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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2733/2020

SH. RAJESH KUMAR

..... Petitioner

Through: Mr.Rama Shankar, Advocate

versus

M/S GLOBAL PACKAGING

..... Respondent

Through:

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Date of Decision: 13th July, 2022.

CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)**

1. The present writ petition has been filed seeking the following prayer:

A. That a writ of mandamus or any other writ or direction may kindly be issued in favour of the petitioner and against the respondent thereby quashing the impugned award dated 15.07.2019 passed by Sh. Pawan Kumar Matto, Presiding Officer, Labour Court no. IX, Rouse Avenue Courts, New Delhi, in old case no. L.I.R no.1075/2014 & new case no. L.I.R no. 430/2016 whereby the claim of the petitioner under Industrial Dispute Act for reinstatement with full back wages was dismissed, may kindly be set aside.

B. The trial court record may kindly be summoned.

2. Learned counsel for the petitioner submits that he joined the respondent company in the year 1997. It has further been submitted that after availing leaves for 20 days, the petitioner went to the respondent company on 13.01.2014 for rejoining. However the management sent him back saying that the machine is not working. The petitioner has



again visited the respondent company on 10.02.2014 and at that time also the petitioner was not allowed to join the duties. Thereafter, the petitioner served a notice dated 05.05.2014 and only in response to that notice, the respondent management offered him to rejoin his services. Learned counsel for the petitioner submits that the petitioner has been removed from service without any enquiry as required under the Industrial Disputes Act.

3. On 24.01.2022, this court has inter alia held as under:

3. Ld. counsel for the Petitioner-Workman (hereinafter "Workman") has appeared in this matter today. There was no appearance on the last two dates of hearings on behalf of the Petitioner.

*4. The present petition arises out of impugned award dated 15th July, 2019, in LIR No.1075/2014 (New LIR No.430/2016) titled **Sh. Rajesh Kumar v. M/s Global Packaging**, whereby the claim of the Workman for reinstatement with full back wages was dismissed. The case of the Workman is that he was not granted wages for a period of one year and was illegally terminated. The finding of the Labour Court is that the Workman had abandoned his job and was also unable to lead any evidence on record that he was illegally terminated on 14th January, 2014. The Labour Court's clear finding is also that the Workman has failed to adduce evidence in support of his case.*

5. Upon being queried as to what is the evidence on record to support the Workman's petition, Mr. Rohtas Mehta, ld. counsel for the Petitioner again seeks an adjournment today and at this stage, submits that he is not the main counsel in this matter.

6. Considering the manner in which this matter is being pursued, there seems to be no urgency.

7. List on 13th July, 2022."

4. Today again, I have heard the matter at length. I have also gone through the impugned order.



5. A perusal of the impugned award dated 15.07.2019 indicates that the learned Labour Court has dealt with each and every point taken by the petitioner and his claim was dismissed after being satisfied that it was the petitioner who has abandoned his service.
6. In the case of ***General Manager, Electrical Rengali Hydro Electric Project, Orissa and Ors. v. Giridhari Sahu and Ors.*** [(2019) 10 SSC 695] it was inter alia held as under:

20. An erroneous decision in respect of a matter which falls within the authority of the Tribunal would not entitle a writ applicant for a writ of certiorari. However, if the decision relates to anything collateral to the merit, an erroneous decision upon which, would affect its jurisdiction, a writ of certiorari would lie

“7. ... 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 2 AIR 1954 SC 440 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... ..

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. ... ”



24 . We may more importantly also advert to the view expressed by this Court in a matter which again arose under the Act in *Parry & Co. Ltd. v. P.C. Pal*²². It was a case related to the scope of the jurisdiction of the Tribunal in the matter of retrenchment under Section 25F. This is what the Court held *inter alia*:

“11. The grounds on which interference by the High Court is available in such writ petitions have by now been well established. In *T. C. Basappa v. T. Nagappa*²² it was observed that a writ of certiorari is generally granted when a court has acted without or in excess of its jurisdiction. It is available in those cases where a tribunal, though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural justice where no particular procedure is prescribed. But a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown, can be so corrected. In *Dharangadhara Chemical Works Ltd. v. State of Saurashtra*¹⁹ this Court once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence. Likewise, in *State of A.P. v. S. Sree Rama Rao*²³ this Court observed that where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion, interference under Article 226 would be justified.” (Emphasis supplied).

27. In fact, in the decision relied upon by the applicants, viz., *S. Viswanathan*¹², it is, *inter alia*, held as follows: (SCC p.196, para 12)



“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon.” (Emphasis supplied)

7. The Labour court is the final arbiter of the facts. This court can interfere in the writ jurisdiction only if there is violation of principles of natural justice or there is manifest illegality. In the present case the learned Labour Court has appreciated the evidence on record. There is no material on the record which could lead to perversity in the order of learned Tribunal. The petitioner has failed to point out any material to show that the judgment is arbitrary or capricious in any manner. The finding of fact recorded by the learned Labour Court is not amendable to the writ jurisdiction. There is also no material on the record to indicate that there is flagrant disregard of rules of procedure or principles of natural justice.
8. I consider that there is no ground to interfere in the matter.
9. Accordingly, the writ petition is dismissed.

DINESH KUMAR SHARMA, J

JULY 13, 2022/rb