

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% W.P.(C) 14768/2004

+ Date of Decision: 9th May, 2012

DEPUTY C.S.T.E. (CONST.)

....Petitioner

! Through: Mr. J.K. Singh, Advocate

Versus

\$ KSHETRAPAL SINGH KUSHWAHA

....Respondent

Through: Mr. E.J. Varghese, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J: (ORAL)

By way of this writ petition, the petitioner challenges the award dated 27th April, 2004 passed by the Central Government Industrial Tribunal-cum-Labour Court ('CGIT')

in short) in I.D.No.12/92 whereby it has held the termination of services of the respondent-workman by his employer, the petitioner herein, to be unjustified and it has been directed to re-instate him.

2. The case of the respondent-workman was that he had worked with the petitioner from 12.12.1975 till 18.06.1976 and his services were terminated illegally by the petitioner-management w.e.f. 19.06.1976. The respondent had claimed that though he had been employed by the petitioner-management as a casual labour but on completion of 120 days of continuous service he had acquired the status of a temporary employee as per the Government instructions applicable to the petitioner-management and, therefore, his services could not be terminated without notice and assigning any reasons. It was the further case of the respondent-workman that though the services of another workman one Dan Singh were also terminated alongwith him but subsequently that Dan Singh had been re-instated while he was not re-instated. Similarly another employee Bachhu Singh was also re-engaged by the petitioner-management. The respondent-workman thus claimed violation of the provisions of Section 25-G & H of the Industrial Disputes

Act,1947.

3. The case of the petitioner-management, on the other hand, was that though the respondent-workman had been employed with effect from 12th December, 1975 as a casual labour but he had not acquired the status of a temporary employee since he had not worked continuously for 180 days which was required for becoming a temporary employee as per the Railway Establishment Manual. It was also claimed that his services were not terminated by the petitioner-management but he himself had left the job w.e.f. 19.05.1976. It was admitted that one Dan Singh and another workman Bachhu Singh were re-engaged but it was claimed that their cases were different. Bachhu Singh had worked for more than 280 days from 24.11.1976 and was discharged on 08.09.1977. He was again engaged on 03.10.1980 and was again discharged on 19.04.1981 and once again re-engaged on 25.11.1986 and thereafter he was continuing to work.

4. As far as the other workman Dan Singh is concerned, though his dispute about the termination of his services was also referred to CGIT for adjudication by a common reference order by the appropriate Government, the

petitioner-management did not give any reason for his re-engagement even though he was also admittedly junior to the respondent-workman, like Bachhu Singh. The reference qua Dan Singh was thus disposed of vide award under challenge by the CGIT as having become infructuous because of his having been re-employed by the petitioner-management while vide same award the respondent-workman was ordered to be re-instated in service but without back wages since he himself had given up the claim of back wages.

5. As far as the defence of the petitioner-management that the respondent-workman had himself abandoned his job is concerned, it has not been found by CGIT to have been established and it has been held in the impugned award that the petitioner-management had terminated the services of the respondent-workman illegally since there was violation of Section 25-F of the Industrial Disputes Act, 1947. It was also held that two employees who were junior to the respondent herein had been re-engaged and for that reason also the termination of the services of the respondent-workman was unjustified. Consequently the CGIT directed the petitioner to re-instate him in service.

6. Learned counsel for the petitioner-management's main argument was that since the respondent-workman had not completed 180 days service he had not become a temporary employee and so he was not entitled to receive any notice from the petitioner-management before the termination of his services and in any case Section 25-F of the Industrial Disputes Act, 1947 was not attracted since the respondent-workman had admittedly not worked for 240 days prior to the date of alleged termination of his services.

7. However, even during the course of hearing the learned counsel for the petitioner-management could not justify its plea of abandonment of service by the respondent workman as also the re-employment of the two juniors of the respondent, though it was not conceded also that this is a case of termination of services of the respondent-workman.

8. On the other hand, learned counsel for the respondent-workman fairly admitted that Section 25-F of the Industrial Disputes Act, 1947 was not attracted in this case. He, however, supported the decision of the CGIT to give the relief of re-instatement to the respondent-workman on the ground that his juniors had been re-employed while the

respondent-workman was not.

9. After having heard the counsel for the parties and perusing the record this Court endorses the conclusion of the CGIT that the respondent-workman had not abandoned his job and that his services were terminated by the petitioner-management. It has also been rightly held by the CGIT that the respondent-workman had become a temporary employee on completion of 120 days service and 180 days service was not required to have been completed to get that status because that was the requirement only in case of employees engaged for some particular project which was neither the plea of the petitioner nor any evidence was adduced to establish that and so rightly was not accepted by the CGIT. Learned counsel submitted that the effect of any employee becoming temporary is that his services cannot be terminated without notice and good reasons. Therefore, the termination of the services of the respondent-workman was contrary to the Indian Railway Establishment Manual, copy of which has been filed on record by the petitioner itself.

10. Admittedly, co-worker Dan Singh, who had also, according to the case of the petitioner, abandoned his job

alongwith the respondent and a common reference was made in respect of the dispute raised by them that their services had been illegally terminated, was allowed to resume his duties by the petitioner-management after the authorities had made the reference to the CGIT but same was treatment was not given to the respondent-workman and there being no justification for that the CGIT has rightly held the action of the petitioner-management to be unjustified. And since other worker Bachhu Singh was admittedly employed on 24.11.1976 after the respondent-workman had been retrenched it was the right of the respondent-workman to be re-employed with the petitioner-management if new hands were to be engaged. That was also not done by the petitioner-management. For reemploying the respondent-workman it was not necessary for him to have shown that he had completed 240 days service in a year preceding the date of termination of his services. This is evident from a plain reading of Section 25-H of the Industrial Disputes Act, 1947 and also from one judgment on this very point given by the Supreme Court in the case of **“Harjinder Singh vs Punjab State Warehousing Corporation”**, (2010) 3 Supreme Court Cases 192.

11. In Harjinder Singh's case(supra) the Supreme Court had also considered as to when and under what circumstances the High Court should in exercise of its jurisdiction under Articles 226/227 of the Constitution of India interfere with the decisions of the inferior courts and tribunals. And this is what was observed:="

“10. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles [226](#) and/or [227](#) of the **Constitution Syed Yakoob v. K.S. Radhakrishnan and Ors.** : AIR 1964 SC 477 and **Surya Dev Rai v. Ram Chander Rai and Ors.**: 2003 (6) SCC 675. In **Syed Yakoob's** case, this Court delineated the scope of the writ of certiorari in the following words:

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 is in excess of it, or as a result of failure to exercise jurisdiction, A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, 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 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.....

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, of is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the

relevant statutory" provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may, not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

11. In **Surya Dev Rai's** case, a two-Judge Bench, after threadbare analysis of Articles 226 and 227 of the Constitution and considering large number of judicial precedents, recorded the following conclusions:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article [226](#) of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction -- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction -- by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article [227](#) of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process' of reasoning, Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory/ jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection

need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

12. A reading of the impugned award of the learned Presiding Officer of the CGIT shows that it does not suffer from any jurisdictional error and is also not vitiated by any error of law apparent on the face of the record. So, there is no scope for any interference by this Court and this writ petition being devoid of any merit is liable to be dismissed.

13. This writ petition is accordingly dismissed.

P.K. BHASIN, J

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