

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.7857 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by A.P. Transmission Corporation and its officers requesting to issue a writ of Certiorari or any other appropriate writ and quash the Award, dated 04.02.2016, in ID.no.344 of 2003, passed by the Chairman-cum-Presiding Officer of the Industrial Tribunal-cum-Labour Court, Ananthapuramu.

2. I have heard the submissions of Smt. K. Udaya Sri, learned counsel appearing for the writ petitioners; of the learned Government Pleader for Labour appearing for the 1st respondent; and, of Sri K.R. Srikanth, learned counsel appearing for the 2nd respondent. I have perused the material record.

3. The history of the case and the facts, in brief, are as follows: - 'In the erstwhile A.P. Electricity Board, certain persons worked either as casual labourers or contract labourers. The Electricity Board was later converted into various Transmission Corporations. Claims were made by the ex-casual/contract labourers for regularization of their services. A policy decision was taken by the Corporation and proceedings in BP No.36, dated 18.05.1997, were issued deciding to fill up 50% of the existing vacancies with the contract labourers etcetera throughout the State of Andhra Pradesh. The said proceedings were issued based on an agreement, dated 05.03.1996, entered into between the Labour Unions espousing the cause of the contract & casual labourers and the management. In furtherance of the Board Proceedings, the Corporation also issued Memos, dated 13.09.1997 & 3.12.1999, prescribing certain qualifications and the manner of recruitment. The 2nd respondent herein, having claimed that she worked as a contract labourer under a contractor,

who was said to have executed the works of the Board/Corporation at Chittoor, from 16.07.1993 to 10.12.1999, made a claim for regularization of her services. She produced a Service Certificate, dated 28.03.1998, said to have been issued by the said Contractor and made an application for her recruitment to a suitable post pursuant to the Notification, dated 01.06.1998, issued by the Corporation. Admittedly, she was subjected to the selection process and was eventually appointed as a Lower Division Clerk (LDC), on 15.09.2000. Later, certain doubts were raised with regard to the genuineness of the Certificates produced by the individuals like the 2nd respondent. After a preliminary enquiry, she was placed under suspension, on 02.12.2000, and a departmental enquiry was initiated. Based on the preliminary enquiry, two charges were framed; and, she was asked to show cause why she should not be removed from service. She gave her explanation. The authority concerned, not having been satisfied with her explanation, initiated departmental enquiry. The Enquiry Officer, after conducting the departmental enquiry, submitted his report, on 21.04.2001, holding that she did not commit any act amounting to misconduct. Despite such findings recorded by the Enquiry Officer, the Disciplinary Authority intended to further proceed in the matter and accordingly refused to accept the said finding of the Enquiry Officer and issued a final show cause notice, dated 30.08.2001, to the 2nd respondent. Eventually, the Disciplinary Authority passed an Order, dated 03.06.2003, directing removal of the 2nd respondent from service. The appellate authority rejected her appeal, on 21.06.2003. Aggrieved thereof, the 2nd respondent raised an industrial dispute. A case *vide* ID.No.344 of 2003 was taken on the file of the learned Chairman-cum-Presiding Officer of the Industrial Tribunal-cum-Labour Court, Ananthapuramu ('Labour Court', for brevity). She filed her claim petition before the Labour Court. The Corporation through its officers filed a counter. After an elaborate enquiry, the Labour Court passed an Award, dated 07.09.2007, setting aside the order of removal of the 2nd respondent and consequently

directed the management to reinstate the 2nd respondent with continuity of service and attendant benefits, however, without back wages for the break period. Assailing the said Award, the Corporation and its officers filed WP.No.7123 of 2008. The 2nd respondent filed a counter and resisted the writ petition. This Court, by a detailed order, dated 28.11.2013, dismissed the writ petition. Aggrieved thereof, the Corporation and its officers filed writ appeal in WA no.1075 of 2014. A Division Bench of this Court, by a common judgment, dated 21.07.2014, passed in the said writ appeal and batch of writ appeals allowed all the writ appeals. By the said common judgment the Division Bench had set aside the order of the learned single Judge, dated 28.11.2013, passed in WP.no.7123 of 2008 and remanded the subject ID.no.344 of 2003 to the Labour Court for fresh consideration and disposal. Pursuant to the said remand orders, the learned Chairman-cum-Presiding Officer of the Industrial Tribunal-cum-Labour Court once again conducted elaborate enquiry; and, by orders, dated 04.02.2016, passed in ID.No.344 of 2003 he had set aside the order of removal of the 2nd respondent and directed her reinstatement into service with continuity of service but without back wages. Aggrieved thereof, the Corporation and its officers filed the present writ petition.'

4. Learned counsel appearing for the Corporation – writ petitioners submitted as follows: - 'While setting aside the orders of a learned single Judge of this Court, the Division Bench of this Court observed that the learned Presiding Officer of the Labour Court ought to have focused on the findings recorded by the Disciplinary Authority and that the Labour Court did not touch the said aspect at all. Therefore, the Division Bench of this Court remanded the matter to the Labour Court for fresh disposal. But, the Labour Court failed to take into consideration the observations that were made by the Division Bench, while remanding the matter to the Labour Court. And the Labour Court gave no findings on the orders of the Disciplinary Authority. Thus, the procedure adopted by the Labour Court is contrary to the

remand orders of the Division Bench of this Court. Therefore, the impugned award of the Labour Court is liable to be set aside and the matter is required to be remanded once again to the Labour Court for disposal afresh. The Labour Court ought to have seen that the certificate produced by the 2nd respondent is not in accordance with the circular clarification issued by the then APSEB in Memo No.DF/Dir/DM(IR)/PO.II/131/96, dated 13.9.1997, wherein it is clarified that the labour supplied by a contractor having a license issued by a competent authority as enumerated in G.O.Ms.No.840, dated 01.11.1974, are only the contract labour eligible for consideration for appointment against 50% of vacant posts. The certificate produced by the 2nd respondent does not refer to any agreement under which the said Contractor was required to supply the labour. The then APSEB also issued circular instructions, dated 03.12.1999. The certificate produced by the 2nd respondent does not confirm to the clarification that the certificate issued by the Contractor is to be signed by the A.P. Transco official i.e., AAE/AE/ADE after due verification with reference to the agreement under which the particular contract labour is engaged, that is, prior to 18.5.1997 and on confirming that the check measurement is after 18.05.1997. On the request of the Divisional Engineer, the Assistant Divisional Engineer verified the certificate issued by the Contractor, which was produced by the individual/2nd respondent, and submitted a letter, dated 10.01.2000, with annexure stating that M/s.Srinivasa Cement Workers Industrial Co-operative society Limited executed the work in LS agreement no.52/95-96 from 16.11.1995 and completed the work, on 21.05.1998. In the remarks column it was recorded that LS agreement work was check measured on 26.05.1997. The Superintendent Engineer (Operations), Tirupati, by letter, dated 29.03.2000, published notice in notice board inviting objections. In the said notice, it was stated that the contractor has not maintained any records. The said aspects were not taken into consideration by the Labour Court and the award was passed mechanically. The

certificate produced is not counter signed by the AE (Civil). It does not refer to LS agreement under which the work was executed by the contractor. Thus, the certificate produced by the 2nd respondent is in contravention of instruction no.6 of the circular, dated 03.12.1999. Such a certificate cannot be the basis to hold that the 2nd respondent worked as a contract labourer. The Labour Court failed to appreciate that the certificate was not in conformity with the instructions, dated 03.12.1999, and that the discrepancies are glaring. Thus, the facts urged by the writ petitioners demonstrate that manipulations were made in collusion with the officials of the department against whom also enquiry was ordered. Hence, the Labour Court ought not to have relied upon the documents, which are not genuine, while arriving at a conclusion in favour of the 2nd respondent. No benefit of doubt should have been given to the certificate, in the facts and circumstances of the case. The Labour Court ought to have seen that a common enquiry was conducted against the 2nd respondent and 17 others and that the Enquiry Officer's report with reference to the 2nd respondent, the documents related to the case and the statements related to the case of the 2nd respondent were also produced before the court. Further, the 2nd respondent has not produced any contract record to establish that she worked as a contract labourer. The Labour Court's finding that insufficient records are produced is not correct. The Labour Court's findings that the certificates produced by the 2nd respondent established her case is not correct as the counter signature done by the concerned officer is improper and as the M book entries prior to completion of works have no relevancy. The Labour Court failed to appreciate that the contractor had deposed to the effect that the father of the 2nd respondent is a trade union leader and that at his instance the certificate was issued; therefore, the Labour Court ought not to have taken the said certificate into consideration for considering the eligibility of the 2nd respondent for the post of LDC. The certificate issued by the contractor without maintaining any records is invalid and no person can claim advantage of such

certificate. The contractor resiled from his earlier statement and stated that the 2nd respondent worked under him and that he had not maintained records and that there are no records with him. Therefore, in the decision taken by the Disciplinary Authority there is no perversity. It is not correct to state that the Contractor did not give any statements during preliminary enquiry. It is borne out by record that the contractor insisted on a statement of indemnity from the beneficiary at whose instance the certificate was given. This fortifies that the certificate was given by the contractor on mere asking. Hence, the said certificate has no authenticity. During the preliminary enquiry statements of various persons were recorded. They have categorically stated that the 2nd respondent has not worked with the contractor and that they have not seen her at the work spot. The said statements were furnished to the 2nd respondent along with charge sheet. Those persons were examined during the course of departmental enquiry. However, they changed their versions. There are two different statements of the witnesses, that is, one set of statements given at the time of preliminary enquiry and another set of statements given during the course of regular enquiry. The Disciplinary Authority found favour with the statements recorded during the preliminary enquiry. Such procedure is justified in the circumstances. No documentary evidence is produced by the 2nd respondent before the Labour Court or at any stage of the proceedings to demonstrate that she worked as a contract labour and fulfilled the terms of BP.no.36, dated 18.05.1997. Thus, she produced no evidence in support of her case to consider her candidature in 50% of the vacancies in the initial recruitment category. The record demonstrates that the 2nd respondent secured employment only at the behest of her father, who happened to be trade Union leader at that time. The finding recorded by the Labour Court that the management of the Corporation tried level best in not producing the enquiry report to defeat the case of the petitioner is perverse. The Labour Court ought to have called for the records, in the event it was of the view that records are not

produced. The observations in paragraph 11 of the award are not borne out by record. Hence, the writ petition be allowed and the award be set aside.'

5. Learned counsel for the 2nd respondent, while supporting the impugned award, submitted as follows:

The creditworthiness of the contractor is not in dispute. The contractor issued subject service certificate. The same was counter signed by the officers of the Corporation. The Asst.Divisional Engineer submitted information regarding the works executed by the Contractor *vide* his letter, dated 10.01.2000. The said letter was submitted by the ADE in response to the letter, dated 10.01.2000, of the Divisional Engineer, Chittoor. The 2nd respondent was taken into service as per the directions given by this Court in the earlier round of litigation. The contractor executed many works of the Corporation. The fact that he executed many works makes it evident that he engaged supporting staff (both on field and off field staff) for performing the works of the Corporation. For the reason that the contractor failed to maintain proper records, the contract workers, who worked under him, cannot be faulted. The non maintenance of records by the contractor cannot lead to a conclusion that the 2nd respondent did not serve in his establishment; nor would it lead to a conclusion that the certificate produced from the contractor by the 2nd respondent is not genuine. Based on the material & evidence that was brought on record during the course of enquiry, the Enquiry Officer had held in favour of the 2nd respondent. The material gathered during the course of enquiry is the basis for the conclusion of the Enquiry Officer that the charges are not proved. The Disciplinary Authority differed with the findings of the Enquiry Officer based on the statements given during the preliminary enquiry, which are only necessary for forming the *prima facie* opinion as to whether a full fledged enquiry should be ordered or not. The statements given during the course of enquiry by the contractor and other persons associated with the contractor's establishment were taken into consideration by the enquiry officer. All

of them deposed that the 2nd respondent worked in the organization. Hence, the service certificate is established to be a genuine one. The officials examined the necessary agreements related to the contractor and confirmed that he had executed many works which required engagement of lot of man power. The Disciplinary Authority acted on surmises and conjectures while disagreeing with the well considered findings of the Enquiry Officer. The sufficiency/adequacy of evidence is not a ground for interference by this writ Court. In this case only one view that was taken by the enquiry officer is possible. Even if two views are possible, the view taken by the fact finding Court shall be final and need not be disturbed on the ground that another view is possible. The Labour Court is the last Court of fact. The award is a well reasoned order and it does not suffer from any infirmity warranting interference. Hence the writ petition is misconceived and is liable to be dismissed.

5.1 He further submitted as follows: ‘The matter was earlier remanded to the Labour Court. After following the remand orders, the present well reasoned award was passed by the Labour Court. At this distance of time, the contention of the standing counsel that the matter requires to be once again remanded to the Labour Court does not merit consideration. And, if necessary, this Court may examine the record and pass appropriate orders confirming the Award of the Labour Court.’

6. I have gone through the material record including the paper book filed by the writ petitioners and the impugned Award.

7. In response to a notification and as per procedure, when the 2nd respondent made a claim for her recruitment, by producing a service certificate, dated 28.03.1998, issued by the contractor, she was subjected to the selection process, which included an interview and she was eventually recruited as an LDC. Thereafter, based on an anonymous petition with regard to appointments of contract labourers as LDCs, a probe was undertaken with regard to the genuineness or otherwise of the service

certificates, which were said to have been obtained by the contract employees from the contractors without actually performing any work. Insofar as the case of the 2nd respondent a preliminary enquiry was first undertaken. Later, a regular departmental enquiry was ordered. It is apt to refer to the charges, which are as follows:

- “1. Ms. M. Hemavathi, LDC, Admn. Section (u/s), % Superintending Engineer, Opn, Tirupathi is reported to have produced false certificate to the effect that she worked as contract labour on the works awarded to Sri C. Bhupathi Naidu of M/s Srinivas Cement Works Industrial Cooperative Society Ltd., Pedda Kalva(V), Gangadhara Nellore (M), Chittor District from time to time by the erstwhile APSE Board during the period from 7/93 to 12/99.
2. Based on the above false certificate Ms. M. Hemavathi,LDC (u/s) is reported to have secured appointment as LDC in Chittor Division (APSPDCL). Thus, she committed fraud and acted dishonestly in regard to administrative affairs of APSPDCL”.

The learned counsel for the writ petitioners contended that the record shows that the contractor, who issued the subject certificate to the 2nd respondent, stated during the course of preliminary enquiry that the 2nd respondent did not work in his establishment and that he had issued the service certificate acceding to the request of her father, who was a trade union leader, after obtaining an indemnity that he would be responsible in the event of any consequences, in future. It is borne out by the record and it is undisputed that in his examination during the course of departmental enquiry he, however, stated that the 2nd respondent worked under him. Though he was required to maintain records, he did not maintain any record is also borne out by the record. He had also stated that he had not maintained any records but, affirmed that the 2nd respondent worked under him. During the course of preliminary enquiry also he had stated that he had not maintained any records, which show that the 2nd respondent and other contract workers worked under him, and further stated that her father obtained the certificate on his own assurance that he alone would be liable for the consequences. Based on this aspect of the matter, learned counsel for the writ petitioners contended that since the certificate was obtained wrongfully by using influence of the father of the 2nd respondent, who is a trade union leader, and as the

contractor is conscious of the fact that he is issuing the certificate, which is not genuine, such an indemnity was insisted upon by him. In reply, learned counsel for the 2nd respondent contended that since the contractor is issuing a certificate being conscious of the fact that he had not maintained any records, he might have insisted upon some assurance from the father of the 2nd respondent in the above regard as he may be required to face some risk in future as the certificate is not based on any record maintained by him, which he ought to have maintained. This aspect of the matter presents a possibility of two views, in the considered view of this Court. One view may be that having not maintained a record and yet having issued a certificate, which is genuine, he might have insisted for the indemnity for the consequences. The other alternative view may be that since the certificate was being issued without any basis and/or on mere asking by a trade union leader, he might have insisted for the indemnity for the consequences. The version of the contractor, therefore, assumes importance as he was examined during the regular enquiry proceedings. In the enquiry proceedings, he resiled from his earlier statement given at the time of preliminary enquiry and stated during the course of regular enquiry that the 2nd respondent worked under him and affirmed that the certificate was issued by him. All the other employees, who worked under the said contractor, also deposed that the 2nd respondent worked in the contractor's establishment. The Enquiry Officer, having considered the statements made before him by the witnesses and the fact that the certificate was counter signed by the officers of the Board/Corporation, has come to a conclusion that the 2nd respondent is not guilty of any malpractice. It is not in dispute and it is also borne out by record that the contractor deposed that the 2nd respondent worked in his PSCC Poll Centre from 16.07.1993 to 10.12.1999 and that he paid salary for the said period through a maistry by name N. Nagaraju. The said Nagaraju had also deposed that the 2nd respondent worked along with others in the contractor's establishment. T. Vijay Kumar, a watchman in PSCC Poll Holder

of the Contractor also supported the version of the contractor. So also Shaik Imam, a Mixer Operator, who worked at the same center. Shaik Answari Saheb, a co-worker of the 2nd respondent also supported the case of the 2nd respondent during the course of departmental enquiry. Even the then A.D.E (Commercial), Chittoor, deposed during the course of enquiry that he had verified the M-Book and checked the particulars with regard to the works executed by the Contractor. Thus, the Enquiry Officer, after considering the evidence adduced during the course of enquiry, recorded a finding that the certificate produced by the 2nd respondent is genuine and that she was not guilty of any misconduct. The Disciplinary Authority, while disagreeing with the findings of the Enquiry Officer, formulated a different opinion from that of the Enquiry Officer and gave a show cause notice to the 2nd respondent with the following observations:

- i) The Enquiry Officer while conducting the enquiry has not considered the statement given by the contractor. Sri C.Bhoopathi Naidu, during preliminary investigation, wherein he admitted that he gave a false service certificate though it formed part of enquiry proceedings.
- ii) The contractor stated that he has never paid P.F or Group Insurance etc. for her and not maintained any records, and payments were made to the watchman, for the labour engaged by him for the contract works undertaken by him and further he stated that he paid money to the two watchmen and that he has maintained the records to this effect. Thus it is evident that Smt M. Hemavathi, has not worked as a contract labour with the contractor of Sri C. Bhupathi Naidu, M/s Srinivasa Cement works, Industrial Co-operative Society Ltd., Pedakalwa, GD Nellore, Chittoor District as he did not maintain records of the payments made to her.
- iii) As the deposition statement of the contractor was made available along with charge sheet to Smt. M. Hemavathi, LDC, it is evident that the charged employee won over the contractor and influenced her to go back on the earlier statement, especially when the statement was recorded during the preliminary enquiry before the DE/Opn/Chittoor.
- iv) The statement of the contractor before the Enquiry Officer going back on the earlier statement after 4 long months indicates that his earlier statement during preliminary investigation was voluntary. Therefore the version of the contractor that the statement obtained during preliminary investigation under duress or force cannot be believed.
- v) The supervisory staff i.e., ADE or DE as the case may be who has countersigned on the bogus Service Certificate definitely defend their own action is having lent their signatures to the bogus certificate thereby failed to perform the duty with devotion, integrity and impartiality.

In-fact, the 2nd respondent gave her explanation to the show cause notice; however, not being satisfied with her explanation, the Disciplinary Authority

passed an order of removal from service considering the same as an appropriate punishment. A perusal of the record shows that the Disciplinary Authority has obviously relied upon the material obtained during the preliminary enquiry and further noted that the contractor and other persons changed their version during the course of regular enquiry perhaps having been won over and, therefore, no credence could be attached to their evidence given during the course of enquiry. As noted, the appeal preferred by the 2nd respondent against the orders of the Disciplinary Authority was dismissed. Learned Presiding Officer extracted the contents of exhibit W11 in the impugned award and further referred to all the exhibits from exhibits W12 to W27. Learned Presiding Officer of the Labour Court in the impugned Award recorded the following findings besides other findings with reference to the documents:

“In this case petitioner filed exhibits W1 to W36 in which enquiry statements are also enclosed. Respondent filed Ex.M-1 to M8. Ex.M2 is the order appointing the enquiry officer on the allegation of false certificates. Ex.M3 is the charge sheet. Ex.M7 is the removal order passed by the Chief General Manager SPDCL Tirupati. Allegations are made against the petitioner and charge sheet was issued against her and enquiry officer was also appointed. The enquiry officer has to enquire on the allegations in detailed way by giving opportunity to both sides by informing the parties in the issue. During the enquiry all witnesses are to be examined and it should be properly recorded and after coming to a conclusion the enquiry report has to be submitted to the employer by giving his findings. Here in this case respondents filed contents of the enquiry. In practice Enquiry Officer has to follow all the enquiry procedure by calling the charge sheeted employee and the authorities who issued certificates and the officers who verified the certificates. The entire enquiry file with the statements of witnesses and connected call letters are to be submitted in original along with enquiry report but here in this case petitioner took efforts and filed the documents relating to the enquiry. Respondents filed only eight documents which are not enclosed with the original statements of witnesses. For better appreciation of the evidence sufficient material has to be placed before the court but the respondent filed insufficient records even though there is mention in the removal order that a

detailed enquiry was conducted. If really respondents has conducted a procedural enquiry there should be statement of witnesses and a detailed enquiry report. It is not known why the respondents failed to file entire enquiry record and also failed to utilize opportunity to adduce any oral evidence before this Court. The certificate produced by the petitioner shows that she was engaged by a contract labour from July 4th 1993 to 28th March 1998. In another certificate (ex.W11) it is mentioned that petitioner worked 2188 days upto 10th December 1991.”

Learned Presiding Officer further observed in the impugned award as follows:

“...It is the duty of the contractor to maintain record. Mistake is on the part of the Contractor and the Respondents but without seeing the records they thrown blame on the Petitioner that she produced false certificates. The chit agreements entered by the Contractors are with the Respondents but the Respondents failed to submit the same before the Court. Respondents also failed to file entire enquiry record and connecting documents. The record further shows that contractor engaged the Petitioner and others in the work of the electricity board but the said contractor clearly mentioned that he has not maintained records pertaining to the Petitioner. This shows that he failed to maintain records such as EPF, ESI and other records. Since the Petitioner and others worked with the work of Electricity Board, the officers who were looking after the work of the Petitioner and others were issued certificate of attestation. Later the said officers to safe guard their skin stated that the certificates issued by them are not genuine. This court have occurred only to safe guard the contractors. Petitioner struggled lot by approaching the higher courts whenever the respondents passed unjustified orders. If really the petitioner had not worked with the respondents he could not have struggled lot for his employment. The documentary proof submitted by the petitioner clearly states that petitioner worked with the contractor and the contractor failed to maintain proper record and it lead to trouble to the petitioner in approaching the superior courts for redressal. Since the respondents itself passed orders in BPMs.no.36, dated 18.5.1997 for filling up of 50% vacancies with the casual labour, contract labours and village electricity workers by framing guidelines for absorption into Electricity Board, since the petitioner worked with the contractors he made application by submitting certificates issued by the contractor. The contractor failed to

maintain record and in order to save himself from the statutory obligations and later they changed his version. If really petitioner had not worked with the respondents, petitioner could not have made such long struggle of approaching court of law. In this case respondents tried their level best in not producing enquiry record to defeat the case of the petitioner. A model employer may not follow such false method to deprive the benefits who worked for the respondents.”

[Reproduced Verbatim]

Learned counsel for the 2nd respondent contended that the Corporation has also admitted that the Contractor is a person of good reputation and he has good turnover in respect of the works he was executing for the Corporation and that the records scrutinized by the officers of the corporation also indicated that the contractor executed many works and that the said factors cumulatively lead to a conclusion that the contractor might have engaged sufficient work force. He also submitted that the evidence brought on record sufficiently established that the 2nd respondent is one of the workers in the said work force.

8. Before proceeding further and dealing with the contention that the matter requires to be remanded as the learned Presiding Officer of the Labour Court failed to follow the observations in the judgment of the Division Bench, it is to be noted that at one stage a learned single Judge of this Court re-appreciated the facts & evidence, in detail, and upheld the award earlier passed by the Labour Court and dismissed the writ petition filed by the writ petitioners herein. However, a Division Bench having set aside the order of the learned single Judge remanded the matter to the Labour Court for fresh disposal. A perusal of the impugned Award now passed by the Labour Court reflects that sufficient reasons are recorded in the award in support of the conclusions. For the reasons, which are recorded in the Award by the learned Presiding Officer of the Labour Court, and as there is no patent error or illegality or perversity in the findings and as the view

taken by the learned Presiding Officer of the Labour Court is possible in the facts and circumstances of the case, this Court finds that this is not a fit case to remand the matter once again at this distance of time, more particularly as the disciplinary authority relied upon the material/statements given at the time of the preliminary enquiry and as the material gathered during the preliminary enquiry cannot be treated as a substantive evidence and there is a possibility to safely conclude that the Award in the facts and circumstances of the case is sustainable.

9. In **Workmen of Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. V. The Management and others** (AIR 1973 SC 1227), the Supreme Court held as follows:

It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points, Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognized in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A.

Thus, the law is well settled that the Labour Court being the last Court of fact is obliged to re-appreciate the evidence acting as an appellate Court and substitute its findings for those of the departmental authorities and that the Labour Court is now clothed with the power to re-appreciate the evidence & satisfy itself and that it is the satisfaction of the Tribunal that finally decides the matter.

10. A careful perusal of the material record including the Award of the Labour Court would show that after necessary examination of the facts and the appreciation of evidence in proper perspective, the learned Presiding Officer of the Labour Court arrived at a finding that the charges are not proved and accordingly allowed the petition of the 2nd respondent and ordered reinstatement of the 2nd respondent into service with continuity of service with all attendant benefits but without back wages for the break period. This Court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the well reasoned award of the learned Presiding Officer of the Labour Court. When once conclusions arrived at by the Presiding Officer of the Labour Court are found to be sustainable on facts and in law, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the said officer.

11. In the decision in **Union of India v. P. Gunasekaran**¹ 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:

“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;

¹ (2015) 2 SCC 610

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.”

12. In **Indian Overseas Bank vs. I.O.B. Staff Canteen Workers' Union and Ors.**², the Supreme Court held that it is impermissible for the High Court in exercise of writ jurisdiction, to liberally re-appreciate the evidence and draw conclusions of its own on pure questions of fact, as the High Court does not exercise any appellate jurisdiction over the awards passed by a Tribunal/Labour Court, presided over by a Judicial Officer. The Supreme Court further held as follows: “The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court.”

13. Accordingly, this Court holds that the writ petition is liable for dismissal. Learned counsel appearing for the writ petitioners has reported that pending the writ petition the 2nd respondent was paid 17B wages and the same are adjustable in regular pay. In the light of the conclusion of this Court that the writ petition is liable for dismissal, it is needless to state that the said wages are to be adjusted in regular pay.

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

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

10.10.2018
Vjl

² AIR 2000 SC 1508