

APHC010178612019



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3368]
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY SECOND DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

WRIT PETITION No: 7698/2019

Between:

1. NUKALA SRINIVASU,, S/O. N VENKATA RAMANA, R/O IN
D.NO.35-11-29, AKULAVARI STREET, MANGALAVARAPU
PETA, RAJ AMAHENDRAVARAM,. EAST GODAVARI DISTRICT.

...PETITIONER

AND

1. M/S INTERNATIONAL PAPER APPM LIMITED, (FORMERLY
KNOWN AS THE ANDHRA PRADESH PAPER MILLS LIMITED)
RAJAMAHENDRAVARAM, EAST GODAVARI DISTRICT,
ANDHRA PRADESH. REP BY ITS ASSOCIATE VICE
PRESIDENT (HRD AND ADMIN

2. THE INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
VISAKHAPATNAM, BY ITS PRESIDING OFFICER.

...RESPONDENT(S):

Counsel for the Petitioner:

1. M SRI ATCHYUT

Counsel for the Respondent(S):

1. VENKAT CHALLA

2. GP FOR LABOUR (AP)

The Court made the following:

THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**WRIT PETITION No.7698 OF 2019****O R D E R:**

Heard Sri M.Vijaya Kumar, learned Senior Counsel assisted by Sri M.Sri Atchyut, learned counsel for the writ petitioner, and Sri K.S.Murthy, learned Senior Counsel assisted by Sri Venkat Challa, learned counsel for the 1st respondent and learned Government Pleader for Labour/2nd respondent.

02. The present writ petition is filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to quash the order dated 08.05.2019 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, in I.D. No. 80 of 2015.

03. The learned Senior Counsel would submit that the Hon'ble Supreme Court discussed in detail about the principles of law governing exercising of extraordinary jurisdiction under Article 226 of the Constitution of India to issue writ of certiorari in the case of **Central Counsel for Research in Ayurvedic Sciences and another Vs Bikartan Das and others**¹ in Civil Appeal No.3339 of 2023 dated 16.08.2023.

¹ 2023 Law Suit (SC) 792

04. The Hon'ble Apex Court in the above judgment at para Nos.50 and 51 held as under:

“The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking”.

“The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end,

the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not”.

05. The Hon’ble Supreme Court further held at para Nos.63 and 64 as under:

“However, we may clarify that findings of fact based on ‘no evidence’ or purely on surmises and conjectures or which are perverse points could be challenged by way of a certiorari as such findings could be regarded as an error of law”.

“Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory”.

06. When coming to the case on hand, the learned Senior Counsel for the petitioner would argue that in the impugned order, Tribunal made observations that the workman failed to establish the basic duties in the

company, and that he has either suppressed the facts of his natural or primary duties in the respondent company or cleverly tried to come under the purview of section 2(s) of I.D.Act to invoke the jurisdiction of the Tribunal, on the ground that the respondent is a company with composite functions and undisputedly, hierarchy system shows there is a purchase department, and the petitioner attended the transactions of purchase. But, he failed to explain whether it is his primary duty or secondary duty and the workman also failed to explain his primary duty.

07. The learned Senior Counsel for the petitioner would further argue that the above observation of the Tribunal is based on no evidence. It is purely a surmise. Hence, they could be challenged by way of writ of certiorari, as those findings have to be regarded as an error of law. He would also argue that the Tribunal did not refer any specific piece of evidence regarding the above observations.

08. Learned Senior Counsel representing the 1st respondent would argue that the observations of the Tribunal are based on evidence, though Tribunal did not refer the relevant evidence. Therefore, the writ petition is not maintainable in law, as they cannot be regarded as an error of law.

09. There is no dispute that the Tribunal in its order made a categorical observation that the petitioner suppressed certain facts

relating to his duties in order to come under the purview of section 2(s) of the I.D.Act. Therefore, refused to entertain the petition and returned the petition giving opportunity to the petitioner to approach proper forum for necessary redressal in accordance with law. Admittedly, the Tribunal in its order did not refer any evidence while expressing the said view/opinion. Undoubtedly, the Tribunal did not entertain the petition based on the above observations, on the ground that it has no jurisdiction. Therefore, it appears that the order of the Tribunal is based on surmise rather than relevant evidence. Hence, it can be treated as an observation based on no evidence. It would amount to an error of law, which led to failure of exercising jurisdiction.

10. In the light of foregoing circumstances, this Court is of the considered opinion that the order of the Tribunal is liable to be set aside, and the matter has to be remitted to the Tribunal for fresh disposal by giving reasons, in accordance with law, after hearing both sides. This is an old matter. Therefore, Tribunal is directed to dispose of the matter as expeditiously as possible, preferably not later than six (06) months, from the date of receipt of copy of the order.

10. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

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