

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20887 of 2014

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Niranjan Goswami, S/o Mugal Goswami, Resident of Village Mansar, P.S.
Nathnagar, District- Bhagalpur

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Labour Department,
Government of Bihar, Patna
2. The Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur
3. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur
4. The Finance Officer, Tilka Manjhi Bhagalpur University, Bhagalpur
5. The Management of Tilka Manjhi Bhagalpur University, Press Bhagalpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Navjot Yesu, Advocate
For the Respondent-State: Mr. Birju Prasad, GP-13
Mr. Ravi Kumar, AC to GP-13
For the T.M.B.University: Mr. Rajendra Kumar Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-03-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Tilka Manjhi
Bhagalpur University.

2. The petitioner has filed this writ application for
quashing of award dated 13.02.2014 passed in Reference Case No. 8
of 2000 by the learned Presiding Officer, Labour Court, Bhagalpur
under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short
'I.D. Act') whereby it has upheld the order passed by the employer



dismissing the petitioner from service.

3. The petitioner and seven others had submitted an application dated 19.07.1999 disputing their dismissal from service from February, 1999 by the management of the Tilka Manjhi Bhagalpur University to the Deputy Labour Commissioner, Bhagalpur-cum-Authority under conciliation proceeding. The Deputy Labour Commissioner, Bhagalpur took initiative for a fair and amicable settlement of the dispute, but no settlement could be arrived at between the parties. On failure of reconciliation, a report under Section 12(4) of the I.D. Act was submitted by the Conciliation Officer to the Government vide letter no. 1888 dated 15.09.1999.

4. After considering the facts and circumstances, the Government opined that industrial dispute exists between the management and workmen. Therefore, in exercise of powers conferred under Section 10(1)(c) read with 10(2-A) of the I.D. Act, the Government referred the dispute for adjudication on 11.03.2000.

5. The reference dated 11.03.2000 reads as under:-

“Whether the termination of Sri Phuleshwar Thakur and other seven workmen of Tilka Manjhi Bhagalpur University, Bhagalpur press is justified? If not, what relief they are entitled to?”



6. As the petitioner failed to appear before the Labour Court and participate in the proceedings, the Labour Court proceeded with the reference of other seven workmen with respect to their respective claims and decided the same vide award dated 09.05.2007.

7. After the disposal of reference in respect of other workmen, the petitioner approached the Labour Court and submitted that his case be also considered and decided in terms of the reference made by the Government. Thereafter, the Labour Court proceeded with the case of the petitioner.

8. The petitioner took a plea that he had worked as a Compositor on the sanctioned post in the University Press from 01.12.1990 till 09.07.1999. He contended that while terminating him from service, he was not given one month's notice in writing indicating the reasons for retrenchment and even wages for the period of notice in lieu of such notice in terms of Section 25-F of the I.D. Act were not paid to him.

9. Learned counsel for the petitioner submitted that the Labour Court failed to appreciate the evidence led before it in correct perspective. He submitted that merely because the petitioner failed to show documents in support of payment made for 240 days in one calendar year, it ought not to have decided the reference against the petitioner specially when on the basis of same evidence



reference in respect of seven other workmen was allowed vide award dated 13.02.2014 in their favour.

10. On the other hand, stand of the University before the Labour Court was that the petitioner was appointed on contract on 27.12.1990 and he worked as such till 05.05.1991. He was paid his wages for the work done during this period. He contended that there was no relationship of an employer and employee and since the petitioner had not completed 240 days of continuous service, there was no requirement for complying with the provisions prescribed under Section 25-F of the I.D. Act.

11. Learned counsel for the University submitted that the Labour Court examined the bank statement of the petitioner's saving account and found that only two transactions were made and total remaining balance of Rs.50/- was shown in his saving account. It also noticed that from photocopy of cheque of Rs. 1600/- issued by the University in favour of the petitioner with regard to the work, the claim made by the petitioner that he had worked regularly for several years could not be proved. He submitted that since the petitioner failed to prove that he worked for 240 days in one year by producing evidence oral or documentary, the findings of the Labour Court cannot be faulted with.

12. He submitted that the petitioner himself had



initially abandoned the reference made by the Government for over seven years and woke up from the deep slumber only after the award in respect of other workmen was passed in the year 2007. He submitted that the evidences led by those workmen could not be taken into account for deciding the case of the petitioner, as it was for the petitioner to lead evidence in order to prove that he was in continuous service for the required number of days in a calendar year. He contended that from the pass book and other evidences produced by the petitioner himself, the Labour Court rightly concluded that the petitioner failed to prove his case that he had continuously worked for one year under the employment of University.

13. I have carefully considered the rival contentions and perused the impugned judgment and other materials on record.

14. I find substance in the argument advanced by the learned counsel for the University.

15. From the evidence on record, the Labour Court gave a finding of fact that in the proceeding in respect of seven other workmen the petitioner did not appear and he failed to lead any evidence. Subsequently, his whole effort was to show parity with the case of the seven workmen in whose matter award was favourably issued. However, from the evidence adduced on his behalf, it could



not be established that he had worked continuously for a period of 240 days in a year. The documentary evidence submitted by him could show that he had received Rs.1600/- only as wages from the University and there were only two transaction in his bank account. Since the petitioner worked as Compositor in the press of the University between 27.12.1990 and 09.05.1991 only, there was no necessity to comply with the requirements of Section 25-F of the I.D. Act.

16. It is well settled that a finding of fact recorded by the Labour Court cannot be challenged in a proceeding for a writ of certiorari on the ground that the materials led into evidence before it were insufficient or inadequate to sustain the finding.

17. In **Syed Yakoob vs. K.S. Radhakrishnan and Ors.**, [AIR 1964 SC 477], the Constitution Bench of the Supreme Court considering the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi judicial functions observed as under:-

“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.”

18. In **Sawarn Singh and Another vs. State of Punjab and Others [(1976) 2 SCC 868]**, the Supreme Court reiterated the limitations of *certiorari*. Jurisdiction indicated in **Syed Yakoob vs. K.S. Radhakrishnan** (supra) in following words; “*in regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in*



excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.”

19. In **Surya Dev Rai vs. Ram Chander Rai & Others [(2003) 6 SCC 675]**, the Supreme Court noticed the distinction between the scope of Articles 226 and 227 of the Constitution and culled out several propositions including the following: “*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 the principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice*”.

20. In **Ishwarlal Mohanlal Thakkar vs. Paschim Gujarat Vij Company Ltd. & Anr. [(2014) 6 SCC 434]**, reminding the well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its finding on contentious points. The Supreme Court observed as under:-



“9. We find the judgment and award of the labour court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the labour court in its Award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the Award of the labour court was based on sound and cogent reasoning, which has served the ends of justice.”

21. What can be inferred from the aforesaid decisions of the Supreme Court is that the limitations on the jurisdiction of this



Court are well settled. A writ in the nature of certiorari may be issued only to annul the findings of the Labour Court in award if there is a serious error of law, or the findings recorded suffer from an error of jurisdiction, or from a breach of principles of natural justice. It would not be proper for this Court to pick up hole here and there in order to set aside the order passed by the Labour Court. It would also not be proper for this Court to re-appreciate the evidence in order to ascertain adequacy or insufficiency of evidence led before the Labour Court in order to annual its finding.

22. In the present case, I find that the Labour Court has exercised its discretion judicially and the findings recorded by it while passing the impugned award do not suffer from any fundamental flaws.

23. Accordingly, the writ application, being devoid of any merit, is dismissed. No costs.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
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