

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

Date of Decision: 16.09.2015

+ **W.P.(C) 8007/2012**

INDER DEV YADAV

... Petitioner

Through: Mr Rajinder Yadav, Adv.

versus

GOVT. OF NCT & ANR.

.... Respondents

Through: Mr A.K. Jain and Ms Santosh Jain, Adv.

**CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA**

J U D G M E N T

: SUNITA GUPTA, J.

1. The challenge in this writ petition under Articles 226 and 227 of the Constitution of India is to the impugned award dated 26.09.2012 passed by the learned POLC – IX, Karkardooma Courts, Delhi in ID No.371/11.

2. Shorn of unnecessary details, the case of the petitioner – workman (hereinafter referred to as “the workman”) is that he was in service of the respondent no. 2 (hereinafter referred to as “the management”) since 1997 on the last drawn salary of Rs.10,200/- per month at the post of machine-man. On 28.06.2010, the services of the workman were terminated illegally and arbitrarily by the management as such the workman filed a complaint before the Deputy Labour Commissioner on 15.07.2010. However, on account of adamant attitude of the management, the conciliation failed. Ultimately, the matter was sent to the Labour Court by the Deputy Labour Commissioner, District North West with following terms of reference:

“Whether the services of Inderdev Yadav s/o late Shri Devi Lal Yadav have been terminated illegally and/or unjustifiably by the management; and if yes, to what relief is he entitled and what directions are necessary in this respect?”

3. After receipt of reference, notice was issued to the workman with directions to file statement of claim wherein the workman filed the claim with a prayer that the management be directed to reinstate him with full back-wages including benefits of continuity of services and other consequential benefits. The claim of the workman was challenged by the management inter alia on the ground that the management never terminated the services of the workman rather he left the services of his own on the pretext of increase in wages which was beyond the financial capacity and reach of the management and thereafter the workman preferred to leave the services of the management. Therefore, the claim of the workman is liable to be dismissed. On merits, the relationship was not denied but it was denied that the workman was working with the management since 13.07.1997 or that his last drawn salary was Rs.10,200/- per month or that he was working as a machine man. It was submitted that the workman has been working with the management since 12.02.2004 that too as a helper and his last drawn salary was Rs. 5278/- per month. It was further submitted that in case the wages of the workman would have been Rs.10,200/- then he would not have accepted the amount of Rs.5185/- through cheque as his earned wages for the month of June, 2010 to 21st July, 2010 in the presence of the Labour Inspector – Joginder Singh. It was denied that the management terminated the services of the workman on any date. The management never disallowed the workman to perform his duties and never terminated his services. It was also denied that the management used to get signatures of the workman on printed or plain papers without his consent.

4. On the pleadings of the parties, learned Labour Court framed the following issues on 17.02.2012:

- “1. Whether the workman has left the service of his own on the pretext of increase in wages?
2. Whether the services of the workman have been terminated illegally and / or unjustifiably by the management?
3. Relief.”

5. The workman examined himself whereas Mr Deepak Garg, proprietor of the management examined himself.

6. Both the issues were taken up together by the learned Labour Court on the ground that the same were interconnected and it was held that the services of the workman have been terminated illegally and unjustifiably. The workman was granted compensation to the extent of 50% of the minimum wages or 50% of the actual salary, whichever was higher from time to time with effect from 28.06.2010 i.e. the date of termination of services. The management was directed to release this payment to the workman within a period of one month from the date of award failing which the amount was to carry simple interest @ 8% per annum from the date of the award till realization.

7. Feeling aggrieved, this writ petition has been filed by the workman.

8. The learned counsel for the petitioner – workman assailed the relief part granted to the workman vide the impugned award primarily on the ground that despite holding that the services of the workman were terminated by the management illegally and unjustifiably, he was not ordered to be reinstated in the services by the Labour Court. Even as regards the quantum of compensation, without any material on record, it was observed that the workman is an able-bodied person and it cannot be believed that he would remain unemployed for such a long period and, therefore, 50% of the minimum wages or actual salary was awarded to the workman. Even if the relief of reinstatement was not granted, the workman was entitled to 100% of the minimum wages or actual salary, whichever was higher.

9. On the other hand, learned counsel for the respondent – management submitted that the findings of the Labour Court deserves to be set aside inasmuch as except for oral statement made by the workman that he was employed with the management since 13.07.1997 and was drawing a salary of Rs.10,200/- per month at the time of his alleged termination, no documentary evidence has been placed on record to substantiate this allegation. On the other hand, the management had proved the appointment letter dated

Ex.WW1/XM-I, which was admitted by the workman to prove that the workman was appointed on 01.01.2004 as a helper on the salary of Rs.3500/-. Moreover, the workman also admitted the salary register Ex.WW1/XM-2 to Ex. WW1/XM-7 to prove the fact that the last drawn salary of the workman was Rs. 5278/-. Even the Labour Inspector submitted his report which was filed by the workman himself which proves the case of the management. The certificate Ex.WW1/2 was given to the workman on his request that he had applied for some flat with DSIDC wherein although it was mentioned that he was working as machine man but his salary was mentioned as Rs.3740/- per month. Even before the Labour Inspector a sum of Rs.5185/- was paid to the workman for the month of June, 2010 and this cheque would not have been accepted by the workman had his salary been Rs.10,200/- per month. Rather the workman himself left the job of the management. He himself declined to join the management unless he is given an increase in his salary. As such it was submitted that the findings of the Labour Court regarding illegal termination of services of the workman deserves to be set aside and the workman is not entitled for any relief.

10. Before considering the merits of the claims of both the parties, it will be useful to refer to the scope of interference by a writ court in finding of facts rendered by the Tribunal / Labour Court.

11. In *M/s Atlas Cycle (Haryana) Ltd. V Kitab Singh*, (2013) 12 SCC 573, the Hon'ble Supreme Court referred to the decision in *Surya Dev Rai v Ram Chander & Ors.*, (2003) 6 SCC 675 where Supreme Court summarized various circumstances under which the High Court can exercise its jurisdiction under Articles 226 and 227 of the Constitution which are as under:

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(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 supervisory 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 thereagainst 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 reappreciation 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.”

12. In the light of the above principle, it is to be seen whether the findings of the Labour Court suffers from any perversity which calls for any interference. It is to be kept in mind that while exercising writ of certiorari, this court is not assuming the role of the Appellate Court, however, the interference of the Court will be warranted only if it is shown that in recording the said findings, the Tribunal / Labour Court had erroneously refused to admit the admissible and material evidence or had erroneously admitted any inadmissible evidence which has influenced the impugned findings.

13. The case of the workman is that he joined the management on 13.07.1997 at the post of machine man at the last drawn salary of Rs.10,200/- per month. Except for oral and bald statement of the workman regarding the date of joining and the last drawn salary, there is no documentary evidence to substantiate his claim. On the other hand, the management placed on record the letter of appointment Ex.WW1/XM-I to show that the workman was appointed as a helper on 01.01.2004 at the salary of Rs.3500/- per month. This appointment letter has been admitted by the workman. The workman himself placed on record the ESI Card which shows his date of appointment as 12.02.2004. The management also placed on record the wage-sheet for the month of December, 2009 to May, 2010 which stands admitted by the workman in order to prove that the last drawn salary of the workman was Rs.5185/- per month. It is also not in dispute that pursuant to a complaint made by the workman, the Labour Inspector visited the premises of the management and submitted his report that as per management, the last drawn salary of the workman was Rs.5185/- per month, the workman himself has left the services; he was demanding more wages which the management was unable to pay and, therefore, he left the job. A sum of Rs.5185/- was paid to him towards his salary for the month of June, 2010 by cheque. The Labour Court, however, observed that even if it is accepted that the workman left the services of his own then the management had not written any letter to him calling him back on duty or to resume the duty. Therefore, the management failed to

prove that the workman left the services of his own and his termination was illegal. The learned counsel for the respondent – management in the counter affidavit assailed the findings of the Labour Court and prayed that the award be set aside. It was, however, admitted that the management did not prefer to challenge the impugned award by filing any writ petition. That being so, this submission of learned counsel for the respondent – management cannot be acceded to.

14. As regards the relief claimed by the workman, the workman himself had admitted in his cross examination that he is not interested in joining the management on the last drawn salary of Rs.5185/- per month. Therefore, the only question for consideration is how much compensation should have been awarded to him. The conduct of the workman himself is not above board as except for oral and bald allegations regarding joining the management since 1997 and getting last drawn salary of Rs.10,200/- per month, no documentary evidence has been placed on record. On the other hand, the management was able to prove by voluminous documents that the workman joined the management only in the year 2002 and that too at an initial salary of Rs.3500/- per month as helper which was increased from time to time. Under the circumstances, the Labour Court had already taken a liberal view by awarding 50% of the actual wages or the minimum wages, whichever is higher, to be payable to the workman within a period of one month failing which the amount was to carry interest @ 8% per annum. The impugned award, therefore, cannot be said to be perverse or suffers from any error apparent on the face of the record or against the principles of natural justice which warrants any interference.

15. That being so, there is no merit in the writ petition and the same is accordingly dismissed. The management is directed to comply with the impugned award within one month from the date of passing of this order, failing which it will carry interest @ 8% per annum, as awarded by the learned Labour Court.

The petition stands disposed of accordingly.

Pending applications, if any, also stand disposed of.

LCR be sent back forthwith.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 16, 2015/rd