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

Date of decision: 31st October, 2018

+ W.P.(C) 17655/2004

SURESH KUMAR

..... Petitioner

Through: Mr. N.D.Pancholi, Adv. with
Ms. Shalu Nigam, Adv.

versus

D.T.C.

..... Respondent

Through: Ms. Manisha Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. The DTC, as the petitioner before this Court, challenges an Award, dated 17th January, 2001, passed by the learned Industrial Tribunal (hereinafter referred to as “the learned Tribunal”), *vide* which the following term of reference, as referred to the learned Tribunal by the Secretary (Labour) Delhi Administration, was adjudicated:

“Whether the punishment awarded to Shri Suresh Kumar by way of reducing him to the initial stage in the time scale of driver is illegal and/or unjustified and if so, what directions are necessary in this respect?”

2. *Vide* the impugned Award, the learned Tribunal has decided the above dispute, as referred to it, against the petitioner and in favour of the respondent. The punishment awarded to the petitioner, *vide* order dated 1st March, 1990, issued by the Depot Manager of the respondent, of reduction of the petitioner to the “initial stage in a time scale”,

stood thereby upheld.

3. The facts of the case, as pleaded by the petitioner before the learned Tribunal, may be set out thus:

(i) The petitioner was employed as a driver, with the respondent, since 16th June, 1989.

(ii) On 16th June, 1989, when he was on duty on Bus No. 9701, on the Jaipur-Delhi Route, the bus was intercepted by checking officials, who, thereafter, alleged, against the petitioner – falsely, as he would assert – that he had failed to stop the bus at the bus stop, as a result of which the checking staff had to pursue the bus and intercept it at a later point. The petitioner contended that the said bus stop was not a scheduled bus stop and that the checking staff was also not in uniform.

(iii) Be that as it may, the petitioner was served with a charge-sheet, dated 30th June, 1989, which was in vernacular. The charge therein, translated into English, reads thus:

“ You were on duty on bus No.DIP 9701 Jaipur to Delhi route on 16.6.1989. Checking staff was stationed at Bairat Nagar School at about 11.40 to check your bus. When your bus reached there, the checking staff signalled by hand as well as by diary for stopping the bus and whistled but you intentionally did not stop the bus. Later on the bus was got stopped by chase with the help of a jeep and on checking 24 passengers were found travelling without tickets. The conductor had collected the due fare from the said passengers. It shows that you were in league with the conductor in such cheating.

Your aforesaid act is a misconduct under para No.19(a) & (h) & (m) of the Standing orders governing the conduct of the employees of the Delhi Transport Corporation.

The report dtd. 16.6. 89 of Shri Suraj Bhan T.I. on which the aforesaid charge-sheet is based is enclosed herewith. Your past record will be taken under consideration at the time of recommendation and final orders.

If you require personal hearing, you should apply for the same in your explanation. Your explanation should reach the undersigned within 10 days failing which ex-parte decision will be taken without hearing you.”

(iv) On the basis of the afore-quoted allegation, the petitioner was directed to show cause as to why action be not taken against him under the Delhi Road Transport Laws (Amendment) Act, 1971 read with Delhi Road Transport Authority (Conditions of Appointment & Service) Regulations, 1952, as the act alleged constituted a misconduct, under sub- paras (a), (b), (h) & (m) of Para 19 of the Standing Orders governing employees of the respondent.

(v) The petitioner responded, to the above mentioned charge-sheet, *vide* a short letter, dated 30th June, 1989, in which the petitioner submitted, while accepting that the checking staff, located at the Bairat Nagar bus stop, that had signalled his bus to stop, that he had to by-pass a truck which was parked on the road and stop ahead of the said truck. He, therefore, categorically denied the allegation that he had failed to respond

to the signals of the checking staff, requiring him to stop the bus.

(vi) The checking report, dated 16th June, 1989, of the G.M. (1) Squad, which had sought to stop the bus, signed by the three members of the said squad, reads thus:

“ We were standing at the Bairat Nagar School at the aforesaid place and time to check the aforesaid bus. We made a signal to the driver with diary as well as whistle but the driver intentionally ran away with the bus. We intercepted the bus with the help of Jeep DNA 4577. We entered into bus (checking and we checked we found that 24 passengers were without ticket in the bus, though the conductor had received the bus fare from them but he had not issued the tickets to them.

Thereafter we inquired from the driver as to why he did not stop the bus but his reply was not satisfactory. We challaned the driver vide challan No.201677 but the driver refused to sign and receive the challan. The original Memo of driver was taken and he was given duplicate memo with the remark.”

(vii) Inquiry proceedings followed. The records of the said inquiry proceedings, as held on 22nd September, 1989, 6th November, 1989 and 10th November, 1989 may be reproduced (as translated) thus:

“ Proceedings dated 22nd September, 1989

Oral and detailed inquiry is being initiated today on 22.09.1989 against Shri Suresh Kumar, Driver Badge No.11505 into the charges pending against him.

Present: Sh. G.K.Sharma, Inquiry Officer
Sh. Suresh Kumar, Driver, 11505

On inquiry the accused informed that he did not wish to appoint any defence representative as he himself was capable of conducting his inquiry.

Sd./-
Suresh Kumar
Driver Badge No.11505
22.9.89

Charge-sheet No.IPD/S.P./t/CS-94/88/6246 dated 30.6.89 was read-over to the accused. The accused denied the charges.

Sd/-
Suresh Kumar
Driver No.11505
dtd. 22.9.89

Statement- Shri Zile Singh A.T.I., No.16039 is being recorded herewith;-

Statement: I was on duty in Jeep No.DNA 4577 on 16.6.89 alongwith Shri Suraj Bhan and Shri Kishan A.T.I, for flying checking. We were standing at Bairat Nagar School for checking the buses. The said place is at a distance of half kilo meter from Bairat Nagar Stand. Bus No.9701 Jaipur-Delhi via Alwar was approaching.

We signalled the driver for stopping the bus for the purposes of checking and at that time all the three members of the checking team were standing there. The driver after seeing us intentionally drove away the bus. We got hold of the bus at Bairat Nagar Stand with the help of the jeep. At that time 24 passengers were there in the bus without tickets. The driver did not give any satisfactory answer when he was asked the reason for not stopping the bus. It proves that the driver had committed fraud in league with the conductor in the bus. The driver was challaned but he refused to sign on the challan.

Sd/-
Zile Singh

Sd/-
Suresh Kumar
Driver 11505 dtd. 22.9.89

The accused was given opportunity to cross examine the witness.

Question: Did you give whistle for stopping the bus?

Answer: When we had shown the diary, we did not deem it necessary to give whistle.

Question: When you show the diary for stopping the bus, was there a truck standing in front of the same.

Answer: There was no truck standing in break down nor there was any other vehicle.

I do not want to ask any other question.

Sd/-
Suresh Kumar
Driver 11505

Sd/-
Zile Singh

The accused informed that he did not want to ask any question from the other members of the checking staff.

Sd/-
Sri Kishan
A.T.I. Driver

Sd/-
Suresh Kumar
11505 dtd. 22-9-89

Sd/-
Suraj Bhan
T.I.

The accused informed that passengers of the bus should be summoned in his defence whose names are mentioned in the case of Shri Jagbir Singh, Conductor Badge No.15525. Enquiry is adjourned.

Sd/-
G.K. Sharma
Inquiry Officer
Dtd. 22.9.89

Received copy of the inquiry proceedings.

Sd/-
Suresh Kumar
11505 dtd. 22-9-89”

Proceedings dated 6th November, 1989

Oral and detailed enquiry in the case of Shri Suresh Kumar driver Badge No.11505 which was adjourned on 22.9.89 is being started today on 6.11.89.

Present: Shri G.K. Sharma: Enquiry Officer 0151
Shri Suresh Kumar, Driver, 11505

The chargesheeted employees told that passengers were sent intimations three times by UPC but they did not present themselves. The chargesheeted employee is told that he should give his defence statement on 10.11.89. The past record of the accused may be summoned. The enquiry is adjourned.

Sd/- Suresh Kumar
Driver, B.No.11505

Sd/- G.K.
6.11.89

Enquiry Officer
6.11.89

Proceedings dated 10th November, 1989

“ The oral and detailed enquiry in the case of Shri Suresh Kumar driver Batch No.11505 which was adjourned on 6.11.89 is being started today on 10.11.89.

The chargesheeted employee has presented himself to submit his defence statement. The chargesheeted employee has submitted one page in Hindi language which is filed in the proceedings.

Sd/-Suresh Kumar
10.11.89

B.No. 11505

The enquiry proceedings are being concluded today with the right that the same may be reopened again if required in the interest of justice.

Sd/-Suresh Kumar
B.No.11505
10.11.89

Sd/- G.K.
10.11
Enquiry Officer
10.11.89”

(viii) The Inquiry Officer, deputed to conduct the aforementioned disciplinary inquiry against the petitioner, submitted his Inquiry Report, dated 15th December, 1989, which reads thus:

“ This case is based on the report of Shri Suraj Bhan, Traffic Inspector, Shri Kishan, Shri Zile Singh, A.T. is against Shri Suresh Kumar, driver. The driver Suresh Kumar B. No.11505 was suspended vide letter No.LP.D.(S.P.)CS-94-98/6048 dt.21.6.89 and was chargesheeted vide charge-sheet No.6246 dt.30.6.89 in which following irregularities were mentioned:-

“ You were deputed for duty on the Jaipur-Delhi Bus Route on Bus No.9701 on 16.6.89. The Checking staff was standing at about 11.40 at the Bairat Nagar school to check your Bus. When your Bus arrived at that place the Checking staff made a signal with hand and the diary as well as blew whistle but you intentionally did not stop the bus at that place. Thereafter the Bus was

intercepted by pursuit by the Jeep and on checking 24 passengers were found without tickets. The conductor had received the requisite bus fare from these passengers. This shows that you were in conspiracy with the conductor in the cheating.”

The charge-sheeted employee in his reply had informed that he had stopped the bus and there was a truck parked which he had to by-pass before stopping the bus.

The explanation of the employee was not found satisfactory and therefore the case was sent to the Enquiry Officer for enquiry.

The charge-sheet was read over to the charge-sheeted employee before the start of the enquiry and the charges were denied by him.

Shri Zile Singh A.T.I. in his statement in evidence on 22.9.89 stated that he was on duty on 16.6.89 on the Jeep along-with other checking staff Shri Suraj Bhan and Shri Kishan. They were standing on the Bairatnagar school which is at a distance of about half a kilometer from the Bairat Nagar Bus stand. The Bus No.9701 reached the spot via Alwar on the Jaipur-Delhi route and they gave a signal to stop the bus. The driver did not stop the bus intentionally when all the three were standing.

We persued the bus and intercepted it at the Bairat Nagar Bus stop.

There were 24 passengers in the bus without any tickets. When the checking staff inquired from the driver, he did not give satisfactory answer. The driver and the conductor conspired to play fraud in the bus.

The driver was also challaned. The driver refused to receive the challan.

The chargesheeted employee declined to ask questions from the other members of the checking staff. He asked questions from Zile Singh ATI. The driver submitted that the passengers in the case of Jagbir Singh conductor B.No.15525 may be summoned in his defence. The driver was informed that the passengers were called but none of them appeared.

The charge sheeted employee submitted his defence-statement on 10.11.89 in which he stated that Shri Zile Singh had replied to one question (in cross examination) that they showed only diary, and did not deem it necessary to blow whistle. He submitted at in conclusion that the checking report was false.

CONCLUSION:

It is clear from the aforesaid detailed enquiry that the driver was on duty on 16.6.89 on bus No.DEP 9701 on Jaipur-Delhi Route. The driver did not stop the bus inspite of the signal of the checking staff at the Bairat Nagar school. It was found on checking, after intercepting the bus by the jeep, that there was 24 passengers without tickets from whom the conductor had received the bus-fare but had not issued the tickets. The driver did not produce any reliable evidence in his defence. The passengers were summoned in his defence but none of the passengers appeared. In his defence statement the driver submitted that to the question whether the checking staff had blown whistle for stopping the bus, the checking staff replied that when the driver was shown the diary, it was not necessary to blow the whistle. Driver has submitted that the report of checking staff states that whistle was blown and the diary was shown. There is no force in the statement of the driver because when the bus was checked there were 24 passengers without tickets. The fact that there were 24 passengers found without tickets prove the guilt of the driver in not-stopping the bus. It also proves that he was in conspiracy with the conductor in the cheating.

The report is submitted for further action.”

(ix) The Depot Manager, as Disciplinary Authority, communicated the aforementioned Inquiry Report, dated 15th December, 1989, to the petitioner, *vide* Memorandum dated 6th February, 1990, expressing a provisional opinion that the charge, as found to be proved against the petitioner, merited imposition, on him, of the penalty of reduction to the initial stage in the time scale, and allowing the petitioner an opportunity of showing cause thereagainst.

(x) It appears that, thereafter, the aforementioned penalty of reduction to the initial stage of the time scale was, indeed, imposed on the petitioner and his appeal, thereagainst, was also rejected by the appellate authority.

(xi) Aggrieved thereby, the petitioner raised an industrial dispute, which, after having been failed to attain resolution thereof, conciliation, was referred, by the Secretary (Labour), Delhi Administration, for adjudication, to the learned Tribunal, *vide* order dated 17th November, 1992.

(xii) The petitioner filed his Statement of Claim before the learned Tribunal. It was reiterated, in the said Statement of Claim, that the Birat Nagar School, where the checking staff had attempted to stop the bus, was not a designated bus stop and that the checking officials were also not in uniform. He further contended that the allegations in the charge-sheet were based on conjectures and surmises. It was asserted that the allegation, which related to collection of money from 24 passengers when

issuing tickets to them, essentially related to the conductor of the bus, and not to the driver i.e. himself. It was further sought to be pointed out that the allegation was based on the sole report of a single checking official who deposed in a perfunctory manner. The petitioner also alleged violation, during the inquiry proceedings, of the principles of natural justice, as he was not given any opportunity to defend himself, and was not permitted the assistance of a co-worker, or given an opportunity to produce defence witnesses. Ventilating these, among other grievances, the petitioner prayed that the punishment imposed on him be declared illegal. Consequential relief was also prayed for.

(xiii) The learned Tribunal examined, first, the propriety and validity of the inquiry held against the petitioner. It was noted that the charge-sheet specifically alleged connivance, between the driver and the conductor, to cheat the passengers, which is why the conductor collected the extra fares, and the driver, i.e. the petitioner, sought to evade the checking staff by not stopping the bus when signalled to do so.

(xiv) On the issue of conformity, of the inquiry proceedings, with the principles of natural justice, the learned Tribunal noted that the petitioner had, in fact, participated in the inquiry proceedings and had specifically declined to avail the services of a defence assistant, as noted in the Inquiry Report of Sh. Suraj Bhan, Traffic Inspector, who was one of the members of

the checking staff, and that the report also contained the names of the other members of the squad.

(xv) The respondent had led the evidence of Zile Singh, A.T.I, who was cross examined by the petitioner. The petitioner had further requested for production of the passengers who travelled in the bus, as his defence witnesses, but despite notice being issued to them, the passengers did not respond.

(xvi) In these circumstances, it was noted that the Inquiry Officer had found the charge against the petitioner to be proved.

(xvii) Holding that there had been complete compliance with the principles of natural justice while conducting the disciplinary proceedings against the petitioner, the learned Tribunal held the claim of the petitioner to be devoid of merit, and the punishment imposed on him to be legal and justified. As a result, the reference made to it was answered, by the learned Tribunal, in favour of the respondent and against the petitioner.

4. Aggrieved thereby, the petitioner is before this Court.

5. I have heard Mr. Pancholi for the petitioner and Ms. Tyagi for the respondent, in detail.

6. Mr. Pancholi has emphatically contended that the inquiry proceedings against his client were conducted in violation of the principles of natural justice. He has further sought to assert that the blame, for collecting fares from passengers in excess of tickets issued

to them, could never be fastened on the driver of the bus, but necessarily lay at the door of the conductor. Once this allegation was removed from the charge-sheet, Mr. Pancholi would point out that the only infraction, if at all, alleged against his client would be of failing to stop the bus when signalled to do so, which, in his submission, would be an extremely minor dereliction, not warranting disciplinary proceedings and imposition of penalty.

7. Mr. Pancholi has also relied on the judgments of the Supreme Court in *Managing Director, ECIL, Hyderabad v. B. Karunakar, 1994 SCC (L & S) 1009* and *State of Punjab v. V.K.Khanna, 2001 (2) SCC 330*.

8. In my estimation, the facts of the present case do not disclose any basis for this Court to interfere.

9. The parameters governing the scope of interference, by writ courts, with awards of Labour Courts and Industrial Tribunals, stand delineated in several authoritative pronouncements. The guiding principles, governing exercise of such jurisdiction, are stated in the following classic passages, from *Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 Supreme Court 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 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.”

10. The discretion granted to the disciplinary authority, to assess whether the allegedly delinquent employee was, in fact, guilty of the infraction imputed to him and, if so, the quantum of punishment to be imposed, therefore, are required to be respected. No doubt, if the

findings of the disciplinary authority, or the quantum of the punishment imposed on him, are found to be tainted with arbitrariness or perversity, or are such as would shock the conscience of the court and would not commend themselves to any ordinary person, conversant with the facts of the case, this Court would be duty bound to interference. Short thereof, however, the hands of this Court are tied.

11. In the present case, the petitioner was issued a charge-sheet and given an opportunity to respond thereto. He was even served with the initial copy of the report of the checking staff, on the basis of which the charge-sheet was passed. The learned Tribunal has returned an observation that, though the said report was signed only by one officer, it bore the signatures of all the members of the checking squad.

12. The petitioner responded to the report, and it was noted, thereafter, that the Inquiry Officer was appointed. Mr. Pancholi has sought to contend, in this case, that the Disciplinary Authority ought to have first written to the petitioner, and rejecting his response to the charge-sheet, before appointing the IO.

13. I am unable to see any such requirement in law. Even assuming any such requirement were present, non-compliance thereto, in a case such as the present, could hardly be said to be fatal.

14. In the inquiry that followed, the petitioner was given full opportunity. He was given the option of engaging of defence assistant,

which the petitioner declined, stating that he would conduct the inquiry himself. He was also given an opportunity to cross-examine the management witness, which he availed. The witnesses whom the petitioner sought to cite as his defence witness, unfortunately, did not condescend to turn up at the inquiry.

15. The Inquiry Officer, in such circumstances, proceeded to analyse the charge and found the charge to be proved against the petitioner, relying, therefor, on the deposition of Zile Singh.

16. In my view, no such perversity can be said to exist, in the said approach, or in the findings of the Inquiry Officer or the disciplinary authority, as would merit interference by this Court.

17. Mr. Pancholi also sought to contend that the liability, for collecting fare without issuing tickets, always lay, so to speak, at the door of the conductor, and not at the seat of the driver.

18. The contention is, undoubtedly, attractive, and worthy of consideration.

19. There can be no doubt about the fact that the person, in the bus, who has to issue tickets against the fare collected is the conductor and not driver. Had the allegation being restricted only to collection of fare without tickets, there can be no manner of doubt that the inculcation of the driver of the bus, therefor, might ordinarily not have been sustainable.

20. In the present case, however, the allegation does not rest there. What is alleged is that the driver in connivance with conductor in this regard and that it was for this reason that the driver defaulted in stopping the bus, when signalled to do so, by the checking staff.

21. Whether, in fact, the driver did not stop the bus, because of this reason, or not, may be a moot question. The authorities below i.e. the Inquiry Officer, Disciplinary Authority and the learned Tribunal, have, however, concurrently held that this was so. The rationality of this finding, in my view, cannot be questioned, as, given the fact that 24 passengers were found not carrying tickets, though they had paid fares, the omission, on the part of the driver, to stop the bus, when signalled to do so, could be attributed, to a reasonable person conversant with the facts, to an attempt to evade detection of the extra collection of fare by the checking staff. Such a conclusion can hardly be said to be perverse, in the given facts. Neither can it be said to be such as would not appeal to any reasonable man conversant with facts.

22. It was probably keeping in mind the lesser degree of culpability of the driver, in such a situation, that the authorities below, have imposed on him, only a punishment of reduction in pay scale.

23. Had the driver been expressly complicit in the act of collecting fares without issuing tickets, he would undoubtedly be liable to be removed from services.

24. In awarding, to the driver, the lesser punishment of reduction of pay, in the time scale, therefore, the disciplinary authority adopted a

holistic view of the facts, with which no fault can possibly be found.

25. Clearly, therefore, the learned Tribunal could not be faulted for having approved the said punishment, as awarded, by the Disciplinary Authority to the petitioner.

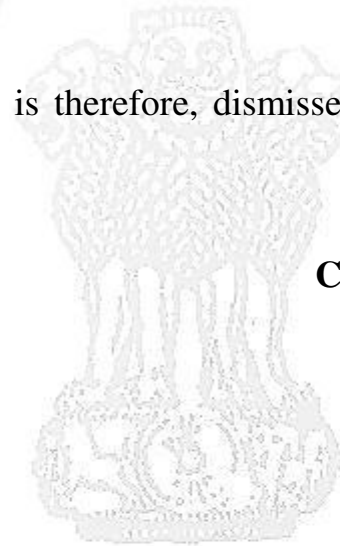
26. For the above reasons, I do not see the present case as one which would warrant interference, by this Court, in exercise of the extraordinary jurisdiction vested in it, under Article 226 of the Constitution of India.

27. The writ petition is therefore, dismissed, with no orders as to costs.

C. HARI SHANKAR, J.

OCTOBER 31, 2018

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