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

% *Decided on: 17.02.2020*

+ **W.P.(C) 4850/2003 & CM APP. 25233/2017**

SCHOOL OF PLANNING & ARCHITECTURE..... Petitioner

Through: Mr. R.K. Singh, Adv. with
Ms. Deepa Rai, Adv.

versus

P.O LABOUR COURT, KKD COURT Respondent

Through: Mr. Rajiv Agarwal, Adv. with
Ms. Meghna De, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This petition impugns the Award dated 02.01.2003, insofar as the respondent has been directed to be taken back into service with full back wages. There is no dispute that the workman had worked for six years and obviously had suffered the agony of trial which lasted for about 12 years. Her services were illegally terminated i.e. there was no process of due prior inquiry followed by the termination. That being the position, the learned Labour Court has rightly held that that the termination was illegal. It referred to the dicta of this Court in *Management of Horticulture Department, Delhi Administration vs. Trilok Chand*, 82 (1999) DLT 747 in this regard.

2. Admittedly, the management did not comply with the provisions of section 25F of the Industrial Disputes Act, 1947. The respondent was

working as a steno-typist when her services were illegally terminated. The workman has now attained the age of superannuation. The Court finds no error in the impugned order.

3. The learned counsel for the respondent submits that question of fact has been duly settled after full trial before learned Industrial Tribunal and there is no cause for disturbing the settled position. He refers to the dicta of the Supreme Court in *Anoop Sharma vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana)*, Civil Appeal No. 3478/2010 (arising out of SLP (C) No. 17965/2008) decided on 09.04.2010, which held, *inter alia*, as under:-

“10. A reading of the impugned order shows that the Division Bench of the High Court set aside the award of the Labour Court without even advertting to the fact that challenge to similar award passed in the cases of other employees was negatived by the High Court and this Court. We have no doubt that if the Division Bench had taken the trouble of ascertaining the status of the disputes raised by other employees, then it would have discovered that the award of reinstatement of similarly situated employees has been upheld by the High Court and this Court and in that event, it may not have passed the impugned order. That apart, we find that even though the Division Bench did not come to the conclusion that the finding recorded by the Labour Court on the issue of non-compliance of Section 25-F of the Act is vitiated by an error of law apparent on the face of the record, it allowed the writ petition by assuming that the appellant's initial engagement/employment was not legal and the respondent had complied with the conditions of a valid retrenchment. In our view, the approach adopted by the Division Bench is contrary to the judicially recognised limitations of the High Court's power to issue writ of certiorari under Article 226 of the Constitution - Syed Yakoob v. K.S. Radhakrishnan (1964) 5 SCR 64, Municipal Board, Saharanpur v. Imperial Tobacco of India Ltd. (1999) 1 SCC 566, Lakshmi Precision Screws Ltd. v. Ram Bhagat (2002) 6

SCC 552, Mohd. Shahnawaz Akhtar v. Ist ADJ Varanasi JT 2002 (8) SC 69, Mukand Ltd. v. Mukand Staff and Officers' Association (2004) 10 SCC 460, Dharamraj and others v. Chhitan and others 2006 (11) SCALE 292 and Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Ltd. 2008 (12) SCALE 582.

11. In Syed Yakoob v. K.S. Radhakrishnan (supra), the Constitution Bench of this Court considered 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 under the Motor Vehicles Act, 1939. Speaking for majority of the Constitution Bench, Gajendragadkar, J. observed as under:

".....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."

4. Insofar as the illegal termination has been duly established, there is no cause for interference with the impugned order.
5. The petition is without merit and is accordingly dismissed.

FEBRUARY, 17, 2020

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NAJMI WAZIRI, J