

**(1970) 03 MAD CK 0017**  
**In the Madras High Court**

P. Balakrishnan

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

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**Date of Decision :** 12-03-1970

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1970) 2 LLJ 679

**Hon'ble Judges :** Alagiriswami, J

**Bench :** Single Bench

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**Judgement**

Alagiriswami, J.—The petitioner was employed in the firm of the 2nd respondent for a number of years. Though he says he has been in

service from 1939, the Labour Court has found that, he has been in service from 1951, and I do not think that that finding can be assailed. But

what happened in this case was that, according to the petitioner, he had some illness on 19.11.1965 and could not proceed to the shop. He

applied for leave and got treated with local medicines and thereafter admitted himself as an in-patient into the Government Hospital, Kanchipuram

on 22.11.1965 and remained there till 25.11.1965. He says that after he was discharged he was undergoing treatment at home under the doctor's

instructions till 1.12.1965. He says further that he reported for duty on 2.12.1965 and worked as usual till 3.12.1965 and that at about 7.30 P.M.

on that day his services were terminated. He appealed to the Commissioner for Workmen's Compensation u/s 41(2) of the Madras Shops and

Establishments Act. He later withdrew it because the industrial dispute between him and the 2nd respondent was referred to the Labour Court,

Madras. The issue referred to the Labour Court was:

Whether the non-employment of P. Balakrishnan is justified; if not, to what relief he is entitled? To compute the relief, if any, awarded in terms of money, if it can be so computed.

The Labour Court has held that it was the petitioner that had left the 2nd respondent's service and that the 2nd respondent did not terminate his service. This writ petition is filed to quash the order of the Labour Court.

2. The Labour Court has referred to the evidence of the petitioner about the various occasions on which he applied for leave and how it U

confused. In so far as this part of the discussion in the Labour Court's order is concerned, it is certainly justified. But the Labour Court has

committed a mistake in saying that the petitioner did not summon the salary register and day book. In fact the salary register was before the Labour

Court, as appears from the order itself. In addition there were three other pieces of evidence before it, by way of answers in cross-examination

given by M.W. 2, a partner of the 2nd respondent firm. He has stated that the petitioner issued three receipts for rent on behalf of the 2nd

respondent to the Kamakshi Amman Co-operative Society on 2.12.1965. He has also stated that the petitioner wrote out 2 cash bills in the shop

on 3.12.1965 and that he would not be able to say what all books he wrote on that day.

3. In Ex. W. 6 sent by the 2nd respondent in the proceedings u/s 41(2) before the Commissioner for Workman's Compensation, the 2nd

respondent had not stated that the petitioner left the service of his own accord. They said so only in the additional counter Ex. M-6. If the Labour

Court had taken this evidence into consideration and still come to the conclusion that the petitioner had left the 2nd respondent's service of his own

accord, this Court may not be able to interfere with that finding of fact. The question therefore is whether a finding arrived at without considering

the relevant pieces of evidence can be said to disclose an error apparent on the face of the record.

It is well established that the jurisdiction of this Court under Article 226 of the Constitution of India in a case where a Tribunal has acted within its

apparent on the face of the record. Leaving aside for the moment cases of interpretation of the statutory provisions which may normally give rise to

no difficulty, the question we are concerned with in this case is whether a finding

of fact arrived at without taking into consideration the relevant piece of evidence can be said to disclose an error apparent on the face of the record. The petitioner relies upon the decision in *Crompton Parkinson (Works) Private Limited v. Their Workmen* 17 *Factories Journal Reports* 121 where at page 129 the Supreme Court has observed that a conclusion drawn by the Tribunal without advertent to the evidence before it amounts to an error of law and cannot possibly be sustained. But in that case their Lordships of the Supreme Court were not concerned with the scope of Article 226 of the Constitution of India. That was a case on an appeal with special leave against a decision of the Labour Appellate Tribunal. That statement of law might not be quite appropriate to the circumstances of this case. The petitioner then relies upon *State of Andhra Pradesh Vs. Sree Rama Rao*, . What their Lordships have stated there is that the High Court may undoubtedly interfere where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion or on similar grounds. They have also stated that if there be some legal evidence on which the findings of the departmental authorities, who are the sole Judges, can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution. Here again this decision is not of any help in the present case, because we are concerned not with the absence of legal evidence to support the findings as there is certainly some evidence which can support the findings, but with the fact that the Tribunal has not adverted to certain pieces of evidence which would have a great relevancy to the decision of the question.

5. The next decision relied upon is the one in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, . Their Lordships of the Supreme Court held that the argument that some evidence was not duly considered by the Tribunal would normally pertain to the realm of the appreciation of evidence and would as such be outside the purview of an enquiry in proceedings for a writ of certiorari under Article 226 of the Constitution. This decision would on first appearance seem to be against the contention of the petitioner. But it was contended in that case that the question whether respondent No. 1 had a workshop at Chidambaram was a pure question of fact

and the High Court had no jurisdiction to interfere with the finding recorded by the Appellate Tribunal and seek to correct it by issuing a writ of certiorari (page 480). On this their Lordships observed:

...but we do not think that the failure of Appellate Tribunal to give a reason in that behalf, or to refer specifically to the evidence adduced by respondent No. 1 would by itself constitute such an error in its decision as to justify the issue of writ of certiorari under Article 226. In this connection we ought to add that it has been suggested by respondent No. 1 that in dealing with his claim for a permit, admissible evidence which he wanted to adduce had been excluded by the Tribunal from the record; the argument that some evidence was not duly considered by the Tribunal, would normally pertain to the realm of the appreciation of evidence and would, as such, be outside the purview of an enquiry in proceedings for a writ of certiorari under Article 226.

In the earlier part of the judgment their Lordships slated tint it might he conceded that it would have been better if the Appellate Tribunal had indicated why it rejected the case of respondent No. 1 in regard to his alleged workshop at Chidambaram. Therefore, looking at the facts of the case it is obvious that was a case where the Tribunal had not held that the fact that reasons were not given would not enable the High Court to interfere under Article 226. But the question whether, where reasons had been given for the conclusion and certain other points which are relevant had not been considered, it is open to this Court to interfere with the finding of fact, still remains. In this connection 1 may refer to the decision in *R. v. Agricultural Land Tribunal* [1960] 2 All E.R. 518. There it was held that where an inferior tribunal acting within its jurisdiction makes an error of law (e.g. in acting on no evidence or in acting on evidence which ought to have been rejected or in failing to take into consideration evidence which ought to have been considered) certiorari cannot be granted to quash the decision of the tribunal for that error of law unless the error appears on the face of the record, and the Court, on application for certiorari, is not entitled to look behind the record or to receive evidence for that purpose.

In this case the record includes the evidence given by M.W. 2 and the admissions which he had made and to which I have already referred. This is not a case where we have got to look behind the record or to receive evidence

before it could be held that there has been an error of law in the finding of the Tribunal. It is an error apparent on the face of the record. That is what their Lordships meant is also clear from the passage at page

520, where their Lordships say:

There is a clear distinction between a tribunal that acts without jurisdiction and one which goes wrong in law while acting within its jurisdiction, e.g.,

in acting on no evidence or in acting on evidence which ought to have been rejected or in failing to take into consideration evidence which ought to

have been considered. Those are all matters of law, and unless the error appears on the record, no order for certiorari can be obtained. I am quite

satisfied that we are not entitled to look at any affidavit evidence, in other words to go behind the record in this case, and on the record I can see

no error of law.

Looking at the record in this case, it is obvious that relevant evidence had not been considered by the Tribunal. It is not however every piece of

evidence the failure to consider which by the Tribunal can be said to disclose an error of law. It must be an evidence as would, it taken into

consideration, lead to a conclusion different from that arrived at by the Tribunal. Such evidence is available in the case. It is therefore obvious that

there is an error apparent on the face of the record in this case. The writ petition is allowed and the order of the Labour Court is quashed. No

costs.