

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 07.09.2017

Judgment pronounced on: 02.11.2017

+ **W.P (C) No. 17326/2004**

D.T.C

..... Petitioner

Through: Mr.Purvesh Buttan and
Mr.Fahad Imtiaz, Adv.

versus

CHANDER SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

1. 17 years after his appointment, the respondent, a low paid conductor with the petitioner, was – at the instance of an apparently disgruntled co-worker - removed from service, on the ground that the institution from which he had obtained his matriculation was not an institution whose certificates were recognized for employment with the Central Government. Allegations of “cheating”, “fraud” and “suppression” were heaped on the respondent, despite the fact that his certificate had – *admittedly* – been seen, by the petitioner, not only at the time of his original appointment, but, as the respondent would aver (which is not rebutted) even later at the stage of his confirmation and periodically while inspecting his service book, *and* despite the fact that the petitioner was itself unsure of the issue, for which it had

to secure the opinion of the Department of Personnel & Training (“DOPT”). The matter travelled, inexorably, to the learned Industrial Tribunal, which declared the removal, of the respondent, from service, to be illegal, and directed his reinstatement with back wages, by which time four years had passed since his removal. The petitioner moved this Court by means of the present writ petition. Recovery proceedings were stayed, *but no stay of reinstatement was granted*. The petitioner, nevertheless, did not reinstate the respondent, and, in the process, these proceedings have languished in this court for 13 long years. In his application, filed under Section 17-B of the Industrial Disputes Act, 1947, the respondent stated, on oath, that he had not been able to secure any alternative employment. There is no reason to believe that the situation has changed.

2. Removal of a low paid employee, such as a conductor, from service, has far-reaching consequences. It amounts to a civil death. It eviscerates not only the livelihood of the employee concerned but has the perilous potentiality of wiping out his entire family, and all others dependent on him for sustenance. It is a step which is to be taken only after complete application of mind and only where the circumstances are such as make it impossible to retain the employee in service. The degree of care and caution to be exercised in such cases is of the highest order and anything that falls short thereof suffers from malice in fact and in law.

3. The respondent has not turned up, before me, to contest these proceedings. I do not know whether he is alive, or dead and neither

does the petitioner. Whether this order would, in the ultimate eventuate, have any meaning, for anyone, is a moot question. Are we, at the end of it all, serving the cause of justice?

4. With the above prefatory thoughts, I proceed to a brief recital of the facts.

5. The respondent was appointed as a 'Retainer Crew Conductor', with the petitioner, on 11th February, 1981. Consequent upon completion of probation, his services were confirmed on 10th August, 1982.

6. Apparently, around a dozen years thereafter, one Mr. Singh Ram, informed the petitioner that the respondent had, at the time of his appointment, submitted a certificate showing himself to be a matriculate, whereas he, in fact, was not one.

7. On receiving this communication, the petitioner, through its Deputy Vigilance Officer, apparently wrote to the DOPT, for verification of the authenticity of the certificate submitted by the respondent at the time of his appointment which, incidentally, was issued by the Akhil Bhartiya Vidyut Samelan Siksha ("A.I.V.S."), Aligarh.

8. The DOPT responded, vide communication dated 4th July, 1994. The said document is not on record. However, apparently on the basis thereof, the Vigilance Officer of the petitioner submitted a response, stating that the examination held by the A.I.V.S. *did not appear to be*

a recognized one for the purposes of employment under the Central Government, as per the list of recognized qualifications contained in Chapter IX of the Hand Book for Personnel Officer (1987 edition).

9. The petitioner contends that the above communication, from the DOPT, revealed “cheating, fraud and misconduct” having been committed by the respondent, for which reason a charge sheet, dated 2nd November 1994, was issued to the respondent under clauses 19(b)&(m) of the Standing Orders applicable to the petitioner. No response was submitted by the respondent thereto.

10. The petitioner conducted an oral enquiry, purportedly in compliance with the principles of natural justice, giving full opportunity to the respondent to represent his case. The enquiry report, which emanated therefrom, opined that the charges against the respondent stood proved.

11. Resultantly, show cause notice, 8th/9th June, 1995, was issued, by the petitioner to the respondent, to show cause, as to why he be not removed from the service of the petitioner. This was followed, nearly inevitably, by an order dated 09th April, 1999, under Regulation 15 (2)(vi) of the DRTA (Conditions of Appointment & Services) Regulations 1952, (hereinafter referred to as ‘the Regulations’), removing the respondent from service.

12. The respondent raised an industrial dispute, which was referred by the Secretary (Labour) Govt. of NCT of Delhi, to the Industrial

Tribunal, vide Order No. F.24 (2216)/2001-lab/ 20892-96. The term of reference read thus:

“Whether the punishment imposed upon Shri Chander Singh S/o Shri Ram Kishan by the management vide their orders dated 09.04.1999 is illegal and/or unjustified, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. notifications and to what other relief is he entitled and what directions are necessary in this respect?”

13. Statement of Claim was filed, by the respondent, before the learned Tribunal, contending, *inter alia*, that he was not guilty of filing, or submitting, any false certificate at the time of appointment. It was pointed out that all documents submitted by him, including the certificates issued by the A.I.V.S., had been scrutinized by the petitioner before appointing him, as well as at the stage of his confirmation consequent to completion of probation. The said certificate, the respondent pointed out, also formed part of his service book which, too, was periodically scrutinized by the petitioner. Nothing adverse was ever pointed out to the respondent, nor was there any complaint regarding the said certificate, or its validity or regarding the manner in which the respondent was discharging his duties. The allegation that the certificate was inadmissible had surfaced more than 15 years after the respondent had joined service. In these circumstances, the respondent submitted that the proposal to remove him from service was *ex facie* illegal and, consequently, prayed that the same be dropped.

14. Written statement, in opposition to the Statement of Claim of the respondent, was filed by the petitioner. Para 1 of the written statement asserts that the petitioner had, “at the time of his appointment submitted false certificate of matric while he is the non-matric candidate and has been working by suppressing his qualification”. Para 2 of the written statement further contends that “the workman by suppressing his actual Qualification committed cheating with the corporation”. The same paragraph further alleges that the respondent had cheated the petitioner by not issuing tickets to the passenger after collecting due fare, for which he had earlier been awarded the punishment of withholding of increments.

15. Significantly, *para 4 of the written statement admits the fact that “at the time of appointment of the petitioner (i.e the respondent herein),the qualification/matriculation certificate was seen”* but proceeds to state that, later on, a complaint was received from one Sh. Singh Ram to the effect that the respondent had submitted a false matriculation certificate.

16. The petitioner led the evidence of the I.O. Sushil Jakab (MW-1),who deposed that the certificate submitted by the respondent was not issued by an institution recognized by the Govt. of India at the relevant time. Mr. Jakab admitted in the said deposition, that there was no charge against the petitioner, in this case, of non-issuance of tickets after collecting due fare.

17. The respondent has led his own evidence as MW1, in the form of affidavit. He affirmed the affidavit, whereafter he was cross

examined by the petitioner. In his cross examination, the respondent denied the allegations against him, pointing out that the A.I.V.S was a recognized body.

18. ID 101/2001 was adjudicated, by the learned Tribunal, *vide* the impugned award dated 04th August, 2003. After setting out the facts and the evidence led by the petitioner and respondent, the learned Tribunal held the termination of the petitioner, *vide* order dated 09th April, 1999 (*supra*) to be illegal and unjustified. The reasoning of the learned Tribunal is contained in paras 13 and 14 of the impugned order, which are extracted for ready reference, as under:

“13. The above said certificate itself clinches the entire issue. First of all, the document does not specifically say that the Examination is not a recognized one, as the language used is appears to be. Even if such a thing is ignored, the fact remains that merely because a certificate submitted is from an institution which is not recognized will not mean that the certificate is false. The value to be attached to such a certificate and the falsity of a certificate are two different things. At best, it can be said that since, the Examination is not recognized one, the certificate does not have any value and it has to be taken that the workman does not possess such qualification. It is not the case of the management that the workman was knowing that such an Institute is not a recognized one. Rather as is apparent, the management was even not sure whether it is recognized or not and as such, had obtained an opinion from the concerned department that too only on complaint after regularizing the workman. So, it cannot be said that the document was forged or fabricated. The workman had worked on these basis before his termination for 18 years. It is significant to point out that charge-sheet was served in 1994 and dismissal for the same cause of action despite serving of show cause notice and conducting of enquiry in 1995 itself, the termination took place in 1999. This also goes to show that the management

was not sure of its action in terminating the services of the workman.

14. Even if the management had come to the conclusion that the workman is not 10th pass as the Examination is not recognized, the management should have taken him on a lower post in Class IV where the requirement is only 8th pass, though in fact for 18 years, the workman must have gained enough experience to work as a conductor.”

19. On the above reasoning, the learned Tribunal directed reinstatement of the respondent, with continuity of service and full back wages, noting the fact that the respondent had submitted that he had been unemployed since the date of his termination and no evidence to the contrary had been led by the petitioner. The petitioner was also directed to remit the salary, of the respondent, from the date of termination till reinstatement, within one month, failing which interest @ 9% per annum would be chargeable thereon.

20. Claiming to be aggrieved thereby, the petitioner has moved this Court by means of the present writ petition.

21. The petitioner urges, in the writ petition, that there could be no question of reinstating the respondent in service as the qualification possessed by him was not recognized and his appointment was, thereby, rendered void *ab initio*. It was submitted that the case not being one of want of good faith, victimization or unfair trade practice, no cause for interference, by this Court could be said to have been made out.

22. The direction to grant full back wages to the respondent is assailed on the ground that there was no evidence to show that the

respondent had remained unemployed during the pendency of the proceedings against him. Reliance, for this purpose is sought to be placed on the judgment of the Madras High Court in ***Silver Sands Employees Union v. Presiding Officer, 1994 LLR 684.***

23. For these reasons, the petitioner prays for issuance of a writ of *certiorari*, quashing and setting aside the impugned award dated 04th August, 2003 and notification dated 13th October, 2003 issued as a consequence thereof.

24. Counter affidavit, to the writ petition, has been filed by the respondent, basically adopting the reasoning, in his favour, as contained in the impugned award dated 4th August 2003. Rejoinder thereto, has also been filed by the petitioner.

25. Notice, on the present writ petition, was issued on 3rd November 2004. While issuing notice, interim relief, to the extent of deferment of the recovery proceedings pending before the Presiding Officer, Labour Court, was granted. *Apparently, no order of stay, of the direction to reinstate the petitioner in service, has been passed till date.* Subsequently, rule was issued on the writ petition on 11th May 2007. Though no order, making the aforementioned *ex parte* stay order absolute, was passed, it appears that the petitioner, as well as respondent, have proceeded on the basis that the said interim order continues till date.

26. It is not in dispute that the respondent has not been reinstated in service. It also merits mention that there is no material available, on

record, to indicate that the respondent has ever secured gainful employment elsewhere.

27. The respondent has remained absent on the last three dates of hearing in the present matter on 21st July 2017, 10th August 2017 and 7th September 2017. Accordingly, I have heard Mr. Purvesh Buttan, Advocate, for the petitioner, at length, and perused the material on record.

28. The grounds urged by the petitioner, in my view, are entirely tangential to the actual issue at hand.

29. That a person who does not possess the prescribed qualifications, has no right to be appointed and that, if he secures such appointment, he does so at his peril, are principles too axiomatic to merit repetition. Invoking the said principle, in the present case would, however, in my opinion, amount to missing the wood for the trees.

32. The issue for consideration, in the present case, is not whether the petitioner was, or was not, qualified for appointment as conductor when he was so appointed, but whether his removal from service, under Regulation 15(2) (vi) of the Regulations could be sustained in law.

31. Sub-Regulations (1) and (2) of Regulation (15) of the Regulation reads thus:

“15. Conduct, Discipline and Appeal:- (1) Conduct:-

The Delhi Road Transport Authority may from time to time issue standing orders governing the conduct of its employees.

A breach of these orders will amount to misconduct.

(1)(A) Suspension pending enquiry or criminal investigation etc. the appointing authority or any officer delegated with powers by the appointing authority in this behalf may place an employee under suspension

- (i) Where a disciplinary proceedings against him is contemplated or is pending; or
- (ii) Where a criminal proceeding against him in respect of any offence is under investigation or trial.

A statement setting out in detail the reasons for such suspension shall be supplied to the employee within a week from the date of suspension.

(1)(B) An employee who is placed under suspension under sub clause 1(A) above, shall during the period of such suspension be paid in clause 15(4)(a)(b).

(2) Discipline -

(a) The following penalties may, for misconduct or, for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Authority:-

- (i) Censure including reprimand and warning.
- (ii) Withholding of increments or promotion, including stoppage at an efficiency bar.
- (iii) Reduction to a lower post or time scale or to a lower stage in a time scale.
- (iv) Recovery from pay or the security or any other dues of the whole or part of

any pecuniary loss caused to the Delhi Road Transport Authority by negligence default or breach of orders. The term pecuniary loss shall include damage to or loss of stores expressly entrusted to the person concerned for custody.

(v) Suspension

(vi) Removal from the services of the Delhi Road Transport Authority.

(vii) Dismissal from the service of the Delhi Road Transport Authority.

(viii) Fines as provided in the Payment of Wages Act”.

32. Sub-Clauses 19 (b) & (m) of the Standing Orders, applicable to the conduct of employees of the petitioner corporation read thus:

“19(b) Theft, fraud or dishonesty in connection with the Authority business or property;
19(m) Any other activity not specifically covered above, but which is *prima facie* detrimental with interest of the organization.”

33. Regulation (15)(2) deals with imposition of penalties for misconduct. The misconduct alleged to have been committed by the respondent in the present case, is stated to be relatable to sub-clause (b) & (m) of Clause 19 of the Standing Orders, which covers theft, fraud or dishonesty in connection with the business of property of the petitioner and any other activity which, *prima facie*, is detrimental to the interest of the organization. The charge that the matriculation qualification possessed by the petitioner was not issued by an institution which was recognized, cannot, even by the farthest stretch

of imagination, be said to amount to “theft, fraud and dishonesty in connection with the business or property” of the petitioner by the respondent. Neither, *ex facie*, can it be treated as an activity which is detrimental to the interest of the petitioner.

34. On the face of it, therefore, it cannot be said that the findings, against the petitioner made out a case of misconduct on his part as would justify removing him from service under Regulation 15(2)(vi) of the Regulations.

35. Broadening the horizon of the discussion, can it be said that the petitioner had committed a misconduct at all?

36. The judgement of the Supreme Court in ***Ravi Yashwant Bhoir v. Collector, (2012) 4 SCC 407*** examines, exhaustively, what is “misconduct”, thus:

“11. “Misconduct” has been defined in Black's Law Dictionary, 6th Edn. as:

“A transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement offence, but not negligence or carelessness.”

“Misconduct in office” has been defined as:

“Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office-

holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.”

12. P. Ramanatha Aiyar's Law Lexicon, Reprint Edn. 1987 at p. 821 defines “misconduct” thus:

“The term ‘misconduct’ implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word ‘misconduct’ is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.

Thus it could be seen that the word ‘misconduct’ though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, *it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule*

of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve....”

13. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office-bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds, etc. constitutes a serious misconduct, inviting severe punishment. (Vide *Disciplinary Authority-cum-Regl. Manager v. Nikunja Bihari Patnaik*, (1996) 9 SCC 69, *Govt. of T.N. v. K.N. Ramamurthy*, (1997) 7 SCC 101, *Inspector Prem Chand v. Govt. of NCT of Delhi*, (2007) 4 SCC 566 and *SBI v. S.N. Goyal*, (2008) 8 SCC 92.

14. In *Govt. of A.P. v. P. Posetty*, (2000) 2 SCC 220, this Court held that since acting in derogation to the prestige of the institution/body and placing his present position in any kind of embarrassment may amount to misconduct, for the reason, that such conduct may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an incumbent of the post.

15. In *M.M. Malhotra v. Union of India*, (2005) 8 SCC 351, this Court explained as under: (SCC p. 362, para 17)

“17. ... It has, therefore, to be noted that the word ‘misconduct’ is not capable of precise definition. But at the same time though incapable of precise definition, the word ‘misconduct’ on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline

and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.”

A similar view has been reiterated in *Baldev Singh Gandhi v. State of Punjab*, (2002) 3 SCC 667.

16. Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment. (See *Union of India v. J. Ahmed*, (1979) 2 SCC 286.)

17. It is also a settled legal proposition that misconduct must necessarily be measured in terms of the nature of the misconduct and the court must examine as to whether misconduct has been detrimental to the public interest. (Vide *Bank of India v. Mohd. Nizamuddin*, (2006) 7 SCC 410.)

18. The expression “misconduct” has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as misdemeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces.

19. Further, the expression “misconduct” has to be construed and understood in reference to the subject-matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of

misconduct as to whether it has been detrimental to the public interest.”

(Emphasis supplied)

37. Applying the above definition of “misconduct” to the present case, it is obvious that the respondent cannot be said to have “misconducted” himself. The certificate submitted by him could not be said to be either false or fabricated inasmuch as it had been regularly issued by the A.I.V.S. and the genuineness thereof has never been called into question at any point of time by anyone, including the petitioner. The entire case of the petitioner appears to be based on the apparent advice obtained by it from the DOPT. However, the said advice is not forthcoming on record before this Court and a holistic reading of the impugned award indicates that it was, apparently, not placed before the learned Tribunal either. What was placed before the learned Tribunal and is, thereafter, before me in the present case, is the noting of the Dy. Vigilance Officer, which was only to the effect that the matriculation certificate issued by the AIVS, Aligarh, “*does not appear to be recognized*” for the purpose of employment under the Central Government. At the very highest, such an opinion can only be regarded as ambivalent, as rightly noted by the learned Tribunal in para 13 of the impugned award. The further finding, of the learned Tribunal, in the same para that there is a distinction between the value to be attached to the certificate and the genuineness thereof, is also well taken. I am entirely in agreement with the learned Tribunal that, in the absence of any allegation, far less evidence, that

the respondent was aware that the certificate issued by the AIVS was not recognized for the purposes of appointment in the Central Government, no fault could be laid at his door. *It is admitted, in para 4 of the written statement filed by the petitioner before the Tribunal, that, at the time of appointment of the respondent, the matriculation certificate provided by him was seen.* It is, therefore, in the entire awareness of the nature of the qualification possessed by the respondent that the petitioner, with eyes open, offered him appointment. The present controversy arose only because of a complaint written by another employee of the DTC, who, for reasons apparently recondate, clearly bore a grudge against the respondent. The respondent has averred, on affidavit, that his certificate was seen not only at the time of his initial appointment, but also at the time of his confirmation after probation, and periodically while examining his service record. There is no rebuttal to this averment on the part of the petitioner. Even after receiving the complaint from Sh. Singh Ram, the petitioner appears to have been unsure of the factual and legal position, as is manifested from the fact that it referred the matter to its vigilance department, who chose to seek the opinion of the DOPT. Even after receiving the said opinion, the view of the vigilance department was not that the respondent qualification possessed by the respondent was unrecognized but it *appeared* to be unrecognized.

38. “Misconduct”, it has to be remembered, is *conduct* which transgresses propriety. “Conduct” presupposes some action, or inaction, on the part of the employee, which is unacceptable in law.

Of what improper action, or inaction, is the respondent, in the present case, guilty? He submitted, at the time of his appointment, the genuineness of the matriculation certificate of the A.I.V.S., was not disputed. The petitioner appointed him in service, admittedly, only after having seen the said certificate. Clearly, therefore, at the time of his appointment, the petitioner was also of the view that the respondent was qualified therefor. Can it be said that merely because 18 years thereafter, the DOPT opined that the said qualification did not appear to be one recognized for appointment to Government service, as per the Chapter IX of the Hand Book for Personnel Officer (1987 edition), that the respondent was guilty of misconduct? The answer is self-evident.

39. Significantly, and mercifully, the petitioner has not sought to contend that persons aspiring to be conductors with the DTC ought to have been aware of the contents of Chapter IX of the Hand Book for Personnel Officers (1987 edition), even though the petitioner, itself, was unaware thereof.

40. In such circumstances, the removal of the respondent, from service, betrays an indifference to the consequences of such an action which is as pathetic as it is apathetic. I, therefore, entirely concur with the learned Tribunal in holding that the removal of the petitioner, from service, was illegal and unjustified.

41. It is also unfortunate that the petitioner chose to challenge the award of the learned Tribunal, which merely directed reinstatement of a driver, and cannot be said, by any stretch or imagination, to be perverse or illegal in any manner. The scope of interference with awards of Labour Courts & Industrial Tribunal has been examined by me in a recent position in ***DTC v. Mool Chand***. It was noticed, in that decision, that the scope of interference, in *certiorari*, with awards of Labour Courts and Industrial Tribunals are circumscribed by the following classic exposition of the law, to be found in ***Syed Yakoob v. K.S. Radhakrishnan***, , ***AIR 1964 SC 477***:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 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 is in excess of it, or as a result of failure to exercise jurisdiction*. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal *acts illegally or in properly, 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 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 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 Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the*

face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened.” (Emphasis supplied)

42. Thereafter, relying on the well-known decisions in ***Management of Madurantakam Cooperative Sugar Mills Ltd. v. S. Viswanathan: (2005), 3 SCC 193, P.G.I of Medical Education and Research, Chandigarh v. Raj Kumar (2001) 2 SCC 54 and M.P State Electricity Board v. Jarina Bee: (2003), 6 SSC 141***, I had culled out the following principles:

- (i) The Labour Court/ Industrial Tribunal is the final fact finding authority.
- (ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/ unacceptable evidence.
- (iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the

findings of fact of the Labour Courts/ Industrial Tribunal, before proceeding to do so.

(iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.

(v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

(vi) “Perversity”, for its part, is attributed to a judicial/ quasi judicial decision if the decision ignores/excludes relevant material, considers irrelevant/inadmissible material, is against the weight of evidence, or so outrageously defies logic as to suffer from irrationality.

(vii) In examining whether a decision is, or is not, perverse, the classic test, of the reasonable man’s conclusion on the facts before the authority concerned would apply.

(viii) Inadequacy of evidence, or the possibility of reading the evidence in a different manner, would not amount to perversity.

43. Applying the said principles to the case at hand, it cannot, be said that the learned Tribunal has erred either on facts or law, in passing the impugned award.

44. Having said that, at this length of time, reinstatement of the petitioner in service would serve no purpose, assuming it were possible at all. Even otherwise, the law leans today in favour of

awarding of a lump sum compensation rather than reinstatement of the employee in service even where removal of such employee is found to be illegal or unjustified. [Refer *Senior Superintendent Telegraph (Traffic) v Santosh Kumar Seal, (2010) 6 SCC 773, Rashtrasant Tukdoji Maharaj Technical Education Sanstha v Prashant Manikarao Kubitkar, MANU/SC/0745/2017*] The quantum of wages, which the respondent would have earned, had he continued in service till superannuation, in my opinion would constitute an appropriate compensation to be awarded to him in the facts of the present case. This amount would include any increments, enhancement on account of pay revisions, etc. to which the respondent would have become entitled from time to time, but would not carry any interest.

45. The petitioner is, accordingly, directed to work out the amount payable on the above basis, and disburse it to the respondent within eight weeks from the date of pronouncement of this judgment.

46. The respondent has not been appearing on the last few occasions when this matter was listed before court. In case the respondent's present whereabouts are not immediately known, or he is not found at his last known address, all efforts would be made to trace him, if necessary by recourse to his service record as available with the petitioner.

47. Solely for the purpose of reporting compliance, the registry is directed to list this petition, before court, on 11th January, 2018.

48. It is clarified that the above payment is being directed not by way of back wages, but as a measure of the lump sum compensation to which, in my opinion, the respondent would be entitled.

49. The writ petition is dismissed, with the above directions.

50. Though the facts of the present case would warrant imposition of heavy costs on the petitioner, I reluctantly refrain from doing so, as there is no appearance on behalf of the respondent.

C. HARI SHANKAR
(JUDGE)

NOVEMBER 02, 2017

neelam/nitin