

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 5094 OF 2017

Shri. Sakharam Govind Mohare	... Petitioner
V/s.	
The Divisional Traffic Superintendent	
MSRTC, Pune Division, Pune	... Respondent

Mr. Bhagwant V. Inamdar for the Petitioner.

CORAM : K. K. TATED, J.
DATED : 28/04/2017

P.C.:

. Heard learned Counsel for the Petitioner.

2 By this petition under Articles 226 & 227 of Constitution of India, the Petitioner is challenging the order dated 15.12.2015 passed by the 4th Labour Court, Pune below Exh. U-2 in Complaint (ULP) No. 85 of 2015 rejecting Petitioner's application for interim relief and the Judgment dated 18.04.2017 passed by the Industrial Court, Pune in Revision Application (ULP) No. 82 of 2015 upholding the order passed by the Labour Court.

3 In the present proceeding, the Petitioner was working with the Respondent as conductor since 14.10.1994. When he was on duty on 20.05.2010, the checking squad checked the Petitioner's bus and found that he collected the money from the passengers and failed to issue valid tickets. In this way, the Petitioner mis-appropriated the Respondent's fund. Hence, the Respondent issued Show Cause Notice

to the Petitioner for taking action. After conducting the full fledged inquiry, the Inquiry Officer submitted the final report. On the basis of final report the Respondent issued final show cause notice dated 09.05.2014 calling upon the Petitioner to show cause why he should not be dismissed from the services. Instead of replying the said final show cause notice, the Petitioner filed complaint (ULP) No. 85 of 2014 under Section 28(1) of M.R.T.U. And P.U.L.P Act 1971 restraining the Respondent from terminating him from service on the basis of final Show Cause Notice dated 09.05.2014. In that complaint, the Respondent filed their Written Statement dated 12.06.2014. The Petitioner preferred Application below Exh. U-2 for interim relief, restraining Respondent from dismissing him from the service on the basis of Show Cause Notice dated 09.05.2014. The Labour Court considering the written statement filed by the Respondent and facts of the present matter, held that the Petitioner failed to make out any case for interim relief at the time of rejecting the Petitioner's Application for interim relief. The Labour Court relied upon the case of Nathu Mahadeo Nigade v/s. Pune Municipal Transport Corporation, reported in 2001 I CLR 155(Bom).

4 Being aggrieved by the order dated 15.12.2015 passed by the Labour Court, Pune below Exh. U-2, the Petitioner preferred Revision Application (ULP) No. 82 of 2015 under Section 44 of the said Act. The Industrial Court considering the evidence on record, recorded in paragraph 8 of the impugned order that prima facie the Petitioner misappropriated the amount of the Respondent Corporation. Hence, the Industrial Court rejected the Petitioner's Revision Application by

Judgment dated 18.04.2017. Hence, the present Writ Petition.

5 The learned Counsel for the Petitioner submits that both the Courts below failed to consider the fact that the main Complaint filed by the Petitioner is pending for hearing on its own merits. Hence, during the pendency of the said main complaint both the Courts ought to have granted interim relief in favour of the Petitioner. He submits that both the courts have committed an error in not appreciating the fact that the entire inquiry utter disregard to the well settled principles of law. He submits that the Inquiry Officer was bias at the time of submitting his inquiry report. Hence, pending the hearing and final disposal of present Writ Petition this Hon'ble Court be pleased to stay the operation and implementation of impugned orders passed by both the Courts below directing the Respondent not to execute and implement the Show Cause Notice dated 09.05.2014. He submits that if ad-interim relief is not granted, irreparable loss and injury will be caused to the Petitioner.

6 I heard learned Counsel for the Petitioner at length. It is to be noted that by this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the concurrent findings of facts recorded by both the Courts below. Apart from that the present petition is arisen out of Application filed by the Petitioner for interim relief. The main complaint filed by the Petitioner is pending for hearing and final disposal of on its own merits.

7 It is settled position in law that a finding of fact is open to attack

as erroneous in law only if it is not supported by 'any evidence' or if it is unreasonable and perverse. But where there is evidence to consider, the finding of fact recorded by a Tribunal is normally immune from interference even where the writ court might, if it was the court of first instance, have come to a different conclusion. In regard to findings of fact recorded by a Tribunal a writ of certiorari can be issued only if it is shown that in recording the finding the Tribunal has erroneously refused to admit material evidence or has erroneously relied upon inadmissible evidence which has influenced the impugned finding. Similarly if a finding of fact is based on 'no evidence' or is contrary to 'weight of evidence' or is patently unreasonable and perverse, that would be regarded as an error of law capable of being corrected by a writ of certiorari. When findings of fact are in issue the writ court can only examine 'reasonableness' of the findings. If the finding is found to be recorded reasonably based upon some evidence, in the sense that relevant material has been taken into account and no irrelevant material has influenced the decision, then judicial review is exhausted even though the finding may not necessarily be what the writ court would have come to, if trying the case as a Tribunal or as a court of the first instance. Therefore in evaluating the rival contentions, I am required to be conscious of the limited scope of interference as against a finding of fact.

8 It is to be noted that though the Respondent issued a show cause notice dated 09.05.2014 to the Petitioner to file his reply, he failed and neglected to do so. Instead of filing reply, the Petitioner filed Complaint under Section 28(1) of M.R.T.U And P.U.L.P Act, 1971. In the present

proceedings, the charges against the Petitioner are in respect of misappropriation of the amount.

9 The Apex Court in the matter of ***Divisional Controller, N.E.K.R.T.C. V/s H. Amaresh***¹ held that when an employees is found guilty of pilferage or of misappropriating the Corporation's fund, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. Paragraph 18 of the said judgment reads thus:

*“18. In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in **Karnataka State Road Transport Corporation v. B.S. Hullikatti** : (2001)ILLJ725SC was also relied on in this judgment among others. Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the*

1 (2006) 6 Supreme Court Cases 187

passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.”

10 The Apex Court in the matter of Management of **Madurantakam Co. Op. Sugar Mills Ltd. V/s. S. Vishwanathan** ² held that normally the Labour Court or Industrial Tribunal is final Court of facts in Industrial Disputes, only if the finding of fact is perverse or not based on legal evidence, High Court under Articles 226 and 227 can interfere therewith. Paragraph 12 of the said judgment reads thus:

“ 12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article [226](#) or under Article [227](#) of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts

² (2005) 3 Supreme Court Cases 193

to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.”

11 The Apex Court in the matter of ***State of Madras V/s. G. Sundaram***³ held that it is well settled now that the High Court in the exercising of jurisdiction under Article 226 of the Constitution of India cannot sit in Appeal over the findings of fact recorded by the Competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. Paragraphs 7,8, 9 and 10 read thus:

“ 7. It is well settled now that a High Court, in the exercise of its jurisdiction under Article [226](#) of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It was so held in State of Orissa v. Murlidhar, , where it was said at p. 408:

"Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. That in effect is the approach initially adopted by the High Court at the beginning of its judgment. However, in the subsequent part of the judgment the High Court appears to have been persuaded to appreciate the evidence for itself, and that, in our opinion, is not reasonable or legitimate."

8. Similar view was emphatically expressed in State of Andhra Pradesh v. Sree Rama Rao, , wherein it was said at p. 1726:

"The High Court is not constituted in a proceeding under Article [226](#) of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held

³ AIR 1965 SC 1103

by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article [226](#) to review the evidence and to arrive at an independent finding on the evidence. But the departmental authorities are, if the enquiry is otherwise properly held the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article [226](#) of the Constitution."

9. It is, therefore, clear that the High Court was not competent to consider the question whether the evidence before the Tribunal and the Government was insufficient or unreliable to establish the charge against the respondent. It could have considered only the fact whether there was any evidence at all which, if believed by the Tribunal, would establish the charge against the respondent. Adequacy of that evidence to sustain the charge is not a question before the High Court when exercising its jurisdiction under Article [226](#) of the Constitution. This view was reiterated in *Union of India v. H. C. Goel*,: (1964)ILLJ38SC .

10. It is, therefore, clear that the High Court was in error in reappreciating the evidence before the Tribunal and recording the conclusion that that evidence did not establish the charges against the respondent. This is the only ground on which the Letters Patent Appeal has been allowed by the Division Bench, all other points urged by the respondent having been rejected by it. In the present appeal, the respondent has attempted to support the decision of the High Court under appeal on the ground that the findings recorded by the High Court on the said other points are erroneous. We will, therefore, deal with the said

points one by one.”

12 The Apex Court in the matter of **Syed Yakoob V/s. K.S. Radhakrishnan & Ors.**⁴ held as under:

“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

4 AIR 1964 SC 477

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.”

13 The Apex Court in the matter of **Mohd. Yunus V/s. Mohd. Mustaqim & Ors.**⁵ held that mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227.

14 In the case in hand though the show cause notice was issued by the Respondent on 09.05.2014 till today, the petitioner has not filed their reply.

15 Considering the findings given by both the courts below, prima facie I am of the opinion that Petitioner has failed to make out any case to interfere under Articles 226 and 227 of the Constitution of India in the present Writ Petition.

16 Hence, Writ Petition stands rejected.

(K.K.TATED, J.)

⁵ (1983) 4 Supreme Court Cases 566