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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.12.2021

PRONOUNCED ON : 08.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.Nos.13603 to 13606 & 13788 to 13791 of 2016
and
Connected Miscellaneous Petitions

In W.P.No.13603 to 13606 of 2016 & 13788 to 13791 of 2016:

1. The Management,
M/s.British Airways
rep. by its Regional HR Manager,
South Asia,
DLF Plaza Tower DLF,
City Phase-I, Gurgaon,
Haryana-122 022.
2. Customer Service Manager,
M/s.British Airways,
No.3/2009 & 4, New Integrated Air Cargo
Complex, Meenambakkam,
Chennai-600 027.

...Petitioners in
all WPs 13603 to 13606 of 2016

Customer Service Manager,
M/s.British Airways,
No.3/2009 & 4, New Integrated Air Cargo
Complex, Meenambakkam,
Chennai-600 027.

...Petitioners in
all WPs 13788 to 13791 of 2016

Vs.

1. The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court,
Shastri Bhawan,
Haddows Road, Chennai-600 006.

2. T.Jenifer Prasanna Kumari

...Respondent in all
WPs.13603 to 13606 of 2016 &
13788 to 13791 of 2016



T.Jenifer Prasanna Kumari

...Respondent 2 in
W.P.No.13603 of 2016
and W.P.No.13788 of 2016

Ramesh Thangadurai

...Respondent 2 in
W.P.No.13604 of 2016
and W.P.No.13789 of 2016

Satish Loganathan

...Respondent 2 in
W.P.No.13605 of 2016
and W.P.No.13790 of 2016

Ramaraja Govindan

...Respondent 2 in
W.P.No.13606 of 2016
and W.P.No.13791 of 2016

Common Prayer in W.P.No.13603 to 13606 of 2016:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records culminated in the impugned common award dated 08.02.2016 made in I.D.No.91 of 2014, I.D.No.92 of 2014, I.D.No.93 of 2014, I.D.No.128 of 2014 respectively passed by the first respondent and to quash the same.

Common Prayer in W.P.No.13788 to 13791 of 2016:

Calling for the entire records culminated in the impugned common award dated 08.02.2016 made in I.D.No.91 of 2014, I.D.No.92 of 2014, I.D.No.93 of 2014, I.D.No.128 of 2014 passed by the 1st Respondent and quash the same and consequently remand back I.D.No.91 of 2014, I.D.No.92 of 2014, I.D.No.93 of 2014, I.D.No.128 of 2014 to the 1st Respondent Tribunal for de-nova adjudication and passing fresh order.

For Petitioners : Mr.R.Prabhakaran in all W.Ps

For Respondent1 : Labour Court (in all Wps)

For Respondent-2: Mr.Balan Haridas in all W.Ps.

C O M M O N O R D E R

Heard the learned counsel for the parties.

2. The brief facts of the case are as follows:-

Claiming that the "Bureau of Civil Aviation Security" [BCAS] had issued an order requiring All International Airlines to stop self-handling of security and to appoint an Indian Domestic



Carrier to carry out security functions, the petitioner-Management had terminated the services of all the respondents-workmen from their various capacities in their security division. The termination order came to be challenged by these affected workmen in various Industrial Disputes before the Central Government Industrial Tribunal-cum-Labour Court, Chennai and by a Common Award dated 08.02.2016, the disputes came to be allowed, by directing the Management to reinstate the workmen with 50% of their back wages, together with continuity of service and other attendant benefits. Challenging these Awards, the present Writ Petitions have been filed.

3.While the learned counsel for the petitioner-Management placed several grounds touching upon the factual matrix of the disputes and questioned the Award, the learned counsel for the workmen submitted that such re-appreciation of evidence under Article 226 of the Constitution of India, is impermissible. The other ground raised by the workmen was that in case of retrenchment, the Management is required to follow the procedure contemplated under Section 25(F) of the Industrial Disputes Act, 1947 [hereinafter referred to as 'ID Act'] and since the Management had not adhered to the principle of "last come first go", the termination itself, is bad in law.

4.Before the Industrial Tribunal, the Management had not let in any oral or documentary evidences. Whereas the workman, namely, T.Jenifer Prasanna Kumari in W.P.No.13603 of 2016, had herself examined as W.W.1 and had let in evidence on behalf of herself and other workmen and had marked 19 documents.

5.The Industrial Tribunal had placed reliance on the oral evidence of W.W.1 and found that apart from the security service work assigned to these workmen, they were also handling other work such as pelletization of cargo, release of cargo, escort of valuable cargo, acceptance of dangerous goods, etc., and Ex.W1, which is the appointment order, does not specify the nature of duties to be carried out by the workmen. Since the Management did not produce any document to substantiate the nature of work of these workmen, the claim of the Management that they were not 'workmen' as defined under the ID Act, was negatived. This apart, the Industrial Tribunal found that, in the list of 12 security service clerks engaged by the Management in their order of seniority, which was not questioned by the Management, the Management had retained some of the juniors to that of the respondents-workmen herein and accordingly held that the termination was in violation of Section 25(G) of the ID Act.

6.It is the settled proposition of law that the scope of interference to an award of the Industrial Tribunal or Labour Court will not be normally interfered by the High Court



exercising its powers under Article 226 of the Constitution of India, but for certain exceptions like correcting errors of jurisdiction or extending the jurisdiction or violation of Principles of Natural Justice or Award based on "no evidence", etc. While demarcating such exceptions, it is also been held that the Tribunal or Labour Court cannot reopen or question the appreciation of evidence in Writ Proceedings.

7. In Syed Yakoob V. K.S. Radhakrishnan and Others reported in AIR 1964 SC 477, such a proposition was held in the following manner:-

"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



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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](#)(1), [Nagendra Nath Bora v. The Commissioner of Hills Division](#) and Appeals, Assam(2), and [Kaushalya Devi v. Bachittar Singh](#) (3)."

8.A similar view was taken in the case of Indian Overseas Bank V. Indian Overseas Bank Staff Canteen Workers' Union and Another reported in 2000 (4) SCC 245, wherein it has held as follows:-

"17.The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. 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 to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of



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the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the Writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below."

9. The learned counsel for the petitioner tried to justify the termination order, by drawing attention of this Court to the reasons adduced in the termination order in connection with the orders issued by BCAS, preventing all International Airlines from handling security functions in the Airports and in handing over such operations to the Indian Domestic Careers. This factual aspect was dealt by the Industrial Tribunal in the impugned award and by placing reliance on the evidence of W.W.1, as well as Ex.W1, had held that inspite of such orders of BCAS, the Management had chosen to retain some of the security clerks, who were juniors to the workmen before it.

10. The Industrial Tribunal had also taken note of the fact that the Management had not produced any documentary evidence to substantiate their claim with regard to the order of BCAS, as well as the seniority list of 12 security clerks, working in their Airlines. This factual findings was on the basis of the evidences before the Industrial Tribunal and therefore the award can neither be termed to be on the basis of "no evidence" nor can this Court re-appreciate such factual findings rendered by the Industrial Tribunal based on the evidences before it in a Writ Petition filed under Article 226 of the Constitution of India. Thus, the stand taken by the learned counsel for the petitioner-Management lacks merit.

11. The Labour Court had also highlighted that some of the juniors of the workmen before the Tribunal were retained by the Management, which finding was on the basis of the evidence of W.W.1. There is no illegality to such a finding. Section 25(G) of the ID Act provides that, when a workman in an Industrial Establishment is sought to be retrenched, the employer shall



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ordinarily retrench the workman, who was the last person in that category. This proposition was ratified by the Hon'ble Supreme Court in the case of Central Bank of India Vs. S.Satyam and Others reported in 1996 (5) SCC 419 in the following manner:-

"9. The plain language of [Section 25-H](#) speaks only of re-employment of 'retrenched workmen'. The ordinary meaning of the expression 'retrenched workmen' must relate to the wide meaning of 'retrenchment' given in [Section 2\(oo\)](#). [Section 25-F](#) also uses the word 'retrenchment' but qualifies it by use of the further words 'workman' who has been in continuous service for not less than one year'. Thus, [Section 25-F](#) does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words workman. Who has been in continuous service for not less than one year. It is clear that [Section 25-F](#) applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while [Section 25-F](#) is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. [Section 25-G](#) prescribes the principle for retrenchment and applies ordinarily the principle of 'last come first so' which is not confined only to workmen who have been in continuous service for not less than one year, covered by [Section 25-F](#)."

12. So also in the case of Samishta Dube Vs. City Board, Etawah and Another reported in 1999 (3) SCC 14, in the following manner:-

"7. We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court could be treated as valid. [Section 6-P](#) of the U.P. Act (which corresponds to Section 25 G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, - in the absence of any agreement between the employer and the workmen in this



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behalf - the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in [Section 6\(N\)](#) (which corresponds to [Section 25F](#) of the Industrial Disputes Act, 1947). ..."

13. Since the impugned Award of the Industrial Tribunal was based on the evidences before it, there is no error of jurisdiction. Likewise, since the Management had not let in any oral or documentary evidence before the Industrial Tribunal to substantiate their grounds, this Court exercising its powers under Article 226 of the Constitution of India, is unable to appreciate the grounds raised by the Management in these Writ Petitions, which involves facts before the Tribunal and which the Management failed to establish therein.

14. Accordingly, all the Writ Petitions stands dismissed. Consequently, the Management shall implement the impugned Common Award of the Central Government Industrial Tribunal-cum- Labour Court, Chennai dated 08.02.2016 passed in I.D.Nos. 91, 92, 93 & 128 of 2014 respectively, within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition(s) is/are closed, if any. There shall be no orders as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court,
Shastri Bhawan, Haddows Road, Chennai-600 006.

+1cc to Mr. Balan Haridas, Advocate, S.R.No.7967

W.P.Nos.13603 to 13606 &
13788 to 13791 of 2016
and Connected Miscellaneous Petitions

AJB(CO)
RGA(18/02/2022)