

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA, AT CHANDIGARH.

Letters Patent Appeal No. 659 of 2015 (O&M)
Date of Decision: September 16, 2015

The Zonal Director Nehru Yuva Kendra Sangathan, Chandigarh ...Appellant

Versus

Raju Chand and another ...Respondents

CORAM: **Hon'ble Mr. Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. Vivek Singla, Advocate, for the appellant.

Mr. Vikas Chaudhary, Advocate, for respondent No. 1.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Civil Miscellaneous No. 1347-LPA of 2015:

We have heard learned counsel for the parties on the application for condonation of delay.

02. In view of the submissions made at the bar and what has been stated in the application, which is supported by affidavit of the applicant, we are satisfied that the appellant was prevented by a sufficient cause from bringing the appeal within the prescribed period.

03. The application, therefore, succeeds and is accepted and delay of 38 days in filing the appeal is condoned.

Letters Patent Appeal No. 659 of 2015 (O&M):

04. Nehru Yuva Kendra Sangthan, an autonomous body functioning under Ministry of Youth Affairs and Sports, Government of India (here-in-after referred to as ‘the Management’) had appointed respondent No. 1, Raju Chand (here-in-after referred to as ‘the Workman’) as a driver on daily wages on September 02, 1999 but his services were terminated on July 01, 2003 without holding a domestic inquiry and without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (here-in-after referred to as ‘the Act’). Conciliation proceedings initiated at the instance of the Workman proved futile. A dispute, thus, having arisen, the appropriate Government made a reference to Central Government Industrial Tribunal-cum-Labour Court, Chandigarh (here-in-after referred to as ‘CGIT’) to the following effect:

“Whether the action of the management of Nehru Yuva Kendra Sangthan, Chandigarh in terminating the services of Sh. Raju Chand w.e.f. 1.7.2003 is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?”

05. The Management contested Workman’s claim stating that he was appointed on daily wage basis without adopting proper procedure and his services were terminated as he did not maintain the car properly and thereby made the Management to incur huge expenditure on its repairs. It was also stated that before termination of his services, one month’s notice was given and one month’s salary was paid to the Workman.

06. Learned CGIT, on appraisal of the pleadings of the parties and evidence adduced by them, came to the conclusion that the Workman was a

temporary employee and his services were terminated on account of misconduct i.e. “gross negligence” without holding a domestic inquiry and, as such, termination of his services was illegal. Accordingly, vide Award dated October 19, 2011, learned CGIT directed the Management to reinstate the Workman in service with full back wages and continuity of service.

07. Civil Writ Petition No. 13121 of 2012 brought by the Management to lay a challenge to the Award dated October 19, 2011, has been dismissed by the learned Single Judge vide order dated February 10, 2015 by holding as under:

“No ground is made out to interfere in the findings of fact recorded by Labour Court in the well reasoned award. The order of termination was both stigmatic and punitive and, therefore, an enquiry should have been held. Assuming that the order was not stigmatic or punitive then retrenchment compensation should have been paid to the respondent. Either way, the action of the petitioner was wrong and the Labour Court after appreciating the evidence on record; has returned findings of fact which cannot be disturbed in judicial review under Articles 226/227 of the Constitution of India, in view of dicta laid down by the Supreme Court in Syed Yakub V/s. K. S. Radhakrishnan AIR 1964 SC 477.

Dismissed.

Interim order stands vacated.

The award shall remain executable in terms of the award passed.”

08. To assail order dated February 10, 2015 passed by the learned Single Judge, the Management has invoked Clause X of the Letters Patent by way of this intra court appeal.

09. We have heard learned counsel for the parties and have also scanned the documents available on record.

10. As aforesaid, learned CGIT has returned a very definite finding that

the Workman was a temporary employee and his services were terminated on account of misconduct, i.e. “gross negligence” without holding a domestic inquiry and, as such, termination of services of the Workman was illegal. Learned Single Judge has refused to quash this finding in view of the following observations of the Hon’ble Supreme Court in Syed Yakoob versus K.S. Radhakrishnan and others, AIR 1964 SC 477:

“7. 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 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. Syed Ahmad Ishaque**, (1955)-1 SCR 1104; **Nagendra Nath Bora. Commr. of Hills Division**, 1958 SCR 1240 and **Kaushalya Devi v. Bachittar Singh**, AIR 1960 Supreme Court 1168.”*

11. Learned counsel for the parties have failed to persuade us to hold otherwise. However, it comes out from the record that the workman was found to be negligent as regards maintenance of the car for which he was deployed to drive and on account of such negligence Director of the appellant Sangthan had to face ugly situations on more than one occasions. It is the case put up in the writ petition that in view of repeated acts of negligence the Workman was relieved from his duties at the Chandigarh unit of the Management and asked to report to Director General for further adjustment. Upon this Director of Chandigarh unit of the Management had face wrath of the Director General. Such being the state of affairs, we are constrained to conclude that the Management has lost trust and confidence in the Workman. Neither the Workman has been allowed to join duty after passing of the Award nor has he been paid wages in terms of Section 17B of the Act inspite of operation of the Award having been stayed by the Writ Court subject to compliance of that Section. That being so, reinstatement of the Workman in service, in our opinion, shall not be in the interest of either the Management or the Workman

and payment of compensation in lieu of reinstatement seems to be the viable alternative.

12. Keeping in view the number of years of service rendered by the Workman before termination of his services, his age (28 years) at the time of termination and number of years he would have worked with the Management but for termination of his services, as also the wages he was drawing at the time of his ouster, we modify the Award dated October 19, 2011 of the CGIT and order dated February 10, 2015, passed by the learned Single Judge and direct payment of lump sum compensation amounting to Rs.3,50,000/- to the Workman in lieu of reinstatement and back wages etc. within three months from today.

13. In the result, the appeal is disposed of by modification of impugned order in the afore-stated terms. However, in the facts and circumstances of the case, parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

September 16, 2015
adhikari