

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P.No.22292 of 2020(O&M)
Date of Order: 27 .01.2021

M/s Century Auto Engg. Private Limited

..Petitioner

Versus

Lal Chand and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Paul S. Saini, Advocate,
for the petitioner.

ANIL KSHETARPAL, J(Oral)

The petitioner-company (the management) has sought issuance of a writ in the nature of certiorari for quashing of an ex-parte order dated 19.10.2015, ex-parte award dated 05.11.2019 and the order dated 05.11.2020, passed by the Industrial Tribunal-cum-Labour Court-II, Gurugram, dismissing an application for setting aside the award.

On 22.12.2020, this writ petition came up for preliminary hearing and after hearing learned counsel for the petitioner at some length, the following order was passed:-

“Learned counsel for the petitioner prays for some time to substantiate the argument that the petitioner has to be granted an opportunity to lead evidence before deciding application under Order 9 rule 13 CPC filed to set aside an ex parte award passed by the Labour Court.”

Thereafter, the case came up on 22.01.2021. Learned counsel for the petitioner fairly admitted that the case law is against him and he does not wish to press the same. He, however, submitted that there is no denial

of the fact that Bikram Singh, an official of the petitioner-company, who attended the proceedings before the Labour Court, had left the services of the management. He drew attention to the reply filed by the workman in response to the management's application for setting aside ex-parte award. He contends that sufficient cause is made out for setting aside an ex-parte award.

This court has carefully analyzed the arguments of learned counsel and with his able assistance perused the paper book.

In the present case, it is not in dispute that the management was served with a notice from Industrial Tribunal-cum-Labour Court-II, Gurugram. Sh. Bikram Singh, Manager HR, appeared before the court on 10.08.2015 and 14.09.2015. It is alleged that Bikram Singh left the services of the management on 30.09.2015. The question is as to whether the petitioner has made out a sufficient cause for setting aside an ex-parte award or not?

Sh. Bikram Singh was an employe of the management which is a private limited company. The management was in the knowledge of the pendency of the proceedings before Industrial Tribunal-cum-Labour Court-II, Gurugram. Even, if Bikram Singh had left the service of the company on 30.09.2015, still the management should have been vigilant and made enquiry about the status of the pending case.

The Labour court on appreciation of the material has reached at a conclusion that the petitioner-company has failed to make out the case for setting aside an ex-parte award. Rather, it has been found that it was negligent in pursuing the case. This court while exercising the power of judicial review does not sit in appeal against the judgment of the Tribunal.

When the petitioner prays for issuance of a writ of certiorari, the scope of judicial review has been elaborately discussed by 5 judges bench of the Hon'ble Supreme Court in ***T.C. Basappa Vs. T. Nagappa & Anr. AIR 1954***

Supreme Court 440, in the following manner:-

“7. One of the fundamental principles in regard to the issuing of a writ of certiorari, is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression “judicial acts” includes the exercise of quasi judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin, L.J. Thus summed up the law on this point in Rex v. Electricity Commissioners: “Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the King’s Bench Division exercised in these writs.”

The second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person.

8. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in King v. Nat Bell Liquors Limited. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari could be demanded. In fact there is little difficulty in the enunciation of the principles; the difficulty really arises in applying the principles to the facts of a particular case.

9. Certiorari may lie and is generally granted when a

court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess.

10. A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. The essential features of the remedy by way of certiorari have been stated with remarkable brevity and clearness by Morris, L.J. in the recent case of Rex v. Northumberland Compensation Appellate Tribunal. The Lord Justice says:

“It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown.”

11. In dealing with the powers of the High Court under Article 226 of the Constitution, this Court has expressed itself in almost similar terms and said:

“Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may

be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.”

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of certiorari under Article 226 of the Constitution.”

Keeping in view the aforesaid facts, this court does not find that the petitioner has successfully made out a case for issuance of the writ in the nature of certiorari.

Hence, the writ petition is dismissed.

27th January, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No