

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2746 OF 2016

Shri Ganesh Sahakari Sakhar
Karkhana Limited, Ganeshnagar,
Tq. Rahata, District Ahmednagar. ..Petitioner

Versus

Somath Balaji Darandale
R/o Korhale, Taluka Rahata,
District Ahmednagar. ..Respondent

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Advocate for Petitioner : Shri Upadhye V.N.
Advocate for Respondent : Shri Gawali Amol K.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 07, 2016
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. By order dated 9.8.2016, the submissions of the learned Advocates for the respective sides were recorded as under:-

"1 Upon hearing the learned Advocates for the respective sides, Shri Upadhye makes a statement that the issue raised in this petition is with regard to the interest of 10% granted from the date the gratuity became payable to the Respondent for an amount of Rs.1,74,736/-. He, therefore, submits on instructions that the Respondent can be permitted to withdraw Rs.1,74,736/with accrued interest, without any condition, as that is an admitted gratuity amount.

2 Shri Gawali submits that he has no dispute with regard to the gratuity amount and is only facing the contest with respect of 10% interest granted.

3 As such, the Respondent is permitted to withdraw Rs.1,74,736/- along with accrued interest which is deposited before the Appellate Authority under the Payment of Gratuity Act, 1972 and Member, Industrial Court, Ahmednagar by filing an application along with a copy of his identity in the form of PAN Card or Adhar Card or Election Identity Card.

4 Stand over to 01.09.2016 for final hearing."

5. Shri Upadhye, learned Advocate strenuously submits that the impugned judgment of the appellate authority under the Payment of Gratuity Act, dated 28.9.2015 is unsustainable. The respondent himself had made an application belatedly. Delay of almost one year was caused. Having caused the delay, the respondent cannot take advantage of his own wrong. His delay ought not to penalize the

petitioner with interest.

6. He further submits that there was no application for condonation of delay. Without such an application, the claim of the respondent should not have been entertained by the controlling authority as well as the appellate authority. He, therefore, prays for quashing the judgments of the controlling authority as well as the appellate authority to the extent of granting interest on the amount of gratuity to be paid.

7. Shri Gawali, learned Advocate submits that the obligation to pay gratuity lies on the employer. Even if the employee does not make an application, it is the duty of the employer to ensure that the gratuity is paid. He refers to the statement of objects and reasons, in support of his contention that the employer is legally obliged to determine the gratuity amount and make the payment. If the employee finds that the payment is less than what is due, he could make an application.

8. He further submits that though it could be said that there was a delay in filing an application on the part of the respondent, the reasons cited were considered by the controlling as well as appellate authority. In fact, the appellate authority has reduced the interest from 12% to 10% per annum and hence no interference is called for.

9. I have considered the submissions of the learned Advocates.

10. Section 7(3A) would indicate that an employer has to arrange the payment of gratuity amount within 30 days from the date it becomes payable. If such amount is not paid, the employer is mandated to pay interest as per the rates notified by the Central Government on long term deposits, from the date on which the gratuity becomes payable upto the date on which it is actually paid. These provisions, therefore, do not require any further interpretation.

11. The Act and the Rules prescribe a mechanism which would enable the employee to make a claim for gratuity if the employer fails to pay the same. In my view, the Act does not necessarily impose a responsibility on the employee for demanding such a payment. If the provision for enabling the employee to file an application would have been missing, the employers would have avoided payment of gratuity on the plea that there is no provision enabling the employee to make a claim. As such, the mechanism to enable the employee to make a claim, comes into operation only after the employer fails to make the payment.

12. In the instant case, the employer had deposited the amount of

gratuity only after the controlling authority issued necessary directions. Sub-section 3A below Section 7 specifically mandates the employer to pay interest as observed above.

13. Having considered the narration of facts as recorded in brief hereinabove, in my view, this petition hangs on a law issue in relation to the jurisdiction of this Court. So far as the limitations of the writ and/or supervisory jurisdiction of this Court are concerned, the view taken by the 5 Judges Bench of the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and others, [AIR 1964 SC 447]. The Apex Court has laid down the law under paragraph Nos. 7 and 8 of the said judgment, which read thus :-

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 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 in excess of it, or as a result of failure to exercise jurisdictions. 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 a 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 Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam ([1958] S.C.R. 1240.) and Kaushalya Devi v. Bachittar Singh.

8. *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, or 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 a the legal provision which is alleged to have been misconstrued or contravened.”

14. In the case of Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], the Apex Court has once again discussed the scope and jurisdiction of the supervisory powers of this Court in paragraph Nos.39(1) to (9) and 39, which read thus :-

“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 No.46 of 1999 with effect from 01.07.2002 in Section 115 of 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 the CPC Amendment Act No. 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 the 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 (iii) 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 there against and entertaining a petition invoking certiorari or supervisory jurisdiction of 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 covert itself into a Court of Appeal and indulge in re-appreciation 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.*

39. *Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken*

care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge."

15. In the light of the above, in the Writ / Supervisory jurisdiction of this Court, I do not find that the Industrial Court has committed a grave error in passing the impugned order. I do not find that the impugned order would cause gross injustice to the petitioner. As such, this petition being devoid of merits is, therefore, dismissed.

16. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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