

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2018

Coram

The Hon'ble Mr.Justice Satrughana Pujahari

Writ Petition No.23457 of 2003

and

W.P.M.P.No.1046 of 2008

The Management of Kancheepuram Co-operative
Housing Society Ltd.,
12-A, Suppani Pillaiyar Kovil Street,
Kancheepuram.

...Petitioner

Vs.

1.The Deputy Commissioner of Labour/
Appellate Authority, under Tamil Nadu
Shops and Establishment Act,
Teynampet, Chennai - 6.

2.E. Senthil Kumar
No.41, C.N. Annadurai Street,
Kancheepuram - 631 503.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records in pursuant to the impugned order passed by the first respondent in T.S.E. 2/30/01 dated 04.04.2003, and to quash the same.

For Petitioner : M/s.T.Girija
Respondent-1 : Labour Court
For Respondent-2 : Mr.Balan Haridass

O R D E R

The petitioner herein is the Management of Kancheepuram Co-operative Housing Society Ltd; the first respondent, the Deputy Commissioner of Labour is the Appellate Authority; second respondent E.Senthil Kumar is the workman under the said management society. For the sake of convenience hereinafter in this order the writ petitioner is referred to as the management society, the contesting respondent that is the respondent No.2 is referred to as the workman and the first respondent as the Appellate Authority in this order.

2. The facts of the case, which are necessary for the disposal of the Writ Petition are as follows:-

The workman was employed by the management society as a clerk on 28.10.1964 and promoted to Head Clerk on 01.07.1975. However in a domestic enquiry initiated on a charge sheet his service was terminated vide order dated 23.06.1980. The said order of dismissal was set aside in an appeal vide order passed in TSE.No.25 of 1981 on 23.02.1981 by the Appellate Authority. The management society unsuccessfully challenged the said order of the Appellate Authority before this Court by filing the writ petition and writ appeal. The S.L.P. filed in the Hon'ble Apex Court by the management society was also dismissed. Thereafter, he being not reinstated into service when the workman initiated further litigations for his reinstatement, he was reinstated into service on 07.10.1993. But soon after the reinstatement, he was given the work of recovery of loan canvass and to process loan application which were not duty of Head Clerk that too without providing any transport facilities to proceed such recovery of loan. The workman made protest of such order. However, the management society immediately put him under suspension on 13.12.1993 indicating he had not obeyed the order of the Authority made on 10.11.1993 and no subsistence allowance was paid to him. Thereafter charge memo dated 04.09.1993, was issued to him levelling the charges that he disobeyed the order of the Special Officer and negligent in attending his legitimate official duty and acted in a high handed manner which was detrimental to the interest of the administration of the society and based on the same an enquiry was conducted and ultimately the management society dismissed him from service on 31.03.1998 pursuant to such enquiry. The workman questioned the same before the Appellate Authority vide TSC No.2/30/01 which was allowed vide the order impugned in this writ petition by the management society.

3. It appears that the Appellate Authority appreciating the materials on record as well as the evidence in this regard produced before him held the the charge levelled against the workman that as he failed to achieve the target of recovery of loan pursuant to the order made was foisted against him mischievously with an intention to harass and without any material and as such the enquiry officer was not correct in holding the same to have been proved and so far as the second charge was concerned with regard to the misconduct of insubordination by questioning the authority of the superior that is the special officer, it was held that the letter written by the workman to the special officer not demonstrating any insubordination or disobedience, the enquiry officer therefore was also not justified in holding the said charge to have been proved. So also the Appellate Authority, appreciating the fact, held the domestic enquiry is vitiated for violation of the principle of natural justice as the enquiry officer proceeded in

a hurried and haste manner ex-parte without giving opportunity to the workman to defend him inasmuch as in spite of the fact that the domestic enquiry was of the year 1994 no urgency was there and the workman intimated that subsistence allowance had not been paid to him, the enquiry officer proceeded without intimation to the workman ex-parte, without addressing such grievance of the workman.

4. The management society came to challenge the same in this writ petition to be illegal inasmuch as the Appellate Authority has no jurisdiction to sit on appeal on the order of the management society against the workman and also perverse as the same is contrary to the materials on record. According to the management society, since there was ample materials on record indicating the fact that in spite of opportunity given the workman, he did not participate in the enquiry and also not come forward with application for release of the subsistence allowance to the management society, the order of the Appellate Authority passed setting aside the order of the disciplinary authority on the ground of non adherence to the principle of natural justice that is the principle of Audi Alteram Partem, is unsustainable. So also the finding recorded that the first charge against the workman was actuated with malafide as there was no material indicating the misconduct and the second charge amounts to no charge and as such the enquiry officer was wrong in holding the same to have been proved and also the order of the management society in accepting the same therefore cannot be sustained, has been assailed to be perverse by the management society inasmuch as the same was contrary to the materials on record and without any justifiable reasons. Pleading the aforesaid the management society has sought for the writ of certiorari to quash the aforesaid order of the Appellate Authority in other words to restore of the order of the management society removing the workman.

5. The same has been resisted by the workman to be without any substance as the Appellate Authority has the necessary jurisdiction and there was no perversity in the finding recorded by the Appellate Authority, which can be visualised from the fact that the management society was determined to harass the from the very beginning proceeded against him without any justifiable reasons alleging misconduct and being unsuccessful upto the highest judicial authority to remove the workman in such domestic enquiry in the first round and to frustrate the benefit arose to the workman of such order, fresh charges were levelled against him without any foundation inasmuch as nothing was there to prove the delinquency and the conduct of the workman amount to no delinquency. In spite of the same, the enquiry officer proceeding in the said case in a hurried and haste manner ex-parte, without giving reasonable opportunity to the workman to defend him in such proceeding and recorded the

finding that the charges to have been proved and the management society having accepted the same without addressing the same in proper perspective, the interference of the Appellate Authority on the ground stated cannot be said to be perverse warranting an interference of this Court in exercise of writ jurisdiction. Since the Appellate Authority taking note of the materials available on record and also appreciating the fact which is well within the jurisdiction of the Appellate Authority, held the charges of dereliction of duty has been raised mischievously to harass the workman and also for the other charges of misconduct of insubordination to have no foundation, the same needs no interference in this writ petition. Therefore the writ petition filed challenging the same to be without any substance, hence this Hon'ble Court in exercise of writ jurisdiction under Article 226 of the constitution of India should not interfere with the same. Therefore, the writ petition is liable to be dismissed, is the averment made by the workman in the reply affidavit.

6. During the course of hearing, the writ petitioner questioned the impugned order, passed by the Appellate Authority on the ground of jurisdiction. Besides the same the learned counsel appearing for the management society assails the order of the authority in this writ petition to be perverse as according to him the Appellate Authority ignored to consider the materials on record indicating the fact that the workman in spite of opportunity given did not participate in the proceeding and also having not applied for the non payment of subsistence allowance for the period he remained under suspension to the management society but to the enquiry officer and intimating the same remained absent deliberately and did not participate in the domestic enquiry, the enquiry conducted in his absence as such cannot be said to have suffered from the vice of the non observance of principle of Audi Alteram Partem, a salutary principle of natural justice. Therefore the Appellate Authority when recorded the finding that the order of the enquiry officer which was made foundation for removal of workman from service by management society is unsustainable on the aforesaid ground, ignoring the said materials on record, the same can very well be said to be perverse and entail the order impugned for interference of this Court in exercise of the writ jurisdiction. So far as the finding that the charges were intentionally raised, the same is also contrary to the materials on record inasmuch as nothing was there indicating the fact that the workman was not supposed to go for recovery of the loan and also admittedly, materials are there indicating that workman had not discharged such duty of recovery of loan diligently and achieved the target. Therefore the workman having not discharged the duty assigned to him, the same exposed him to the aforesaid charge which the Appellate Authority failed to take into consideration. The Appellate Authority also having not

appreciated the letter of the workman questioning the authority of the superior, amounts to insubordination and as such the misconduct, the same makes the order impugned vulnerable. In such premises, it is submitted that the order of the Appellate Authority impugned here in this writ petition being suffering from perversity, the same needs to be quashed and consequently the order of the management society removing the workman from service required to be restored.

7. In response, the learned counsel appearing for the workman submits that the jurisdiction of this Court to issue a writ of certiorari against the order impugned is a well demarcated one. Such a jurisdiction is supervisory in nature and not an appellate jurisdiction. The aforesaid necessarily means the court can in exercise of such jurisdiction correct the error of jurisdiction of the inferior courts or tribunals and not to disturb the finding on facts. Since in this case there is no jurisdictional error inasmuch the contention advanced by the Appellate Authority in interfering with the aforesaid order on the ground of lack of jurisdiction, is without substance for the reasons that in an earlier round of litigations the same Appellate Authority interference with such an order of removal of the workman passed by the management society has been upheld by this court and also not interfered by the Apex Court. So far as challenge to the same on the ground of perversity is concerned, as the same is based on appreciation of facts and evidence on record and the Appellate Authority is competent to do so, such contention is also without any substance. Hence, the writ petition filed challenging such order of the Appellate Authority, is liable to be dismissed.

8. Before addressing the contention of the parties, with regard to sustainability of the impugned order passed by the Appellate Authority, it would be apposite to mention that the dealing with the jurisdiction of this Court with regard to issuance of writ of certiorari, in exercise of power under Article 226 of the Constitution of India, the Apex Court in the case of Syed Yakoob Vrs. K. S. Radhakrishnan and others reported in AIR 1964 SC 477, wherein their Lordships have 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."

9. So also in another decision, reported in the case of Nagendra Nath Bose v. Commr. of Hills Division reported in AIR 1958 SC 398, wherein dealing the jurisdiction of High Court under Article 227 of the Constitution of India to issue a writ of certiorari, it has been held by the Hon'ble Apex Court that "It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasijudicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the

limits of its authority."

10. Keeping in mind the aforesaid law laid down, when the contention advanced with regard to the sustainability of the impugned order is addressed, it appears to this Court that the writ petitioner has challenged such order of the Appellate Authority to be without jurisdiction inasmuch as the cooperative society are not coming under the Shops and Commercial Establishment Act, therefore, it is contended that the impugned order is liable to be quashed on the ground of lack of jurisdiction. But as seen from the record, admittedly the same Appellate Authority in an earlier occasion had also interfered with regard to the removal of the workman by the management society in an earlier domestic enquiry which was also challenged in this Court by the management society and this Court did not interfere with the same in exercise of writ jurisdiction on the ground of lack of jurisdiction. The matter was also taken to Supreme Court, and the Hon'ble Supreme court also declined to interfere with the same. It is never brought to the notice of this Court that thereafter any law has been laid down indicating that the Appellate Authority has no such jurisdiction. In such premises, the challenge to the impugned order on the ground of lack of jurisdiction of the Appellate Authority to pass such order is without any substance, has been raised to be rejected.

11. Now coming to the other contention advanced that since the Appellate Authority ignoring the materials on record, indicating the fact that the workman deliberately did not participate in the enquiry and also not came forward to receive the subsistence allowance, held that the workman was denied the opportunity of hearing in the enquiry and as such the finding of guilt recorded in such enquiry on the delinquency which has been accepted by the management society and order of removal cannot be sustained on the ground of violation of principle of natural justice, the same is perverse and as such vulnerable and hence liable to be quashed in exercise of writ jurisdiction. But to this Court, it appears that the Appellate Authority in a detailed appreciation of the materials available on record and also the manner in which the enquiry officer conducted the ex-parte enquiry without giving further notice to the workman to participate in the domestic enquiry, after receipt of the workman intimation regarding non payment of subsistence allowance, taking note of the workman earlier conduct in a domestic enquiry of not participating which was not germane in this domestic enquiry and proceeding hastily without any reason of urgency, held the enquiry was conducted in violation of principle of natural justice and as such cannot be sustained. Therefore, the aforesaid finding on fact recorded in exercise of Appellate Jurisdiction which has also the sanction of law, cannot be said to be perverse. Reliance in this regard can be placed in a decision of the Hon'ble Apex Court in the case of Jagdamba Prasad Shukla Vs. State of UP & Others reported in AIR

2000 SC 2806, wherein the Hon'ble Apex Court have held that the payment of subsistence allowance in accordance with the Rules, to an employee under suspension is not a bounty, it is a right and if suspended employee is unable to appear for want of funds on account of non-payment of subsistence allowance, it is a clear case of breach of principle of natural justice on account of denial of reasonable opportunity to defend himself in the departmental enquiry and that vitiates the departmental enquiry and the consequential order of removal from service. It also appears that considering the circumstances in which the charge was framed and the Appellate Authority held the first charge has been raised being actuated with malafide i.e. intending to harass the workman and also the second charge amounts to no charge inasmuch as there was no insubordination. The same was recorded appreciating the facts on record not on any surmises and conjecture. The Appellate Authority has jurisdiction to reappreciate the evidence / facts on record. The Appellate Authority having the jurisdiction of the re-appreciation of the evidence on record, having recorded the finding making a re-appreciation of the materials on record in detail and nothing being there indicating the fact that in recording such finding on facts any of the materials available on record was ignored or any inadmissible materials on record was taken note of, only because the Appellate Authority re-appreciated the evidence / materials on record in a different manner than the enquiry officer as well as the management society while accepting the same, it cannot be said that there was perversity in such finding recorded by the Appellate Authority warranting an interference of this Court in exercise of the writ jurisdiction.

12. Therefore for the forgoing reasons this Court is of the view that the management society is unable to persuade this Court to interfere with the order of the Appellate Authority on any of the grounds stated inasmuch as no such grounds are made out from the materials on record to interfere with the impugned order in exercise of the writ jurisdiction to issue a writ of certiorari for quashment of the order of the Appellate Authority and as such the writ petition filed is devoid of merits and liable to be dismissed. Accordingly, the same stands dismissed. Consequently, connected miscellaneous petition is closed. However, in the circumstances there shall be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Labour/
Appellate Authority, under Tamil Nadu
Shops and Establishment Act,
Teynampet, Chennai - 6.

+1cc to Mr.T.Girija, Advocate, S.R.No.58462

+1cc to Mr.Balanharidas, Advocate, S.R.No.58324

Writ Petition No.23457 of 2003

rrs 24/10/2018



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