

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 22593 of 2014 (O&M)
Date of Decision: 13.1.2015.

Gurpreet Singh

--Petitioner

Versus

Presiding Officer & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. F.S. Virk, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J

The instant writ petition is directed against the award dated 7.2.2014, passed by the Industrial Tribunal, Patiala, whereby the reference has been answered against the petitioner workman and he has not been held entitled to any relief.

Learned counsel appearing for the petitioner would submit that the petitioner was employed as Helper at the Punjab State Warehousing Corporation Godown, Malerkotla, District Sangrur in April, 2001 and was drawing salary of Rs.2280/- per month. His presence was being marked in the attendance register maintained at the State Warehousing Corporation at Malerkotla itself. However, from 1.11.2005 the petitioner was not allotted any work and was not marked present. Counsel would submit that even without passing of any specific order, services of the petitioner were terminated by the respondent-Corporation in violation of the mandatory provisions of the Industrial Disputes Act (herein after to be referred as the Act). Argument raised by the counsel is that the Industrial Tribunal while passing the impugned award has erroneously discarded the evidence that had been adduced by the workman in the shape of documents at Ex. W-5 to

Ex. W-14 as also Ex. W-17 to Ex. W-19, which were relevant copies of the attendance register as also slips reflecting the workman to have duly worked and discharged duties with the State Warehousing Corporation Godown at Malerkotla. It is contended that the finding recorded by the Tribunal as regards the workman having not been engaged and not having worked with the Corporation, is perverse. It is further argued that since the workman had not been granted any retrenchment compensation, was not issued any notice or pay in lieu of notice period, there was violation of Section 25-F of the Act and as such, the petitioner was entitled to reinstatement in service with all consequential benefits.

Learned counsel for the petitioner has been heard at length and the case paper book has been perused.

The Hon'ble Supreme Court of India in the landmark judgement in **Syed Yakoob Vs. K.S. Radhakrishnan and others, AIR 1964 S.C., 477** had examined the limits of the jurisdiction of the High Courts in issuing Writ of Certiorari under Article 226 of the Constitution of India while examining awards/decisions rendered by the Tribunals and other inferior courts. It was held 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. In other words, the findings of fact reached by the inferior court or Tribunal upon appreciation of evidence cannot be reopened or questioned in writ proceedings. It was furthermore observed that a finding of fact recorded by the Tribunal cannot be challenged in writ proceedings on the ground of insufficiency or inadequacy of evidence to sustain the impugned finding. The issue with regard to adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said

finding were held to be within the exclusive domain and jurisdiction of the Tribunal.

Adverting back to the facts of the present case, the evidence adduced on record on behalf of the workman in the shape of work slips Ex. W-3 and W-4 as also copies of attendance register Ex. W-5 to Ex. W-14 have been dealt with and discarded by the Tribunal on the following reason:-

“5. Workman in support of his case that he was working as Helper, has placed on file Ex. W3 and Ex. W4 i.e. Slips regarding the dispatch of wheat on 17.04.2004 and 16.04.2004. On Ex. W3 he signed as Warehouse Representative, whereas in Columns of “Sign of Cartman/Truck Driver” and “Signature of Arthia” are left blank. Thus, it seems that workman signed the blank slip and thereafter filled the same.

So far as Ex.W4 removal of chit of wheat is concerned, the same also seems to be fabricated, because in place of acknowledgment, a signature of Gurpreet Singh is appended. Name of the Truck Driver is not mentioned. In column “Name of Truck Driver” number of the Truck is mentioned and in place “Truck No.”, name of the workman is mentioned.

Similarly in Ex.W3 in front of column of “Truck No.” wheat is mentioned. The name of F.C., Godown and Sheller in Ex.W3 as well as Ex.W4 is left blank.

Ex.W5 to Ex.W14 are the photocopies of attendance register attested by Notary Public. It is unbelievable that Attendance Register of the respondent would be in possession of the workman for the purpose of comparison by Notary Public before affixing the stamps on attendance record Ex.W5 to Ex.W14. Moreover, the Registration number Notary Public is not mentioned on the stamps of Notary affixed on Ex.W5 to Ex.W14.

Name of the workman, in this record Ex.W5 to Ex.W14, is mentioned in the end and is of different handwriting. The fact that documents Ex.W5 to Ex.W14 are forged is further made out from the fact that in Ex.W7 in the entry for the month of February 5th and 6th letter “P” is over the words “Saturday” and “Sunday”. Had the workman put his presence on 5th and 6th, in regular course of marking his presence, the word Saturday and Sunday would have been beneath the letter “P” and not over lapping it.

The same is position with regard to Ex.W8 for the days 2nd and 3rd April 10th and 11th April and 16th and 17th April.”

On the other hand, while recording a finding as regards there being no relationship of master and servant between the petitioner workman and the respondent-Corporation, the deposition of MW-1 Sh. Baljinder Singh, Manager of the Corporation, his affidavit Ex. MW-1/A in support of his deposition as also the statement of MW-2 Swaranjit Singh, Incharge of the Corporation Godown at Malerkotla and who in turn tendered his affidavit Ex. MW-2 as also produced documents Ex. M-1 to Ex. M-140 were referred to and in which the names of all the employees, who worked in the State Warehousing Corporation, Malerkotla holding the positions of Workmen, Helpers and Casual Workers were mentioned but the presence of the present petitioner Gurpreet Singh had never been marked from the year 2001 to 2005. The documents adduced on behalf of the Management/Employer-Corporation Ex. M-1 to M-140 also included the attested copy of the payment voucher, salary bills and staff position report month wise and in such documents also the name of the present petitioner as an employee of the Corporation, did not find a mention.

That apart, the Tribunal while passing the impugned award has noticed that for the relevant period i.e. month of October, 2005 as per Ex. M-121 the payments released in favour of other employees, who were also engaged as Helpers namely Arun Bindu, Rajinder Singh, Baljinder Singh, Harbhag Singh, Jang Singh, Desh Raj Pandey, Sukhdev Kumar, Gurmeet Singh, Sant Ram etc. were shown to be between Rs.16,123/- to Rs.5585/-, whereas the document Ex. W-15 relied upon by the workman reflected his salary of Rs.2280/- per month only. Such discrepancy in the quantum of wages has gone unexplained by counsel even during the course of hearing in the present petition today.

The finding of fact recorded by the Tribunal as regards there being no relationship of employer-employee between the petitioner workman and the respondent Corporation, is upon due appreciation of the entire evidence adduced on record, both on behalf of the workman as also the Corporation i.e. the employer. Such finding would not call for any intervention by applying the dictum laid down by the Hon'ble Supreme Court in **Syed Yakoob's** case (supra).

Consequently, the impugned award is affirmed and the writ petition is dismissed.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

January 13, 2015.
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Whether to be referred to Reporter? Yes.