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W.A.Nos.2774, 2776, 2793 & 2794 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

W.A.Nos.2774, 2776, 2793 & 2794 of 2021

T.Ramachandran (Deceased)

Mrs.R.Loganayagi

*(P2 substituted as LR of the deceased P1 vide
order dated 28.01.2019 in WMP.No.18270/2017)*

... Appellant in WA.No.2774/2021

G.Kathirvelu

... Appellant in WA.No.2776/2021

L.Dhayalan

... Appellant in WA.No.2793/2021

M.Murugesan

... Appellant in WA.No.2794/2021

Vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai.

2.Formerly
The Special Officer,
Thiruvallikkeni Urban Co-operative Society,
No.156, Big Street, Thiruvallikkeni, Chennai – 600 005
Now the Managing Director,
Thiruvallikkeni Urban Co-operative Society,
No.156, Big Street, Thiruvallikkeni, Chennai – 600 005.

... Respondents in all WAs



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COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent Act, praying to set aside the orders passed by the learned Single Judge in W.P.Nos.15911 to 15914 of 2014 dated 26.08.2019.

(in all WAs)

For Appellants : Mr.S.T.Varadarajulu

For R1 : Labour Court

For R2 : Mr.S.John J.Raja Singh,
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the Court was made by *C.KUMARAPPAN, J.*)

This is a case of manipulation of records and misappropriation of Government grant.

2. All the appellants, while serving as Sales Attendant/Assistant under the second respondent/Society, were levelled with charges that they had sold domestic gas cylinders to 428 fictitious consumers and had unjustly enriched themselves. Based on these charges, a domestic inquiry was



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conducted, wherein the charges against them were held as 'proved'.

Consequently, the Disciplinary Authority had imposed the punishment of dismissal on 01.03.2011. When these workmen had challenged the order of dismissal before the Labour Court, Chennai, in I.D.Nos.107 to 110 of 2011, all the Industrial Disputes came to be dismissed by Awards dated 27.03.2014. The challenge made to the Awards of dismissal before the learned Single Judge of this Court in WP.Nos.15911 to 15914 of 2014 was also dismissed on 26.08.2019, which common order is assailed in the present Writ Appeals.

3. The only contention raised by the learned counsel for the appellants is that the author of the material documents which was relied upon by the Labour Court, was not examined. However, the learned Single Judge had touched upon the issues and has rightly found that the standard of proof before the Labour Court is only preponderance of probability, and that the documents produced before the Labour Court was sufficient to reach on such a conclusion.

4. It is a settled principle of law that under the power of judicial



review, the factual finding given by the Labour Court, cannot be gone into, unless the same is perverse.

5. Before we further delve into the above aspect, it is relevant to refer the judgment of the Hon'ble Supreme Court in the case of '**Central Industrial Security Force Vs. Abrar Ali**' reported in '**(2017) 4 SCC 507**', wherein the Hon'ble Supreme Court in categorical term has enunciated that the High Court should not have entered into the arena of facts, which tantamounts to re-appreciation of evidence. It was further held that the re-appreciation of evidence is not permissible in exercise of jurisdiction under Article 226 of the Constitution of India. In the above judgment, the Hon'ble Supreme Court has also relied upon the judgment of '**State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya**' [**State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya and Union of India Vs. P. Gunasekaran**] reported in '**(2015) 2 SCC 610**'. The relevant paragraphs 14 and 15 read as under:-

“14. In State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , this Court held as follows : (SCC p. 587, para 7)

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led



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in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762 : 1999 SCC



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(L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [High Court of Judicature at Bombay v. Shashikant S. Patil, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)”

15. *In Union of India v. P. Gunasekaran [Union of India v. P.Gunasekaran, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554], this Court held as follows : (SCC pp. 616-17, paras 12-13)*

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.

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*



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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;

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

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

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.



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(vi) *correct the error of fact however grave it may appear to be;*

(vii) *go into the proportionality of punishment unless it shocks its conscience.””*

6. In yet another judgment in '**General Manager Vs. Giridhari Sahu and others**' reported in '**(2019) 10 SCC 695**', the Hon'ble Supreme Court has referred the Constitution Bench judgment of this Court in '**Yakoob Vs. K.S. Radhakrishnan**' reported in '**AIR 1964 SC 477**', and held in paragraph 23 as follows:-

“23. A Constitution Bench of this Court, in Yakoob v. K.S.Radhakrishnan [Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477] , has spoken about the scope of writ of certiorari in the following terms: (AIR pp. 479-80, para 7)

“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 is in excess of it, or as a result of failure to exercise jurisdiction. A writ can



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*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 writ of*



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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 (vide Hari Vishnu Kamath v. Ahmad Ishaque [Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233] , Nagendra Nath Bora v. Commr. of Hills Division and Appeals [Nagendra Nath Bora v. Commr. of Hills Division and Appeals, AIR 1958 SC 398] and Kaushalya Devi v. Bachittar Singh [Kaushalya Devi v. Bachittar Singh, AIR 1960 SC 1168]).

(emphasis supplied) ”

****[Emphasis supplied by this Court]***



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7. In the light of the above precedent, it is abundantly clear that 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, howsoever grave it may appear to be. It is also made clear that while issuing a Writ of Certiorari, the finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant material evidence adduced before the Tribunal were inadequate to sustain the impugned finding. It was also held that 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 and domain of the tribunal, and thus, the same cannot be agitated before a Writ Court.

8. While considering the perversity, the only ground urged by the learned counsel for the appellants is the non-examination of the witness, who was author of the material document. But on perusal of Labour Court's Award, the Management has submitted 14 documents, and had also examined 1 witness. The Labour Court had elaborately gone into the oral and documentary evidences and rendered a factual arrived at the finding that the charges levelled against the petitioners are proved. Thus, we do not find



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any perversity in the finding, as well as the consequential punishment imposed against these petitioners. The learned Single Judge has rightly upheld the Labour Court's Award and hence, we find no reason to interfere with the well considered findings of the learned Single Judge.

9. Accordingly, all the Writ Appeals stand dismissed. No costs.

**[M.S.R., J] [C.K., J]
09.09.2024**

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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