal terms, reveals that the Tribunal meticulously and thoroughly discussed and considered the entire material available on record and arrived at the conclusions. The validity and the trustworthiness of Ex.W3 was considered by the Tribunal at paragraph 15 of the impugned award. It is yet another submission of the learned counsel for workman that the writ petitioner has utterly failed in making out a case, warranting interference of this Court under Article 226 of the Constitution of India. In this context, it may apt and appropriate to refer to the judgment of the Hon'ble Supreme Court in **Syed Yakoob v. K.S. Radhakrishnan**. In the said judgment, the Hon'ble Supreme Court at paragraph 7, while dealing with the matters pertains to issuance of Writ of Certiorari, 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 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.”

10. In the instant case, the petitioner herein could not point out neither lack of jurisdiction nor failure to exercise jurisdiction nor

violation of principles of natural justice nor any perversity in the findings recorded by the Industrial Tribunal.

11. In view of the above reasons and having regard to the parameters in the above referred judgment, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned award does not suffer from any infirmity and the petitioner herein has failed to make out any case, warranting interference of this Court under Article 226 of the Constitution of India.

12. For the aforesaid 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: 7.1.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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