(2015) 01 SC CK 0107

Supreme Court of India

Case No: Civil Appeal No. 412 of 2015 (Arising out of SLP (Civil) No. 5236/2014)

K.V.S. Ram		APPELLANT
	Vs	
Bangalore Metropolitan Transport Corpn.		RESPONDENT

Date of Decision: Jan. 14, 2015

Acts Referred:

- Constitution of India, 1950 - Article 226, 227, 38, 39, 43
- Industrial Disputes Act, 1947 - Section 11A

Citation: (2015) 2 AD (SC) 202 : AIR 2015 SC 998 : (2015) 2 AJR 236 : (2015) 1 AKR 857 : (2015) 2 AWC 1565 : (2015) 144 FLR 994 : (2015) 1 JLJR 402 : (2015) 2 KCCR 1272 : (2015) 1 LLJ 257 : (2015) 2 PLJR 43 : (2015) 1 SCALE 436 : (2015) 6 SCJ 7 : (2015) 2 SCT 81 :

Hon'ble Judges: R. Banumathi, J.; V. Gopala Gowda, J.

Bench: Division Bench

Advocate: V.N. Raghupathy, for the Appellant; S.N. Bhat, Advocates for the Respondent

Final Decision: Disposed Of

Judgement

R. Banumathi, J.
Leave granted.

2. This appeal by special leave arises out of the judgment dated 3.9.2012 passed by the High Court of Karnataka, in and by which, the High Court dismissed the appeal filed by the Appellant-workman thereby, confirming the termination of the Appellant.

3. Brief facts which led to the filing of this appeal are as under:- The Appellant was appointed on the post of Driver in the Bangalore Metropolitan Transport Corporation on 3.9.1985 and was working on the same post since then. The Appellant was served with article of charge dated 3.9.1990 alleging that he had secured appointment by producing a false transfer certificate. An enquiry was initiated on 15.7.1992 and the Appellant submitted his explanation to the aforesaid charges. The Enquiry Officer submitted his

report on 13.3.2002 holding the Appellant guilty for his misconduct. After affording opportunity to the Appellant to show cause against the proposed punishment, the disciplinary authority passed the order imposing punishment of dismissal from service vide order dated 1.10.2004.

4. Aggrieved by the order of dismissal, the Appellant raised an industrial dispute bearing I.D. No. 39/2005 before the III Additional Labour Court, Bangalore. The Labour Court vide award dated 14.2.2007 directed the management of the corporation to reinstate the Appellant in his original post with continuity of service but without backwages. The Labour Court modified the punishment directing withholding of four annual increments with cumulative effect. In the Labour Court, Appellant has produced notarized copies of orders passed by the Respondent-Corporation in respect of other workmen, who have committed similar misconduct but were awarded lesser punishments. Referring to Exs. W.5 to W.11 which are the notarized copies of the orders passed in respect of other workmen who have committed similar misconduct, Labour Court held that those workmen were reinstated in service with minor punishment of withholding of few annual increments, whereas the Appellant was imposed grave punishment of dismissal from service and thus was discriminated. Referring to another judgment of the High Court in W.P. No. 17316/2005 (L/K) dated 8.8.2005, Labour Court observed that when similarly situated workmen were imposed lesser punishment and the Appellant cannot be discriminated by imposing punishment of dismissal from service and the Labour Court in exercise of its discretion Under Section 11A set aside the punishment imposed on the Appellant and directed reinstatement of the Appellant without backwages.

5. Being aggrieved, Respondent-corporation filed a writ petition before the High Court. Vide order dated 31.1.2008, learned Single Judge of the High Court allowed the writ petition holding that the punishment of dismissal from service was proportionate to the proved misconduct against the Appellant. Aggrieved by the same, the Appellant-workman preferred appeal before the Division Bench challenging the legality and correctness of the said order. The Division Bench dismissed the appeal filed by the Appellant on the ground that the charges levelled against the Appellant are serious in nature and that the punishment of dismissal from service imposed by the disciplinary authority was just and proper. In this appeal, the Appellant assails the correctness of the above judgment.

6. Learned Counsel for the Appellant contended that the High Court erroneously held that the long delay of twelve years in holding the enquiry is not fatal to the case, although it is clearly evident that no reasonable explanation is forthcoming for the inordinate delay of twelve years in concluding the disciplinary proceedings. It was further submitted that in the similar cases of other workmen who produced bogus certificate, they were reinstated in the service withholding of few increments with cumulative effect and while so, the Appellant alone cannot be discriminated by imposing harsh punishment of dismissal from service.

7. Per contra, learned Counsel for the Respondent-Corporation contended that the finding of guilt was based on appreciation of evidence on record and having regard to the gravity of the charges, the Labour Court was not justified in interfering with the punishment imposed by the disciplinary authority and the learned Single Judge as well as the Division Bench of the High Court rightly set aside the award passed by the Court.

8. We have carefully considered the rival contentions and perused the impugned judgment and other materials on record.

9. The Appellant joined the services of the corporation in the year 1985. In the year 1990, charges were framed against the Appellant alleging that he had secured appointment by producing a false certificate and enquiry was initiated in the year 1992 and the Enquiry Officer submitted his report only in the year 2002, nearly twelve years after framing of charges. Even though the Enquiry Officer submitted his report on 13.3.2002, order of dismissal from service was passed only on 1.10.2004. Enquiry report was thus submitted after a lapse of twelve years and there was a delay of twelve years in conducting and completing the enquiry. As pointed out by the Labour Court, there was no plausible explanation for such inordinate delay in completing the enquiry. The Appellant continued in service from 1990 to 2004. Having allowed the Appellant-workman to work for fourteen years, by the time punishment of dismissal from service was imposed on the Appellant, the Appellant had reached the age of forty five years. As observed by the Labour Court, the Appellant having crossed forty five years, he could not have sought for alternative employment. Further, as seen from Exs. W.5 to W.11, similarly placed workmen were ordered to be reinstated with lesser punishment of stoppage of few increments. While so, there is no reason as to why for the similar misconduct the Appellant should be imposed harsh punishment of dismissal from service.

10. It is settled proposition of law that while considering the management''s decision to dismiss or terminate the services of a workman, the Labour Court can interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. Considering the delay in completing the enquiry and the age of the Appellant and the fact that similarly situated workmen were reinstated with lesser punishment, the Labour Court ordered reinstatement, in exercise of its discretion Under Section 11A of the Industrial Disputes Act.

11. In the Writ Petition, while setting aside the award of the Labour Court, learned Single Judge placed reliance upon the judgment of this Court passed in the case of Punjab Water Supply Sewerage Board and Another Vs. Ram Sajivan and Another, and also another judgment of the High Court and observed that a person who practices fraud for securing employment cannot perpetuate on the ground of delay and the learned Single Judge faulted the Labour Court for exercising discretion Under Section 11A of the Industrial Disputes Act and interfering with the punishment of dismissal from service. In our considered view, in exercise of its power of superintendence Under Article 227 of the

Constitution of India, the High Court can interfere with the order of the Tribunal, only, when there has been a patent perversity in the orders of tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted. In our view, when the Labour Court has exercised its discretion keeping in view the facts of the case and the cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court.

12. In Syed Yakoob Vs. K.S. Radhakrishnan and Others, , the Constitution Bench of this Court considered the scope of the High Court''s jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi-judicial functions under the Motor Vehicles Act, 1939. Speaking for the majority of the Constitution Bench, Gajendragadkar, J. observed as under: (AIR pp. 479-80, para 7)

7...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 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 Article 226 to issue a writ of certiorari can be legitimately exercised.

(Emphasis supplied)

13. In the case of Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd. and Anr. (2004) 6 SCC 434, it was held as under:

15. We find the judgment and award of the labour court well reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power Under Article 227 of the Constitution of India to annul the findings of the labour court in its award as it is well settled law that the High Court cannot exercise its power Under Article 227 of the Constitution as an appellate court or reappreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the Appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.

16. It is relevant to mention that in Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, with regard to the limitations of the High Court to exercise its jurisdiction Under Article 227, it was held in para 49 that: (SCC p. 348)

49. (m)...The power of interference Under [Article 227] is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

It was also held that: (SCC p. 347, para 49)

49. (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence Under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it.

14. Emphasizing that while exercising jurisdiction Under Articles 226 and/or 227 of the Constitution of India, Courts are to keep in view the goals set out in the Preamble and in Part IV of the Constitution while construing social welfare legislations, in Harjinder Singh Vs. Punjab State Warehousing Corporation, , this Court has held as under:

21. Before concluding, we consider it necessary to observe that while exercising jurisdiction Under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and

women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

10...The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.

The State of Mysore Vs. The Workers of Gold Mines,

15. Once the Labour Court has exercised the discretion judicially, the High Court can interfere with the award, only if it is satisfied that the award of the Labour Court is vitiated by any fundamental flaws. We do not find that the award passed by the Labour Court suffers from any such flaws. While interfering with the award of the Labour Court, the High Court did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court Under Articles 226 and/or 227 of the Constitution of India and the impugned judgment cannot be sustained.

16. In the result, the appeal is allowed and the impugned judgment passed by the High Court is set aside and the award passed by the Labour Court is restored. In the facts and circumstances of the case, we make no order as to costs.

17. Hon''ble Mrs. Justice R. Banumathi pronounced the judgment of the Bench comprising Hon''ble Mr. Justice v. Gopala Gowda and Hon''ble Mrs. Justice R. Banumathi.

18. Delay condoned.

19. Leave granted.

20. The appeal is allowed in terms of the signed order.