

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT PETITION No.1998 of 2019

ORDER: *(per the Hon'ble Justice Sri A.Rajasheker Reddy)*

This writ petition is filed with the following prayer:

“For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of certiorari or any other appropriate writ after calling for the records and subsequently direct the Respondents herein to set aside the order No.43/2005/Admn.Dis. No.4555 dated 28.08.2015 imposing the punishment of stoppage of 3 annual grade increments with cumulative effect and the subsequent orders dated 19.07.2016 in rejecting the appeal and pass such other order or other orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. It is the case of the petitioner that initially he joined the judicial service as Attender on 01.10.1981 at Additional Sub-Court, Mahaboobnagar. Thereafter, in the year 2004, he was transferred to the Court of Senior Civil Judge, Narayanpet. While so, he applied for sick leave for two days during public holidays i.e., on 08.01.2005 and 09.01.2005 and left the headquarters after taking necessary permission from the Presiding Officer. Subsequently, he joined duty on 10.01.2005. Since he has not recovered from illness, he again applied for leave from 10.01.2005 to 12.01.2005. But, a memo was issued to the petitioner treating the said two days leave as unauthorized absence, pursuant to the same, he submitted his explanation. Thereafter, several memos and show cause notices were issued to the petitioner, and he submitted his explanations to the same. Subsequently, disciplinary proceedings were initiated against the petitioner

on the grounds that (1) the delinquent employee unauthorisedly absented to duty, which amounts to violation of duty and willful misconduct; (2) disobeyed the orders of the Presiding Officers and made false allegations against the officers; and (3) on 17.01.2005, he misbehaved with his co-employee viz., Smt. Varalakshmi, Typist-cum-Junior Assistant and acted in a discourteous manner. Based on the material available on record, the Enquiry Officer came to the conclusion that Charge Nos.1 and 2 were proved. Insofar as Charge No.3 is concerned, the petitioner was exonerated. After considering the enquiry report and other relevant material, the Disciplinary Authority disagreed with the finding of the Enquiry Officer with regard to Charge No.3, and came to the conclusion that the petitioner willfully and intentionally absented to duties and thereby caused inconvenience to the judicial work, and passed the order dated 28.08.2015 imposing the punishment of stoppage of three annual grade increments with cumulative effect against him. Challenging the same, the petitioner preferred an appeal. The appellate authority dismissed the appeal. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner was not permitted to cross examine the witnesses, as a result of which, he could not defend his case effectively; that there is no material for the Disciplinary Authority to differ with the findings of the Enquiry Officer with regard to

Charge No.3 and that the punishment of stoppage of three annual grade increments with cumulative effect imposed upon the petitioner is on higher side and disproportionate to the charges leveled against the petitioner.

4. Learned Standing Counsel appearing for the first respondent submits that only after following the procedure and after issuing notice to the petitioner, the Disciplinary Authority, while differing with the conclusion of the Enquiry Officer with regard to Charge No.3, held that all the charges were proved, and imposed the punishment, and therefore, the impugned order needs no interference by this Court.

5. The plea that the petitioner was not permitted to cross examine is not raised in the grounds of appeal before the first respondent authority and more so, the impugned order is passed on 28.08.2015 and the writ petition is filed in the year 2019.

6. We have gone through the order passed by the Disciplinary Authority as well as the Appellate Authority. We find that the Enquiry Officer, based on the material available on record, held that Charge Nos.1 and 2 were proved. Insofar as Charge No.3 is concerned, though the Enquiry Officer held that the said charge was not proved, the Disciplinary Authority, after issuing notice to the petitioner and after giving him an opportunity, elaborately considered

the issue and basing on the material available on record, came to the conclusion that Charge No.3 was also proved. All the three charges, which are mentioned above, are serious in nature.

7. In ***Syed Yakooob v. K.S.Radhakrishnan***¹, the Hon'ble Supreme Court held as follows:

“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 wherein 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 (vide [Hari Vishnu Kamath v. Syed Ahmed Ishaque](#)), [Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam](#) ([1958] S.C.R. 1240), and [Kaushalya Devi v. Bachittar Singh](#)”.

¹ AIR 1964 SC 477

8. We are of the view that the Disciplinary Authority as well as the Appellate Authority have considered the issue in proper perspective and rightly imposed the punishment of stoppage of three annual grade increments with cumulative effect against the petitioner. As such, we are not inclined to interfere with the impugned order in writ jurisdiction by exercising the power of judicial review under Article 226 of the Constitution of India that too under certiorari jurisdiction.

9. The writ petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Date: 06.02.2019
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