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

Date of Decision: 31st August, 2018

% + WP(C) 6748/2013 & CM APPL. 14646/2013
SUNDER LAL RAJ KUMAR Petitioner
Through: Mr. K. Sunil, Adv.

versus

MURARI LAL GUPTA Respondent
Through: Mr. D.K.Pandey and Mr. Sunil
Dwivedi, Advs.

+ WP(C) 6749/2013 & CM APPL. 14648/2013
SUNDER LAL RAJ KUMAR Petitioner
Through: Mr. K. Sunil, Adv.

versus

BALRAM KANSAL Respondent
Through: Mr. D.K.Pandey and Mr. Sunil
Dwivedi, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. The issues of fact and law, arising in these two writ petitions, are cognate and, to an extent, common, involving consideration of the same legal issues and leading to the same conclusion. They are, therefore, being decided by this common judgement. In order to facilitate an easier appreciation of the controversy, however, I would be deciding the issues arising for controversy in the context of WP (C) 6748/2013 (M/s Sunder Lal Raj Kumar v. Murali Lal Gupta), and

applying, later in this judgement, the said decision to the facts in WP (C) 6749/2013 (M/s Sunder Lal Raj Kumar v. Balram Kansal).

2. The issues of law involved in these petitions admit of no legal complexity whatsoever. They are trite, and well settled; this judgement merely augments the pantheon of judicial authority that applies these principles.

WP (C) 6478/2013 (M/s Sunder Lal Raj Kumar v. Murali Lal Gupta)

3. Proceeding, now, to the facts, arising in WP (C) 6478/2013 (M/s Sunder Lal Raj Kumar v. Murali Lal Gupta). For ease of reference, the respondents in these two writ petitions, i.e. Murari Lal Gupta and Balram Kansal, shall each be referred to as “the workman”, while dealing with their cases.

4. Murari Lal Gupta, who claimed to be a workman in the employ of the petitioner M/s Sunder Lal Raj Kumar, since 1st April, 1989, initiated an industrial dispute, challenging the alleged termination, of his services, by the petitioner, on 12th April, 2006. The workman alleged that he had been working with the petitioner since 1st April, 1989 as *munim* (accountant), *sans* any appointment letter or other official record. Alleging that he had been terminated owing to differences between the petitioner and himself, without any show cause notice or charge-sheet, the workman claimed that Section 25F of the Industrial Disputes Act, 1947, had been infringed.

5. The petitioner alleged, *per contra*, that there was no employer-employee relationship between the workman and it and that, therefore, the reference itself was not maintainable. It was contended that the workman was gainfully employed with M/s Suraj Bhan Ghanshyam Dass (hereinafter referred to as “SBGD”), and had never worked with the petitioner.

6. The dispute was referred, by the GNCTD, to the Labour Court, on 5th December, 2007 with the following single term of reference:

“Whether there existed an employer-employee relationship between the management and Sh. Murari Lal Gupta s/o Sh. Ram Chander and if so, whether the services of Sh. Murari Lal Gupta have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. notification and to what other relief is he entitled and what directions are necessary in this respect?”

7. Statement of Claim was filed by the workman, and written statement, by way of opposition thereto, was filed by the petitioner.

8. The workman contended, in his Statement of Claim, that he had been working with the petitioner since 1st April, 1989, as *munim*, without having been issued any appointment letter, or being permitted to mark his attendance. He contended that, on his requesting for the said facilities to be made available to him, the petitioner started harassing him and, after obtaining his signatures on certain blank papers and vouchers, terminated his services on 12th April, 2006, without issuing any show cause notice or charge-sheet to him. This, he contended, constituted a violation of Section 25 F of the ID Act.

He, therefore, issued a notice to the petitioner, on 14th June, 2006, to which the petitioner replied, and the workman replicated. Conciliation was attempted, which failed, resulting in the workman initiating the industrial dispute, which is the genesis of these proceedings. The workman claimed reinstatement in service with full back wages and continuity of service.

9. *Per contra*, the petitioner stoutly contested the very existence of any employer-employee relationship, between the workman and itself. It was asserted, by the petitioner, that the workman was, in fact, permanently gainfully employed with SBGD, and had never worked for the petitioner at any point of time. As such, it was asserted that the entire claim of the workman was bereft of substance, and dismissal, thereof, was accordingly prayed for.

10. Pursuant to completion of pleadings as aforesaid, the Labour Court framed the following questions, for determination:

“(i) Whether there exists any relationship of employee and employer between the workman and the management?

(ii) As per terms of reference.”

11. An award, initially passed in the dispute on 12th March, 2012, was set aside by this Court on 13th March, 2013, and the matter remanded for reconsideration. The impugned Award has been passed consequent thereto.

12. The workman, leading his own evidence as WW-1, tendered, in his examination-in-chief, his affidavit by way of evidence, which was accordingly exhibited as Ex. WW-1/A. It was deposed, in the said

affidavit, that the workman had been working as *munim*, with the petitioner, since 1st April, 1989, on regular basis, without being provided an appointment letter, overtime salary, record register, etc., and was even denied wages for the period 1st April, 2005 to 12th April, 2006. The workman deposed that, on his demanding the said facilities, the petitioner retaliated by terminating his services, orally, on 12th April, 2006. He pointed out that, prior thereto, he had neither been issued any memo, nor any show cause notice, and no enquiry had been held against him. The workman's termination from service, therefore, the affidavit sought to contend, amounted to "retrenchment" within the meaning of Section 25 F of the ID Act, and, having been effected without complying with the mandatory provisions of the said Section, stood vitiated thereby. He also deposed that, from 24th April, 2006 onwards, he had remained unemployed.

13. The workman also produced four copies of books of accounts of the petitioner, in vernacular, on the petitioner's letterhead, bearing the signature of the workman at the foot of the said documents, which were marked 'A' to 'D'. The workman deposed, in examination-in-chief, that he was relying on the said documents marked 'A' to 'D'.

14. The workman was cross-examined on 8th October, 2010. To a suggestion to the contrary, put to him, he asserted that he had worked with the petitioner for 17 to 18 years. The workman was confronted with a document, marked 'X', on the letterhead of SBGD, which authorised the workman to sign certain Sales Tax forms on its behalf.

Regarding this document, the workman deposed, in cross-examination, thus:

“Mark X bears my signature and photograph. I know the contents of Mark X. It is incorrect to suggest that time the permanent employee of Suraj Bhan Ghanshyam Dass. Vol. I was given Mark X only to bring a Sales Tax form. It is incorrect to suggest that I was given Mark X not only to brings Sales Tax form. It is incorrect to suggest that I was given Mark X to represent Suraj Mal Ghan Shyam Dass in proceedings. Except Suraj Mal Ghan Shyam Dass I have not been authorised to bring any Sales Tax form from the Department. I have signed the proceeding sheet of Sales Tax authority on the basis of the authorisation letter Mark X.”

The workman further deposed that he, and Balram Kansal, had worked for the petitioner during the same period. Regarding the particulars of the petitioner, the workman deposed, in cross-examination, as under:

“I have never seen the partnership deed of the alleged management. The morning management is a partnership concern. Sri Sundar Lal, Raj Kumar, Ved Prakash, Laxmi Devi were the partners of the alleged management. After the death of Laxmi Devi, Anil Gupta and Atul Gupta were made partner of the said management. Prior to 2000, Anil and Atul Gupta were made partner’s stop I have never seen the said Partnership Deed. I have knowledge about the partners as I was working there.”

15. The workman denied the suggestion that he had been working with SBGD, or that he used to write its daily records. He denied receiving any salary from the said firm. At the same time, he accepted that he had no documentary proof to show that he was, in fact, receiving ₹ 3500/- from the petitioner. The original books of the petitioner, he stated, if produced, would reveal the fact.

16. The Management led the evidence of three witnesses, namely MW-1 Radhey Shyam Gupta, a broker who claimed to regularly visit the petitioner, MW-2 Nand Kishore Jain, a former “*mahamantri*” of the Dalal Galla Committee of the area who, on that basis, claimed knowledge of “each and every shops and their owners and workers” and also claimed to be a regular visitor at the shop of the petitioner and MW-3 Sundar Lal, who was permanently and gainfully employed with the petitioner and claimed, therefore, to be entirely aware of the facts of the case.

17. While para 1 of the affidavits of MW-1, Radhey Shyam Gupta and MW-2 Nand Kishore Jain merely referred to their knowing the petitioner-firm, paras 2 to 4 were identical, and read thus:

“2. That the deponent is the broker in grains in the market and accordingly, the deponent visit almost various shops including the shop of M/s Sunder Lal Raj Kumar and accordingly, know various facts.

3. That to the knowledge of the deponent Shri Murari Lal Gupta was never employed with M/s Sunder Lal Raj Kumar nor he has anything to do with them.

4. That earlier Shri Murari Lal Gupta is permanently employed with M/s Suraj Bhan Ghan Shyam Dass, 2735/4, Mohan Palace, Naya Bazar, Delhi-110006 which is owned by Shri Prem Chand.”

18. The said witnesses, MW-1 and MW-2, proved their affidavits in evidence in their examination-in-chief.

19. MW-1 and MW-2 were cross examined, on the same day i.e. 23rd April, 2011. Their depositions, in cross examination, read as under:

MW-1

“ I have not brought I-card to show that I am Radhey Shyam, I am not a summoned witness. I have called at the instance of Management. I am a broker and I have in visiting terms with the Management working place. I know the claimant. It is wrong to suggest that I got the claimant in employment with the management. I have not seen the claimant at the working place of M/s Sunder Lal Rajkumar. I have been visiting M/s Sunder Lal Rajkumar daily and regularly. Sunday is the weekly off in the area. As I have not seen the claimant physically and accordingly on the said basis I have stated in my affidavit that the claimant was not working with M/s Sunder Lal Rajkumar. I have not placed any document myself to show that he was earlier employed with M/s Suraj Bhan Ghanshyam Das. It is wrong to suggest that the claimant was working with M/s Sunder Lal Rajkumar w.e.f 1.4.1989 to 12.04.2006. It is wrong to suggest that I am deposing to favour the management as I have been called by them. It is wrong *tot* suggest that I have filed the false affidavit or that I am deposing falsely.”

MW-2

“ I have not brought I-card to show that I am Nand Kishore, I am not a summoned witness. I have called at the instance of Management. I am a broker and I have in visiting terms with the Management working place. I know the claimant. I have not seen the claimant at the working place of M/s Sunder Lal Rajkumar. I have been visiting M/s Sunder Lal Rajkumar daily and regularly. Sunday is the weekly off in the area. As I have not seen the claimant physically and accordingly on the said basis I have stated in my affidavit that the claimant was not working with M/s Sunder Lal Rajkumar. I have not placed any document myself to show that he was earlier employed with M/s Suraj Bhan Ghanshyam Das. It is wrong to suggest that the claimant was working with M/s Sunder Lal Rajkumar w.e.f 1.4.1989 to 12.04.2006. It is

wrong to suggest that I am deposing to favour the management as I have been called by them. It is wrong *tot* suggest that I have filed the false affidavit or that I am deposing falsely.”

20. Apart from the evidentiary value of these affidavits, I am constrained to enter an observation regarding the manner in which they have been recorded. The affidavits are, on their face, identical reproductions of each other. In judicial proceedings, this is highly undesirable. It is obvious that the depositions of the two witnesses were not recorded independently, but that one was copied from the other. This is all the more unsettling when the deposition is in cross-examination, and serves as a hurdle to the Court faced with the issue of whether to rely on the said affidavits, or not. No doubt, trial courts are overburdened, and time is short; however, that cannot justify dispensation with the basic essentials of the manner in which evidence is to be recorded.

21. In the present case, the situation is even more unsettling, as it is seen that the depositions, in cross-examination, of MW-1 and MW-2 are identical to the extreme extent even of typographical errors. The last sentence, in both these depositions reads thus:

“It is wrong *tot* suggest that I have filed the false affidavit or that I am deposing falsely.”

I say no more.

22. MW-3 Sunder Lal, in his affidavit in evidence, which was relied upon, and proved, by him, in his examination-in-chief on 16th July, 2011, deposed that the workman had, “in collusion with and

connivance with his brother Balram Kansal”, forged and fabricated documents, for which a complaint stood filed. Various other allegations were heaped, in the said affidavit, on the workman, including attempts to blackmail and extort money from the petitioner. In the light thereof, the affidavit sought to depose that there was no industrial dispute between the petitioner and the workman, and no relationship of employer and employee existed between them.

23. In cross-examination, MW-3 Sunder Lal, reiterated that the workman was not an employee of the petitioner. However, he acknowledged that the documents, marked ‘A’ to ‘D’, belonged to them.

Findings of the Labour Court

24. Having thus recorded the evidence adduced before him, the Labour Court proceeded to return its findings. Even while acknowledging the fact that, in law, the onus to establish employer-employee relationship was on the workman, as held in *Workmen of Nilgiri Cooperative Mkt. Society Ltd. v. State of T.N. (2004) 3 SCC 514*, as also the fact that the signature of the workman did appear on the document marked ‘X’, of SBGD, the Labour Court nevertheless held that the said document was not sufficient to establish existence of employer-employee relationship between the petitioner and the workman.

25. The Labour Court also observed that, “once the workman had denied the relationship of employer-employee between him and M/s Suraj Mal Ghanshyam Das, therefore the onus to prove this fact shifts

upon the management.” I may note that this proposition, thus empirically cannot be legally sustained in law, as mere assertion, by the employee-workman, of the fact of employment with the management, cannot be sufficient to shift the onus of proof onto the management, to establish otherwise. However, on facts, as I would observe hereinafter, there is no justification for this Court to interfere with the findings of the Labour Court; this somewhat inaccurate understanding, by the Labour Court, of the legal position, may not, therefore, significantly affect the outcome of these proceedings.

26. The Labour Court, thereafter, proceeded to hold that, in view of certain books of accounts marked ‘A’ to ‘D’, which were acknowledged by MW-3 Sunder Lal, as belonging to the petitioner-firm, it stood established that the workman was, in fact, employed with the petitioner. The document marked ‘X’, though issued by SBGD, it was observed, was insufficient to tilt the balance in favour of the petitioner.

27. The Labour Court also relied on the fact that the petitioner had not led any evidence, except in the form of the depositions of MW-1 and MW-3, to prove the alleged factum of employment, of the workman, with SBGD.

28. The Labour Court also noted the fact that, pursuant to a request made by the workman in that regard, the Labour Court had, on 9th March, 2010, directed the petitioner to produce the attendance registers and other documents such as the accounts register, *nakal naam bahi*, *nakal jama bahi* etc. for the period 1989-2006 as, in the

submission of the workman, these documents would establish that he had, in fact, worked for the petitioner during the said period. Despite being afforded repeated opportunities in this regard, the said documents were not produced by the petitioner. The Labour Court has also treated this fact as justifying an adverse inference against the petitioner, regarding the factum of the workman having been its employee during the said period.

WP (C) 6749/2013 (M/s Sunder Lal Raj Kumar v. Balram Kansal)

29. The facts obtaining, and issues arising, in this case, were practically identical to those in WP (C) 6748/2013. The dispute was the same, i.e. the alleged illegal retrenchment of the workman Balram Kansal, by the petitioner M/s Sunder Lal Raj Kumar. In this case, however, the petitioner, while alleging that the workman Balram Kansal had never been employed with it, asserted that he had worked, earlier, with Satish Jain in M/s Ram Kumar Lakshmi Narayan and, thereafter, in M/s H.R Traders. The witnesses produced by the petitioner, in this case, were the same as those produced to traverse the claim of Murari Lal Gupta, namely, Radhey Shyam Gupta as MW-1, Nand Kishore Jain as MW-2 and Sunder Lal as MW-3. The affidavits-in-evidence of Radhey Shyam Gupta and Nand Kishore Jain, proved in their respective examinations-in-chief, were also identical to those adduced by them in the proceedings relating to Murari Lal Gupta, except for the difference in the names of the firm in which the workman was alleged to have been employed. The records of cross examination, again disquietingly, were identical to the records of cross examination of MW-1 and MW-2 in the proceedings

relating to Murari Lal Gupta, to the extent of the typographical error “*tot*” figuring in the last sentence of the depositions.

30. While Murari Lal Gupta had, as already noted above, produced the books of account of the petitioner, and had them marked ‘A’ to ‘D’, as evidencing his employment with the petitioner, Balram Kansal produced salary certificates, issued by the petitioner to him, regarding payment of his salary for the years 1996-97, 1997-1998 and 2005-2006. These documents were marked ‘A’ to ‘C’, and relied upon by the workman, in his examination-in-chief.

31. MW-3 Sunder Lal did not dispute the correctness of the said certificates, either in his affidavit in chief or in his cross examination. Rather, he admitted, in his cross examination, that he had not produced any document to prove the employment, of the workman-Balram Kansal either with M/s Ram Kumar Lakshmi Narayan or M/s H.R.Traders.

32. In respect of Balram Kansal, the Labour Court has returned findings similar to those returned in the case of Murari Lal Gupta. While, in the case of Murari Lal Gupta, there was at least a document of SBGD, authorizing the workman to submit its Sales Tax returns, no such document was forthcoming in the case of Balram Kansal. The Labour Court has held, in the impugned award, that in the absence of any dispute, by the petitioner, regarding document marked ‘A’ to ‘C’, i.e. salary certificates showing payment of salary to Balram Kansal, those documents were sufficient to establish the existence of

employer-employee relationship between Balram Kansal and the petitioner.

33. Following on the above findings, the Labour Court held that, as the evidence adduced by the workmen Murari Lal Gupta and Balram Kansal was sufficient to establish that each of them had worked with the petitioner for more than 240 days in a calendar year, before their employment was terminated, the termination amounted to “retrenchment” within the meaning of Section 2(o) of the Industrial Disputes Act, 1947 and having been effected without complying with the mandate of Section 25 F thereof, was *ex facie* illegal.

34. I may note that the fact of non-compliance with the stipulations contained in Section 25 F, of issuance of notice to the workman, has not been disputed by the petitioner, who has chosen, instead, to adhere to the stand that the alleged workmen were never employed with it and that, therefore, there could be no question of any termination of said employment.

35. The Labour Court has also noticed that, despite lengthy cross-examination of both the workmen, Murari Lal Gupta and Balram Kansal, no evidence of their having been secured any gainful employment after their termination by the petitioner, could be elicited.

36. In these circumstances, the Labour Court, after holding the termination of the workmen- Murari Lal Gupta and Balram Kansal, by the petitioner, as amounting to retrenchment, which had been affected in infraction of Section 25 F of the Industrial Disputes Act, 1947,

awarded to each of the said workmen, a lump sum compensation of ₹ 1,00,000/- in lieu of reinstatement and back wages.

37. The management is before this Court, in the present proceedings, challenging the said award.

Rival Contentions

38. Mr. Sunil, appearing for the petitioner, submits that the Labour Court fell completely into error in placing the onus on the petitioner, to disprove the fact of employer-employee relationship, rather than requiring the respondent-workman to prove the same. He would further submit that the Labour Court erred in preferring the documents, produced by the workman, to the written authorization, by SBGD, authorizing Murari Lal Gupta to file its Sales Tax forms, which was adduced by the petitioner to rebut the claim of the workman.

39. Mr. Sunil places reliance on the judgment of this Court in ***Prem Nath Yadav v. Chandra Bose, (2010) 174 DLT 352 (Del)***. He would seek to emphasise the fact that the situation obtaining, in the said case, was identical to that obtaining in the present case. In that case, too, Mr Sunil points out, the workman had moved an application, before the Labour Court, to summon various documents from the management which were never forthcoming. He further submits that the petitioner, in that case, too, had also placed, on record, documents such as bills, challans and notices, but that this Court held that such documents could not prove relationship of employer and employee

between the petitioner and the respondent, but “could at the most have proved the fact that the petitioner had received the goods on behalf of the management when the delivery of the goods were made by the suppliers at at the shop of the management or because of the address furnished by the petitioner himself, the *dak* was received by the petitioner at the same address”. It was opined, by this Court in the said judgement, that “for establishing a relationship of employer-employee, something more cogent and convincing is required, but no such documentary evidence was placed or proved by the petitioner”. Reliance was placed in that case, by the learned Single Judge of this Court, on *Workmen of Nilgiri Cooperative Mkt. Society Ltd (supra)* as well as on decisions of various High Courts, to the effect that the burden to prove the existence of employer and employee relationship rested on the workman, and not on the management. It was noted, by the learned Single Judge in that case, that the Management had, in its evidence, “clearly proved the fact that the petitioner was doing the job of putting stripes on bags of various shopkeepers of the area and was not in the sole employment of the respondent”. In these circumstances, the award of the Labour Court, which was, in that case, in favour of the management and against the workman, was upheld, holding that no case for interference therewith, had been made out by the learned counsel for the workman.

40. As against this, Mr. Pandey, appearing for the workman, emphasises the fact that the management had been granted several opportunities, by the Labour Court, to produce its records, as requisitioned by the workman, but of no avail. He would submit that, in such circumstances, the Labour Court could not be faulted at

having drawn an adverse inference against the petitioner. He draws my attention to the fact that the workmen had, in their cross examination, correctly answered several questions, put to them, regarding particulars of the petitioner-firm, which would not have been in their knowledge, have they not been employed with it. He also relies on the fact that the petitioner had not produced any evidence – in the case of Balram Kansal – to establish his employment with any other firm.

Analysis

41. This Court does not sit in appeal over the orders of the Labour Court or Industrial Tribunal.

42. In *Chander Singh v. D.T.C.*, MANU/DE/3444/2017, I have already had an occasion to observe thus, in relation to the parameters of certiorari jurisdiction, as exercisable by this Court while examining awards passed by the Labour Court or Industrial Tribunal:

“41. It is also unfortunate that the petitioner chose to challenge the award of the learned Tribunal, which merely directed reinstatement of a driver, and cannot be said, by any stretch or imagination, to be perverse or illegal in any manner. The scope of interference with awards of Labour Courts & Industrial Tribunal has been examined by me in a recent position in DTC v. Mool Chand. It was noticed, in that decision, that the scope of interference, in certiorari, with awards of Labour Courts and Industrial Tribunals are circumscribed by the following classic exposition of the law, to be 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 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 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 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 misconducted or contravened."

42. Thereafter, relying on the well-known decisions in *Management of Madurantakam Cooperative Sugar Mills Ltd. v. S. Viswanathan*, (2005) 3 SCC 193, *P.G.I of Medical Education and Research, Chandigarh v. Raj Kumar*, (2001) 2 SCC 54 and *M.P State Electricity Board v. Jarina Bee*, (2003) 6 SSC 141, I had culled out the following principles:

‘(i) The Labour Court/Industrial Tribunal is the final fact finding authority.

(ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/unacceptable evidence.

(iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/Industrial Tribunal, before proceeding to do so.

(iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.

(v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

(vi) "Perversity", for its part, is attributed to a judicial/quasi judicial decision if the decision ignores/excludes relevant material, considers irrelevant/inadmissible material, is against the weight of evidence, or so outrageously defies logic as to suffer from irrationality.

(vii) In examining whether a decision is, or is not, perverse, the classic test, of the reasonable man's conclusion on the facts before the authority concerned would apply.

(viii) Inadequacy of evidence, or the possibility of reading the evidence in a different manner, would not amount to perversity.’ ”

42. **Chander Singh (supra)** was directly carried by DTC, in SLP before the Supreme Court, which was dismissed, *vide* order dated 9th March, 2018, holding that the Supreme Court, having heard learned counsel for the petitioner, did “not find any legal and valid ground for interference.”

43. Apropos the judgment of the learned Single Judge in **Prem Nath Yadav (supra)**, one of the most important aspects, to be borne in mind, is that the award of the Labour Court, in that case, was in favour of the management, unlike the present case in which the award is in favour of the workman. The Court, in that case, as well as the Court in the present case, is concerned with the issue of whether, in view of the limited scope of jurisdiction exercisable by this Court while sitting in judicial review over the decisions of the Labour Court/Industrial Tribunal, a case for such review and, consequently, for unsettling the Award of the Labour Court/Industrial Tribunal, has been made out or not.

44. The learned Single Judge held, in **Prem Nath Yadav (supra)**, that no such case for review had been made out. Equally, I may note, even at this juncture, no case for review with the award of the Labour Court is made out in this case either.

45. Para 6 in the judgment in **Prem Nath Yadav (supra)**, on which the petitioner places reliance is sufficient to defeat the case of the petitioner in the present petitions.

46. The documents produced by the workman, in *Prem Nath Yadav (supra)*, were in the nature of bills, challans and notices. It was for this reason that the learned Single Judge held, in that case, that such documents could not prove employer-employee relationship, as, at best, they were documents evidencing receipt of goods, on behalf of the employer. The documents produced in the present case are not in the nature of bills, challans or notices. Balram Kansal has produced actual salary certificates, evidencing payment of salary paid to him by the petitioner. I do not see how any better evidence, of employee-employer relationship, could be produced. No doubt, Mr. Sunil made a valiant effort to argue that these documents were only issued because some work had been extracted from Balram Kansal, during holidays, but I do not find anything to support such a submission. In any event, acceptance of such a submission would amount to my substituting my assessment of the evidence, in place of the manner in which the evidence has been appreciated by the Labour Court. Such substitution would amount to re-appreciation of evidence; an exercise which both Article 226 and Article 227 of the Constitution of India frown upon. The Labour Court has treated the salary certificates as evidence of the employment of the workman-Balram Kansal, by the petitioner, and I do not see how I can record a contrary opinion – even assuming such a contrary opinion were possible. Substitution, by the Court exercising jurisdiction under Article 226, or 227, of the Constitution of India, with the opinion of the court below, would be permissible only where the latter is found to suffer from perversity, or is such as would never be arrived at by any reasonable person conversant with the facts of the case and the applicable law. Tested on

that touchstone, I am unable to hold that the findings come of the Labour Court were perverse, warranting interference by me in writ jurisdiction.

47. The observation, by the Labour Court that the above mentioned documents were never denied or contested by any of the witnesses of the petitioner, including MW-3 Sunder Lal himself, is, in this regard, also, I may note, well taken.

48. Murari Lal Gupta for his part, produced books of account, of the petitioner, bearing his signature. These books of account were on the letterhead of the petitioner. MW-3 in his cross examination, categorically admitted that these books of accounts belonged to his firm. That being so, Section 106 of the Evidence Act specifically required the petitioner to establish how the signatures of the workman Murari Lal Gupta came to figure on the said books of account. No such explanation worth its name, was – or is – forthcoming.

49. As in the case of Balram Kansal, therefore, no infirmity can be said to exist, in the decision, of the Labour Court, to treat the signature of workman Murari Lal Gupta, as figuring on the said books of account, as evidencing employer-employee relationship between the workman and the petitioner.

50. As regards the document marked 'X', in the case of Murari Lal Gupta, which was an authorisation by SBGD, to Murari Lal Gupta, authorizing him to file its Sales Tax returns, Murari Lal Gupta furnished an explanation in this regard. To that extent, therefore,

Murari Lal Gupta discharged his onus under Section 106 of the Evidence Act, unlike the petitioner who made no attempt to explain the signature of workman-Murari Lal Gupta on its books of account.

51. In these circumstances, I do not see how I can reverse the findings of the Labour Court and hold that the fact of employer-employee relationship between the petitioner and the respective workmen, did not stand established, in the present case, on the basis of the salary certificates, in the case of Balram Kansal, and on the basis of the signatures on the books of account, in the case of Murari Lal Gupta. Neither do I see how I can prefer, in the case of Murari Lal Gupta, the document marked 'X', in preference to the books of account of the petitioner, to return a finding that Murari Lal Gupta was actually an employee of SBGD and not of the petitioner during the relevant period. Any such attempt, on my part, would amount to re-appreciation of evidence and, on the basis thereof, substitution of my view in place of that of the Labour court; an exercise which, under Article 226 of the Constitution of India, I confess that I am loath to undertake.

52. Mr. Sunil, learned counsel for the petitioner, also sought to urge that the evidence, relied upon by the respective workmen, and accepted by the Labour Court as establishing their employer-employee relationship *vis-à-vis* the petitioner, was grossly insufficient to establish such relationship. This argument, again, revolves around sufficiency of evidence, which, is not an aspect which I would, ordinarily, examine while exercising judicial review in writ

jurisdiction, and the facts of this case, in my view, are not so extraordinary as should compel me to stray from the beaten path.

53. No doubt, if the manner in which the evidence is appreciated is *ex-facie* perverse, in that relevant materials are eschewed from consideration, irrelevant material is taken into consideration, or a conclusion, which no reasonable man could be expected to arrive at, is reached by the authority below, this Court would undoubtedly step in and exercise its jurisdiction. No such patent illegality, infirmity or perversity can, however, be said to exist in the present case. The Labour Court examined all the documents, and arrived at a conclusion that they were sufficient to tilt the balance in favour of the workman, insofar as the issue of acceptance of employer-employee relationship, between the petitioner, and the respective workmen, was concerned. In the case of Balram Kansal, the Labour Court additionally noted the fact that no evidence, whatsoever regarding employment of Balram Kansal with any other firm or undertaking, during the relevant period, had been produced by the petitioner—a fact which MW-3 Sunder Lal candidly acknowledged in his cross examination. In the case of Murari Lal Gupta, the only document cited by the petitioner was in the form of the document of SBGD, authorizing Murari Lal Gupta to file certain Sales Tax forms. In preferring the evidence in the form of the books of account of the petitioner, signed by Murari Lal Gupta and admitted by the petitioner, to belong to it, in preference to the said document of authorization issued by SBGD, I am of the view that the Labour Court cannot be said to have fallen into any such obvious error, or indulged in any such exercise in perversity, as would justify

reversal of its findings, by me, under Article 226 of the Constitution of India.

54. For the above reasons, I am of the view that no error of fact or law can be said to exist in the impugned award of the Labour Court, which is, consequently, sustained in its entirety.

55. The writ petitions are dismissed. There shall be no orders as to costs.

C.HARI SHANKAR, J

AUGUST 31, 2018

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