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

% ***Date of decision : 12th September, 2018***

+ W.P.(C) 4895/2014

MADAN

..... Petitioner

Through : Mr. B.K. Singh, Adv.
along with the petitioner.

versus

M/S ANMOL FINANCIAL SERVICES LTD. Respondent

Through : Mr. Om Prakash Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. These proceedings emanate from an industrial dispute, initiated by the petitioner and referred by the Government of National Capital Territory of Delhi, for adjudication to the Labour Court, *vide* order dated 14th April, 1995, containing the following single term of reference :

“Whether services of Shri Madan S/o Shri Heera Lai have been illegally and/or unjustifiably terminated by the management and if yes, to what relief is he entitled?”

2. The petitioner, in his Statement of Claim before the Labour Court, contended that he had jointed the respondent, as permanent driver on 6th January, 1992, and had a clean service record. Even so, he contended, he had not been provided the benefits due to him and, on his insisting therefor, the respondent terminated his services on 6th September, 2011, after withholding his wages for the period August to September, 2011.

3. The petitioner sent a demand notice, dated 21st November, 2011, to the respondent, but, on finding no response forthcoming, initiated the present industrial dispute.

4. As is practically the norm in all such cases, the respondent, in its written statement before the Labour Court, denied the existence of any employer/employee relationship between the petitioner and itself. The petitioner, in rejoinder, reiterated his claim.

5. The following issues were framed, by the Labour Court, as arising for its consideration, on 28th January, 2013 :

- “1. Whether there existed relationship of employer and employee between the workman and the management?
OPW
2. As per terms of reference.
3. Relief”

6. The workman examined himself as WW1 and closed his evidence. The respondent examined Shri Krishan Kumar Sharma, Recovery Officer working in its office as MW1 and closed its evidence.

7. Needless to say, the depositions of the petitioner, as WW1 and Shri Krishan Kumar Sharma as MW1, reflected their respective stands as canvassed in the statement of claim and the written statement, with the petition asserting that he had been the employee of the respondent and the respondent insisting *per contra*.

8. Having taken into account the evidence before it, the Labour Court, *vide* the impugned award dated 23rd April, 2014, returned the following findings :

(i) The onus to prove existence of employer-employee relationship was on the workman, as held by the Supreme Court in *Workmen of Nilgiri Co-operative Marketing Society Ltd. v. State of Tamil Nadu*, (2004) 3 SCC 514.

(ii) The petitioner relied on the following evidence, to support the assertion that he was the employee of the respondent :

- (a) a photograph depicting him on the driver seat in a car with Registration No.DL-7C F-2625,
- (b) a photocopy of the insurance certificate of the said car, showing that the said car belonging to the respondent,
- (c) a copy of his bank passbook, depicting his address as A-66, Guru Nanakpura, which, according to the petitioner, was the then existing address of the respondent, as mentioned on the copy of the visiting card, relied upon by him and exhibited as Ex.WW1/I, and
- (d) his own deposition that Chander, Babloo, Surender and Rajiv were his co-employees under the respondent, read with the deposition of MW-1 to the effect that Surender and Babloo were, indeed, the respondent's employees.

(iv) The workman had failed to place on record even his driving licence.

(v) The photograph, showing him on the driving seat of the car, even assuming the car belonging to the respondent, could not have established existence of employer-employee relationship between the petitioner and the respondent. MW1 had categorically denied, in his deposition, that the car was registered in the name of the respondent.

(vi) The address on the passbook was different from that on the visiting card, inasmuch as, on the visiting card, there was a reference to “first floor”, which was missing on the passbook. Even otherwise, the mere reflection of the address of the respondent on the passbook of the petitioner was insufficient to establish employer-employee relationship between the petitioner and the respondent. Reliance was placed, for this purpose, on the judgment of this Court in ***Suresh Bhati v. M/S Kapil Industries, MANU/DE/8864/2006***.

(vii) Similarly, the naming, by the petitioner, of some of the employees of the respondent, would not create a presumption of the existence of employer-employee relationship between them.

(viii) Though, the petitioner, in cross-examination, had deposed that one Rajeshji, working with the respondent, had appointed him as driver, after he was told about the vacancy of one Chhote Lal, he failed to lead the evidence of either of the said persons.

(ix) In these circumstances, and in the absence of any letter of appointment, Provident Fund contribution slip, etc., the workman could not be said to have discharged the onus of proving the existence of employer-employee relationship between the respondent and himself. For this proposition too, the Labour Court placed reliance on ***Automobile Associate of Upper India v. PO Labour***

Court II & Anr., 2006 LLR 851 Delhi.

9. The writ petition does not adduce any substantial ground to question the finding of the Labour Court, except for reiterating the facts and the evidence, which were already placed, by the petitioner, on record before the Labour Court.

10. Mr. B.K. Singh, appearing for the petitioner, however, emphatically contends that the workman was in possession of certain documents, which could have established employer-employee relationship between his client and the respondent, and had, in fact, handed over the said documents to his counsel, but that the counsel had apparently defaulted in placing them before the Labour Court. He therefore, requests this court to remand the matter to the Labour Court, so that he could lead the said evidence.

11. At this distance of time, I am of the view that any such remand would not be in the interests of justice. I may note that no such document has been placed on record in these proceedings either; nor is there a whisper of an averment, in the pleadings before this Court, supporting the submissions of Mr. Singh.

12. It is trite that this court, in such matters, exercises certiorari jurisdiction, the peripheries of which stand authoritatively delineated in the following classic expositions found in ***Syed Yakoob v. K. S. Radhakrishnan, 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 in 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 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. 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; 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 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 misconducted or contravened.”

13. Specifically on the point of the existence of employer-employee relationship, the Supreme Court, in *Workman of Nilgiri (supra)*, while placing the onus in that regard on the workman, also went to hold that the said finding, being a pure finding of fact, the High Court would originally not interfere therewith, unless the finding suffered from perversity or was such as could not be arrived at any reasonable man conversant with the facts of the case.

14. Tested on these principles, I am of the view that the impugned award of the Labour Court cannot be said to have suffer from any such infirmity, as to justify a revisitation of the issue by this Court, or any attempt, by it, to arrive at a contrary conclusion.

15. Learned counsel for the petitioner does not dispute the fact that the material placed by his client before the Labour Court was in fact, taken into account in the impugned award. The desperate attempt, at this stage, to request the Labour Court to re-examine the matter and allow the petitioner to place further material before it, neither impresses, nor commends acceptance.

16. In the circumstances, I find no reason to interfere with the impugned award dated 23rd April, 2014, passed by the Labour Court, which is sustained in its entirety.

17. The writ petition is accordingly dismissed.

18. No costs.

SEPTEMBER 12, 2018
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C.HARI SHANKAR, J