

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

% W.P. (C) 6860/2002

+ Date of Decision: 29th May, 2012

**# M/S. CLASSIC BOTTLE
CAPS (P) LTD. Petitioner**

**! Through: Mr. Amit Mahajan &
Mr. Shashi Shekhar, Advs.**

Versus

\$ USHA SINHA & ORS. ...Respondents
Through: Mr. Ankur Bansal, Advocate
for R-1 & R-2

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

JUDGMENT

P.K.BHASIN, J:

By way of this writ petition the petitioner-Company had challenged the award dated 21-03-2002 in ID Case No. 241/1990 whereby the relief of re-instatement in service with 50% back wages was granted to the two respondents-workmen by the Industrial Tribunal.

2. The respondents-workmen were admittedly employed with the petitioner-management. They had approached the labour authorities with the grievance that their services had been terminated illegally by the petitioner herein. Since they could not get any relief against the petitioner there the dispute between the petitioner was referred for adjudication to the Industrial Tribunal vide Reference order dated 23rd March, 1990 with the following term of reference:-

“Whether the services of Ms. Usha Sinha and Sh. Kamal Kumar Bhandari have been terminated illegally and/or unjustifiably by the management, and if so, to what relief are they entitled and what directions are necessary in this respect?”

3. The respondents-workmen had filed their separate statements of claim whereby they claimed that the termination of their services to be illegal. The petitioner-management had also filed its separate written statements denying the allegations of illegal termination of the services of the respondents. It was pleaded that the respondent no. 1 was employed w.e.f. 2nd May, 1988 while respondent no. 2 was employed w.e.f. 1st April, 1989 and that they were remaining absent w.e.f. 10.9.89 and 20.9.89 respectively and further that they had not completed 240

days of service and that the management was ready to take them back on duty without any back wages.

4. After examining the evidence adduced before it by both the sides the Industrial Tribunal vide its award under challenge came to the conclusion that the services of the respondents-workmen were illegally terminated by the petitioner and after holding so relief of reinstatement in service with 50% back wages was granted to both of them.

5. The petitioner–management felt aggrieved by the award of the Industrial Tribunal and thus filed this writ petition.

6. Learned counsel for the petitioner-management’s main argument was that since the respondents-workmen had not completed 240 days of service before the alleged termination of their services Section 25-F of the Industrial Disputes Act, 1947 was not attracted and so there is a justified reason for this Court to interfere with the award of the Industrial Tribunal which has allowed the claim of the workman because of non-compliance of Section 25-F by the petitioner.

7. The Tribunal has accepted the case of the respondents-workmen relying upon the admission of the witness of the management, Sh. K.K. Pahuja, in his cross-examination that

the respondent no. 1 had been employed w.e.f. 10.6.86 and respondent no. 2 w.e.f. 26.3.88 respectively with the petitioner-management and as per that statement both the workmen had completed 240 days service.

8. Learned counsel for the petitioner had contended that the management's witness had in his affidavit clearly given the exact dates of appointment of the workmen and, therefore, his statement to the contrary in cross-examination could not be given any weightage. However, this Court is not inclined to accept this argument. Cross-examination is as much a part of evidence of a witness as the examination-in-chief. If any party is able to elicit any admission on some vital point of dispute from a witness that admission can certainly be used by the party who is benefitted by that admission. So, there is no illegality committed by the Tribunal in using the admission made by management's own witness. Similarly, no fault can be found with the finding of the Tribunal that services of the workmen had been terminated by the petitioner since it cannot be believed that if workmen were actually absenting no action would have been taken against them and their names would have continued to remain on its rolls.

9. This Court in any case is not sitting in appeal over the findings of fact given by the Tribunal and jurisdiction of the High Court to interfere in the awards of labour Courts is very limited. The Supreme Court in the case of **“Harjinder Singh vs Punjab State Warehousing Corporation”**, (2010) 3 Supreme Court Cases 192 had observed as follows about the jurisdiction of High Court to interfere with awards of labour Courts:-

*“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; but 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.”

10. A reading of the impugned award in the present case 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.

11. This writ petition is, accordingly, dismissed.

P.K. BHASIN, J

MAY 29, 2012