

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WP No. 3216 of 2006**

Steel Authority of India Ltd. Bhilai Steel Plant, Bhilai, Through: Managing Director, Bhilai Steel Plant, Bhilai, District Durg Chhattisgarh

**---- Petitioner**

**Versus**

1. Sarvan Kumar, S/o. Shri Dhani Ram, Near Hanuman Mandir, Nahar Para, Sharda Para, Bhilai, District Durg Chhattisgarh
2. President, Industrial Court, Raipur Chhattisgarh
3. Presiding Officer, Labour Court, Durg, Chhattisgarh

**---Respondents**

|                     |   |                                                                     |
|---------------------|---|---------------------------------------------------------------------|
| For Petitioner      | : | Dr. N.K. Shukla, Advocate along with<br>Mr. Vikram Sharma, Advocate |
| For Respondent No.1 | : | Mr. N.L. Soni, Advocate                                             |

**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**14/01/2019**

1. The challenge in the present writ petition is to the order of the Labour Court dated 07.02.2001 and the appeal of the Industrial Court dated 04.07.2005.
2. The issue revolves around the dismissal of service of the respondent No.1. The facts, which led to the filing of the present writ petition is that the respondent No.1 was initially appointed by the petitioner as a worker as early as on 20.09.1985. The appointment of the respondent No.1 is said to have been against the reserved post for schedule caste. In due course of time the services of the respondent No.1 was also regularized vide order dated 13.10.1986.
3. Having put in more than a decade of service, the petitioner issued the respondent No.1 a charge-sheet on 21.02.1997. The contention or

allegation in the charge-sheet was that the respondent No.1 is said to have obtained employment on the basis of the false certificate in respect of the caste that he belonged, the domicile certificate that he had submitted and the fake school leaving certificate that he had produced at the time of appointment. The charge-sheet was replied by the petitioner, however, since the management did not find the reply to be satisfactory, they ordered for conducting a departmental enquiry.

4. After the witnesses were examined before the Inquiry officer, the Disciplinary authority vide order dated 20.02.1998 i.e. after the petitioner has put in about 12 years of service, inflicted him with the order of punishment of termination from service. The said order of the termination was challenged before the Labour Court in a proceeding under Section 31(1) of the M.P.I.R. Act, where the case was registered as case No. 111/MPIR/98. The Labour Court initially deciding the issue No.1, so far as the veracity of the departmental enquiry is concerned, passed an order holding that the inquiry was in violation of the principles of natural justice and vitiating the departmental enquiry, ordered for the management to adduce evidence before the Labour Court to prove its case. The management led evidence of three persons namely; Mr. R.S. Thakur, Additional Tahsildar, Mr. P.N. Tripathi, Senior Vigilance Officer of the Bhilai Steel Plant and Mr. Pushpar Prasad Dubey, Headmaster of Primary School, Sirgitti.
5. After the recording of the evidence, the Labour Court found that the department has not sufficiently proved the charges by leading cogent and strong evidence to establish the allegations and charge against him. The

Labour Court vide order dated 07.02.2001 (Annexure P/16) allowed the application and granted the relief of reinstatement without back wages.

6. The management, thereafter, preferred an appeal under Section 65 before the State Industrial Court and the Industrial Court also vide the impugned order Annexure P/18 dated 04.07.2005 rejected the appeal and thereby confirming the order of reinstatement of respondent No.1. It is these two orders, which are under challenge in the present writ petition.
7. The contention of the learned counsel for the petitioner is that impugned order passed by the Labour Court as well as Industrial Court are *per se* bad in law for the reason that the same are without properly appreciating the evidences, which have come on record. The findings given by the two Courts below are also perverse findings and therefore the same deserves to be set-aside/quashed.
8. It was the contention of the petitioner that the two Courts below failed to properly appreciate the evidence of the Tahsildar namely Mr. R.S. Thakur, who was examined and who has given a categorical finding in respect of the allegations leveled against the respondent No.1. It was also the contention of the petitioner that the respondent No.1 on the contrary has not been able to provide any sufficient, cogent and strong material to disprove the allegations that have been leveled against the respondent No.1 through the charge-sheet.
9. The contention of the petitioner further is that the Labour Court as well as the Industrial Court also did not take into account the fact that decision of the management was based on the report submitted by the Tahsildar and the report of the Tahsildar stood established before the Labour Court by the

evidence of the Tahsildar himself and thus on this ground also the orders of the Labour Court as well as the Industrial Court are not sustainable and the same deserves to be set-aside/quashed.

10. The counsel appearing for the respondent No.1 on the other hand submits that the findings of the Labour Court as well as the Industrial Court cannot be said to be perverse in as much as they are all findings of facts, based on materials, which have been brought before the Labour Court. It is also the contention of the learned counsel for the respondent No.1/ employee that the finding of the Labour Court is very specific to the extent that the management was supposed to lead the evidence by establishing the charges, but they have not produced the material witnesses to establish the charge, but have relied upon the statement of the Tahsildar, who in fact had not personally inquired into the matter, so far as the allegations, which are leveled against the respondent No.1. Thus, prayed for the dismissal of the writ petition.
11. Having heard the contentions put forth on either side and on perusal of record, particularly taking note of the fact that the two orders passed in the present case are quite old. The order-sheets of this Court also reveals that there was no interim protection granted in favour of the petitioner, so far as the effect & operation of the two orders are concerned. From the date of the order of the Labour Court it is by now 18 years of time and from the date of the Industrial Court also it is more than 13 years of time that has lapsed. Now coming to the question of the evidence, that has been adduced before the two Courts below, this Court is of the opinion that the orders under challenge are concurrent findings of facts. Initially the Labour Court had vitiated the departmental enquiry directing the management to lead

evidence afresh. When a fresh evidence is ordered to be produced by the management, it is expected that they shall produce the best evidence available to establish the charge against the delinquent employee. It is as if the Labour Court becomes the Inquiry officer and the witnesses become the departmental witnesses to prove the evidence.

12. Under such circumstances, it is the materials, which were collected and the persons, who had collected the materials, who were required to be examined before the Labour Court as witnesses of the management. In the instant case, the finding of the Labour Court reveals that the witness i.e. the Tahsildar Mr. R.S. Thakur was not the witness, who had in fact scrutinized or inquired into the allegations, that were leveled against the respondent No.1. The said witness had only recently joined the office and the entire inquiry, which was conducted, if at all, was by the predecessor Mr. A.S. Sisodhariya, who was also available in service at the relevant point of time, and the petitioner, if they so wanted should have called upon the said witness to prove the allegations and the preliminary enquiry, that he had conducted. In the absence of which, the finding of the Labour Court that the management has not properly led evidence, cannot be said to be either bad in law or a perverse finding.
13. Even though, the standard of proof required in a departmental enquiry is preponderance of probability. The fact, which still required is that for drawing a preponderance of probability also, there has to be cogent evidence led by the proper witnesses before the Inquiry officer.
14. What also cannot be lost sight of is that the order of the Labour Court has been put to test before the Industrial Court in the First Appeal and the

Industrial Court also has thoroughly scrutinized the grounds, which were raised in appeal and have given a speaking order, upholding the order of the Labour Court. It is a case where the finding of the Labour Court has been put to test before the appellate forum and the appellate forum also has not found any illegality to the said finding. Moreover, while deciding the appeal also the Industrial Court has given reasonable reasons also, under which it has held that the finding of the Labour Court need not be interfered with.

15. The Hon'ble Supreme Court in a series of decisions have repeatedly held that the concurrent finding of fact arising out of the orders of the Labour Court and Industrial Court should not be ordinarily interfered with by the High Court in exercise of its power under Article 226 of Constitution of India. It is also the settled legal position that unless the finding of the Labour Court is a perverse finding or is contrary to the evidence, which have come on record or the finding given by the Labour Court shocks the conscious of a prudent person. The same should not be lightly interfered with.
16. It is settled that the scope of interference of the High Court to issue writ of Certiorari sitting under Article 226 of the Constitution of India is very limited. In the case of **Syed Yakooob Vrs. K. S. Radhakrishnan and others reported in AIR 1964 SC 477** wherein at paragraph-7 their Lordships have been pleased to hold as follows:-

***“7. xxxxxxxxxx. 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.”*

17. In the case of ***Heinz India Private Limited and another vrs. State of Uttar Pradesh and others*** reported in **(2012) 5 SCC 443**, their Lordships has been pleased to hold at para-66, which is being quoted herein below:-

***“66. That the Court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant “the feel of the expert” by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable on evidence and whether such findings are consistent with the laws of the land.”***

18. It is also by now a well settled proposition of law that the High Court in exercise of its power under Article 226 of the Constitution of India, while exercising the scope of judicial review against an order of Labour Court, would not be sitting as a second appellate or an appellate Court. The scope

of scrutiny of the High Court would be to the extent of decision making process initiated by the two Courts below and not the decision itself.

19. Given the facts that the two Courts below have already given a concurrent finding, this Court, taking into consideration the aforesaid observations, does not find any strong case made out by the petitioner/ management for interfering with the said orders.
20. So far as the judgment of the Hon'ble Supreme Court in the case of "**J.D. Jain v. The Management of State Bank of India & Another**" **AIR 1982 Supreme Court 673**, this Court is of the opinion that the said judgment, as such, could not be applied in the case of the petitioner for the reason that the facts, under which the finding was given in that case, were entirely different, though the matter relates to hearsay evidence, but under a different contextual background altogether. Thus, the said judgment would not come to the rescue of the petitioner.
21. For the aforesaid reasons, the writ petition being devoid of merits, deserves to be and is accordingly dismissed.

Sd/-  
**(P. Sam Koshy)**  
**Judge**