

Ge Power India Ltd. vs A.Aziz on 30 January, 2020

Author: Sanjay Kishan Kaul

Bench: Sanjay Kishan Kaul, K.M. Joseph

REPO

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8111-8112 OF 2009

GE POWER INDIA LTD.
(Formerly known as
M/s. Alstom Projects Ltd.)

Vs.

SRI A.AZIZ

...App

...Res

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The respondent was employed as a workman with the appellant (earlier known as M/s. Alstom Projects Limited) in 1998 when an incident took place on 15th July, 1998 which resulted in a charge sheet-cum-Suspension Order dated 15th July, 1998 charging the respondent with theft and dishonesty in connection with the company's property and act subversive of discipline.

2. The respondent apparently took a hospital gate pass at 10.05 a.m. but went out of the gate at 10.30.a.m. not handing over the gate pass but on the pretext he would go to the pan shop nearby, the ramification of this was the respondent was not checked personally. He actually went to the pan shop and was standing there for about two-three minutes but then started moving towards I.B.road. This movement was seen by the security head guard who asked one Date: 2020.02.06 17:15:52 IST Reason:

of the security guard to call the respondent back. Suffice to say that some reluctance was shown by the respondent and he stopped on the way back to ease himself without actually easing himself and in the process he is allged to have thrown a copper wire weighing 1.4 kgs. which was tied to his waist in cloth at that site from where the items was recovered. Some altercation took place over the issue but on the arrival of the security guards the matter was brought under control.

3. Departmental enquiry was held in pursuance to the aforesaid charges framed and on all the factual aspects it was found that the case of theft had been proved and the respondent was held

guilty of the charges enumerated in the charge-sheet. As a consequence of the enquiry report, an order of dismissal from service was passed on 25th January, 1999 post an opportunity to the respondent to give his explanation.

4. The respondent thereafter assailed the enquiry proceedings before the Labour Court, Gulbarga and award was made and published on 7th March, 2005. The Labour Court analysed the facts in detail and found that the enquiry had been held in accordance with the procedure established as per law, the evidence has been scrutinised and no material evidence was ignored nor was there any perversity. The respondent was found to have thrown copper wire wrapped in a cloth under the guise of easing himself. The application filed by the respondent challenging the orders of the appellant was thus rejected.

5. The respondent thereafter challenged the order of the Labour Court before the Karnataka High Court in W.P. No.9619/2006 which was allowed by the learned Single Judge in terms of order dated 13th February, 2008. The reversal order was based on the facts that the management was required to lead proper evidence to prove case of theft, theft had not occurred inside the factory, no witnesses have been produced nor corroborative evidence lead. It was on the suspicion arising from the fact that the respondent moved away from the pan shop that he was intercepted. Records also show apparently the management had earlier also found some material missing and suspected the respondent as the same had occurred on the days when respondent had applied for a hospital pass. However the learned Single Judge did not allow any benefits of backwages on account of absence of evidence of not having worked.

6. The appellant-management filed an appeal and so did the respondent-workman (latter on account of denial of back wages). The Division Bench of the Karnataka High Court in Writ Appeal No.461/2008 and 646/2008 considered the matter and dismissed the appeal of the appellant while partly allowed the appeal of the respondent by granting 25% of the back wages.

7. The appellant-management thus came in appeal before this Court and while issuing notice, operation of the impugned judgment was stayed by an order dated 16th January, 2009. Subsequently, leave was granted in the matter.

8. We have heard learned counsel for the parties and perused the impugned orders.

9. The substratum of the case of the appellant is that the departmental enquiry which was held met with all the norms of such an enquiry and there was sufficient evidence adduced and analysed which established the case against the respondent beyond all reasonable doubt. The fact that no criminal case was preferred of theft against the respondent could not be a factor taken into account. It has also been submitted that a detailed scrutiny took place at the level of Labour Court which also in detail analysed the evidence on record and came to a finding that there was not perversity or illegality in the order of the disciplinary authority.

10. Learned counsel sought to rely on the observations made in *Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana)* (2010) 5 (SCC) 497 on the issue of scope

of the interference in labour matters by High Courts in exercise of jurisdiction under Article 226 of the Constitution of India. In this behalf he referred to the proposition framed in para 1 and the observations from paragraphs 12 to 14. In the facts of the case, the question which was framed was whether the High Court erred in upsetting the award of the Labour Court without even recording a finding that the same suffered from any jurisdictional error or violation of the rules of natural justice or was vitiated on error of law apparent on the face of the record. The interference by the High Court was frowned upon and set aside. The approach adopted by the Division Bench was said to be contrary to the judicially recognised limitation of High Courts powers in such cases as enunciated in various judgments and the observations made by the Constitution Bench in *Syed Yakoob v. K.S.Radhakrishnan* (1964) 5 SCR 64 were extracted. For convenience, we extract the same observations as under:

"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."

11. On the other hand learned counsel for the respondent contends that the inquiry proceedings were vitiated as the respondent was not in possession of the subject matter of theft and that the Labour Court had erred while the courts below i.e. learned Single Judge and the Division Bench

rightly interfered with the award of the Tribunal.

12. We have considered the rival submissions and are of the view that the proceedings of the enquiry which was found to be in order vide award of the Tribunal did not call for any interference by the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. In fact the learned senior counsel for the appellant was right in contending that there is not even a pretence of recording a finding of any jurisdictional error or violation of natural justice or error of law apparent on the face of the record. What has been done is actually re-appreciation of evidence and on the basis of the some evidence lead, different conclusions is sought to be drawn. It is not also a case where any relevant evidence has been ignored or any inadmissible evidence taken into account but that on the basis of the some evidence scrutinised, another conclusion is sought to be urged. This, in our view, was impermissible.

13. We have also caregully gone through the enquiry report and the evidence which formed the basis of the same as also the award of the Labour Court even though we were not called upon to do so in the proceedings in which we are examining the case. We find that the manner of conduct of the departmental enquiry was in accordance with law and the award of the Labour Court is unassailable as it is based on proper appreciation of evidence.

14. The result of the aforesaid is that the impugned orders of the learned Single Judge dated 13th Feb, 2008 and the Division Bench dated 1st August, 2008 are set aside and the appeals are allowed leaving the parties to bear their own costs.

15. We may note that the aforesaid order is based on the legal principles of the case though we may have some sympathy for the respondent considering he has since crossed the age of retirement and has been battling over these years to get his lis decided. The question is whether any benefit can be extended to the respondent in the aforesaid facts and circumstances. We are of the view that the same can be done to do substantive justice between the parties by invoking our jurisdiction under Article 142 of the Constitution of India and on discussion find that an amount of Rs.2,00,000/- (Rupees two lakhs) to be paid by the management to the respondent to take care of himself, keeping in mind that he lost his service long back, would meet the ends of justice. The amount to be remitted to the respondent within four weeks from today.

.....J. [SANJAY KISHAN KAUL]J. [K.M.JOSEPH] New Delhi;

January 30, 2020.

ITEM NO.103

COURT NO.11

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 8111-8112/2009

GE POWER INDIA LTD.

Appellant(s)

(Formerly known as M/s. Alstom Projects Ltd.) VERSUS A.AZIZ Respondent(s) Date : 30-01-2020
These appeals were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE K.M.
JOSEPH For Appellant(s) Mr. C.U.Singh,Sr.Adv.

Mr. S.S.Rana,Adv.

Mrs.Bindra Rana,Adv.

Mr. Daljeet Dabas,Adv.

For M/S. S. S. Rana & Co., AOR For Respondent(s) Ms. Sneha,Adv.

Mr. Joseph Aristotle,Adv.

Mr. V. G. Pragasam, AOR UPON hearing the counsel the Court made the following O
R D E R Heard learned counsel for the parties. The civil appeals are allowed in terms
of the signed Reportable Judgment.

Pending application, if any, shall also stand disposed of.

(ANITA MALHOTRA)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER

(Signed Reportable Judgment is placed on the file.)