

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

+ **W.P.(C) 4177/2002**

% Judgement reserved on: 12.02.2015
Judgement pronounced on: 02.03.2015

M.C.D. Petitioner

Through: Ms Shyel Trehan and Ms Tejaswi
Shetty, Advs.

versus

RAJNI SHARMA & ANR. Respondents

Through: Mr.Rajiv Aggarwal and
Ms.Neelam Tiwari, Advocates

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide this writ petition, the petitioner has challenged the award dated 16.04.2001, passed in ID No.14/1998 by the Industrial Tribunal. Vide this award, the Industrial Tribunal has held that Kumari Rajni Sharma (hereinafter referred to as ' the workman') is entitled to be reinstated as LDC/Typist instead of *Beldar* in terms of award dated 09.10.1995, passed by Shri Nepal Singh, in ID No. 105/88.

2. The brief history of the case is that the workman was in the employment of the petitioner. She had been appointed as a muster roll/ daily rated/casual worker with effect from 10.06.1986. Her services were

terminated with effect from 18.08.1987 and she raised a dispute which was referred for adjudication to the Labour Court, and was registered as ID No. 105/1988.

3. In the said industrial dispute, the workman had contended that although she was appointed as a daily rated/muster roll/casual worker with effect from 10.06.1986, she had been working as a LDC/Typist under Shri D.K. Chablani, Superintendent in the Office of Shri O.P. Aggarwal, Executive Engineer, Quality Control Circle, during the periods from 10.06.1986 to 13.12.1986 and 14.12.1986 to 21.06.1987 and was paid the wages of a skilled worker for that period, calculated as per the Minimum Wages Act. She had also contended that thereafter with effect from 01.07.1987, she had been paid wages of unskilled *Beldar* under the Minimum Wages Act. She had also raised several other contentions, including that although she was working as a clerk-cum-typist, but she was shown in the muster roll as *Beldar* and while her counterparts were given the pay scale of Rs. 950-1500 of LDC/Typist, she had been paid the wages as per Minimum Wages Act. She served a notice demanding parity and regularization. According to her contention, this annoyed the Management-DTC and the Management-DTC, i.e., the petitioner thereafter terminated her

services. The case of the petitioner before the Labour Court was that the workman had abandoned her services and that she was serving as a daily wager from 15.09.1986 up to 13.12.1986 in the office of Ex-Engineer as Mortar Man and was paid wages prescribed for the unskilled workers. From 15.12.1986 to 30.06.1987, she had worked as a daily wager LDC in the office and from 15.07.1987 to 14.08.1987 as daily wager *Beldar* and accordingly she was paid. It is also submitted that she had no case for regularization. The Labour Court found that the services of the workwoman were terminated and the termination was illegal and issued following directions:-

“Therefore, she was entitled to full back wages at the rate of her last drawn salary of the minimum wage from time to time whichever is higher with effect from the date of termination till the date of her reinstatement. Management be directed to reinstate the workman immediately and pay her entire back wages at the rate of her last drawn wages or minimum wage permissible under the Minimum wages Act from time to time whichever is higher with effect from date of her termination till the date of her reinstatement.”

4. Pursuant to this order, the workman had gone to join her duties. It seems that the Management-petitioner were ready to take her as unskilled worker on the post of *Beldar*, but she wanted her appointment in the post of

LDC and, therefore, a dispute arose again between the parties and the matter was referred to the Industrial Tribunal and the following reference was made by the Appropriate Authority:-

“Whether Kumari Rajni Sharma is entitled to be reinstated as LDC/Typist instead of Beldar in terms of Award dated 09.10.1995 passed in I.D. No.105/88 and what directions are necessary in this respect?”

5. The Industrial Tribunal, after recording the evidences of the parties, reached to the conclusion that the workman was entitled to be reinstated as LDC/typist instead of *Beldar* in terms of award dated 09.10.1995.

6. This award has been challenged by the Management-petitioner on the ground that the workman is entitled to be reinstated only on the post of *Beldar* and not as LDC/Typist because the appointment of LDC is done by Staff Selection Commission/Delhi Subordinate Services Selection Board by open selection. It is also contended that reinstatement of the workman as LDC would amount to back door entry and the other eligible candidates would be deprived of the post of LDC. It is further stated that the workman was given the work for LDC only on the sanctioned LDC post for six months and after that, she had worked as *Beldar* and received the salary as *Beldar* on Muster Roll and simply because she had worked as an LDC for

six months, she cannot claim to be reinstated as LDC/Typist. On this contention, it is prayed that the order of the Tribunal be set aside.

7. The claim has been contested by the workman. It is submitted that this Court under Article 226 of the Constitution of India has no jurisdiction to upset the findings of the Industrial Tribunal which are based on materials on record and that there is no illegality and infirmity in the impugned award. Reliance has been placed on the findings of the Supreme Court cases Sadhu Ram vs. Delhi Transport Corporation, AIR 1984 SC 1964; Harbans Lal vs. Jag Mohan (1985) 4 SCC 333, Calcutta Port Shramik Union vs. Calcutta River Transport Association & Ors. 1988 (Sup.) SCC 768, Sudhoo vs. M/s Haji Lal Mohd. Biri Works and Ors. 1990 Lab. I.C. 1538 and Jasmer Singh vs. State of Haryana and Anr. 2015 SCC OnLine SC 29.

8. On merits, it is submitted that it is the admitted case that the workman had worked as LDC although shown to have been appointed as *Beldar*, which is an unskilled post. It is submitted that the petitioner had misusing its position and despite that the workman was working as a skilled worker, she had been shown as working on the post of *Beldar*. It is further submitted that if it is a back door entry, the petitioner should conduct an enquiry and fix the responsibility on its officials responsible for such sorry state of affairs. It is

contended that the reinstatement of the workman does not amount to back door entry. During the course of arguments, the learned counsel for the workman has submitted that the workman is not seeking any regularization on the post of LDC nor her reinstatement to the post amounts to her regularization. She was working as a daily wager LDC and she has claimed to be reinstated on the said position, wherein she was working at the time of her termination. It is submitted that award does not suffer from any infirmity and the writ petition is liable to be dismissed.

9. I have perused the file and have given thoughtful considerations to the rival contentions of the parties.

10. The main contention of the respondent is that this Court has no jurisdiction to issue a writ of certiorari and upset the award since the Court is not sitting as a Court of Appeal over the award of the Industrial Tribunal and that there is neither an error of fact nor an error of law on the face of the award. On the other hand, the submission of the petitioner is that the award suffers with an error on the face of it since the implementation of the award amounts to regularization of the services of the workman.

11. The scope of the jurisdiction of the Courts under Article 226 and 227 of the Constitution has been considered by Supreme Court in its various

pronouncements.

12. In the case of **Syed Yakoob v. K.S. Radhakrishnan and Ors.** AIR 1964 SC 477, the Supreme Court delineated the scope of 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; *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam*: 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, 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.

13. In **Sadhu Ram** (*supra*), the Supreme Court has discussed the jurisdiction of this Court under Article 226 and has held as under:-

“We are afraid the High Court misdirected itself. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals...”

14. In **Harbans Lal's** case (*supra*) also, the Supreme Court has clearly held that in exercise of the jurisdiction under Article 226 and 227 of the Constitution, it is not open for the High Courts to re-appreciate the evidences on record and then give its findings. The Court has clearly held that “*We are satisfied that the High Court travelled outside its jurisdiction in embarking upon a reappraisal of the evidence.*”

15. It is thus not open to this Court under Article 226 and 227 of the Constitution to re-appreciate or reappraise the evidences on record to judge if the findings of Tribunal are right or wrong. Where the findings of the Tribunals are based on the appreciation of the evidences before it, it is not open to challenge in the writ proceedings. However, where the Tribunal, while appreciating the evidences, had relied upon the materials which were not before it or not admissible in evidence and where the findings are influenced by some extraneous materials, it is open to this Court to interfere

with such findings. The findings of the Tribunal on facts, if based on no evidence before it, can be interfered with. The Courts can also interfere with the findings of the Tribunal if there is an error of law apparent on the face of the record or findings are against the principle of natural justice. In the present case, it is the undisputed facts that an award dated 09.10.1995, directing the reinstatement of the workman was passed by Labour Court. This award is final and binding. The issue before Tribunal thus was, whether on implementing the award dated 09.10.1995, the respondent be reinstated as LDC or *Beldar*. On appreciation of evidence, the Tribunal found that respondent although employed as *Beldar* (unskilled worker), was, for a good length of time, working as LDC and also paid minimum wages of skilled post.

16. The workman has also nowhere contended that she was working in the capacity of a regular/permanent employee with the petitioner. Her claim was that she was appointed as a daily wager/muster roll/*Beldar*, but, she had been working as a skilled labour on the post of LDC and she was also paid minimum wages of the said post. The petitioner has failed to point out that findings of facts by Tribunal are not based on evidence. It is based on the correct interpretation and appreciation of the evidences. This part of the

findings of the Tribunal, therefore, does not suffer with any infirmity.

17. The petitioner has shown the apprehension that it would amount to regularization of respondent to the post of LDC. This apprehension of the petitioner is unfounded. It is apparent that it was not the claim of the workman before the Tribunal that she should be reinstated as a regular employee nor the Tribunal had directed that the workman be treated as a regular employee. The question of regularization of the petitioner was not the matter in issue before the Tribunal during the course of arguments on behalf of the workman, claim of regularization has not been put forward. Rather, learned counsel for the workman had argued that the workman had never claimed any regularization and had only sought her reinstatement on the skilled post of LDC in the same capacity on which she was working before her termination. It has also been brought to the notice of this Court that after the order of reinstatement and payment of full back wages, the petitioner has paid the back wages to the workman, calculated as to the wages which would have been payable to the workman had she continued on the said post of LDC. Also, pursuant to the order of this Court dated 10.11.2003, the workman had been reinstated as LDC with effect from 01.12.2003 with the rider that she will not be treated as a regular employee

and she will only be paid the emoluments of the LDC and her working as an LDC will not create any equity in her favour.

18. For the foregoing reasons, I find no reasons to set aside the impugned award. The petition has no merit and the same is dismissed. Parties to bear their own costs.

**DEEPA SHARMA
(JUDGE)**

MARCH __, 2015
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