
(2014) 12 MAD CK 0216
In the Madras High Court
Case No : Writ Appeal No. 1136 of 2012

The Special Officer

APPELLANT

Vs

The Appellate Authority/Assistant Commissioner of Labour

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 33

Tamil Nadu Shops and Establishments Act, 1947 — Section 41, 41(1), 41(2)

Citation : (2015) 1 LLJ 568

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Judgement

P.R. Shivakumar, J.—This writ appeal is filed against the order dated 29.11.2011 made in W.P. No.20654 of 2011 wherein the appellant herein had challenged the order of the first respondent passed in TNSE Appeal No.IA/11/2009 dated 14.02.2011 and prayed for quashing of the same by issue of a Writ of Certiorari.

2. The arguments advanced by Mr.M.S. Palaniswamy, learned counsel for the appellant and by Mr. Lakshmi Narayanan, learned counsel representing Mr.S.Mohan, learned counsel on record for the second respondent were heard. We paid our anxious considerations to the same. We also took into consideration the relevant materials produced in the form of typed-set of papers.

3. The second respondent is an employee of Chennai Central Co- Operative Bank Limited. While she was employed as Jewel Appraiser in V.House Branch of the said bank, she opened a Savings Bank account in her name at the Anna Salai branch of the same bank in Savings Bank Account No. 3368. As many as 12 fictitious credit entries were made in the above said Savings Bank account of the second respondent by making credit entries prior to the date of cheques issued in respect of the said account, whereas actual remittance came to be made much later and thereby temporary misappropriation took place causing loss of interest to the Bank. Similarly, some fictitious credit entries were also made in the Saving Bank account of the second respondent for honouring certain cheques drawn on

her account. A debit note dated 12.04.2004 for payment in respect of Cheque No. 804536 was found, but the cheque was found missing. A cash remittance of Rs.17,000/- made on 30.11.2004 was not posted in the ledger folio. Another cheque dated 12.02.2005 bearing Cheque No. 805470 for a sum of Rs.50,000/- was not posted in the ledger folio. A sum of Rs.10,000/- from S.B. Account No. 2963 of one Rajamanickam and a sum of Rs.32,500/- from the Saving Bank account No. 1207 of one Syed Salim were transferred to the Saving Bank Account of the second respondent on 31.03.2004 without the consent of the concerned account holders. A further sum of Rs.50,000/- from the account of the above said Syed Salim came to be transferred to the account of the second respondent on 30.06.2004. A sum of Rs.8,500/- also came to be transferred from the Savings Bank Account No. 3432 of Syed Unnisa to the above said Savings Bank account of the second respondent on 29.09.2004. All such things happened because, the second respondent, after opening the account, permitted the then Manager of Anna Salai Branch by name Shanmugavel to operate her account, besides handing over a number of post dated cheques / signed blank cheques to him. The said Shanmugavel, who was the then Manager of Anna Salai branch, was found to have misappropriated the bank funds and indulged in falsification of entries and unauthorized transactions. Misappropriation made by him through the operation of the Savings Bank account of the second respondent was found to be to the tune of Rs.7,655/-.

4. Alleging that the second respondent colluded with the branch manager Shanmugavel and facilitated the irregularities committed by him and thereby she too committed misappropriation of funds of the Bank, she was served with a charge memo dated 20.07.2007. In the domestic enquiry, the charge was found to be proved and the management awarded the punishment of dismissal from service by the order of the appellant dated 08.04.2009 made in his proceedings No. 4130/04/2008/A1.

5. The above said impugned order of the appellant was challenged by the second respondent before the first respondent in TNSE. Appeal No. 1- A/11 of 2009 under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947. P.Shanmugavel, the then branch manager of Anna Salai branch, was not examined before the Enquiry Officer in the domestic enquiry either on the side of the Management or by the second respondent (employee) on her side. Hence, three documents produced by the second respondent before the Enquiry Officer as DE-1, DE-2 and DE-3 were not considered by the Enquiry Officer on the premise that the author of the said documents, namely Shanmugavel, was not produced by the second respondent/employee as a witness on her side to prove the said documents. In the light of the said facts, the Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947 (the first respondent) gave an opportunity to the second respondent to adduce further evidence and the second respondent adduced further evidence by examining herself as Aw1 and the said Shanmugavel as AW2 and by producing 20 documents marked as Exs.A1 to A20 in the said appeal. The appellant herein, who was the respondent

before the first respondent, was also allowed to adduce additional evidence in the form of testimony of one Chandrasekaran examined as RW1. The appellate authority under the Tamil Nadu Shops and Establishments Act, 1947, namely the first respondent herein, considered the entire materials available on record including the additional evidence recorded in the statutory appeal and, upon such consideration, took a view that the charge against the second respondent was not proved and held that the order of dismissal could not be justified. Accordingly, the first respondent set aside the order of dismissal issued by the appellant in his proceedings No. 4130/04/2008/A1 dated 08.04.2009. The said order of the first respondent dated 14.02.2011 made in TNSE Appeal No. 1A/11 of 2009 was challenged in the writ petition and the learned single Judge declined interference with the impugned order of the first respondent.

6. It is the contention of the learned counsel for the appellant that the powers of the appellate authority under Section 41 the Tamil Nadu Shops and Establishments Act, 1947 is similar to that of a Labour Court under the Industrial Establishments Act; that in a case wherein the dismissal or discharge of an employee is challenged before the Labour Court/appellate authority under the Tamil Nadu Shops and Establishments Act, 1947, the Labour Court /Appellate Authority has to decide at the first instance the question whether the order of dismissal was proceeded by a fair and proper enquiry following principles of natural justice; that only if the Labour Court / appellate Authority arrives at a conclusion that either there was no enquiry or the enquiry conducted was not fair and proper or in case the management itself volunteers to adduce additional evidence thinking that the evidence adduced in the domestic enquiry may not be sufficient to justify the punishment, additional evidence can be recorded by the Labour Court/Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947; that in the case on hand, the first respondent/appellate authority under the Tamil Nadu Shops and Establishments Act, 1947, without rendering a preliminary finding as to the fairness and propriety of the domestic enquiry and without there being an exercise of option by the management to adduce further evidence in justification of the punishment of dismissal, erroneously allowed the second respondent/employee to adduce evidence and thereafter called upon the management to adduce rebuttal evidence and that such a procedure adopted by the first respondent was erroneous. It is the further contention of the learned counsel for the appellant that as per Section 11-A to the Industrial Disputes Act, 1947 for exercising the power of the Labour Court to set aside the order of dismissal or discharge and direct reinstatement on such terms and conditions or to give such other relief to the workman including the award of lesser punishment in lieu of discharge or dismissal, only the materials already on record alone shall be taken into account; that the power of the first respondent (appellate authority under Section 41 of Tamil Nadu Shops of Establishment Act, 1947) being pari materia with the power of the Labour Court under Section 11-A of the Industrial Disputes Act, 1947 ought not to have taken into account, the additional evidence adduced by the

second respondent in the appeal and that since the first respondent allowed additional evidence to be adduced by the second respondent and took into consideration such additional evidence also to arrive at a conclusion that the charges were not proved and the punishment of dismissal was liable to be set aside as it could not be justified, such an exercise by the first respondent/appellate authority was beyond the scope of the power conferred under Section 11-A of the Industrial Disputes Act, 1947. In support of his contention, learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, wherein the Apex Court has enumerated as many as 7 principles. They are as follows:

"(I) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straight away adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be under such circumstances, it is open to the Tribunal to deal with, in the first instance, as a preliminary issue, the validity of the domestic enquiry, If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management.

But if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did both provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings- recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the Validity of the domestic enquiry as well as the finding recorded there in and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under S. 10 or by way of an application under S. 33 of the Act."

7. The learned counsel for the appellant also relied on a judgment of the Hon''ble Supreme Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, in which *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, was followed. It was clarified by the Hon''ble Supreme Court as follows:

"In our considered opinion it will be most unnatural and impractical to expect a party to take a definite stand when a decision of jurisdictional fact has first to be

reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal."

22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as preliminary issue: whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties, that question must be decided as a preliminary issue. On that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before that Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible, in any proceeding to raise the issue."

8. On the other hand, it is the contention of the learned counsel for the contesting respondent (second respondent) that the learned counsel for the appellant inappropriately advocates the application of the principle embodied in Section 11-A of the Industrial Disputes Act is inappropriately sought by to the case of an appeal before the appellate authority under the Tamil Nadu Shops and Establishments Act, 1947; that the appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 being an appellate forum is clothed with powers of directing/permitting additional evidence to be adduced and that therefore, the proceedings under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 before the appellate authority under the said Act shall not be controlled by Section 11-A of the Industrial Disputes Act since the statutory appeal under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 is not comparable with the Industrial dispute referred to the Labour Court/Industrial Tribunal. In support of his contention, learned counsel for the second respondent has relied on a judgment of a Division Bench of this Court and a judgment of the Hon"ble Supreme Court. They are

1. Srirangam Janopakara Bank Ltd. Vs. S. Rangarajan and Another, (a Division Bench of this Court); and

2. Remington Rand of India Limited Vs. Thiru R. Jambulingam, .(Supreme Court).

9. In Srirangam Janopakara Bank Ltd., and Rangarajan (S.) and another, a Division Bench of this Court, dealing with the scope of an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 quoted with approval an observation made by an earlier Division Bench in S.U.S. Davey Sons Vs. Additional Commissioner for Workmen's Compensation and Another, to the following effect that the power of the appellate authority under Section 41(1) of the Tamil Nadu Shops and Establishments Act, 1947 was an appellate jurisdiction conferred by the statutory provision and that Rule 9(2) which purported to confine the consideration of the appellate authoirty to the evidence already on

record could not be taken as a rule abridging or taking away the power of the appellate authority to take additional evidence. Rule 9(2) of the Tamil Nadu Shops and Establishments Rules, 1948, reads as follows:

"The procedure to be followed by the Commissioner for Workmen's Compensation when hearing appeals preferred to him under Section 41(2) shall be summary. He shall record briefly the evidence adduced before him and then pass orders giving his reasons therefor."

Pointing out the said provision, the Division Bench made it clear that the said rule was not intended to confer power on the appellate authority to take evidence dehors Section 41(2) and that the rule really lays down a rule of procedure stating that the hearing of the appeal shall be summary and the evidence, if any, to be recorded shall be brief and that reasons should be assigned for the orders passed. Reading together Section 41 and Rule 9(2), the Division Bench made the following observation:

"It would also appear necessary in the interests of the proper working of an enactment like the Madras Shops and Establishments Act, to confer on the appellate authority the power to take evidence itself, if the circumstances of a case justify it. The common law gives the employer the right to terminate the services of an employee in accordance with the terms of the contract between them, but S.41(1) has provided a restriction on this right by making it obligatory on the employer to hold an enquiry and make a record of the evidence, before terminating the employee's services. It is a matter of common knowledge that many employers are not adequately equipped to conduct an enquiry dealing with an erring employee charged with misconduct. The employer may be illiterate; even if he is literate, he might be unfamiliar with the judicial procedure of holding an enquiry; he might be the person whom the employee had disobeyed and from that point of view the prosecutor and the judge would be rolled into one; as a consequence, he might be considered as having a bias against the employee. But none of these circumstances by its own force can preclude the employer from holding the enquiry and from discharging the statutory obligations placed on him. To hold otherwise, would lead to an unworkable state of affairs, because no one else can take the place of the employer for the purpose of holding an enquiry, against an employee in his own establishment, even if he suffers from any of the disabilities above mentioned. By making the scope of the appeal sufficiently wide and comprehensive it will be possible for the aggrieved party to obtain redress in the appellate Court, namely the Commissioner for Workmen's Compensation, who, functioning in a judicial capacity, holds the balance even between the employer on the one hand and the employee on the other. For that purpose, it may be necessary for him to take additional evidence in the interests of justice and for the purpose of giving an adequate and binding decision. The power of the appellate authority under S.41 (2) of the Act should be construed in the widest manner possible, so as to take in also the power to take additional evidence, where the needs of the case call for it."

10. The scope of an appeal under the Tamil Nadu Shops and Establishments Act, 1947 was considered by the Hon"ble Supreme Court in *Remington Rand of India Limited Vs. Thiru R.Jambulingam*, cited "2" supra. The Hon"ble Supreme Court made the following observations:

"The jurisdiction of the Commissioner is an appellate jurisdiction and is of wider scope unlike that of the Tribunal in an application under section 33 of the I.D. Act. The Commissioner is competent to rehear the matter completely and come to its own conclusion after re-appreciation of the evidence. There is no legal bar in entertaining additional evidence if that is necessary in the interest of justice. The rule of law which has been laid down by this Court with regard to jurisdiction of the Industrial Tribunal in an application under section 33 of the I.D. Act in interfering with the order of dismissal passed in a domestic enquiry, is not applicable to the case of an appeal before the Commissioner provided for under section 41 of the Shops Act. We are, therefore, unable to accept the submission of the learned counsel."

11. The scope of the power of appellate authority under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 came to be considered again by the Supreme Court in the light of proviso to Section 11-A of the Industrial Disputes Act, 1947 in the *The United Planters Association of Southern India Vs. K.G. Sangameswaran and another*, . After reproducing Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 and Rule 9 of the Tamil Nadu Shops and Establishments Rules, 1948, the Hon"ble Supreme Court made the following observations:

"17. From a perusal of the provisions quoted above. It will be seen that the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion on the questions involved in the appeal is very wide. Even if the evidence is recorded in the domestic enquiry and the order of dismissal is passed thereafter, it will still be open to the appellate Authority to records. If need be, such evidence as may be produced by the parties. Conversely, also if the domestic enquiry is ex parte of no evidence was recorded during those proceedings, the Appellate Authority would still be justified in taking additional evidenced to enable it to come to its own conclusions on the articles of charges framed against the delinquent officer."

12. The above cited judgments of the Division Bench of this Court and the Hon"ble Supreme Court, provide a fitting answer to the contention of the learned counsel for the appellant that the appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 was wrong in permitting the second respondent to adduce evidence in the appeal without rendering a finding to the effect that either there was no enquiry preceding the order of dismissal or that the enquiry conducted was not fair and proper.

13. In the light of the above said judgments of this Court as well as the Hon"ble Supreme Court laying down the principles of law governing the powers of the

appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 to reappraise the evidence and record additional evidence, we are of the considered view that the contention of the learned counsel for the appellant that the first respondent /appellate authority under the Tamil Nadu Shops and Establishments Act, 1947, committed an error in allowing the second respondent to lead evidence at the stage of appeal without at the first instance expressing a finding as to the fairness and propriety or otherwise of the domestic enquiry, is untenable and the same has got to be discountenanced.

14. Coming to the merits of the case, the charge levelled against the second respondent/delinquent employee is that she committed misappropriation of funds by opening a Saving Bank Account at Anna Salai branch of the appellant bank, colluding with Shanmugavel, the then Branch Manager of Anna Salai Branch of the appellant Bank and facilitated a series of illegal financial transactions in respect of the said Savings Bank Account carried out by him. The charge is not that there was dereliction of duty on her part or that there was negligence on her part as an employee of the Bank. On the other hand, the specific charge levelled against her is that she colluded with Shanmugavel, the then Branch Manager of Anna Salai Branch of the appellant Bank and facilitated the irregular financial transactions made by him in respect of the said Savings bank account by making false entries and unauthorized transfers and misappropriation of the funds of the Bank. The second respondent/delinquent employee does not dispute the fact that she opened a Savings Bank Account at Anna Salai Branch of Chennai Central Co-Operative Bank Ltd., whereas she was working as Jewel Appraiser at V.House branch and that some irregularities and falsification of entries came to be made in respect of the said account opened by her at Anna Salai Branch. It is also not disputed by her that she had given post dated cheques / signed blank cheques to Shanmugavel, the then Branch Manager of Anna Salai Branch and permitted him to operate the said account on her behalf. But she has given an explanation to the effect that the said account was opened at the request of Shanmugavel, the then Branch Manager, Anna Salai Branch in order to help him to avail a loan from Karur Vysya Bank in her name for meeting the expenses of his son's marriage and issued post dated cheques and signed blank cheques for repayment of the loan based on the promise made by him that he would keep the account regularized and use the cheques only for the repayment of the loan availed from Karur Vysya Bank. It is her further explanation that since none of the cheques was dishonoured, she was under a bonafide belief that Shanmugavel making remittances into her account regularly equal to the instalments; that on the other hand said Shanmugavel seems to have committed some irregularities in respect of the said account without the knowledge of the second respondent; that she did not commit any misappropriation in collusion with the said Shanmugavel as projected in the charge memo and that the same was confirmed by Shanmugavel by giving a letter dated 01.02.2007 produced as DE-1 and producing DE-2 letter dated 12.05.2005 and DE-3 receipt evidencing remittance of Rs.7643/-, the amount of loss allegedly caused to the Bank in connection with

the transactions in the S.B Account of the second respondent. even the loss occasioned due to the misappropriation by Shanmugavel was make good by remitting the amount allegedly misappropriated.

15. In this regard, it is an admitted fact that the above said Shanmugavel, who allegedly indulged in such malpractices relating to the account of the second respondent was proceeded with departmentally and removed from service and he was not in the service of the appellant bank when the domestic enquiry against the second respondent was conducted. As the second respondent was sought to be held responsible for the misappropriation committed by Shanmugavel on the premise that she colluded with him and facilitated the commission of misappropriation by him, a joint domestic enquiry against both could have revealed the correctness or otherwise of the contention of the second respondent regarding absence of knowledge of the malpractices committed by Shanmugavel. Unfortunately such common enquiry was not conducted. When the domestic enquiry was conducted against the second respondent, she expected Shanmugavel to be produced by the management as a witness. But, the management did not examine him as a witness on the side of the management. She relied on two letters written by Shanmugavel admitting that the irregularities in maintenance of the accounts relating to the Savings Bank account of the second respondent were committed by him alone and a receipt showing that he remitted a sum of Rs.7643/- (the amount of loss caused to the bank due to the irregularities committed in respect of the S.B account of the second respondent) to show that there was no complicity in that regard on the part of the second respondent. Those three documents were produced before the Enquiry Officer as DE1, DE2 and DE3, the Enquiry Officer refused to take them into account on the ground that the author of the documents was not examined. Consequently, the finding of the Enquiry Officer went against the second respondent. The same made her to take to her guards by adducing additional evidence before the appellate authority, namely the first respondent. Before the appellate authority, the above said Shanmugavel figured as AW2 and he himself fully supported the defence plea of the second respondent, taking upon himself the entire blame. He has also accepted having given the letters admitting that he himself committed the mistakes and there was no abutment, connivance or collusion on the part of the second respondent.

16. It is also pertinent to note that after the second respondent adduced evidence in the form of testimonies of AW1 and AW2 and Exs.A1 to A20, the management also chose to adduce rebuttal evidence by examining RW1. After a thorough scrutiny of the evidence recorded by the Enquiry Officer and also the additional evidence recorded by the first respondent in the appeal, at the time of hearing of the appeal, the first respondent /appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 came to the conclusion that the charge of misappropriation (either directly or in collusion with Shanmagavel) against the second respondent was not proved; that if at all there was any negligence on her part in not verifying what was happening in Anna Salai Branch

in respect of her account, the same could not be construed to be a negligence in discharge of her duty as an employee of the Bank at V.House Branch and that hence the order of dismissal was not justified and the same was liable to be set aside.

17. The said finding of the appellate authority, the final authority on facts, cannot be said to be perverse. The learned single Judge also, after going through the materials found no ground to interfere with either the finding of the appellate authority or the order of the appellate authority setting aside the order of dismissal. We are also not in a position to find any reason to interfere with the order of the learned single Judge dismissing the writ petition. There is no merit in the writ appeal and the same is liable to be dismissed.

Accordingly, the writ appeal is dismissed. No costs.