

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

+ W.P. (C) No. 9192/2009 and CM APPL No. 6864/2009 (Stay)

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Reserved on: 3rd August, 2012
Decided on: 27th September, 2012

M/S HANDLOOM TEXTORIUM

..... Petitioner

Through: **Mr. Prakash Gautam and Mr. Vivek
Ojha, Advocates.**

versus

GUNESHWAR RAI

..... Respondent

Through: **Mr. Ajit Singh, Advocate.**

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner challenges the award dated 11th July, 2007 whereby the Respondent was directed to be reinstated with full back wages and other consequential benefits with effect from 7th March, 1999.

2. Learned counsel for the Petitioner contends that the learned Trial Court grossly erred in appreciating the evidence on record in the form of receipt Ex.WW1/M1 duly signed by the Respondent. The Respondent admitted that he had signed the receipt wherein it was clearly written that he worked with the management with effect from 14th July, 1992 and on 12th October, 1992 he took the payment of Rs. 1200/- being the salary for the month of September, 1992 and thus settled all his claims. The date of termination i.e. 14th October, 1992 is not disputed by the parties. However the case of the Petitioner is that the Respondent was employed only on 14th

July, 1992 whereas the Respondent claims that he had been working from 1983. However, the Respondent had failed to prove this fact, as there is no document or any other evidence proved before the learned Labour Court in this regard. Since 240 days had not been completed when the Respondent was terminated, the provisions of Section 25-F, 25-G of the Industrial Dispute Act (in short the ID Act) were not applicable and no directions for reinstatement with back wages could have been given.

3. Learned counsel for the Respondent on the other hand contends that he worked for 9 years when his services were terminated on 14th October, 1992. In the written statement the Petitioner has not taken the stand that 240 days were not over. The Respondent denies having received Rs. 3000/-. There is no cross-examination on behalf of the management of the Respondent with regard to abandonment of service. Since no appointment letter was given as admitted by the management, the Respondent could not have proved his appointment and working since 1983. Hence, the writ petition be dismissed.

4. I have heard learned counsel for the parties. Respondent was terminated on 14th October, 1992 and thus he raised a dispute on which the following reference was sent for adjudication under Section 10(1)(c) and 12(5) of the Industrial Dispute Act:

“Whether the services of Shri Guneshwar Rai have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?”.

5. Respondent in his affidavit stated that he had been working with the Petitioner for 9 years as a salesman and his last monthly salary was Rs. 1500/-. The Petitioner was not paying bonus, overtime, etc. In order to punish the Respondent because of his demands, the service of the Respondent was terminated on 10th November, 1992. The Petitioner did not pay to him bonus, over-time and earned leaves. No notice was given to him. Thus, he approached the union and a dispute was raised. However, no settlement could be arrived at. The Respondent was unemployed from the date of his termination and could not get any job despite efforts. In his cross-examination the Respondent admitted that on 12th October, 1997 he had gone at the shop of the management along with Labour Inspector Shri V.K. Gupta. However, he denied that in the presence of Labour Inspector he received a sum of Rs. 1200/- from the management. He volunteered that he was reinstated. However, Respondent admitted his signature at point 'A' on Ex.WW1/M1.

6. Ex.WW1/M1 is a receipt whereby the Respondent has accepted a sum of Rs. 1200/- as salary for the month of September, 1992. Ex.WW1/M1 is also signed by Labour Inspector Shri V.K. Gupta wherein it is written that the payment of Rs. 1200/- was made in cash before the Labour Inspector being salary for the month of September, 1992. It is also recorded that the Respondent stated that he worked in the establishment with effect from 14th July, 1992. No evidence has been led by the Respondent to prove that he has been working with the Petitioner since 1983. Ex.WW1/M2 is a receipt dated 14th October, 1992 wherein the Respondent has signed at point 'A' and 'B'. Though Respondent had denied having received the amount, however

Ex.WW1/M2 clearly states that on 14th October, 1992 the Respondent has been paid sum of Rs. 3000/- as the balance amount and all his claims till that day i.e. earned wages, notice pay, compensation etc., were fulfilled.

7. Though the management filed the affidavit of Shri Radhey Shyam the sole proprietor of the Petitioner as per which the Respondent received all his dues from the management and in this regard he executed a receipt on 14th October, 1992 exhibited vide Ex.WW1/M2, however, the management witness did not appear before the learned Trial Court and thus could not exhibit his affidavit and could not be cross-examined. Thus, there is no evidence led on behalf of the Petitioner/ management. Further, the Respondent received a monthly salary of Rs. 1200/- for the month of September, 1992 in the presence of Labour Inspector Shri V.K. Gupta. It is specifically stated that the Respondent joined the management only on 14th July, 1992 and had not worked for 240 days with the management. It is further stated that the Respondent was absent since 21st September, 1992 and reported on duty only on 12th October, 1992 along with the Labour Inspector.

8. However, even from the evidence led by the Respondent and his admission of the signatures on the two receipts, it is evident that the Respondent had been working with the Petitioner only from 14th July, 1992 and had received the salary for the month of September in the presence of the Labour Inspector Shri V.K. Gupta who had duly signed the receipt and endorsed that the payment of Rs. 1200/- was made in cash before him being the salary for the month of September, 1992 and also recorded the fact that the Respondent stated that he was working with the Petitioner with effect from 14th July, 1992. The Respondent has also admitted his signatures on

Ex.WW1/M2, the receipt wherein he has received Rs. 3000/- on 14th October, 1992 in full and final settlement of the claim. This is not a case where on appreciation of evidence two views are possible but the fact that the evidence placed on record in the form of two receipts with which the Respondent has been duly confronted has not been considered by the learned Trial Court.

9. In *Harjinder Singh Vs. Punjab State Warehousing Corporation* (2010) 3 SCC 192 their Lordships held:

“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* [AIR 1964 SC 477] and *Surya Dev Rai v. Ram Chander Rai* [(2003) 6 SCC 675] . In *Syed Yakoob case* [AIR 1964 SC 477] , this Court delineated the scope of the writ of certiorari in the following words: (AIR pp. 479-80, paras 7-8)

“ 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 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 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. Ahmad Ishaque* [AIR 1955 SC 233 : (1955) 1 SCR 1104] , *Nagendra Nath Bora v. Commr. of Hills Division* [AIR 1958 SC 398 : 1958 SCR 1240] and *Kaushalya Devi v. Bachittar Singh* [AIR 1960 SC 1168]).

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 misinterpretation of the relevant

statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or 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.”

10. Thus, even in the absence of any evidence having been led by the Petitioner, on the basis of evidence of the workman and his being duly confronted with two exhibits Ex.WW1/M1 & WW1/M2 wherein he admitted his signatures, it is apparent that the Respondent has not worked for 240 days in the calendar year preceding the termination. The Petitioner has proved its case by cross-examining the Respondent wherein he has admitted his signatures on the two receipts which are self-explanatory and this evidence

could not have been ignored by the learned Trial Court. Hence, the Respondent is not entitled to the relief of reinstatement with full back wages with effect from 17th March, 1999 onwards, as awarded by the learned Tribunal. The impugned award is set aside.

11. Petition and application are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 27, 2012
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