

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.16784 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the unsuccessful respondents-A.P. Transco is directed against the Award, dated 13.02.2003, in I.D.No.83 of 2000 on the file of the learned Presiding Officer, Labour Court-III, Hyderabad.

2. I have heard the submissions of *Sri R. Vinod Reddy*, learned standing counsel appearing for the writ petitioners-Transco, and of *Sri G. Ravi Mohan*, learned counsel appearing for the 1st respondent-workman. I have perused the material record.

3. On an analysis of the pleadings and the submissions made before this Court, the facts that come to the fore, in brief, are as follows:

On 19.04.1977, the 1st respondent joined as an Attender in the erstwhile Andhra Pradesh State Electricity Board (APSEB), which is now known as A.P. Transco Limited. Since his appointment he is discharging his duties to the best of his ability. However, he was terminated from service, on 29.06.1999. By that time he had put in more than 22 years of unblemished service. Shaik Khaja Moinuddin, who is said to be the father of the 1st respondent, worked as an Attender in the erstwhile APSEB and died, on 22.08.1975, in harness. The 1st respondent was appointed into the service of the then APSEB under the bread winner scheme, that is, the deceased employee's quota. While the 1st respondent was working under the Divisional Engineer, Nalgonda, on 07.05.1997, he was served with a charge sheet, with verbatim the following charges:

1. Sri S.K. Lateef is reported to have entered the department as attender grounds being son of Sri S.K. Saheb, R/o.Yendlapalli and not son of Sri Khaja Moinuddin, Attender who expired.
2. Sri S.K. Lateef is reported to have falsely declared that he got 3 children whereas he got 4 children and obtained incentive increment and other benefits by cheating and other irregular practices.
3. He is reported to be not staying in Head quarters not doing his legitimate duties regularly and suffering the public of Intipamula of Nakrekal Mandal, by demanding corruption for doing official favour.
4. Sri S.K. Lateef is reported to have violated regulation No.5 of APSEB conduct regulations in intimating the Board about the purchase/sale of his property worth about Rs.10,000/-.

To the said charges, the 1st respondent submitted his explanation, dated 25.06.1997, categorically denying each and every charge and *inter alia* stating that his father's alias name is Shaik Saheb and that his father is popularly known as Shaik Saheb. As the department is not satisfied with his explanation to the various charges, an enquiry was ordered and an enquiry officer was appointed. After conducting an enquiry, the enquiry officer submitted a report holding that the charges are proved. Thereafter, a show cause notice was issued to the 1st respondent and eventually an order of removal, dated 29.06.1999, was passed. Assailing the said order, the 1st respondent filed W.P.No.13931 of 1999. Since the appeal before the appellate authority was pending by that time, the said writ petition was disposed of with a direction to dispose of the appeal preferred by the 1st respondent. However, the appellate authority rejected the appeal by order, dated 15.05.2000. Hence, the petitioner raised an industrial dispute and filed a claim petition. The same was resisted by the writ petitioners-Transco. On merits, the learned Presiding Officer of the Labour Court held that the charges are not proved and had set aside the order of removal from service and directed the management to reinstate the 1st respondent into service with

continuity of service, back wages and all other attendant benefits. Aggrieved thereby, the Transco represented by its officers filed this writ petition.

4. Learned standing counsel for the petitioners would contend as follows:

One Shaik Khaja Moinuddin worked as an Attender in the erstwhile APSEB. He died while in service. At that time, the 1st respondent by falsely representing that he is the son of the said Khaja Moinuddin obtained appointment on compassionate grounds as an Attender in the then APSEB and joined, on 19.04.1977, in the service of the Company. However, the petitioners-Transco received information that he is not the son of the said late Khaja Moinuddin and that he obtained appointment by misrepresenting facts and misleading the employer. Thus, the company came to know that he entered the department as an Attender by false and fraudulent means. Further, the 1st respondent falsely declared that he has got three children and obtained incentive increment and other benefits by means of cheating and irregular practices. He is in fact having four children. It was also reported that he is not staying in the headquarters and is not discharging his legitimate duties regularly and making the public of Itipamula village of Nakrekal Mandal to suffer by demanding bribes for doing official favour. He further violated the conduct regulations by not intimating the employer about the purchase/ sale of his property worth about Rs.10,000/- . After due enquiry, the enquiry officer held that the said charges are proved. Based on the said report of the enquiry officer and after following due procedure, the services of the 1st respondent are terminated eventually. The learned Presiding Officer of the Labour Court did not appreciate the facts correctly and the evidence in proper perspective and erroneously

held that the charges are not proved and unnecessarily interfered with the findings of the enquiry officer and the punishment imposed by the disciplinary authority. Considering the gravity of the charges, the management is justified in terminating the services of the petitioner. Hence, the award may be set aside and the findings of the enquiry officer and the disciplinary authority may be restored.

5. Per contra, learned counsel for the 1st respondent would submit as follows: “The 1st respondent joined the service in the year 1977 under bread winner scheme-deceased employee’s quota. After he has put in 22 years of long and unblemished service, he was suddenly subjected to a charge that he is not the son of the deceased employee. In-fact, at the inception when there was a dispute among the legal heirs of the deceased employee, who is the father of the 1st respondent, the dispute was resolved on the indulgence and guidance of the officers of Transco and on such resolution it was agreed between the legal heirs that the 1st respondent should be given compassionate appointment and his step mother, Ameena Bee, shall be given the pensionary benefits; and, accordingly the understanding was implemented. In-fact, a suit for declaration was filed by impleading a responsible officer of the Transco as a defendant and a declaration was sought that the 1st respondent is the son of the deceased employee and the said suit was decreed. After detailed examination of facts and evidence, the learned Presiding Officer of the Labour Court held that all the charges are not proved and, therefore, granted the reliefs to the 1st respondent. When once the said findings are based on facts and evidence, this Court normally would not interfere with such well considered sustainable findings and substitute its subjective opinion in the place of the finding recorded by the Labour Court. The Supreme Court time and again held that when once the

Labour Court holds that the charges are not proved and when such finding is based on some legal evidence, this Court shall not re-appreciate the evidence and is not supposed to examine the adequacy and reliability of the evidence. The writ petition is devoid of merit and is liable to be dismissed.”

6. I have carefully perused the material record including the award impugned in this writ petition. A perusal of the 1st charge reveals that according to the petitioners, the 1st respondent is not the son of late Shaik Khaja Moinuddin, who worked as an Attender in the erstwhile APSEB and died, on 22.07.1985, while in service and that the 1st respondent by making false representations that he is the son of the said employee obtained appointment as an Attender on compassionate grounds by misleading the then APSEB and that on information received by the petitioners it came to light that he is not the son of the said deceased employee and that he obtained appointment by misleading the organisation and by misrepresenting facts and playing fraud. However, the case of the 1st respondent is that he is the son of the said deceased employee, Shaik Khaja Moinuddin, who is also known as Shaik Saheb, and that he did not resort to any misrepresentation or mislead the officers concerned of the APSEB. He further submits that the first wife of the said Shaik Khaja Moinuddin alias Shaik Saheb by name Razia begum passed away and that thereafter he married Rasool Bee as his 2nd wife and that he is the son of Shaik Khaja Moinuddin alias Shaik Saheb through his said second wife. According to him, after the death of Shaik Khaja Moinuddin alias Shaik Saheb, there was a mutual understanding arrived at among the legal heirs in respect of the terminal benefits etcetera of the deceased employee that too, on the indulgence and

guidance of the then officers concerned of APSEB and that as per the said understanding it was agreed that the appointment under compassionate scheme has to be given to the 1st respondent and that the pensionary benefits shall be given to the 3rd wife, Ameena Bee of the deceased employee and that accordingly the 1st respondent was appointed as Attender in APSEB Khammam division on compassionate grounds, that is, under bread winner scheme-deceased employee's quota and that pensionary benefits were conferred on Ameena Bee, the 3rd wife of late Shaik Khaja Moinuddin @ Shaik Saheb. It is to be noted that during the enquiry, certificates issued by the Tahasildar and RDO and a copy of the voters list, which disclosed the father's name of the 1st respondent as Shaik Khaja Moinuddin @ Shaik Saheb were produced. In-fact, the enquiry officer in his report held as follows: 'Though there are evidences that Khaja Moinuddin was being called as Shaik Saheb, S.K. Lateef, who has got appointment under deceased employee's (Khaja Moinuddin) quota under compassionate grounds is not the real son of Smt. Ameena Begum (the 3rd wife of deceased) and is only her step son and she is enjoying pensionary benefits, as declared in her pension papers.' The learned Presiding Officer of the Labour Court noted in the award that despite the said finding, the enquiry officer still held that the 1st respondent is not the son of Khaja Moinunndin and that the said finding is inconsistent with the very observations of the enquiry officer in his report and, therefore, held that the said findings of the enquiry officer are perverse. In-fact, it is not disputed before this Court that the 1st respondent filed OS.no.396 of 2000 against the State and the Superintendent Engineer (Operation Circle) AP Transco, Nalgonda, on the file of the Junior Civil Judge's Court, Nalgonda, for declaration that he is the son of late Khaja Moinuddin alias Shaik Saheb and that suit was

decreed on merits by a judgment, dated 22.08.2003. Having thus considered the facts and analysed the evidence, the learned Presiding Officer of the Labour Court held that the 1st charge is not proved.

7. Coming to the second charge that the 1st respondent made a false declaration that he is having only three children as on 28.03.1988 and that he falsely claimed an incentive increment though in fact he is having four children, the explanation of the 1st respondent is that his wife underwent Tubectomy, on 28.03.1988, but, unfortunately the said operation failed and that, therefore, she later conceived and gave birth to another child. In support of the said explanation he produced relevant medical certificate before the disciplinary authority. Therefore, the learned Presiding Officer of the Labour Court found in favour of the 1st respondent in respect of the said charge.

8. Insofar as the third charge is concerned, the 1st respondent was earlier charge sheeted and was punished in respect of the very same graveman of the said charge and, therefore, the learned Presiding Officer of the Labour Court held that the 1st respondent was charge sheeted a second time in respect of the very same allegation and that he was being victimised at the instance of some persons having vested interests.

9. So far as the fourth charge is concerned, the explanation that the 1st respondent acquired the property with the sale proceeds of a plot given to his wife by her parents and that, therefore it is her stridhana property was accepted and, therefore, it was held that the said acts do not amount to any misconduct. Further, the charge itself is very vague and does not disclose as to whether the property was sold or purchased and what are the details of the said transaction like date, the name of

the vendor/ vendee and the nature & details of the property. Further, during the course of hearing it is also brought to the notice of this Court that after reinstatement the 1st respondent continued in service and retired in the year 2016 on attaining the age of superannuation.

10. A careful perusal of the record would show that the learned Presiding Officer of the Labour Court having carefully examined the facts and the evidence on record recorded reasoned findings that none of the charges levelled against the 1st respondent are proved and that the findings of the enquiry officer to the contrary are unsustainable and accordingly set aside the said findings by re-appreciating the evidence by exercising the jurisdiction and power conferred upon him. On the above analysis, this court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the findings recorded by the learned Presiding Officer of the Labour Court. Further, the law is fairly well settled that this Court shall not go into the adequacy or the reliability of the evidence and shall not interfere with the findings of the Labour Court, if there is some legal evidence, which supports the findings. When once conclusions arrived at by the Presiding Officer of the Labour Court are found to be sustainable on facts and the evidence, this Court will not normally substitute its subjective opinion in the place of one arrived at by the Labour Court.

11. In the decision in Union of India v. P. Gunasekaran¹ the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

¹ (2015) 2 SCC 610

“In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.”

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

12. Therefore, having regard to the facts and the findings recorded supra and the settled legal position, this Court holds that the contentions of the petitioners-AP Transco that the charges are proved and that the Award warrants interference need no countenance.

13. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SEETHARAMA MURTI, J

17.04.2017
Vjl

