

HIGH COURT OF JUDICATUTE AT JABALPUR (M.P.)

SINGLE BENCH : HON'BLE JUSTICE NANDITA DUBEY

Writ Petition No.19400/2014

M.P. Road Transport Corporation & another
Vs.
Rajendra Tiwari

Shri Pranjal Diwakar, learned counsel for the petitioners.
Shri Ashok K. Gupta, learned counsel for the
respondent.

Writ Petition No.19301/2014

M.P. Road Transport Corporation & another
Vs.
Ramnath Kori

Shri Pranjal Diwakar, learned counsel for the petitioners.
Shri Gajendra S. Thakur, learned counsel for the
respondent.

Writ Petition No.19300/2014

M.P. Road Transport Corporation & another
Vs.
Santosh Tiwari

Shri Pranjal Diwakar, learned counsel for the petitioners.
Shri Ashok K. Gupta, learned counsel for the
respondent.

Writ Petition No.19212/2014

M.P. Road Transport Corporation & another
Vs.
Hari Dubey

Shri Pranjal Diwakar, learned counsel for the petitioners.
Shri Ashok K. Gupta, learned counsel for the respondent.

Writ Petition No.7935/2014

Hari Dubey & another
Vs.
M.P. Road Transport Corporation & another

Shri Ashok K. Gupta, learned counsel for the petitioners.
Shri Pranjal Diwakar, learned counsel for the respondents.

Whether approved for reporting : **Yes**
Law laid down
Significant paragraph numbers : **16 & 24.**

ORDER
(28.02.2019)

Writ petition Nos.19400/2014, 19301/2014, 19300/2014, and 19212/2014 are filed by the Corporation for setting aside the award dated 11.09.2012 and 24.12.2013 passed by the Labour Court, whereas W.P. No. 7935/2014 is filed by employees Hari Dubey and another for grant of back wages.

2. As all these petitions arise out of the same award, they are analogously heard and decided by a common order. The facts are taken from W.P. No. 19400/2014.

3. The petitioner is aggrieved by the award dated 11.09.2012 and 24.12.2013, whereby the Labour Court has quashed the order of dismissal of the respondent/employee and directed the Management of the petitioner/Corporation to reinstate the respondent/employee, within one month, without back wages.

4. Brief facts, which led to filing of the present petition are: the petitioner is Madhya Pradesh Road Transport Corporation. The respondent/employee was working as Booking Clerk at the Sagar Depot of the petitioner/Corporation. He and other employees were transferred from Sagar to Bairagarh Depot vide order dated 02.09.2008. This order of transfer was challenged by way of Writ Petition No.10829/2008(S) and the writ Court vide order dated 05.09.2008, stayed the order of transfer and further directed that the respondent shall be permitted to work at the present place of posting, Sagar until further orders. On 19.09.2008, the petitioner/corporation issued yet another order closing down the Sagar Depot with immediate effect and shifting/transferring/posting all the employees to the Divisional Office, Bhopal. This order was

also challenged by the respondent/employee and this Court vide order dated 25.09.2008, stayed the same, directing the Corporation to maintain status-quo with regard to the service condition of the respondent/employee.

5. On 25.10.2008, an inspection of Sagar Depot was made by Shri R.K. Sharma and A.K. Saini, Officers of the petitioner/Corporation, where respondent and 5 other employees were found unauthorizedly working and collecting commission from the transporters and a sum of Rs. 33,185/- alongwith other documents were seized from one Mr. R.M. Tripathi. Pursuant to the inspection report dated 25.10.2008, respondent was served with charge sheet on 31.10.2008, alleging that he was found unauthorizedly working and collecting 2% commission from the bus operators in utter disregard of the relieving order dated 23.09.2008, and without the permission of the competent authority, even though the Sagar Depot was closed on 19.09.2008. The 2% amount illegally collected by him was not deposited by him in the account of petitioner/Corporation, but kept with R.M. Tripathi for personal gain, with intent to cause financial loss to the petitioner/Corporation. The action of respondent in

deliberately disobeying the order of the Superior Officers and illegal collection of funds in the name of Corporation is a major misconduct under *Sthariya Sthayi Adesh* (स्तरीय स्थायी आदेश) 12(1)(b)(d)(f) and (n).

6. Respondent submitted his explanation, the authority, however, not being satisfied with his explanation, initiated an enquiry against the respondent. The Enquiry Officer in his report found the respondent guilty for committing misconduct. The petitioner/Corporation accordingly decided to dismiss him from service vide order dated 26.11.2008.

7. Aggrieved by the order of dismissal, the respondent/employee raised an industrial dispute before the Labour Court, Sagar. The Labour Court vide award dated 24.12.2013, quashed the order of dismissal and directed the management of the petitioner/Corporation to reinstate the respondent, within one month, without back wages. Being aggrieved, the present petition has been preferred.

8. The learned counsel for the petitioner/Corporation contended that the Labour Court,

Sagar has no territorial jurisdiction to decide the matter as the Sagar Depot was closed on 19.09.2008. It was further argued that quashing of enquiry report will not automatically result in the reinstatement of the respondent/employee and the proceedings shall continue from the stage where it stood vitiated. According to him, the award of Labour Court, reinstating the respondent is contrary to the decision of the Supreme Court. Reliance is placed on **(1993) 4 SCC 727 Managing Director Ecil Hyderabad vs B. Karunakar Etc., (2008) 12 SCC 30 Union Of India vs Y.S. Sadhu. Ex-Inspector** and **(2013) 6 SCC 530 Chairman Life Insurance Corporation of India and Ors Vs. Masilamani.**

9. Per contra, the learned counsel for the respondent/employee contended that the Labour Court after appreciation of all the facts has come to the conclusion that the enquiry was arbitrary, biased and illegal and quashed the order of dismissal. It is contended that Labour Court was justified in reinstating the respondent/employee. On behalf of petitioners in W.P. No. 7935/2014, it is urged that the Labour Court ought to have

granted the back wages, since the enquiry was found vitiated and misconduct was not proved.

10. No other point has been raised by the parties.

11. I have carefully considered the rival contentions and perused the impugned award and other materials on record.

12. The charge against the respondent pertains to his unauthorized attending the office at Sagar Depot, without the permission of Superior Officers and disobeying the order of relieving and also of illegally collecting 2% commission for Corporation and keeping it with R.M. Tripathi for personal gain, instead of depositing it in the account of petitioner/Corporation.

13. On perusal of order dated 05.09.2008 and 25.09.2008, passed in W.P. No. 10829/2008(s), it is evident that respondent was working at the Sagar Depot pursuant to the orders of the High Court, whereby the transfer orders of respondent dated 02.09.2008 and 19.09.2008 were stayed by the High Court directing the petitioner/Corporation that respondent/employee shall be

permitted to work at the present place of posting at Sagar and to maintain status quo with regard to service condition of respondent. Hence, the contention of Shri Pranjal Diwakar that the Labour Court, Sagar lacks territorial jurisdiction has no substance and therefore rejected.

14. As regards the contention of learned counsel that award of Labour Court is contrary to the law of Supreme Court, it is observed that the case laws relied by the counsel for the petitioner are not one under the Labour Law/Industrial Law, hence not applicable to the facts of the instant case. In the case laws cited by the petitioner, the employee never raised an industrial dispute, nor invoked the jurisdiction of Labour Court/Industrial Court as has been done in the instant case. In the case laws cited by the petitioner, the employee had directly moved the High Court for exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India for challenging the order of dismissal, primarily on the ground that it was violative of natural justice, which requires that public employment should not be terminated without giving an opportunity to defend himself.

15. As the question of reinstatement of employee, with or without back-wages depends upon a finding of fact to be arrived at on the basis of evidence, the High Court in absence of finding of fact is only entitled to quash the impugned order of dismissal and cannot ordinarily order reinstatement, which is not the case here.

16. In the instant petition, a dispute was raised before the Labour Court under Section 10 of the Industrial Disputes Act. The question as to what are the powers of the Labour Court and how it should proceed to decide the legality and correctness of the termination order of an employee/worker in reference proceedings is no more *res integra*. The Supreme Court in the case of **Delhi Cloth and General Mills Co. Vs. V. Ludh Budh Singh (1972) 1 SCC 595** has explained the legal position :-

"(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its

finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence 1 (1972) 1 SCC 595 before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it."

17. The aforesaid principles were approved by the Supreme Court in the cases of **Karnataka State Road Transport Corporation Vs. Lakshmidamma (Smt.) & Anr. (2001) 5 SCC 433** and **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483**.

18. It is thus clear that the jurisdiction of the Labour Court in a case where the departmental enquiry is found to be illegal is much wider and extend not only to the appreciation of evidence but to record its own findings to its own satisfaction and it may by its award, set aside the order of discharge or dismissal and direct reinstatement of the employee in such terms and conditions as it thinks fit.

19. It is seen from the record that the first issue, "whether the departmental enquiry held against the

employee is illegal and wrong ? If yes, then its effect ?” was decided as preliminary issue by the Labour Court on 11.09.2012. The Labour Court after going through the entire record/documents produced by the employee as well as the Corporation recorded a finding that the enquiry proceedings were conducted arbitrarily and concluded only in three hearings. The Labour Court has observed that on 24.11.2008, the employee had asked for supply of documents and on the same day submitted his objections before the Enquiry officer and despite he being present before the Enquiry Officer, the statement of Departmental witnesses were recorded exparte and the employee was neither supplied with the documents nor given any opportunity to cross-examine the witnesses nor given any opportunity to produce his defence. The Labour Court has also observed that no preliminary enquiry was conducted before initiating the departmental enquiry and held the enquiry conducted against the employee as illegal and improper. The matter was thereafter listed for evidence on the remaining issue on 05.11.2012. Pursuant to which, evidence of Arvind K. Saini (D.W.-1) was recorded and documents Ex. D-1 to D-8 were exhibited.

20. A categoric conclusion that misconduct against the respondent is not proved, has been arrived at by the Labour Court on the basis of evidence on record. The Labour Court has referred to the evidence of D.W.-1 Arvind Kumar Saini, who inspected the Sagar Depot on 25.10.2008 with Mr. R.K. Sharma. He has admitted that the High Court on 05.09.2008 and 25.09.2008 in W.P. No.10829/2008(s) has stayed both the transfer orders dated 02.09.2008 and 19.09.2008 (Ex. D-2) and the respondent was working at Sagar Depot pursuant to these stay orders. The Corporation also failed to prove that relieving order (Ex.D-4) was served on the respondent/employee.

21. Mr. A.K. Saini (D.W.-1) has also admitted that 2% commission was collected as per the order of the District Magistrate, Sagar and deposited by the respondent with Depot Incharge, R.M. Tripathi. Rajendra Tiwari (P.W.-1), has stated that after collection, he used to deposit the amount, as per practice with the Depot Incharge R.M. Tripathi, which is not controverted by the petitioner/Corporation, in fact the inspection report shows that Rs.33,185/- was seized from R.M. Tripathi. The documents, i.e., register/copy etc. seized alongwith the cash amount of Rs.33,185/-, show that the

record of these amount, so collected by the respondent/employee was maintained. The amount of Rs.33,185/- was recovered from the Depot Incharge R.M. Tripathi, and deposited in the account of the Corporation on 25.10.2008 itself with the receipt in the name of R.K. Sharma, Traffic Superintendent. This copy/register contains the date-wise details of the amount collected by the employees, found working on Sagar Depot on that day. It is not the case of the petitioner/Corporation that the amount/money so seized from R.M. Tripathi does not tally with the books or was more or less than what was recorded in the books/register seized on 25.10.2008. In view of the aforestated, it cannot be inferred that there was any personal gain to the respondent/employee or any financial loss has occurred to the petitioner/Corporation. Under the circumstances, there is no perversity in the order of Labour Court. The finding of Labour Court that allegation of misconduct has not been proved is based on sound reasoning and does not call for any interference.

22. As regard the grant of back wages in W.P. No.7934/2014, it is seen that the Labour Court considering that no evidence has been produced by the petitioner that

he was gainfully employed during this period or could not get employment despite trying and the poor financial conditions of Corporation, declined to grant back wages.

23. In exercise of its power of superintendence under Article 226/227 of the Constitution of India, the High Court can interfere with the order of Tribunal/Labour Court only when there has been a patent perversity in the order of the Tribunal/Court subordinate to it or where there has been gross and manifest failure of justice or the basic principle of natural justice has been flouted.

24. In **Syed Yakoob Vs. K.S. Radhakrishnan AIR 1964 Vs. SC 477**, the Constitution Bench of Supreme Court considered the scope of High Courts' jurisdiction to issue a writ of certiorari in cases involving challenge to the order passed by the authorities entrusted with quasi judicial functions under the Motor Vehicles Act, 1939, it was observed :-

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 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 .

25. In view of the parameters laid down by the Supreme Court, the High Court can interfere with the award, only if it is satisfied that the award of Labour Court is vitiated by any fundamental flaws.

26. In my view, the Labour Court has exercised its discretion keeping in view the facts and legal evidence on record and given a well reasoned order, which does not warrant any interference from this Court under the exercise of supervisory jurisdiction.

27. In the result, the writ petitions fail and are dismissed. The award passed by the Labour Court is affirmed. No order as to costs.

**(Nandita Dubey)
Judge**