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

Date of decision: 16th August, 2018

+ W.P.(C) 6843/2017 & CM No.28474/2017

LAXMI MEMORIAL PUBLIC SCHOOL Petitioner
Through Mr.Pramod K. Verma, Adv.

versus

SURESCH CHAND GUPTA AND ANR ... Respondents
Through Ms.Kiran Yadav, Adv. for R-1
Mr.Gautam Narayan, ASC with
Ms.Mahamaya Chaterjee and Ms.Shivani
Vij, Advs. for R-2GNCTD

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

% **JUDGMENT (ORAL)**

1. This writ petition challenges order, dated 26th April, 2014, passed by the learned Delhi School Tribunal (hereinafter referred to as “the Tribunal”), on an appeal preferred, before it, by the respondent herein.

2. The respondent approached the Tribunal, submitting that he had been working with the petitioner-School (hereinafter referred to as “the School”), as Assistant Teacher since 1999, without interruption, on meagre wages of Rs. 3,500/- per month, without being paid benefits under the Employees’ State Insurance Act, 1948 or the Employees’ Provident Funds Act, 1952 and was not being allowed to sign on the attendance register. His case was that, on his protesting

thereagainst, he was orally terminated, by the School, on 3rd April, 2014.

3. The respondent submitted that this termination, which had been effected without any show cause notice, charge-sheet, inquiry or any prior opportunity of personal hearing, was *ex facie* illegal.

4. The school contended, *per contra*, before the learned Tribunal, that it had never appointed the respondent as Assistant Teacher, and there was no employer-employee relationship between the respondent and the School. Neither, it was submitted by the petitioner, did any privity of contract exist between them. The respondent's name, it was further pointed out, did not figure on the petitioner's muster rolls. The documents filed by the respondent, in support of his claim of being an employee of the petitioner, were alleged to be "false and frivolous". In these circumstances, the petitioner sought to contend that, the Respondent not being its employee, there could be no question of termination, of his services, by the Petitioner.

5. In rejoinder, the respondents submitted that the Petitioner was maintaining double records. The learned Tribunal, in the impugned order dated 26th April, 2017, has returned the following findings:

- (i) The Respondent had produced, in support of his claim of employment under the Petitioner,
 - (a) photographs of the attendance-sheets for different years, in which the Petitioner's name was entered, against which he had signed,

- (b) sheet results of students, which too, bore his signature,
- (c) photographs of the respondent, with the staff of the school, and
- (d) photographs of the respondent conducting classes.

(ii) The Directorate of Education (DOE) had conducted an inquiry into the matter, the Inquiry Report, whereof, confirmed that the Respondent was the employee of the Petitioner, and that, the Petitioner was, indeed, maintaining double records. I may, for this purpose, reproduce paras 4 and 5 of the Inquiry Report, which contain the evaluation, by the Inquiry Officer, of the documents, and the conclusion arrived at on the basis thereof:

“Evaluation of the documents –

From close perusal of the documents i.e. photographs of the school staff placed in the file at Page No. 39/c, copy of the Attendance Register for the month of Nov, 2011, copy of the SLC in R/o a student Akhil Shukla dt. 09.07.2009, copy of the result sheet in r/o a student Renu Dixit for 2005-2006 placed at Page No. 36/c to copy of the Attendance Register for the month of Feb, 2013 placed at Page No. 38/c to copy of the SLC in r/o Pooja Kumari dt. 07.04.2008, copy of the salary slip in r/o Sh. S.C. Gupta placed at Page No. 34/c copy of the result sheet in r/o Sashi Diwakar, Class VIII-C, student, dt. 30.03.2005, it is found that there is a signature of the said Sh. S.C. Gupta on the said document while the photograph of the staff support his claim as employee of the school.

On the other hand, the document provided by the school, there is no any sign of his being an employee of the school.

It may be seen that, copy of staff Attendance Register for the month of Feb, 2014 to April, 2014 & Nov, 14, the name of the complainant does not appear. As such statement of the students made by them before the Inquiry committee, it can not be denied that they might have been tortured not to speak the truth while the staff of the school could not affirm the truth in anticipation of losing their job.

It may be noted that the school has provided the document, i.e. Staff Attendance Register only for 2014 but not for all the claimed session by the complainant.

From the above, it is learnt that the school is maintaining two records – one for the deptt. In black and white but the other for their own purpose. It is hard fact that no one can claim of being employee in an institution unless he is deployed by the school authority.

Hence, the records provided by the school cannot be relied upon and the committee inclined to the claim of the applicant as being employee of the school either Assistant Teacher or any other employee who used to work as teacher as and when the school desired to do so.

5. Conclusion:-

On the basis of the available records and foregoing evaluation, the committee is of the opinion that the complainant had been the employee of the school either on the post of Assistant Teacher or other.”

(iii) This Inquiry Report being categorically against the Petitioner, on 26th July, 2016, the Deputy Director of Education (DDE), by e-mail, had a second inquiry conducted, purportedly on instructions of the government counsel. This second inquiry on which the Petitioner, predictably, relies – returned a finding

that the Respondent was not the employee of the Petitioner. However, this report stood discountenanced as (a) on 27th February, 2017, the government counsel, who had purportedly advised the second inquiry, filed an affidavit, stating that she had never given any such advice and (b) the DDE also filed an affidavit, stating that he had ordered the second inquiry by mistake.

(iv) In these circumstances, the first Inquiry Report, dated 29th November, 2014, could be relied upon.

6. On the basis of these observations/findings, the learned Tribunal held that the Respondent had been established as being an employee of the Petitioner, and that, therefore, the act of the Petitioner, in removing him from service, was illegal. The respondent's appeal, was, therefore, allowed with costs of Rs. 33,000/-.

7. Aggrieved thereby, the school is before this court in the present writ petition.

8. Mr. Pramod K. Verma, appearing for the Petitioner, submits that the learned Tribunal exceeded its jurisdiction, by effectively entering into the thicket of controversial facts, and adjudicating an issue which could only have been decided by a proper suit instituted for declaration. It is contended that the learned Tribunal had no jurisdiction to enter any finding on the status of the Petitioner, as this involved adjudication of disputed questions of fact, which it was not empowered to do.

9. Learned counsel would submit that, as the Respondent was not an employee of the Petitioner, the respondent's appeal, before the learned Tribunal, was itself not maintainable.

10. Mr. Verma further submits that, there being two Inquiry Reports, which were contrary to each other, it was not open to the learned Tribunal to chose the first, over the second.

11. Mr. Verma also submits that the documents, filed by the Respondent before the learned Tribunal were fake and frivolous, and could not have been relied upon, to his client's prejudice.

12. It is finally sought to be contended, by Mr. Verma, that the Respondent was not qualified, and had crossed the upperage, for being appointed as a teacher with the School, and that, even on this ground, the finding of the learned Tribunal, that he was an employee of the school could not sustain.

13. Mr. Gautam Narayan, learned Additional Standing Counsel, appearing for the Directorate of Education, relies on the findings of the learned Tribunal and contends, additionally, that the first Inquiry Report, dated 29th November, 2014, never having been challenged by the Petitioner, the second Inquiry Report could not, have been relied upon by it.

14. Having heard learned counsel, I have applied my mind to the documents on record and the rival submissions made at the Bar.

15. This Court, while adjudicating such matters, exercises *certiorari* jurisdiction, the parameters of which stand authoritatively delineated in the following classic passage, from *Syed Yakub 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 mis-interpretation 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.”

(Emphasis supplied)

16. The jurisdiction of this Court to interfere with findings of fact, returned by the authority below is; therefore, foreclosed, unless and until it is convinced that the findings are palpably wrong on facts or in law or is tainted by perversity. In the present case, findings of fact have been returned by the learned Tribunal, based on documents, produced by the Respondent, to the effect that the Respondent was the employee of the Petitioner. The allegation that the said documents were false and frivolous, was thrownup, in the written statement of the Respondent, without any factual support. Even otherwise, in writ proceedings, I am not inclined to accept such a submission, which is easier made than maintained.

17. In view of the finding, by the learned Tribunal, that the Respondent was the employee of the Petitioner, the submission, of Mr.Verma, that the appeal, of the Petitioner, before the learned Tribunal, was not maintainable, obviously cannot sustain.

18. Neither do I find any merit, in the submission of learned counsel, to the effect that the learned Tribunal exceeded its jurisdiction, by adjudicating on controversial issues questions of facts, which ought to have been properly instituted in a suit. If such a submission is to be accepted, it would lead to a piquant situation in which, whenever a workman or an employee is hired without giving an appointment letter, and is terminated thereafter, the doors of the Tribunal would stand closed to the employee, who would necessarily have to move the civil court for relief. Such a situation obviously

cannot be countenanced to law. Against the claim of the employee, it is open to the employer, i.e. the Petitioner in the present case, to contend that there was no employer-employee relationship between the two. Such a contention was, indeed, raised in the present case, and has been negated by the learned Tribunal, by a proper appreciation of facts, which cannot be said to suffer from any perversity.

19. The submission that the Petitioner was not qualified, and was overage, for being appointed as teacher, does not stand reflected in the submissions made before the learned Tribunal, as set out in the impugned order. Accordingly, I am not inclined to take any stock of these submissions, in the present writ proceedings.

20. For the above reasons, I find no reason to interfere with the impugned order of the learned Tribunal, which is sustained in its entirety. The writ petition is accordingly dismissed without any order as to costs.

C.HARI SHANKAR, J

AUGUST 16, 2018

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