Supreme Court of India
T. Prem Sagar vs The Standard Vacuum Oil ... on 16 December, 1963
Equivalent citations: 1965 AIR 111, 1964 SCR (5)1030
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
T. PREM SAGAR

Vs.

RESPONDENT:
THE STANDARD VACUUM OIL COMPANYMADRAS AND OTHERS

DATE OF JUDGMENT:
16/12/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
GUPTA, K.C. DAS

CITATION:
1965 AIR 111 1964 SCR (5)1030
CITATOR INFO :
D 1972 SC1479 (8)

ACT:
Madras Shops and Establishments Act (36 of 1947) ss.4(1)(a) and 51-Position of management-What is practice-Writ of certiorari--Issue of-High Court-Jurisdiction to decide on facts.

HEADNOTE:
The appellant was appointed by respondent as Road Engineer. After some time, he was promoted as Operations Assistant. There was some misunderstanding between him and the respondent in 1957. While he was drawing Rs. 1000 p.m., he was asked to take leave. When he reported for duty, he was not allowed to join duty as Operations Assistant but was, asked to take up the post of the Senior Operations Supervisor carrying a salary of Rs. 900. As he refused to take up the new post, his services were terminated without complying with the provisions of Section 41,(1). Ho filed an appeal before the Additional Commissioner under s. 41 of the Madras Shops & Establishments Act, 1947. His contention was that the order terminating his services was invalid. The contention of the respondent was that the Additional Commissioner had no jurisdiction to deal with the appeal as

the appellant was a person employed in a position of management and hence the provisions of the Act were not applicable to him. Under Section 51 Of the Act, the Commissioner of Labour decided that the appellant was not employed under the respondent in a position of management. The respondent filed a writ petition in the Madras High Court challenging the order of the Commissioner of Labour..

When the cast was taken up by the Additional Commissioner, the respondent contended that the appellant was an employer as defined in the Act and not an employee. That contention was rejected by the Additional Commissioner who also set aside the order of termination of services of appellant. The respondent filed a writ petition challenging the order of the Additional Commissioner.

The two writ petitions were heard together by a Single Judge of the Madras High Court and were dismissed on the ground that the question involved was one of fact. However, Letters Patent Appeals were accepted by the Division Bench of the Madras High Court. It is against the order of the Division Bench that the appellant came to this Court after obtaining a certificate from the High court. Allowing the Appeals,

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Held (i) The High Court was not right in coming to the, conclusion that the impugned order suffered from any error of law which was apparent on the face of the record and there was no justification for interfering with that order. The order of the Commissioner was an elaborate and well considered order. The Commissioner had taken into account the or a land documentary evidence and had already examined the probabilities of the case. He had laid down certain tests to determine as to whether a person was in a position of management and also applied them to the facts of the case.

(ii)The appellant was not employed in a position of management and as such did not fall within the exemption of s. 4(1) (a).

In order to determine whether a person is in a position of management or not, the factors to be considered are whether the, person had power to operate on the Bank account, whether he could make payments to third parties and enter into agreements with them on behalf of the employer, whether he was entitled to represent the employer to the world at large in regard to the dealings of the employer with strangers, whether he had authority to supervise the work of the clerks employed in the establishment, whether he had control and charge of the correspondence, whether he could make commitments on behalf of the employer, whether he could grant leave to the members of the staff and hold disciplinary proceedings against them and whether he had the power to appoint members of the staff or punish them. The salary drawn by an employee may have no significance and may not be material though it may be treated theoretically as a

relevant factor.
(iii)It could not be maintained that because s. 51 provided that the order of Commissioner of Labour on the questions falling within his jurisdiction was final and could not be agitated in any court of law, High Court was not competent to deal with the writ petition filed against those orders.
In writ proceedings if an error of law apparent on the face of the record is disclosed and a writ is issued, the usual course to adopt is to correct the error and send the case back to the Special Tribunal for its decision in accordance with law. It is inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusion in matters which have been left by the legislature to the decision of specially constituted Tribunals.
Rai Brij Raj Krishna v. S.K. Shaw and Bros., [1951] S.C.R. 145, The Colonial Bank of Australasia v. Willan, 5 P.C. 417, Parry & Co. Ltd. v. Commercial Employees Association, Madras, [1952] S.C.R. 519, Nagendra Nath v. Commissioner of Hills Division, [1958] S.C.R. 1240, Syed Yakoob v. K. S. Radhakrishnan [1964] 5 S.C.R. 64P.T. Chandra v. Commissioner for Workmen's Compensation, Madras, [1958] 1 L.L.J., 55 and The Salem Sri Ramaswami Bank Ltd., Salem v. The Additional
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Commissioner for Workmen's Compensation, Chepauk, Madras and an other, [1956] 2 L.L.J. 254, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 581 and 582 of 1963.

Appeals from the judgment and order dated February 18, 1960 of the Madras High Court in Writ Appeals Nos. 139 and 140 of 1959.

K.K. Venugopal and A.G. Ratnaparkhi, for the appellant (In both the appeals).

S.Govind Swaminathan, P. Ram Reddy, A.V.V. Nair and R. Thiagarajan, for respondent (In both the appeals). December 16, 1963. The Judgment of the Court was delivered by GAJENDRAGADKAR J.-These two appeals raise a short question about the validity of the writ of certiorari which has been ordered to be issued by the Division Bench of the Madras High Court in allowing a Letters Patent Appeal preferred before it by the respondent M/s. Standard Vacuum Oil Company, Madras. The appellant T. Prem Sagar was appointed by the respondent as its Road Engineer at Madras on the 5th February, 1951. In January, 1952, he was promoted as Operations Assistant on a salary of Rs. 450 p.m., and as such, he was placed on probation for a period of six months. At the end of six months, the respondent declared that he had completed his probation satisfactorily. In October,, 1957, as a result of some misunderstandings between him and the respondent, he was again placed on

probation from 1st October, 1957 for a period of six months in the same post of Operations Assistant. At the end of this period,, the appellant received a letter from the Operations Manager of the respondent informing him that he had done his work as a probationer satisfactorily. Even so, it was alleged that he did not show capacity for growth with the organisation and on that account, he was offered the lower post' of Senior Operations Supervisor. It appears that this post was specifically created for the appellant and it carried a salary of Rs. 900. At this time, as Operations Assistant the appellant was drawing Rs. 1,000 p.m. The appellant was then asked to take leave which was due to him, and when on returning from his leave he reported for duty, the management refused to allow him to join duty as an Operations Assistant. The appellant was not prepared to take the post of the Senior Operations Supervisor, with the result that on the 2nd May, 1958, the management of the respondent terminated the services of the appellant with effect from 30th April, 1958.

The appellant then filed an appeal before the Addl. Commissioner for Workmen's Compensation under s. 41 of the Madras Shops and Establishments Act, 1947 (No. 36 of 1947) (hereinafter called the Act). By this application, the appellant complained that the order terminating his services was invalid inasmuch as it had been passed without complying with the mandatory provisions of s. 41 of the Act. Before the Addl. Commissioner for Workmen's, Compensation, the respondent filed a petition alleging that the Addl. Commissioner had no jurisdiction to deal with the appellant's appeal in view of the fact that the appellant was a person employed in the respondent's Head Office at Madras in a position of management, and so, the provisions of the said Act were inapplicable to him. The respondent thereupon moved the Commissioner of Labour under s. 51 of the Act to determine this question. Under the said section, the Commissioner of Labour is competent to decide questions of status and that is why the respondent moved the Commissioner of Labour.

The Commissioner recorded the evidence led by the respondent as well as the appellant, and on the 12th January, 1959 he pronounced his decision that the appellant was employed under the respondent and he was not in a position of management.

The respondent then moved the Madras High Court by Writ Petition No. 521 of 1959 challenging the order of the Commissioner of Labour. Mean-

while, the Additional Commissioner for Workmen's Compensation took up the appeal for hearing. At this time, the order passed by the Commissioner of Labour under s. 51 had been pronounced and the said order was binding between the parties and was final. In view of the said order, the respondent took up an alternative plea before the Addl. Commissioner and urged that the appellant could not invoke the provisions of s. 41 of the Act, because he was an employer as defined under the Act and not an employee. The Addl. Commissioner over-ruled this contention and held that the Act applied. On the merits, he made findings in favour of the appellant, rejected the contentions raised by the respondent against the work of the appellant and its quality and in the result, set aside the order of termination passed by the respondent on the 2nd May, 1958. This order was challenged by the respondent by preferring a writ petition No. 573/1959 before the Madras High Court. That is how the two writ petitions came to be filed. In both these writ petitions, the respondent impleaded the appellant as well as the Commissioner of Labour and the Addl. Commissioner for Workmen's Compensation, Madras. These two latter officers are respondents 2 & 3 in the present appeals,

whereas the employer, the Standard Vacuum Oil Company is respondent No.

1. We are describing the employer Company as the respondent in the course of this judgment.

The two Writ Petitions were heard together by Balakrishna Ayyar J. The learned Judge was inclined to take the view that the appellant was in a position of management and in that sense, he did not agree with the conclusion of the Commissioner of Labour. Even so, he held that the question involved was one of fact and it was not open to him to issue a writ of certiorari to correct the conclusion of the Commissioner even if he thought that the said conclusion was not right. On that view,. he refused to issue a writ in favour of the respondent in W.P. No. 521 of 1959 and as a consequence, the said writ petition as well as W.P. No. 573 of 1959 were dismissed. It is common ground that if the respondent's claim for a writ of certiorari made in W.P. No. 521 of 1959 fails, its claim for quashing the order passed by the Addl. Commissioner for Workmen's Compensation cannot be upheld. The decision of Balakrishna Ayyar J. was challenged by the respondent by preferring an appeal under the Utters Patent before a Division Bench of the Madras High Court. The Division Bench came to the conclusion that Balakrishna Ayyar J. had taken an unduly narrow view about the scope of the High Court's jurisdiction under Art. 226 and it held that the finding made by the Commissioner about the status of the appellant suffered from an error of law which was apparent on the face of it. That is why the said Bench issued a writ of certiorari correcting the finding of the Commissioner and consequently allowed both the writ petitions filed by the respondent. It is against these decisions that the two present appeals have been brought to this Court by the appellant with a certificate issued by the High Court. Before dealing with the main points in controversy between the parties. it would be relevant to refer to the material provisions of the Act. The Act received the assent of the Governor-General on the 2nd February, 1948 and came into force on the 10th February, 1948. It has been passed with the object of providing for the regulation of conditions of work in shops, commercial establishments, restaurants, theaters and other establishments, and for certain other purposes. Section 2 of the Act prescribes definitions. Section 2(3) defines a commercial establishment. It is unnecessary to refer to this definition because it is common ground that the respondent's office at Madras where the appellant was employed at the material time is a commercial establishment under the Act. Section 2(5) defines an employer as meaning a person owning, or having charge of, the business of an establishment and in-

cludes the Manager, Agent or other person acting in the general management or control of an establishment. It will be seen that the definition of the word " employer" includes persons who own the establishment or have charge of the business of the establishment as well as persons who act as the Manager or Agent of the said establishment, or are otherwise acting in the general management or control of it. The control or management which is associated with persons falling under the definition of employer is the general management or control of the said establishment; it is a kind of overall management or control and not management or control of sections or departments or sub-sections or sub- divisions that function under the establishment. Section 2(12) defines a person employed. Since in the present appeals we are concerned with a commercial establishment, it is necessary to read s. 2(12) (iii). It provides that a person employed means in the case of a commercial establishment other than a clerical department of a factory or an industrial undertaking, a person wholly or principally employed in connection with the business of the establishment, and includes a

peon. The test which has to be applied in determining the question as to whether a person is employed in a commercial establishment is whether he is wholly or principally employed in connection with the business of the said establishment. As soon as it is shown that the employment of the person is either wholly or principally connected with the business of the establishment, he falls within the definition. That takes us to the exemptions prescribed by s. 4. We are concerned in the present case with the exemption prescribed by s. 4(1)(a). The said provision lays down that nothing contained in this Act shall apply to persons employed in any establishment in a position of management. One of the points in dispute between the parties is when a person can be said to be employed in the position of management? If the appellant is such a person, then, of course, s. 41 would not apply to him and the view taken by the Division Bench would be right.

The next section to consider is s. 41. This section provides the procedure which has to be followed in dismissing employees to whom the Act applies. Section 41(1) lays down that no employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided, however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose. Sub-section (12) confers right of appeal on the person dealt with under sub-section (1), and sub-section (3) provides that the decision of the appellate authority shall be final and binding on both the employer and the person employed. It is common ground that the termination of the services of the appellant which has given rise to the present proceedings has not complied with s. 41(1); so that if it is shown that the appellant is an employee under s. 2(12)(iii) and not an employer under s. 2(5) and if it is further proved that he is not a person employed in the respondent's establishment in a position of management, then the termination of his services is invalid and the order passed by the addl. Commissioner for Workmen's Compensation is correct. It is only if the respondent can show that the appellant is either an employer or falls within the exemption prescribed by s. 4(1)(a) that the writ petitions filed by it can succeed.

There is one more section to which reference must be made before we proceed to deal with the merits of the present appeals. That is section 51. This section provides, inter alia, that if any question arises whether all or any of the provisions of the Act apply to an establishment or to a person employed therein , it shall be decided by the Commissioner of Labour and his decision thereon shall be final and shall not be liable to be questioned in any court of law. The Commissioner is thus constituted into a Tribunal empowered to deal with questions therein specified, and the statute provides that the decision of the Commissioner shall be final on those points.

The first question which falls to be considered is: what are the limits of the High Courts' jurisdiction in issuing a writ of certiorari in respect of orders like the one pronounced by the Commissioner in the present case? Mr. Venugopal contends that in dealing with this question in the present appeals, we must bear in mind the specific provision of s. 51 which provides that the decision of the Commissioner of Labour on the questions falling within his jurisdiction under the said section shall be final and shall not be liable to be questioned in any court of law' He concedes that a provision like this cannot take away the jurisdiction conferred on the High Courts under Art. 226 of the

Constitution, and so, it would not be open to him to contend that because s. 51 provides that the said questions will not be agitated in any court of law the High Court was incompetent to deal with the writ petitions filed by the respondent against the Commissioner's orders. He, however, urges that in determining the limits of the High Court's jurisdiction and the scope of its interference under Art. 226, it would be material to remember that the statute has provided that the decision of the Commissioner shall be final.

In support of this argument, he has referred us to the decision of this Court in Rai Brij Raj Krishana and another v. S.K. Shaw & Brothers(1). In that case, this Court was dealing with the scheme of the Bihar Buildings (Lease, Rent and Eviction) Control Act (No. 111 of 1947) and the provisions of S. 11 in particular. Fazl Ali J. who spoke for the Court observed that the Act has set up a complete machinery for the investigation of the matters mentioned in it upon which the jurisdiction of the Controller to order eviction of a tenant depends, and it expressly (1) [1951] S.C.R. 145.

makes his order final and subject only to the decision of the Commissioner. It is in the background of this position that the question which arose for the decision of the Court was whether in such a case, the validity of the order could be questioned in a regular suit brought before a civil court. In answering this question, a distinction was drawn between facts which are collateral and the proof of which confers jurisdiction on the special tribunal, and facts the decision of which on the merits has been left to the jurisdiction of the Tribunal. In regard to the latter category of cases, the Court accepted the view expressed by Sir James Colville in the Colonial Bank of Australasia' v. Willan(1). Sir James Colville had observed in that case that "the authorities establish that an adjudication by a Judge having jurisdiction over the subject-matter is, if no defect appears on the face of it, to be taken as conclusive of the facts stated therein; and that the Court of Queen's Bench will not on certiorari 'quash such an adjudication on the ground that any such fact, however essential, has been erroneously found." Proceeding to deal with the dispute before it on this basis, this Court held that even if the Controller may be assumed to have wrongly decided the question of non-payment of rent, which by no means was clear, his order cannot be questioned in a civil court. It would be noticed that though Fazl Ali J. has discussed the position in regard to the jurisdiction of the High Court under Art. 226, the issue arose in an appeal brought from a suit instituted for the purpose of challenging the Controller's findings and conclusions. The distinction made between. jurisdictional facts which are Collateral and the proof of which confers jurisdiction on the special tribunal and facts which are left to the decision of the tribunal on the merits is, however, well-settled and is not open to doubt or dispute. In that sense, Mr. Venugopal may be right in contending that the question about the status of the appellant has been left to the decision of the Commissioner of Labour under s. 51, and so, the High Court can correct the (1) 5 P.C. 417 at p. 443.

error committed by the Commissioner in dealing with the question of status only if the said error-is an error of law apparent on the face of the record.

Mr. Venugopal has then relied upon the observations made by this Court in the case of Parry & Co. Ltd. vs. Commercial Employees' Association, Madras(1). In that case, Mukherjee J. stated that no certiorari is available to quash a decision passed with jurisdiction by an inferior tribunal on the mere ground that such decision is erroneous, and be has further added that it was conceded by Mr. Isaacs

that in spite of the relevant statutory provisions the superior Court is not absolutely deprived of the power to issue a writ, although it can do so only on the ground of either a manifest defect of jurisdiction in the tribunal that made the order or of a manifest fraud in the party procuring it. The argument is that these observations suggest that it is only errors in respect of jurisdiction or errors in orders produced by fraud that can be corrected by a writ of certiorari. It may be conceded that the observation made by Mukherjee J. on which Mr. Venugopal relies does, prima facie lend some support to his argument; but we do not think that this observation can be read as laying down a categorical and unqualified proposition that unless an error of jurisdiction is established, or fraud proved, no writ of certiorari can be issued.

In fact, after the judgment of this Court was pronounced in the case of Parry & Co. Ltd.(1), the question about the jurisdiction of High Courts in issuing writs of certiorari under Art. 226 has been frequently considered and there is consensus of opinion in the judgments delivered by this Court eversince that a writ of certiorari can be issued where the order of the inferior tribunal is shown to suffer from an error which is at)-parent on the face of the record. As was observed by this Court in Nagendra Nath v. Commissioner of Hills Division.(2), "it is clear from an examination of the authorities of this Court. (1) [1952] S.C.R. 519 at P. 525. (2) [1958] S.C.R. 1240,1269,1270.

as also of the Courts in England, that one of the grounds on which the jurisdiction of the High Court on certiorari may be invoked, is an error of law apparent on the face of the record and not every error either of law or fact, which can be corrected by a superior Court, in exercise of its statutory powers as a Court of appeal of revision." It is, of course, difficult and indeed it would be inexpedient to lay down any general test to determine which errors of law can be described as errors of law apparent on the face of the record, vide Syed Yakoob v. K.S. Radhakrishnan & Ors.(1). Therefore, we are not prepared to accept Mr. Venugopal's contention that since there is no error of jurisdiction in the present case and no allegation of fraud, the High Court was not justified in issuing a writ. In our opinion, if the Commissioner's order is shown to suffer from the infirmity of an error of law apparent on face of the record, the High Court would be justified in issuing a writ notwithstanding the fact that s. 51 of the Act purports to make the Commissioner's order final.

That takes us to the question as to whether the High Court was right in holding that the Commissioner's order suffered from such an infirmity. Two points were urged in the writ proceedings by the respondent when it challenged the validity of the Commissioner's order. The first contention was that the appellant is not an employee of the respondent and does not fall under s. 2(12) which defines a person employed for the simple reason that he comes under the class of persons included in the definition of the word "employer". The argument was that the appellant being in a position of management, was really holding the status of a manager in a limited sense and was thus an employer. In support of this argument, it was pointed out that several provisions of the Act were not applicable to the appellant, and so, it would be futile to describe him as a person employed by the respondent. In fact, the argument was that the (1)[1964] 5 S.C.R. 64.

I/SCI/64-66 salary paid to the appellant cannot be said to be wages, and so, s. 29 itself was inapplicable to him. It is unnecessary to consider whether the salary paid to the appellant amounts to wages or not, because, in our opinion, the argument that the appellant was in the position of an

employer is so clearly unsustainable that it is hardly necessary to examine it in detail. Even so, it may incidentally be observed that the definition of wages prescribed by s. 2(18) is wide enough to take in the case of the appellant's salary. Similarly, it was urged that s. 31 which provides for the wages for over-time work, as well as ss. 32 and 33 would not be applicable to the appellant. Assuming that some provisions of the Act will not apply to the appellant, we do not see how it follows that the appellant becomes an employer under s. 2(5). If he is not an employer under s. 2(5), he is obviously a person employed under s. 2(12), subject, of course, to the decision of the question as to whether his case falls under the exemption provided for by s. 4(1) (a). Now, the definition of the word "employer" contained in s. 2(5) clearly requires that the person who can be called an employer should have the general management or control of the establishment. The appellant was employed at the Head Office of the respondent at Madras and it is nobody's case that he was having any control or general management of the said establishment. Indeed, we are inclined to think that the plea raised by the respondent in this form for the first time in the writ proceedings before the High Court that the appellant was an employer, is a frivolous plea. This plea had not been raised in this form either before the Addl. Commissioner for Workmen's Compensation or the Commissioner for Labour.. That takes us to the question as to whether the appellant is an employee whose case falls under the category of exempted cases provided for by s. 4(1)(a). Section 4(1)(a) refers to persons employed in any ,'.establishment in a position of management, and so, the question is when can a person be said to have been employed by the respondent in a position of management. It is difficult to lay down exhaustively all the tests which can be reasonably applied in deciding this question. Several considerations would naturally be relevant in dealing with this problem. It may be inquired whether the person had a power to operate on the bank account or could he make payments to third parties and enter into agreements with them on behalf of the employer, was he entitled to represent the employer to the world at large in regard to the dealings of the employer with strangers, did he have authority to supervise the work of the clerks employed in the establishment, did he have control and charge of the correspondence, could he make commitments on behalf of the employer, could he grant leave to the members of the staff and hold disciplinary proceedings against them, has he power to appoint members of the staff or punish them-, these and similar other tests may be usefully applied in determining the question about the status of an employee in relation to the requirements of s. 4(1)(a). The salary drawn by the employee may have no significance and may not be material though it may be treated theoretically as a relevant factor, vide Chandra (T.P.) v. Commissioner for Workmen's Compensation, Madras & Anr(1). and The Salem Sri Ramaswami Bank Ltd Salem v. The Additional Commissioner for Workmen's Compensation, Chepauk, Madras & Anr(1). At this stage, it is necessary to examine how the Commissioner of Labour approached this question. He began the discussion of this problem by referring to the two

-Madras decisions just cited by us and said that as decided by the Madras High Court, it would be necessary to find out whether the appellant was in a position of management "because he was in charge of correspondence of the branch, was supervising the work of the clerks employed in the Branch, was operating on the bank account, was making payments, was entering into agreements with third parties on (1) [1958] 1 L.L.J 55.

(2) [1956] 2 L.L.J 254.

behalf of the Company and was granting leave to the staff of the Branch." Thus, it would be seen that in addressing himself to the question raised for his decision, the Commissioner applied tests to which no exception can be taken. Having set out the tests which had to be applied, he considered the evidence led by the parties before him and be recorded his conclusions clearly and categorically in his order. He held that the appellant had no power of appoint- ment of labour, had no power to take disciplinary action against them, had no power to grant leave to persons subordinate to him, had no discretion in the matter of incurring expenditure of his own accord as the expenditure had to be sanctioned by the General Manager; had no power of attorney to enter into agreements with third parties on behalf of the Company; his work was subject to the overall supervision of the Operations Manager; he bad no power to bind the Company by his acts; he could not operate upon the Co.'s bank account; he could not lay down policy for the Co. and that be had to obtain the approval of the Operation Manager on almost all matters. Having discussed the whole of the evidence and recorded definite findings, the Commissioner no doubt observed in the course of his order that "it cannot, therefore, be said that the respondent was exercising managerial powers in relation to the Head Office of the Company where he was employed," and in that connection, he added that one of the questions which had to be considered by him was whether the powers exercised by the appellant were managerial with reference to the Head Office of the Company. It is on these two statements which the Commissioner made in the course of his order that the Division Bench has rested its decision and has recorded its finding that the order passed by the Commissioner of Labour is on its face patently and manifestly erroneous. The Division Bench considered the relevant judicial decisions bearing on the question about the extent of the High Court's jurisdiction in entertaining petitions for writs of certiorari and held that if the error in the judgment of the Commissioner of Labour was shown to be an error of law which was manifest on the face of the record, it would be justified in issuing a writ. This view is undoubtedly correct. The High Court was also right when it held that the question about the status of the appellant being a mixed question of fact and law, if it clearly appeared from the impugned order that in dealing with the status of the appellant a patently erroneous legal test was applied, that also would-justify the(interference of the High Court under Art. 226. It is in that connection that the High Court has observed that the manifest error in the impugned order lay in the fact that the Commissioner "thought that it is only when an employee is exercising managerial powers in relation to the head office of the Company where he was employed that he can be said to be employed in a position of management within the meaning of s. 4(1)(a) of the Act". It would be noticed that this conclusion is based on the two statements in the impugned order to which we have already adverted.

Mr. Swaminathan for the respondent has fairly conceded that when the Commissioner enumerated the tests which had to be applied in dealing with the status of the appellant, he committed no error of law; but be strongly urged that having laid down the proper tests, the Commissioner went wrong in applying the said tests because he seems to have concentrated on the main question as to whether the appellant was clothed with managerial powers in regard to the affairs of the Head Office of the Company at Madras where he was employed, and that he contends constitutes a manifest and patent error flaw in the conclusion recorded by the Commissioner. We are not impressed by this argument. The order pronounced by the Commissioner is an elaborate and well-considered order. He has taken into account the oral evidence, the documents produced before him and has also examined the probabilities of the case. In appreciating the effect of the two statements on which so much reliance

has been placed by Mr. Swaminathan and which, in substance, was the sole basis of the decision of the Division Bench, we have to bear in mind the fact '.bat the said two sentences represent only one of the many reasons given by the Commissioner in support of his conclusion, and that reason also was given by him and probably had to be given by him, because it appears that one of the contentions raised by the respondent before the Commissioner was that the appellant was clothed with managerial functions and duties. In the application made by the respondent under s. 51 before the Commissioner, the respondent had specifically averred in paragraph 3 that the appellant was an employee in the position of management and "his duties and functions were managerial". That being so, the Commissioner naturally had to consider this aspect of the matter and so, he observed that he appellant did not have managerial functions, duties or authorities. It would we think, be unfair to hold that the whole approach of the Commissioner was vitiated by the fact that he 'concentrated on the question about managerial functions and authority and did not apply the other tests which have been expressly set out by him in the earlier part of his order. Therefore, we do not think that the Division Bench was right in coming to the conclusion that the impugned order suffers from any error of law which is apparent on the face of the record. Incidentally, we ought to point out that even if the Division Bench was right in holding that the impugned order should be corrected by the issue of a writ of certiorari, it would have been better if it had not made its own findings on the evidence and passed its own order in that behalf. In writ proceedings if an error of law apparent on the face of the record is disclosed and a writ is issued, the usual course to adopt is to correct the error and send the case back to the special Tribunal for its decision in accordance with law. It would, we think, be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted Tribunals.

In the result, the appeals are allowed, the orders passed by the High Court in the two writ petitions filed by the respondent are set aside and the said writ petitions are ordered to be dismissed with costs.

Appeals allowed.