

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11881 OF 2014

Ramesh Babasaheb Choudhari

PETITIONER

VERSUS

The Executive Engineer,
Minor Irrigation Division No.2,
Ahmednagar

RESPONDENT

Mr.P.V.Barde, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/10/2015

PER COURT :

1. The petitioner is aggrieved by the impugned judgment and award dated 27/01/2014 delivered by the Labour Court by which Ref. (IDA) No.07/2011 has been answered in the negative.

2. The thrust of Mr.Barde's submission on behalf of the petitioner is that juniors have been retained in service and the petitioner has been terminated. Violation of Section 25-G of the I.D.Act, 1947 is therefore unsustainable in the light of the ratio laid down by the Apex Court in the case Harjinder Singh Vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116.

3. He further submits that the petitioner had worked continuously from 01/01/1989 as a daily wage labourer till 04/01/1992 when he was terminated (three years). An Industrial Dispute was raised in 2011 after about 19 years from the date of termination and which was registered as Ref.(IDA) No.7/2011.

4. He further submits that it is immaterial whether the petitioner completed 240 days in continuous employment or not when the issue of non compliance of Section 25-G of the I.D.Act, has been alleged. He further points out that the name of Mr.Manjabapu Ramdas Rohokale was referred to in the statement of claim to indicate that he and few others are juniors to the petitioner and they had been retained in employment. A seniority list was produced before the Labour Court, which is Exhibit U-11 to indicate that new employees have been appointed in place of the petitioner.

5. He further submits that his reference has been rejected purely on the ground that he had not completed 240 days in continuous service and by taking into account the fact that a dispute was raised after 19 years from the date of termination.

6. He, therefore, submits that the Labour Court has erred in

concluding that there is no merit in the reference and the same deserves to be dismissed. He submits that the fact of juniors having been retained or newly recruited in his place renders the impugned award bad and the petitioner deserves to be reinstated in service.

7. I have considered the submissions of the learned Advocate and have gone through the petition paper book.

8. Reliance has been placed upon the judgment of Harjinder Singh (supra). In the said matter, the appellant was employed as a “Munshi” with the respondent/Corporation. His termination led to an industrial Dispute. The names of juniors, who were retained in service like Anju Gupta, Shubh Dhayan and Joginder Singh were mentioned in the pleadings and the seniority list was produced by the Management which indicated that the other workmen were retained in service and were regularized. There was no evidence on record that the appellant was appointed only for a specific period.

9. The Labour Court in the Harjinder Singh case (supra) allowed the reference and directed his reinstatement with continuity of service and 50% back wages. The Punjab and Haryana High Court interfered with the matter despite there being a finding on facts. The

Apex Court considered the ratio laid down in the case of Syed Yakoob Vs. K.S.Radhakrishnan and others, AIR 1964, SC 477 and Surya Dev Rai Vs.Ram Chander Rai and others, 2003(6) SCC 675 and concluded that the High Court should not interfere with a finding on facts.

10. The observations of the Apex Court in paragraph Nos. 10, 11 and 12 in the case of Harjinder Singh (supra) are reproduced as follows :-

*“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 vide Hari Vishnu Kamath v. Syed Ahmad Ishaque, 1955 (1) SCR 1104; (AIR 1955 SC 233), Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam, 1958 SCR 1240 : (AIR 1958 SC 398) 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 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 supervisor/ 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 there against 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 re appreciation 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.

A reading of the impugned order shows that the learned Single Judge did not find any jurisdictional error in the award of the Labour Court. He also did not find that the award was vitiated by any error of law apparent on the face of the record or that there was violation of rules of natural justice. As a matter of fact, the learned Single Judge rejected the argument of the corporation

that termination of the appellant's service falls within the ambit of Section [2\(oo\)\(bb\)](#) of the Act, and expressed unequivocal agreement with the Labour Court that the action taken by the Managing Director of corporation was contrary to Section [25G](#) of the Act which embodies the rule of last come first go. Notwithstanding this, the learned Single Judge substituted the award of reinstatement of the appellant with compensation of Rs. 87,582/- by assuming that appellant was initially appointed without complying with the equality clause enshrined in Articles [14](#) and [16](#) of the Constitution of India and the relevant regulations. While doing so, the learned Single Judge failed to notice that in the reply filed on behalf of the corporation before the Labour Court, the appellant's claim for reinstatement with back wages was not resisted on the ground that his initial appointment was illegal or unconstitutional and that neither any evidence was produced nor any argument was advanced in that regard. Therefore, the Labour Court did not get any opportunity to consider the issue whether reinstatement should be denied to the appellant by applying the new jurisprudence developed by the superior courts in recent years that the court should not pass an award which may result in perpetuation of illegality. This being the position, the learned Single Judge was not at all justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of arguments and over turn an otherwise well reasoned award passed by the Labour Court and deprive the appellant of what may be the only source of his own sustenance and that of his family.

12. Another serious error committed by the learned Single Judge is that he decided the writ petition by erroneously assuming that the appellant was a daily wage employee. This is ex facie contrary to the averments contained in the statement of claim filed by the workman that he was appointed in the scale of Rs. 350-525 and the orders dated 3.10.1986 and 25.2.1987 issued by the concerned Executive Engineer appointing the appellant as Work Munshi in the pay scale of Rs. 355-525 and then in the scale of Rs. 400-600. This was not even the case of the corporation that the appellant was employed on daily wages. It seems that attention of the learned Single Judge was not drawn to the relevant records, else he would not have passed the impugned order on a wholly unfounded assumption that the appellant was a daily wager.”

11. I have viewed the case of the petitioner in the light of the ratio laid down by the Apex Court in the Harjinder Singh Case (supra).

12. Unless the service details of an employee are not brought before the Court, it cannot be concluded whether the claimant is senior to those who have been retained in service. From the impugned award and the statement of claim filed by the petitioner, no such details have been set out. Even the witness namely Manjabapu, who deposed on behalf of the petitioner, has neither stated his date of joining nor has he stated that he was regularized in service.

13 It cannot be overlooked that the petitioner was orally appointed as a daily wager. The seniority list produced as per the evidence of the respondent, indicates that those employees, who had completed 5 years in continuous service and had worked for 240 days continuously in each of such 5 years, were granted absorption.

14. From the conclusions of the Labour Court, it is apparent that though the petitioner has referred to certain names, service details as regards their date of joining and their continuous employment as well as whether they were engaged as daily wagers or in some other capacity, has not been brought on record before the Labour Court.

15. The petitioner, as a daily wager, had worked for about 131 days as and when the work was available in the preceding 12 months prior to the date of reference. The witness of the petitioner Manjabapu stated in his cross examination that he was not aware as to when Ramesh Choudhary (another employee) was appointed and how many years has he put in.

16. In the above backdrop and considering the fact that the petitioner has raised an industrial dispute after having intermittently worked in between 01/01/1989 till 03/01/1992, after 19 years of his

oral disengagement and the fact that service details of other employees, who could be said to be junior to the petitioner and comparable, were not brought before the Court, I do not find that the Labour Court has erred in answering the reference in the negative.

17. Considering the view expressed by the Apex Court in the Harjinder Singh Case (supra) by relying upon the judgment of the Apex Court in Syed Yakoob and Surya Dev Rai case (supra), I do not find any reason to interfere with the conclusions drawn by the Labour Court merely because a different view is possible.

18. In the light of the above, this petition is dismissed.

(RAVINDRA V. GHUGE, J.)