

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**WRIT PETITION Nos.16194 of 2021 and 10277 of 2022**

**WRIT PETITION No.16194 of 2021**

**Between:**

1. The Union of India rep. by it's the Secretary, Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.

2. The Chief Commissioner of Customs, Central GST Visakhapatnam Zone, GST Bhawan, Port Area, Visakhapatnam-530035.

3. The Principal Commissioner of Customs, Custom House, Port Area, Visakhapatnam-530035.

**... Petitioners.**

**AND**

Namarla Satyanarayana, S/o.late Venkata Rao, Superintendent of Customs (Preventive),  
(Under the Orders of Suspension & Currently Suspension revoked)  
O/o.The Principal Commissioner of Customs, Custom House, Port Area, Visakhapatnam-530035.

**... Respondent.**

**WRIT PETITION No.10277 of 2022**

**Between:**

1. The Union of India rep. by it's the Secretary, Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.

2. The Chief Commissioner of Customs, Central GST Visakhapatnam Zone, GST Bhawan, Port Area, Visakhapatnam-530035.

3. The Principal Commissioner of Customs, Custom House, Port Area, Visakhapatnam-530035.

**... Petitioners.**

**AND**

Namarla Satyanarayana, S/o.late Venkata Rao, Superintendent of Customs (Preventive),  
(Under the Orders of Suspension & Currently Suspension revoked)  
O/o.The Principal Commissioner of Customs, Custom House, Port Area, Visakhapatnam-530035.

**... Respondent.**

DATE OF ORDER PRONOUNCED : 19.04.2022

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI  
AND  
THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**

1. Whether Reporters of Local Newspapers may be allowed to see the order? : Yes/No
2. Whether the copy of order may be marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to see the fair copy of the order? : Yes/No

**JUSTICE A.V.SESHA SAI**

**JUSTICE RAVI CHEEMALAPATI**

**\* THE HON'BLE SRI JUSTICE A.V.SESHA SAI  
AND  
THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**

**+ WRIT PETITION Nos.16194 of 2021 and 10277 of 2022**

**% 19.04.2022**

**WRIT PETITION No.16194 of 2021**

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1. The Union of India rep. by it's the Secretary, Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
2. The Chief Commissioner of Customs, Central GST Visakhapatnam Zone, GST Bhawan, Port Area, Visakhapatnam-530035.
3. The Principal Commissioner of Customs, Custom House, Port Area, Visakhapatnam-530035.

**... Petitioners.**

**AND**

Namarla Satyanarayana, S/o.late Venkata Rao, Superintendent of Customs (Preventive),  
(Under the Orders of Suspension & Currently Suspension revoked)  
O/o.The Principal Commissioner of Customs, Custom House, Port Area, Visakhapatnam-530035.

**... Respondent.**

**! Counsel for Petitioners : Sri Suresh Kumar Routhu.**

**^ Counsel for Respondent : Sri N.Vijay.**

**WRIT PETITION No.10277 of 2022**

**Between:**

1. The Union of India rep. by it's the Secretary, Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.

2. The Chief Commissioner of Customs, Central GST  
Visakhapatnam Zone, GST Bhawan, Port Area, Visakhapatnam-  
530035.

3. The Principal Commissioner of Customs, Custom House, Port  
Area, Visakhapatnam-530035.

**... Petitioners.**

**AND**

Namarla Satyanarayana, S/o.late Venkata Rao, Superintendent  
of Customs (Preventive),  
(Under the Orders of Suspension & Currently Suspension  
revoked)  
O/o.The Principal Commissioner of Customs, Custom House, Port  
Area, Visakhapatnam-530035.

**... Respondent.**

**! Counsel for Petitioners : Sri Suresh Kumar Routhu.**

**^ Counsel for Respondent : Sri N.Vijay.**

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1)** Civil Appeal Nos.2055-2056 of 2022, dated 23.03.2022
- 2)** (1964) 5 SCR 64 : AIR 1964 SC 477
- 3)** (1995) 1 S.C.R. 1104
- 4)** (1958) S.C.R. 1240
- 5)** A.I.R. 1960 S.C. 1168

This Court made the following:

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI  
AND  
THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**

**WRIT PETITION Nos.16194 of 2021 and 10277 of 2022**

**COMMON ORDER:-**

Having regard to the nature of controversies in these two writ petitions, this Court deems it appropriate to dispose of these two writ petitions by way of this common order. The respondents in Original Application Nos.162 and 174 of 2021 on the file of the Central Administrative Tribunal, Hyderabad Bench are the petitioners in these writ petitions. In these cases challenge is to the common order, dated 07.04.2021, passed by the Tribunal in the aforementioned original applications.

2. Shorn of inappropriate details, the factual situation which is relevant for the adjudication of these writ petitions is as follows:-

On the basis of a complaint alleged to have been made by the brothers of the respondent herein as to the schedule tribe caste status of the respondent, the District Collector initiated action under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulations of issuance of certificate Act, 1993, (hereinafter called, Act 6 of 1993) and issued a show cause notice, dated 03.05.2018 and in response thereto respondent herein submitted his explanation. Thereafter, the District Collector vide order, dated 25.06.2018, cancelled the schedule tribe caste certificate of the petitioner, issued in the year 1980. Challenging the said order of cancellation of the caste certificate, respondent herein filed a

statutory appeal under Section 7 of the Act and the State Government, appellate authority on 12.07.2018 granted stay of operation of the orders of the cancellation of caste certificate passed by the District Collector on 25.06.2018 and the said appeal is pending consideration before the State Government-appellate authority.

3. On the basis of a complaint made by the niece of the respondent on 06.03.2020, respondent was suspended from service by the third petitioner by way of an order, dated 04.05.2020 and the same came to be extended on 30.07.2020. Applicant/respondent filed Original Application No.506 of 2020 before the Tribunal, questioning the said orders of suspension. The Tribunal allowed the said Original Application No.506 of 2020 by way of an order, dated 10.11.2020, setting aside the order of suspension, dated 04.05.2020 and the extension order, dated 30.07.2020. The Tribunal also directed the respondents therein to post the applicant/respondent herein in a non-sensitive post. Questioning the said order, petitioners herein filed Writ Petition No.5358 of 2021 before this Court and this Court by way of an order, dated 05.03.2021 disposed of the said writ petition without interfering with the order passed by the Tribunal in Original Application No.506 of 2020. Thereafter, the review filed by the petitioners herein also ended in dismissal on 22.10.2021. It is also pertinent to note that on 11.03.2021 the department reinstated the applicant/respondent into service. Vide order, dated 24.12.2020, the Union of India promoted the respondent as Assistant Commissioner of Endowments, which is a Group-A

post. Subsequently, the Principal Commissioner of Endowments/third petitioner herein vide order, dated 25.01.2021 extended the period of suspension of the respondent by 45 days. Assailing the validity of the said order, dated 25.01.2021, the respondent herein filed Original Application No.162 of 2021. Third petitioner herein also issued a charge memo, dated 04.02.2021, framing as many as seven charges against the respondent herein. Assailing the said charge memo, the respondent herein filed Original Application No.174 of 2021 before the Tribunal. The Tribunal by way of the impugned common order disposed of the Original Application Nos.162 and 174 of 2021, setting aside the charge memo, dated 04.02.2021 and directed the petitioners herein to allow the applicant to join as Assistant Commissioner of Endowments on a notional basis from the date of revocation of the suspension by the authorities with consequential benefits thereof excepting back wages while fixing three months time for the compliance of the said order. The Tribunal also left it open for the authorities to initiate disciplinary proceedings against the applicant in terms of rules and the law.

4. In the above background these two writ petitions came to be instituted by the petitioners herein, questioning the common order passed by the Tribunal in the above said Original Applications.

5. Heard Sri Suresh Kumar Routhu, learned Senior Standing Counsel for Customs and Central Excise and Sri N.Vijay, learned counsel for the respondent/applicant.

6. Learned counsel for the petitioners contended that the common order passed by the Tribunal is highly erroneous, contrary to law and in elaboration it is contended by the learned counsel that the finding of the Tribunal that the impugned action in the original applications suffers from lack of jurisdiction is neither sustainable nor tenable in the eye of law. It is further argued by the learned counsel that having regard to the language employed in the office order, dated 24.12.2020 of the Union of India, the conclusions arrived at by the Tribunal in the impugned order with regard to the jurisdiction of the third petitioner herein cannot be sustained. It is further contended that since the respondent is not permitted to assume the charge of Assistant Commissioner of Endowments pursuant to the office order, dated 24.12.2020, it cannot be construed that third petitioner herein has lost jurisdiction to initiate the impugned action. Learned counsel further submits that the respondent/applicant did not raise any contention as regard the jurisdiction in Original Application No.506 of 2020. According to the learned counsel, the judgment referred in the impugned order is not relevant to the facts and circumstances of the case. In support of his submissions and contentions, learned counsel for the petitioners places reliance on the judgment, dated 23.03.2022, of the Hon'ble Supreme Court in the case of

***Premlatha @ Sunita vs. Naseeb Bee and others in Civil Appeal Nos.2055-2056 of 2022.***

7. Per contra, learned counsel for the respondent/applicant submits that there is absolutely no error nor there exists any infirmity in the order passed by the Tribunal and in the absence of the same, the order passed by the Tribunal which is impugned in the present writ petitions is not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted by the learned counsel that the finding of the Tribunal with regard to the jurisdiction of third petitioner to initiate the impugned action cannot be faulted in view of the office order No.156/2020, dated 24.12.2020 passed by the Government of India. It is further contended by the learned counsel that by way of the office order, dated 24.12.2020 the Union of India ordered promotion of the respondent herein along with others as Assistant Commissioner of Customs and Central Excise with immediate effect. According to the learned counsel paragraph 6 of the office order, dated 24.12.2020, cannot be pressed into service for denying the posting nor the same can be a ground for interference by this Court with the order passed by the Tribunal. It is also the submission of the learned counsel that once the promotion order is issued, third petitioner herein seized to have the power to initiate any action against the respondent and the authority competent, to take action if any is the Union of India.

8. In the above background, now the issues this Court is called upon to answer in the present writ petition are:-

*a) Whether the orders passed by the Tribunal, in the facts and circumstances of the case, are sustainable and tenable?*

*b) Whether the impugned orders warrant any interference by this Court under Article 226 of the Constitution of India?*

9. The information available before this Court, in clear and vivid terms, reveals that when the third petitioner herein suspended the respondent vide order, dated 04.05.2020, and extended the same by way of an order, dated 30.07.2020, the respondent herein, by invoking provisions of Section 19 of the Administrative Tribunal Act, 1985, filed Original Application No.506 of 2020. The said orders of suspension and the extension were set aside by the Tribunal vide order, dated 10.11.2020 in Original Application No.506 of 2020 and the Tribunal also directed the authorities to post the applicant in a non-sensitive post and left it open to initiate disciplinary action. Questioning the validity of the said order, the Department carried the matter to this Court by way of filing W.P.No.5358 of 2021. This Court disposed of the said writ petition by way of order, dated 05.03.2021 and the fact remains that this Court declined to interfere with the order passed by the Tribunal in Original Application No.506 of 2020. In this context it would be appropriate to refer to the operative portion of the said order, which reads as follows:-

*"With regard to subsequent events, we note that the charge memo subsequently issued upon the respondent employee is under challenge before the Tribunal, hence we choose not to make any observations on the merits of such challenge. We, however, hold the decision of 4<sup>th</sup> petitioner to extend suspension of the respondent on 21.01.2021 in spite of the order of the Tribunal and after his promotion is non est in law. It shall, however, be open to the appropriate authority to take independent decision with regard to suspension of the respondent, if necessary, pending departmental enquiry in accordance with law without being influenced by the observations made in this order."*

10. Despite the aforesaid finding recorded by this Court as to the sustainability of the extension of suspension, dated 21.01.2021, third petitioner herein passed another order on 25.01.2021, once again extending the period of 45 days. According to the learned counsel for the respondent, the said action on the part of the third petitioner herein would amount to disobedience of the orders passed by this Court. The said order of extension, dated 25.01.2021, was the subject matter of Original Application No.162 of 2021.

11. When the third petitioner herein issued a charge memo, dated 04.02.2021, framing as many as seven charges against the respondent herein, the respondent herein filed Original Application No.174 of 2021, assailing the said charge memo on the ground of inherent lack of jurisdiction to the third petitioner herein to issue such a charge memo. As mentioned supra,

according to Sri Suresh Kumar Routhu, learned Senior Standing Counsel for the Customs and Central Excise, the finding recorded by the Tribunal with regard to the jurisdiction of the third petitioner herein is highly unsustainable and untenable in view of the office order No.151 of 2020, dated 24.12.2020. Learned counsel places heavy reliance on the paragraphs 6 and 7 of the said office order, dated 24.12.2020, which read as follows:-

*"6. The Principal Chief Commissioner/Principal Director General, CBIC and all other supervisory authority concerned shall ensure that if any of the officers whose name has figured in Annexure-I, II & III to this order is under suspension or facing any chargesheet or prosecution, he/she should not be allowed to assume charge of the post of Assistant Commissioner and this fact should be reported to the Board immediately. Further, if any of the officers figuring in Annexure-I, II & III is undergoing any penalty, he/she should be allowed to assume the charge of the post of Assistant Commissioner only after the expiry of the currency of the penalty period. This fact may also be reported to the Board. Furthermore, if any of the officers figuring in the Annexure-I, II & III has taken VRS or has resigned or has expired, this order would not be applicable and the supervisory authority concerned shall report the facts relating thereto to the Board immediately.*

*7. The joining reports of the officers with name, designation, date of birth, current zone, mobile number and e-mail ID may be sent to the Board, DGHRD (HRM-I) and DGHRD (HRM-II) by 7<sup>th</sup> January, 2021."*

12. Learned counsel for the applicant/respondent submits that once promotion orders are passed by the Union of India, the Principal Commissioner of Customs/third petitioner herein loses his jurisdiction to initiate any sort of disciplinary proceedings against the respondent herein and places reliance on paragraph 1 of the said office order No.156 of 2020, dated 24.12.2020, which reads as follows:-

*"The President is pleased to promote the officers mentioned in Annexure-I, II and III to the grade of Assistant Commissioner of Customs and Central Excise in Pay Band 3 with Grade Pay of Rs.5400/- (pre-revised) on purely ad-hoc basis with immediate effect and until further orders, against temporary posts in the grade of Assistant Commissioner created as a result of cadre restructuring of CBEC in the year 2013 for a period of 5 years ending in December, 2018 and further extended for a period of 3 years with the approval of the competent authority."*

13. The contention of the learned counsel for the petitioner with reference to paragraphs 6 and 7 of the office order No.156 of 2020, dated 24.12.2020, in the considered opinion of this Court would not render any assistance to the case of the petitioners herein in view of the above paragraph. The fact remains that as on the date of issuance of office order No.156 of 2020, dated 24.12.2020, there was no suspension order nor there was charge memo. Therefore, in the opinion of this Court, the contention contra advanced by the learned counsel for the petitioner would not stand for judicial scrutiny. It is significant to

note in this context that according to the Office Order No.156 of 2020, dated 24.12.2020, the order of promotion came into existence with immediate effect. In fact, the Tribunal categorically dealt with the sustainability of the charge memo, dated 04.02.2021, at paragraph 7(iii) of the impugned order. It is also very much clear that while disposing of the Original Applications, the Tribunal also left it open for the authorities to initiate disciplinary proceedings in accordance with law. Once the orders of promotion are issued having regard to the factual scenario of the present case, in the considered opinion of this Court, the Principal Commissioner of Customs, the third petitioner herein, loses his jurisdiction to initiate any action against the respondent herein.

14. By the time Original Application No.506 of 2020 was filed by the respondent/applicant before the Tribunal, the orders of promotion, dated 24.12.2020, were admittedly not in existence, as such the contentions advanced by the learned counsel for the petitioners is completely bereft of any merit. In view of the same, the judgment of the Hon'ble Supreme Court in the case of ***Premlatha @ Sunita vs. Naseeb Bee and others in Civil Appeal Nos.2055-2056 of 2022*** would not render any assistance to the petitioners herein.

15. At this juncture, it is appropriate to refer to the judgment of the Hon'ble Apex Court in the case of ***Syed Yakoob vs. K.S.Radhakrishnan and others***<sup>1</sup>. In the said judgment, the

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<sup>1</sup> (1964) 5 SCR 64 : AIR 1964 SC 477

Hon'ble Apex Court, while dealing with the jurisdiction of the Courts to issue a writ in the nature of writ of certiorari, at paragraph No.7 held as follows:-

*The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under [Article 226](#) has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. 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 in excess of it, or as a result of failure to exercise jurisdictions. 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 (vide [Hari Vishnu Kamath v. Syed Ahmed Ishaque](#)<sup>2</sup>, [Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam](#)<sup>3</sup>, and [Kaushalya Devi v. Bachittar Singh](#)<sup>4</sup>).*

16. It is evident from the reading of the above paragraph of the judgment of the Hon'ble Supreme Court that a writ in the

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<sup>2</sup> [1955] 1 S.C.R. 1104

<sup>3</sup> [1958] S.C.R. 1240

<sup>4</sup> A.I.R. 1960 S.C. 1168

nature of writ of certiorari cannot be issued unless the order impugned suffers from jurisdictional error, patent perversity and passed in violation of the principles of natural justice. In the considered of this Court, the said contingencies are conspicuously absent in the orders impugned in these writ petitions and in view of the same, this Court is not inclined to meddle with the well articulated orders passed by the Tribunal.

17. For the aforesaid reasons, the Writ Petitions are dismissed.  
No order as to costs.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

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**JUSTICE A.V.SESHA SAI**

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**JUSTICE RAVI CHEEMALAPATI**

Date: 19.04.2022

SPP

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI  
AND  
THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**

**WRIT PETITION Nos.16194 of 2021 and 10277 of 2022**

**Date: 19.04.2022**

SPP