

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16292 of 2015

Date of Decision: 17.08.2015

Maharshi Dayanand University, Rohtak

... Petitioner

Versus

Presiding Officer, Industrial Tribunal-  
cum-Labour Court, Rohtak and another

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Anurag Goyal, Advocate,  
for the petitioner.

Mr. Sandeep Singal, Advocate,  
for the caveator.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RAJIV NARAIN RAINA, J.**

1. This petition has been filed under Articles 226 & 227 of the Constitution of India challenging the award passed by the Presiding Officer, Labour Court, Rohtak dated April 17, 2015. The Labour Court has reinstated the workman with continuity of service and has awarded 50% back wages from the date of demand notice i.e. February 25, 2005.

2. The present is a case originating from alleged tampering of award list by two clerks working in the petitioner-University and deputed to cross check award of marks following an examination. The two people allegedly involved in the incident are Phool Kumar and Raj Kumar. A

preliminary inquiry was conducted by the University into the allegations of gross misconduct levelled against both the officials and they were dismissed from service.

3. Aggrieved by the orders of dismissal, Raj Kumar alone approached the appropriate Government against his dismissal and the dispute was referred to the Labour Court, Rohtak for adjudication as to whether the dismissal order was justified or not, and if not, to what relief was the workman entitled to. Phool Kumar was satisfied with the dismissal order and has not litigated any further. This is not disputed by the learned counsel for the University.

4. The Labour Court decided the issue whether the inquiry conducted by the management was fair and proper as a preliminary issue and has recorded findings in favour of the workman and against the University holding that the inquiry conducted was neither fair nor proper. However, a request was made to the Labour Court by the petitioner university for permission to lead evidence afresh before the court to establish the guilt of the workman. Leave was granted.

5. Learned counsel for the management submits that three witnesses were produced before the Labour Court to establish that the workman was guilty of the charged misconduct.

6. The reference has been answered in favour of the workman and it has been held that it was Phool Kumar who was responsible for the misconduct and the role of Raj Kumar was based on negligence as it was he who worked on the computed keyboard punching figures dictated to him while Phool Kumar sitting beside him calling out the marks from the

original award list. On this premise, the Labour Court exercised its judicial discretion after appreciating the evidence on record and came to the conclusion that it was not a fit case for awarding the severest punishment of dismissal but was a case where the ends of justice would be met if lesser punishment is awarded. In doing so, the Labour Court exercised its jurisdiction under section 11-A of the Industrial Disputes Act, 1947 (for short “the Act”) and denied payment of 50% back wages. Denying wages fully or partially in cases of inquiries is itself works as a punishment unlike cuts made in back wages in cases involving breaches of section 25-F of the Act. When the Labour Court has weighed the evidence pro and contra and reached the conclusion that present is not a fit case for inflicting the punishment of dismissal from service and has judiciously exercised its discretion in making a set back on half the back wages then interference is warranted especially having regard to the period of 10 years and odd over which back wages run, then this amounts to substantive punishment by itself.

7. The limited role High Courts have in judicial reviewing awards of Labour Courts and Tribunals has been explained by the Supreme Court in a spate of judgments including in **Shalini Shyam Shetty & Anr. v. Rajinder Shankar Patil**, (2010) 8 SCC 329; **Jai Singh & Others v. Municipal Corporation of Delhi & Anr.**, (2010) 9 SCC 385; **Harjinder Singh v. Punjab State Warehousing Corporation**, (2010) 3 SCC 192 and **Anoop Sharma v. Executive Engineer, Public Health Division No 1, Panipat, Haryana**, (2010) 5 SCC 497. On the question of relief of reinstatement one might read the expanded and liberal restatement of the

law in **Devinder Singh v. Municipal Council, Sanaur**, (2011) 6 SCC 584 guiding that reinstatement in breach of section 25 F, 25 G and 25 H cases is the normal relief in the matter in such cases. The present case is an inquiry case where reinstatement would necessarily follow when inquiry is neither fair nor proper. Such inquiries are no inquiries in the eyes of law. The effort of the management to prove guilt of the delinquent before the labour court failed remaining unsubstantiated by evidence. The labour court correctly drew a distinction between the roles of the two employees

8. In **Syed Yakoob v. K.S. Radhakrishnan**, AIR 1964 SC 477 the Supreme Court identified the limitations of certiorari jurisdiction of the High Court within Article 226 of the Constitution 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 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."*

9. Having heard the learned counsel for the petitioner and counsel appearing on caveat for the respondent workman at length and in the aforesaid view of the matter I find no cogent reason to interfere with the findings of fact recorded in the award of the Labour Court or the judicial discretion exercised in favour of the workman which appear to be just, fair and proper in the circumstances and call for no interference in writ jurisdiction. There is no fundamental flaw apparent on the face of the record or in the impugned award and the view taken is eminently plausible. A writ would not issue to quash the award.

10. The caveat petition stands disposed of. Accordingly, the writ

petition stands dismissed. No costs.

(RAJIV NARAIN RAINA)  
JUDGE

17.08.2015  
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