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

+ W.P.(C) 6820/2012

SHRAWAN KUMAR LOHIA

..... Petitioner

Through: Ms. Asha Jain Madan and Mr. Anmol
Sharma, Advs.

versus

YUDHVIR SINGH HOMEOPATHIC CHARITABLE TRUST

..... Respondent

Through: Mr. Mahesh Srivastava with
Mr. Ashok Sharma and Mr. Vaibhav
Manu Srivastava, Advs.

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Date of Decision: 24th November, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present writ petition has been filed challenging the impugned Award dated 20.03.2012 passed by the Ld. POLC – XIX (East), Karkardooma Courts, Delhi, in LIR D No.1050/2006. Vide the impugned Award, the learned Labour Court, while holding the claimant to be a workman u/s 2s of ID Act, 1947, has dismissed the claim of the workman u/s 10 r/w/ S. 2A, ID Act, and held that the workman is not entitled to any relief. Aggrieved thus, the petitioner workman has preferred the instant writ seeking the following prayers:

“a) issue a writ of certiorari or any other appropriate writ quashing and setting aside the impugned award dated

20.3.2012 passed by the Court of Sh. Sanjay Sharma, Presiding Officer, Labour Court-XIX (East) Karkardooma Court, Delhi in LIR D. No. 1050/2006, to the extent It decides the issue no. 2 and 3 against the petitioner/workman.

b) direct the management/Respondent for reinstatement of Petitioner in all the three concerns of the management /Respondent with full back wages alongwith other consequential benefits.

c) direct the management/ Respondent to pay Rs.5,75,117/-(due against one of the unit is appointed by Management and other two units agreed by the management) to the Petitioner/Workman against his earned wages and other benefits accrued to him as mentioned in para no. 4 of the writ petition.

d) direct the management/Respondent to pay Rs.3,93,937.50/- to Petitioner/workman against overtime work done by him as mentioned in para no. 5 of the writ petition.

e) award the costs of the writ in favour of Petitioner/workman and against the Respondent/management;

f) award interest on the amount due found due from the respondent/management to the petitioner/workman @18% P.A. from the date such amount became due till the date of payment.”

Brief Facts

2. Briefly stated the facts as alleged in the petition are that the petitioner workman was appointed by the management vide an appointment letter dated 29.11.1999, at the post of Deputy Administrative Officer, on part

time basis, w.e.f. 01.12.1999. The workman was initially on probation for a period of six months, whereafter his services were regularized. As per the appointment letter of the workman (Ex. WW1/6), his job entailed maintenance and upkeep of the accounts of the management Trust at a monthly remuneration of Rs. 3000/- p.m.

3. It has been averred by the petitioner workman that despite his designation, i.e. of a Deputy Administrative officer, neither did the workman exercise any administrative control, nor was his job supervisory in nature. It is stated that his job was purely clerical in nature. It has been alleged by the petitioner workman that during his services, the management was getting additional work done from him, for two of its other sister concerns namely, 'Homeopathy free dispensary' and 'purchase and supply section', in addition to the work done for the respondent Trust. It has been alleged that the management promised to pay the petitioner Rs. 3000/- pm with 10 % increment every year, for the work done for each of the sister concerns. However, he was only paid for the work done for Homeopathy Free Dispensary. It has been submitted that the workman was made to work from 9 Am to 9 PM, without getting any holidays on Sundays and gazetted holidays, and without being paid any benefits which he was legally entitled to.
4. Petitioner workman has further alleged that the respondent management has extracted work from him, even prior to the period of his appointment. It is submitted that for the said period, he was only paid Rs. 6000/- and that too, for the work done for the Dispensary and

not the remaining two sister concern units. Petitioner workman claims that an amount of Rs. 5,75,117/- is due to be paid, in lieu of the payment under various heads and an additional amount of Rs. 3,93,937.50/-, in lieu of overtime, which has not yet been paid by the respondent management. Petitioner workman states that the management did not pay his dues and benefits to which he was legally entitled. Therefore, he approached the management demanding the same. However, the management terminated him w.e.f. 31.10.2003, by way of a retrenchment notice dated 29.10.2003. It is an admitted fact that the workman received the termination letter/ retrenchment notice along with one month's salary i.e., Rs. 3360/- (last drawn wages) in lieu of the notice period, enclosed with it. However, the workman did not encash the said cheque. It has further been alleged by the Petitioner workman that the respondent management has not paid him, his gratuity and provident fund. It has been submitted that the respondent management had mentioned in the termination letter, that the said benefits would be paid to the workman, shortly, but the same has not yet been paid. It is the contention of the petitioner workman that the management, thereafter flouting provisions of ID Act, appointed one Sh. P.C. Gupta to carry out the same work for which the petitioner was earlier appointed.

5. Petitioner workman sent a demand notice dated 05.04.2004 to the respondent. However no reply was received thereto. Aggrieved, thus the petitioner raised an industrial dispute and filed a statement of claim u/s 10, ID Act and u/s 33 C (2), ID Act, before the learned Labour

Court raising the aforementioned pleas and seeking reinstatement with back wages and all other consequential benefits.

6. The management filed a detailed written statement refuting all the contentions raised by the workman. In the written statement filed by the respondent, an objection was raised that the claimant is not a workman, as per the definition of workman contained under section 2 (s), ID Act, as he was engaged at a post of Deputy Administrative Officer, on part time basis. Another challenge was raised with respect to the learned Labour Court not having jurisdiction to entertain the claim, as there existed no industrial dispute. Management contended that the claimant has been disengaged from the services as per the terms and conditions of his appointment and has been self-employed, doing accounts work for several other clients. The management stated that the amended claim seeking monetary benefits filed on behalf of the workman is not maintainable u/s 10 (2A) of the ID Act. Pursuant to this, the petitioner filed the Rejoinder to the written statement of the management, denying all the averments therein and reiterating the contents of his claim.

7. On the basis of the pleadings, learned Labour Court framed the following issues:

1. Whether the claimant is workman as per the definition defined u/s 2(s) of the ID Act? OPW

2. Whether the services of the workman have been terminated illegally and unjustifiably? OPW

3. Whether the workman is entitled to relief, as pleaded in amended claim dated 10.07.2009? OPW

4. Relief

8. Thereafter the matter was fixed for leading evidence. The workman examined himself as **WW1** and examined four other witnesses namely:

WW2 - Sh. Umesh Gaur (PNB, Chandni Chowk), who brought the account details/statement of account of the management (Ex. WW2/A) and statement of current account of the management (Ex. WW2/A2).

WW3 - Yogender Babu (Assistant Director Community Services Department, MCD), who proved the record of the grant/aid given to the management w.e.f. 01.04.1999 to 31.03.2004 (Ex. WW.3/A) and the list of staff members working with the management from 2002 to 2003 wherein the name of the claimant appears at S. No.16 (Ex. WW3/B).

WW4 - Sh. Ajay Kumar Arora (Labour Inspector), who proved the complaint of the claimant and to whom the records pertaining to the claimant were produced.

WW5 - Manmohan Gupta (PNB Chandni Chowk), who proved the account statement of SB Account No. 45148 from 15.11.2000 to 23.11.2005 (Ex. WW5/1), account statement of Current A/c No.

19076 from 08.12.1999 to 19.03.2004 (Ex. WW5/2), and account statement of Current A/c no. 17904 from 08.12.1999 to 06.04.2004 (Ex. WW5/3). He also proved the account opening application of account No. 19076 with resolution (Ex. WW5/4), the account opening form with resolution of management, its memorandum of association and rules and regulations (Ex. WW5/5 to Ex. WW5/7 respectively).

9. The Management did not lead any evidence. Learned Labour Court passed the Award dated 20.03.2012 *inter alia* holding that though the claimant workman is a workman within the purview of section 2 (s), ID Act, however he is not entitled to any relief as the management has legally and justifiably terminated his services.

Findings of the Labour Court

10. On the 1st issue as to whether the claimant is a workman as per the definition contained u/s 2 (s), ID Act, the learned Labour Court has returned a finding in the affirmative. The workman deposed that even though he was appointed at the position of a Deputy Administrative Officer, his job was not administrative and supervisory in nature and only entailed clerical work such as maintaining accounts, preparing vouchers, cash books etc. The management did not cross examine the workman and did not lead any evidence on this issue and merely raised a plea that as per his appointment letter he was engaged as a Deputy Administrative Officer, that too, on part time basis.

11. Learned Labour Court after appreciating all the evidence and submissions of the parties and relying upon the decisions in ***HR Adyanthaya and Ors. Vs. Sandoz (India) Ltd. And Ors.***, 1994 (5) SCC 737; ***South India Bank Ltd. vs. AR Chacko***, AIR 1964 SC 1522; ***SK Maini vs. M/s Carona Sahu & Co. Ltd.***, (1994) 3 SCC 10 & ***Devender Singh vs. Municipal Council Sanaur***, AIR 2011 SC 2532, returned a finding that whereas, on the one hand the workman was performing all kinds of clerical work such as maintaining account books, reconciliation of accounts etc. and on the other, the management failed to show that the workman was exercising supervisory control over any employee who was working directly under him and held that the claimant is a workman covered under the definition of workman u/s 2 (s), ID Act.
12. On the 2nd issue as to whether the services of the workman have been terminated illegally and unjustifiably, the learned Labour Court returned a finding in the negative. The onus to prove this issue was casted upon the workman, who stated that he was terminated illegally, solely because he approached the management demanding his pending dues. He raised a plea that after he was terminated, one Sh. P.C. Gupta was engaged to do the same work as done by him and relied on the appointment letter issued to Sh. P.C. Gupta (Ex. WW1/6). A plain reading of the appointment letter reflected that Sh. P.C. Gupta was appointed as an Administrative Officer, on honorary basis, for a period of one year only, at an honorarium of Rs.3000/- p.m., with conveyance

allowance of Rs. 2000/- p.m., and without the benefit of provident fund or gratuity.

13. It was observed by the learned Labour Court that Rule 5 (h) of the memorandum of association of rules and regulations of the management (Ex. WW5/7), provides for appointment of honorary members not exceeding three in number, who are found or likely to be found helpful to the Trust in any way, for such period and on such terms and conditions which the trustees may from time to time decide.
14. On the contrary, it was plead by the management that the workman was terminated in terms of his conditions of service as laid down in his appointment letter, which was different from that of Sh. P.C. Gupta. The management submitted that the appointment of Sh. PC Gupta had nothing to do with the termination of the claimant workman. It is not a disputed fact that the services of the workman were regularized after completion of his probation period. A perusal of the appointment letter of the claimant (Ex. WW1/1), reflects that the terms and service conditions of the claimant were totally different from that of Sh. P.C. Gupta. Appointment letter of the claimant workman stipulates that once his services were regularized, one month's notice or one month's salary in lieu thereof would be required from either side. It further stipulated that the management Trust has the right to terminate his services without assigning any reason. Moreover, the termination letter (Ex. WW1/5) stated that the services of the claimant were no longer required and had with it enclosed a cheque, in lieu of the one month's

salary for notice period. It is not disputed that the notice along with cheque was received by the workman, who did not encash the same.

15. Based on this, Learned Labour Court concluded that the appointment of Sh. P.C. Gupta had nothing to do with the service conditions of the claimant as it was a totally separate nature of appointment, for a fixed period of one year unlike the regular employment as that of the claimant workman. Learned Labour Court returned the finding that the management has terminated the workman in compliance of the provisions of Section 25F of ID Act. Learned Labour court further held that the termination was also in consonance with the terms of the workman's appointment letter which laid down the manner in which his services can be terminated. The appointment letter mentions that the services of the claimant can be terminated without assigning any reasons. The Termination letter of the workman mentioned that the services of the claimant would no more be required w.e.f. 31.10.2003. The workman accepted these terms of employment without any protest. Learned Labour court also considered a letter dated 25.06.2003 (Ex. WW1/4) produced by the workman, which was in fact a Show Cause Notice, wherein the workman has been reprimanded by the Secretary of the management for failing to complete the accounts within the stipulated time frame as mentioned in the appointment letter. Learned Court further returned a finding that no explanation was tendered by the workman to this show cause notice, nor any was placed on record. The workman was asked to show cause as to why action be not taken against him for dereliction of duty. Learned Court observed that the

termination was just four months thereafter and may be suggestive that the work of the workman was not proper. Thus, this issue was decided in favour of the management and against the workman and it was held that the services of the workman were legally and justifiably terminated by the management following the provisions of 25F, ID Act and as per the terms and conditions of service contained in his appointment letter.

16. On the 3rd issue as to whether the claimant workman would be entitled to the relief as sought for in the amended claim dated 10.07.2009, the learned Labour Court held that since the services of the workman were held to be terminated legally, he is not entitled to relief of reinstatement. With regards to the monetary reliefs sought by the claimant for the work allegedly done by him for the other two units of the management, the work done by him in the period prior to his appointment, increment, or leave encashment, earned leaves, bonus, health benefits etc., the learned Labour Court rightly returned the finding that these are matters beyond the scope of the Labour Courts and are matters within the jurisdiction of the Industrial Tribunal, as per Third Schedule of the ID Act. Learned Labour court rightly held that these reliefs cannot be granted by the Labour courts. The workman placed reliance upon the judgments delivered in *M/s Hongkong and Shanghai Banking Corporation Ltd. Vs Govt. of India.*, WP (C) 12602/2006, dated 24.09.2008; *Joseph Niranjana Kumar Pradhan vs Presiding Officer Industrial ...*(1977) ILLJ 36 Orissa., *SK Verma vs Mahesh Chand & Ors*, 1983 SCR (3)799 and *Mathur Aviation vs Lt. Governor & Ors.*, (1977) II LLJ 255 to show that the Labour Courts have the power to decide upon the monetary reliefs as claimed. Learned

Labour Court rejected this argument, for the same was misplaced, given that the aforesaid decisions were passed against the orders/awards of the Industrial Tribunals, which is the competent forum to decide monetary relief as sought, and decided this issue in favour of the management and against the workman.

Contentions of the Petitioner workman

17. Learned counsel for the petitioner submits that the services of the petitioner workman were regularized upon completion of his probation period. It has been submitted that this admitted fact has also been recorded by the learned Labour court in the impugned Award. It has been submitted that the respondent management did not conduct any enquiry before terminating him. It is further submitted that admittedly after terminating the Petitioner, the respondent engaged another employee namely Sh. P. C. Gupta, on contract basis for the same job.
18. Learned counsel submits that in view of the admitted fact that the Petitioner's services were regularized after completion of his probation period, his services could be terminated only either by conducting disciplinary proceedings and /or by following the mandatory provisions contained under section 25F, ID Act. Learned counsel submits that the appointment of Sh. PC Gupta was also in violation of section 25 H of the ID Act.
19. It has been submitted that as per settled law, the services of a confirmed regular employee can be terminated only after complying with the

mandatory preconditions prescribed u/s 25F, ID Act, and in the case of misconduct, by initiating disciplinary proceedings against him. Learned counsel states that services of a regular confirmed employee cannot be terminated by giving one month's notice in terms of the employment letter, as such a condition in the appointment letter is illegal, null and void and as such cannot be the basis for terminating the workman. Learned counsel submits that such a clause is opposed to public policy and is violative of section 23, Indian Contract Act, 1872. Reliance is placed upon the judgements in ***Central Inland Water Transport Corpn. v. Brojo Nath Ganguly***, (1986) 3SCC 156, (paras 100, 102, 109, 112) ; ***Novartis India Ltd. v. State of W.B.***, (2009) 3 SCC 124 (paras 35, 36 & 38) ; ***Ajaypal Singh v. Haryana Warehousing Corpn.*** (2015) 6 SCC 321 (paras 9-12, 19-23) ; ***Raj Kumar v. Director of Education***, (2016) 6 SCC 541, (paras 35, 36, 39)

20. Learned counsel submits that the learned Labour court erroneously held that the appointment of P. C. Gupta had absolutely no concern with the service conditions of the claimant workman. It has been submitted that the learned Labour court has fallen into a grave error by rejecting the plea raised by the petitioner that another employee namely Sh. P.C. Gupta was engaged at the same position after terminating the petitioner, as the same is in violation of the provisions enumerated in the ID Act.
21. Learned counsel contends that reliance placed by the respondent management on section 2 (oo) (bb), ID Act, is misplaced as the present

case is admittedly not a case of fixed term contract. The 2nd limb of clause (bb) also refers to a stipulation in such fixed term contracts only.

22. It has been submitted that the Petitioner is entitled to all consequential benefits including full back wages as per the judgement of the Supreme Court in *Deepali Gundu Surwasev. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10SCC 324 [para 38 (iii)]
23. Learned counsel states that the litigations pertaining to the workman as cited by the respondent, to show that the workman has been reinstated elsewhere, is misplaced. She submits that the Petitioner was/is entitled to do alternate job, being a part term employee. Learned counsel states that admittedly the Petitioner was entitled to work from home and work for other clients also. Reliance is placed on *New India Assurance Co. Ltd. v. A. Sankaralingam*, (2008) 10 SCC 698 (paras 7-8)

Contentions of the Respondent management

24. Learned counsel for the respondent vehemently opposing the contentions of the petitioner submits that the petitioner was appointed on part time basis w.e.f. 01.12.1999. The appointment letter dated 29.11.1999 stipulates the terms and conditions pertaining to his service. It is submitted that the appointment letter enables the management to terminate the workman without assigning any reason. It is stipulated therein, that after regularization of the services of the workman, one month's notice or one month's salary in lieu of notice period was required to be given by either of the parties.

25. Learned counsel for the respondent submits that the petitioner accepted the said terms and conditions of the appointment letter before joining services. Moreover, the petitioner has not challenged the terms and conditions of the appointment letter before the learned Labour court. The petitioner has neither challenged the terms and conditions of the appointment letter, in the Demand Notice, nor in the Statement of Claim and nor before this Court. Thus, it is stated that the petitioner has accepted the terms and conditions contained in his appointment letter, without any demur. The petitioner has also not led any evidence regarding the arbitrariness of the terms and conditions before the learned Labour Court. Learned counsel for the respondent submits that the petitioner at this stage, cannot be permitted to challenge the terms and conditions of the appointment letter before this Court under its writ jurisdiction, on the ground that it goes against public policy. Thus, the judgement passed in ***Central Inland Water Transport Corpn. Vs. Brojo Nath Ganguly, (Supra)*** is not relevant given the facts and circumstances of the present case.
26. It is stated that the termination letter dated 29.10.2003 is covered by the second part of Section 2 (oo) (bb), ID Act, as there is a specific stipulation in the appointment letter. A cheque of Rs. 3,360/- dated 29.10.2003 which was enclosed with the termination letter/ retrenchment notice and received by the petitioner has been admitted on record and is reflected in the Award impugned. Reliance is placed

on the judgment of the Supreme Court in ***Municipal Council Samrala Vs. Raj Kumar*** (2006) 3 SCC 81, (Para14).

27. Learned counsel submits that, admittedly the petitioner was working on part time basis and used to work with the management as well as other establishments. Learned counsel submits that the workman has approached this court with unclean hands and has suppressed material facts before the learned Labour Court. It is submitted that the petitioner filed an Affidavit before the learned Court on 17.11.2009, whereby the petitioner has lied on oath regarding his unemployment. Learned counsel states that the petitioner was gainfully employed with Mafcom Security Limited, 517, Sanchi Building - 77, Nehru Place, New Delhi, w.e.f. 16.05.2008 and was paid salary @ of Rs. 29,000/pm. It has been submitted that besides suppressing the fact of gainful employment and the award from another Labour court awarding reinstatement with much higher backwages, the petitioner also cannot work for two establishments as the same is impermissible. Learned counsel submits that the present petition is merely an attempt to extract money from the management by suppressing material facts and submitting false pleadings. Reliance is placed in ***M/s Shree Ji Sarees through Its proprietor Sh. Pankaj Jain Vs. Ved Prakash Sharma***, W.P. (C) No.7267/2012 (Para 19), whereby this Court has *inter alia* held that a person who approaches the court for enforcement of his legal rights must come to the court with clean hands and disclose all material facts to the court.

28. It has further been submitted that the petitioner has also raised an industrial dispute with Mafcom Security Limited, whereby the learned Labour Court has awarded reinstatement to the workman with full back wages and continuity of service. Learned counsel submits that an application bearing C.M. APPL. 2643/2015, was filed by the respondent before this Court, regarding suppression of workman's gainful employment, whereby vide Order dated 08.10.2015 this Court passed the following order:

"ORDER
08.10.2015

C.M. No. 2643/2015 by respondent for filing additional documents.

This is an application moved by the respondent for filing additional documents.

It is submitted by counsel for the respondent that during pendency of these pleadings, the petitioner has raised another industrial dispute with another establishment.

In view of the submission made therein, the application is allowed and the additional documents filed by the respondent are taken on record and the effect of the same will be considered at the time of final hearing of the petition.

The application stands disposed of accordingly."

29. Learned counsel for the respondent management submits that the present petition does not survive, in light of the fact that the petitioner has been granted an award in his favour, in ID. No. 235/2010 wherein, the learned Labour Court has awarded reinstatement with full back

wages and continuity of service. It has been submitted the petitioner in the said employment was receiving salary at a remuneration of Rs. 29,000/- p.m.

30. It has been submitted that the learned Labour Court rightly after appreciating evidence on record found that termination of the petitioner is squarely covered under the terms and conditions of the appointment letter dated 29.11.1999. Since it is an exception to the retrenchment as defined under Section 2(oo), therefore there is no application of Section 25F of ID Act. Section 2 (oo) (bb) provides as under:

“(oo) retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]”

31. It has been stated that even otherwise, compliance of 25F(c), ID Act is directory and not mandatory. Reliance is placed in ***Pramod Jha and Others vs. State of Bihar and Others*** (2003) 4 SCC 619 (Para 11), ***Bombay Union Journalists vs. State of Bombay & Ors***, (1964) 6 SCR 22.

32. Learned counsel thus submits that the award passed by the Learned Labour Court is in accordance with law and therefore requires no interference of this Court under its writ jurisdiction. Learned counsel submits that the learned Labour Court has neither exceeded its jurisdiction nor appreciated the evidence contrary to law. He thus prays that the present petition is dismissed.

Finding and Analysis

33. I have noted the submissions and perused the pleadings of the parties. Before coming to my findings, I deem it appropriate to recapitulate the law on the scope of jurisdiction of High Court under 226 and 227, Constitution of India.
34. The writ jurisdiction of High Courts under 226/ 227, Constitution of India have been meticulously discussed in a plethora of cases. It is well settled that the powers conferred under 226 & 227, though vast, should be exercised sparingly and with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind, qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those tribunals. High Courts cannot interfere with the findings of jurisdictional facts which the Tribunal is well competent to decide. (Refer *Sadhu Ram v. Delhi Transport Corpn.*, (1983) 4 SCC 156 (Para 3).

35. The legislature in its wisdom has not provided any appeal against the award of the Labour court/Industrial Tribunal, thus, making the Labour Court/ Industrial Tribunal, the final adjudicator of facts. It is impermissible for the High Courts under its writ jurisdiction to re-appreciate evidence and substitute its view with that of the Labour Court/ Tribunals. High Courts should refrain itself from re-entertaining pure questions of facts, which have already been adjudicated by the courts/ tribunals having the jurisdiction to do so, unless the same is found to be perverse, patently illegal, contrary to law, or if there is an error apparent on the face of the record. Writ of certiorari can be issued to correct errors of jurisdiction, but not to upset pure findings of the fact, which is within the domain of an appellate court only.

36. The Supreme Court in ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245 *inter alia* held as under:

“17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. The only course, therefore, open to the writ Judge was to find out the

satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below.”

37. The Supreme Court in ***Hari Vishnu Kamath v. Ahmed Ishaque & Ors.***, AIR 1955 SC 233, *inter alia* held as under:

“21. ... On these authorities, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.

23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be

one which must be manifest on the face of the record. ... The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

38. In ***Dharangadhara Chemical Works Ltd. v. State of Saurashtra*** (1957) SCR 152, the Supreme 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 unsupported by evidence.
39. In ***Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan*** (2005) 3 SCC 193, the Apex Court, held that the Labour Courts/ Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.
40. In a Constitution Bench judgement of the Supreme Court in ***Syed Yakoob vs. K.S. Radhakrishnan & Ors.***, AIR 1964 SC 477, the Apex Court has *inter alia* held as under:

“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 properly, as for instance, it decides a question without giving an opportunity, 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 Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

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; but 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 rounded 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 misconstrued or contravened.”

41. In the case of ***State of Haryana vs. Devi Dutt & Ors.***, (2006) 13 SCC 32, the Apex Court has *inter alia* held that the writ Court can interfere with the factual findings of fact only if (1) the Award is perverse; (2) the Labour Court has applied wrong legal principles; (3) the Labour Court has posed wrong questions; (4) the Labour Court has not taken into consideration the relevant facts; or (5) the Labour Court has arrived at findings on the basis of irrelevant facts or on extraneous consideration.
42. The scope of certiorari jurisdiction has been extensively discussed in ***General Manager, Electrical Rengali Hydro Electric Project, Orissa and Others vs. Giridhari Sahu and Others***, (2019) 10 SCC 695, whereby, the Apex Court referring to several cases has aptly summarized the nature and scope of certiorari of High Courts and held as under:

“28. On the conspectus of the decisions and material, we would hold as follows:

The jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of Certiorari will not don the cap of an Appellate Court. It will not reappreciate evidence. The Writ of Certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a

Tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to Certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a Writ of Certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter 'off bounds' for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of Certiorari must also one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath (supra), as to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amendable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is

what this Court has laid down [See M/s. Perry and Co. Ltd (supra)].”

43. Further, the Supreme Court in **Venkatlal G. Pittie v. Bright Bros. (P) Ltd.**, (1987) 3 SCC 558, has *inter alia* held as under:

“31. This Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447] held that in exercise of jurisdiction under Article 227 of the Constitution, the High Court can go into the questions of facts or look into the evidence if justice so requires it. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the facts in the absence of clear cut-down reasons where the question depends upon the appreciation of evidence. The High Court should not interfere with a finding within the jurisdiction of the inferior tribunal or court except where the finding is perverse in law in the sense that no reasonable person properly instructed in law could have come to such a finding or there is misdirection in law or view of fact has been taken in the teeth of preponderance of evidence or the finding is not based on any material evidence or it resulted in manifest injustice. Except to the limited extent indicated above, the High Court has no jurisdiction.”

44. The supervisory jurisdiction of the High Courts under Article 227, Constitution of India, was discussed by the Supreme Court in **Mohd. Yunus v. Mohd. Mustaqim**, (1983) 4 SCC 566, whereby it was *inter alia* held as under:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited “to seeing that an inferior court or tribunal functions within the limits of its authority”, and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in

our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

45. Furthermore, in ***Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala***, (1988) 1 SCC 155, the Supreme Court held as under:

“13. The intention here is manifest. In any event this is a possible view that could be taken. This Court in Venkatlal G. Pittie v. Bright Bros. (P) Ltd. [(1987) 3 SCC 558] and Beopar Sahayak (P) Ltd. v. Vishwa Nath [(1987) 3 SCC 693] held that where it cannot be said that there was no error apparent on the face of the record, the error if any has to be discovered by long process of reasoning, and the High Court should not exercise jurisdiction under Article 227 of the Constitution. See in this connection the observations of this Court in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137 : (1960) 62 Bom LR 146] . Where two views are possible and the trial court has taken one view which is a possible and plausible view merely because another view is attractive, the High Court should not interfere and would be in error in interfering with the finding of the trial court or interfering under Article 227 of the Constitution over such decision.”

46. The Supreme Court in *Heinz India (P) Ltd. v. State of U.P.*, (2012) 5 SCC 443 analyzing the power and scope of judicial review held as under:

“60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of “judicial review” one is instantly reminded of the classic and oft-quoted passage from Council of Civil Service Unions v. Minister for the Civil Service [1985 AC 374: (1984) 3 WLR 1174: (1984) 3 All ER 935 (HL)], where Lord Diplock summed up the permissible grounds of judicial review thus: (AC pp. 410 D, F-H and 411 A-B)

“... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. ...

By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable.

By ‘irrationality’ I mean what can by now be succinctly referred to as ‘Wednesbury [Associated Provincial Picture

Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA)] unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. ...

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

61. The above principles have been accepted even by this Court in a long line of decisions handed down from time to time. We may, however, refer only to some of those decisions where the development of law on the subject has been extensively examined and the principles applicable clearly enunciated.

62. In Tata Cellular v. Union of India [(1994) 6 SCC 651] this Court identified the grounds of judicial review of administrative action in the following words: (SCC pp. 677-78, para 77)

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

(1) Whether a decision-making authority exceeded its powers?

(2) committed an error of law,

(3) committed a breach of the rules of natural justice,

(4) reached a decision which no reasonable tribunal would have reached or,

(5) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA)] unreasonableness.

(iii) Procedural impropriety.”

63. Reference may also be made to the decision of this Court in State of Punjab v. Gurdial Singh [(1980) 2 SCC 471] where Krishna Iyer, J. noticed the limitations of judicial review and declared that the power vested in the superior courts ought to be exercised with great circumspection and that interference may be permissible only where the exercise of the power seems

to have been vitiated or is otherwise void on well-established grounds. The Court observed: (SCC p. 475, para 8)

“8. ... The court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the executive and judicial circumspection keeps the court lock jawed save where the power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset.”

64. There is almost complete unanimity on the principle that judicial review is not so much concerned with the decision itself as much with the decision-making process. (See Chief Constable of the North Wales Police v. Evans [(1982) 1 WLR 1155: (1982) 3 All ER 141 (HL)] .) As a matter of fact, the juristic basis for such limitation on the exercise of the power of judicial review is that unless the restrictions on the power of the court are observed, the courts may themselves under the guise of preventing abuse of power, be guilty of usurping that power.

65. Frankfurter, J.'s note of caution in Trop v. Dulles [2 L Ed 2d 630: 356 US 86 (1958)] is in this regard apposite when he said: (L Ed p. 653)

“... All power is, in Madison's phrase, ‘of an encroaching nature’. ... Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.”

66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant “the feel of the expert” by its own review, is also fairly well settled by the

decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land. (See Union of India v. S.B. Vohra [(2004) 2 SCC 150: 2004 SCC (L&S) 363], Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] and Thansingh Nathmal v. Supdt. of Taxes [AIR 1964 SC 1419].”

47. Moreover, this Court, in **Vijay Kumar Gupta vs. Reserve Bank of India & Ors.**, WP (C) 5453/2008, while relying on several judgements of the Apex Court has inter alia held as under:

“47. Under Article 226 of the Constitution of India, High Courts have the power to adjudicate upon an impugned order along with the power to entertain writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed down to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and question of facts would amount to exceeding the jurisdiction. While examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record.

48. The Hon’ble Supreme Court in **Union of India vs. P. Gunasekaran**, (2015) 2 SCC 610, elaborating upon the extent of exercise of writ jurisdiction, held as under:

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not: (i) reappreciate the evidence; (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii) go into the adequacy of the evidence; (iv) go into the reliability of the

evidence; (v) interfere, if there be some legal evidence on which findings can be based. (vi) correct the error of fact however grave it may appear to be:”

49. Further, the Hon’ble Supreme Court in **Sarvepalli Ramaiah vs. District Collector, Chittoor**, (2019) 4 SCC 500, made the observations as reproduced hereunder, while examining the scope of Article 226 of the Constitution of India:-

“41. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.

42. A decision may sometimes be set aside and quashed under Article 226 on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root of the decision and/or in other words an apparent error, but for which the decision would have been otherwise.”

50. Further in **Sanjay Kumar Jha vs. Prakash Chandra Chaudhary**, (2019) 2 SCC 499, the following observations were made by the Supreme Court:-

“13. It is well settled that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as a court of appeal over the findings recorded by a competent administrative authority, nor reappraise evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based on evidence and substitute its own findings....”

48. Further in *N. Balakrishnan (Dr.) v. Nehru Memorial Museum & Library Society*, 2010 SCC OnLine Del 3717, this Court *inter alia* held as under:

“21.Fifthly, It is also to be kept in mind that the writ court is not fact finding court. The writ court will not go into factual enquiry and then adjudicate the correctness or otherwise of the facts and rather would look the fairness, reasonableness of administrative actions and the taking away of any legal rights if any by virtue of the same. This has also been held in Management of Madurantakam, Co-operative Sugar Mills Ltd. v. S. Viswanathan, (2005) 3 SCC 193: AIR 2005 SC 1954 wherein the apex court observed:

“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type 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 of India 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. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were

reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.”

23. Thus, unless the court records that the factual enquiry is required on account of perversity in the lower court finding, the fact finding is not permissible in exercise of Article 226 or Article 227.”

49. In light of the aforesaid settled law, it becomes pivotal to examine the Award impugned so as to ascertain whether the Award passed has an infirmity which so requires the interference of this Court. A perusal of the impugned Award indicates that the Award on the 1st issue as to whether the claimant/ petitioner is a workman u/s 2(s), ID Act held in the affirmative. However, since the petitioner workman has challenged the said Award only to the extent of Issue Nos. 2 & 3 and given that the management has not challenged the said Award, it is expedient to examine the said issues challenged in the instant writ, applying the law as laid above.
50. The Labour Court on the 2nd issue as to whether the services of the workman have been illegally and unjustifiably terminated, has held in the negative and held that the services of the workman has been legally and justifiably terminated. Learned Labour Court has returned this finding based on oral submissions and documentary evidence produced by the parties before it and the admission of the workman qua receiving his termination letter/retrenchment notice along with one month's salary, in lieu of notice period. Before the learned Labour Court, a plea

was taken by the workman that his services were illegally terminated when he approached the management to claim his legal dues, which had not been paid by the management. That instead the management employed one Sh. P.C. Gupta in his place and terminated the services of the workman. Further, another plea was raised that since the services of the workman were regularized, he could not have been terminated by the management, flouting the provisions as contained in section 25F, ID Act.

51. Learned Labour court in order to adjudicate this issue has examined the appointment letter of Sh. P.C. Gupta, the appointment letter (Ex. WW 1/1) and termination letter (Ex. WW 1/5) of the workman, the Memorandum of association of rules and regulations of the management (Ex. WW 5/7), and a SCN dated 25.06.2003 (Ex. WW 1/4). Upon examination of the aforesaid appointment letter of Sh. PC Gupta read with Rule 5 (h) of the Memorandum of association of rules and regulations of the management, the learned Labour court held that the appointment of Sh. P.C. Gupta has absolutely no concern with the service conditions of the claimant workman, as it was a totally separate nature of appointment, for a fixed period of one year and not a regular employment as that of the workman. Moreover, after examining the appointment letter and termination letter of the workman, it held that the management had terminated the services of the workman in compliance of section 25F, ID Act and in consonance with the terms mentioned in his appointment letter.

52. Perusal of the appointment letter of Sh. P.C. Gupta in juxtaposition with that of the workman makes it apparent that the terms and service conditions of both the workmen i.e., Sh. PC Gupta and the petitioner workman, were different and not related. The appointment letter of Sh. P.C. Gupta shows that he was appointed as an administrative officer on honorary basis, only for a period of one year, at remuneration of Rs. 3000/- p.m. with Rs. 2000/- p.m. as conveyance allowance, without any benefits of provident fund/ gratuity. Moreover, Rule 5 (h) of the Memorandum of association of rules and regulations of the management, provides for the appointment of honorary members, not exceeding three in number, who are found or likely to be found helpful to the Trust in any way, for such period, and on such terms and conditions which the trustees may decide from time to time. Whereas the appointment letter of the petitioner workmen reflects that the petitioner workman was appointed as a Deputy Administrative officer, on part time basis at the remuneration of Rs. 3000/- p.m. The appointment letter stipulates that initially the workman would be kept on a probation period of six months, after completion of which if the services of the workman are not confirmed within one month, the probation period would be deemed to have been extended for another three months. The termination clause in the appointment letter clearly reveals that after regularization of services of the workman, one month's notice from either side or one month's salary in lieu of notice period, would be required, and that the management Trust has the right to terminate the service of the workman without assigning any reason.

53. The termination letter/ retrenchment notice of the workman is reproduced as under:

Dated 29.10.2003

“Mr. Shrawan Kumar Lohia

Dy. Administrative Officer (Part Time)

S/o Shri B.L.Lohia,

*House No. 1417, Gali Kishan Dutt, Maliwara, Chandni Chowk,
Delhi- 110006.*

Dear Mr. Lohia,

Please refer to your letter of Appointment dated Nov. 29, 1999 appointing you as Dy. Ad. Officer on Part Time basis w.e.f.01.12.1999. Your services are no more required by the Trust and the same are terminated w.e.f. 31st October, 2003. As per clause of Termination in your Appointment letter a cheque of Rs.3,360/- (Rupees Three Thousand Three Hundred Sixty only)equivalent to one month's salary in lieu of Notice period is enclosed.

The remaining dues of Gratuity and Provident Fund as admissible shall also be paid to you shortly.

(S.P.SINGH)

General Secretary

Sd

(RAJ KUMAR GUPTA)

President

Written by hand

Encl. Ch. No. 106372 dt. 29.10.2003 for Rs. 3360—"

The appointment letter of Sh. PC Gupta read with Rule 5 (h) of the Memorandum of association of rules and regulations of the management and the appointment letter of the workman reveals that the terms and services condition and the nature of appointment of the two i.e., Sh. PC Gupta and the workman, as per their appointment letters were different. The appointment of Sh. PC Gupta was on honorary basis, for a fixed period of one year unlike a regular employment as in the case of the workman. Further, the termination letter/ retrenchment notice of the workman explicitly states that the services of the workman would no longer be required and has been terminated. It further states that as per the termination clause contained in his appointment letter, a cheque of Rs. 3360/-, with respect to one month's salary in lieu of notice period is being enclosed. The appointment letter also stipulated that the management need not assign any reasons for terminating the workman.

54. Thus, it becomes evident that the termination of the workman was in consonance with the terms and conditions contained in his appointment letter. The relevant extract of the Appointment letter dated 29.11.1999 is reproduced herein under:

“

Dated Nov. 29, 99

*Mr. Shrawan Kumar Lohia
S/o Shri B.L.Lohia,
H. No. 1417 (2nd Floor),
Gali Kishan Dutt,*

*Maliwara,
Chandni Chowk,
Delhi- 110 006.*

Dear Mr. Lohia,

This has reference to the resume submitted by you on 25th November, 1999 and subsequent interviews held by Dr. S.P.Singh and the undersigned. The management committee of Dr. yudhveer singh Charitable Trust is pleased to appoint you as Dy. Administrative Officer, on part-time basis, with effect from 1st December, 1999 on the following terms and conditions:-

PROBATION PERIOD

You would be kept on 'probation' for a period for six months from the date of your joining. On completion of 'probation period', if your services (for continuance of part-time work) are not confirmed within one month, the 'probation period' would deemed to has been extended for another three months.

JOB RESPONSIBILITIES

xxx

NOTICE/ TERMINATION

During probation period, your services can be terminated within 24 hours without assigning any reason. However, if you want to leave the job during probation period, you have to give one month's notice.

After regularisation of your services, one month's notice from either side shall be required or one month's salaries in lieu of the notice would be required.

The Trust has right to terminate your service without assigning any reason.

GENERAL CONDITIONS OF SERVICE

xxx

REMUNERATION

xxx

Sd
(Dr. S.P. Singh)
CHIEF
MEDICAL
OFFICER

Sd
(C.R. Rai)
PRESIDENT ”

55. Learned Labour court has also returned a finding that the termination is in compliance of the provisions under Section 25F, ID Act. It is thus apposite to reproduce the provisions contained under Section 25F, ID Act, which reads as under:

“25F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days'

average pay[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette”

A bare perusal of the above section makes it abundantly clear that the termination of the workman was indeed in accordance with the provisions under section 25F, ID Act, which mandates one month's notice with reasons of retrenchment mentioned, or compensation equivalent to fifteen days' average pay for every completed year of continuous service.

56. The contention of the workman before this Court that he did not receive the retrenchment notice or the cheque, is thus contrary to the fact as recorded in the Award of the Labour Court. It is pertinent to note that the impugned Award in *Para 18* has categorically recorded that “*It is not disputed that the said cheque was received by the workman but he had not encash the same.*”

57. In *Pramod Jha v. State of Bihar*, (2003) 4 SCC 619, the Supreme Court *inter alia* held as under:

“7. On behalf of the State of Bihar it is not disputed for the purpose of this case that the project wherein the appellants were engaged falls within the definition of “industry” and that each one of the appellants had served continuously for not less than one year within the meaning of Section 25-F, and therefore, the employment could not have been terminated except on compliance

with the provisions of Section 25-F of the Act. The core of the controversy centres around the question whether it can be said that the mandatory requirements of Section 25-F were complied with or not. A bare reading of Section 25-F of the Act shows that retrenchment within the meaning of Section 2(oo) of the Act must satisfy the following requirements:

(i) that the workman has been given one month's notice: (a) in writing, and (b) indicating the reasons for retrenchment;

(ii) that the retrenchment must take effect after the expiry of the period of notice i.e. one month or else the workman should be paid in lieu of such notice, wages for the period of the notice;

(iii) that at the time of retrenchment the worker has been paid compensation equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(iv) that the notice in the prescribed manner is served on the appropriate Government or on the specified authority as notified.

10. We have given our anxious consideration to submission and counter-submission made before us in the light of the pleadings and undisputed documents available on record. We are of the opinion that the appeals are devoid of any merit and liable to be dismissed. The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation

at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

11. Compliance with clauses (a) and (b) of Section 25-F strictly as per the requirement of the provision is mandatory. However, compliance with clause (c) is directory, as held in Gurmail Singh v. State of Punjab [(1991) 1 SCC 189; 1991 SCC (L&S) 147] and a substantial compliance would be enough.”

58. Further, the learned Labour Court also considered a SCN dated 25.06.2003 (Ex. WW 1/4) filed by the workman, which was in fact a SCN issued to the workman by the secretary of the management, reprimanding the workman for failing to complete the accounts within the stipulated time frame as per his appointment letter. By way of the SCN the workman was asked to show cause as to why action not be taken against him for dereliction of duty. It has been further recorded by the learned Labour court that no explanation was tendered by the

workman to the said SCN and nothing with respect to this was placed on record by the workman. Learned Court observed that the termination was just four months thereafter and may be suggestive that the work of the workman was not proper.

59. The learned Labour Court upon examining the aforesaid evidence, returned a categorical finding that the management has legally and justifiably terminated the services of the workman in consonance with his terms and conditions contained in the appointment letter and in compliance of section 25F, ID Act, as the said termination letter/ retrenchment notice was enclosed with one month's salary in lieu of notice period, and as, such as per the appointment letter, the management could terminate the workman without assigning reasons.
60. The contention of the workman before me, that the services of a regular confirmed employee cannot be terminated by giving one month's notice in terms of the employment letter as such as condition in the appointment letter is arbitrary, illegal, null and void and opposed to public policy and in violation of section 23 of The Indian Contract Act. It is pertinent to note that such a plea cannot be raised before this Court, at this stage, as the same is beyond the pleadings. The petitioner workman has neither challenged the said terms and conditions of the appointment letter before the learned Labour Court, nor has he led any before evidence to support this contention before the learned Labour Court. Moreover, the terms and conditions of the appointment letter have also not been challenged before this Court. Thus, it can be

considered appropriate that the petitioner accepted the said terms and conditions and thereafter joined the services of the management.

61. With respect to the 3rd issue as to whether the workman would be entitled to relief as sought in the amended claim. Learned Labour court returned a finding that since the services of the workman were legally terminated by the management, he is not entitled to reinstatement. With respect to the monetary reliefs sought by him for the work allegedly done by him for the other two units of the management, the work done in the period prior to his appointment, increment, or leave encashment, earned leaves, bonus, health benefits etc., the learned Labour court held that the same are beyond the scope of the learned Labour court and are matters falling within the jurisdiction of the Industrial Tribunal as per Third Schedule, ID Act. The learned Labour court has rightly returned the finding that monetary reliefs as sought, cannot be granted by the Labour courts. It may be noted that Section 7 r/w the Second Schedule of the ID Act entails the matters which the learned Labour courts have the jurisdiction to adjudicate. Rule 6 of the Second Schedule states that the learned Labour court has the jurisdiction on all matters other than those specified in the Third Schedule of the ID Act. Section 7A r/w the Third Schedule, ID Act, provides the matters which are under the jurisdiction of the Industrial tribunals. The monetary reliefs as sought by the workman, such as bonus, increment, provident fund and gratuity, compensatory and other allowances, all fall within the scope and purview of Industrial Tribunals under the Third Schedule, ID Act. Learned Labour Court therefore rightly rejected the monetary reliefs as

sought by the workman and held that the workman would not be entitled to any relief.

62. Applying the above discussed settled propositions of law to the instant case at hand, it can be observed that the impugned Award is neither perverse, nor illegal. In absence of any jurisdictional error, it may not be feasible for this Court to embark upon an exercise of reappreciating evidence or to substitute its view with those recorded by the learned Labour court. In absence of any such perversity, illegality or jurisdictional error, this Court should not enter into the realm of factual disputes, which have been adjudicated and decided by the learned Labour court, which is the final adjudicator of facts. High Courts cannot, in the guise of exercising its writ jurisdiction convert itself into a court of appeal when the legislature has not conferred a right of appeal.
63. Thus, the learned Labour court has returned its finding of fact based on cogent evidence, and submissions of the parties. It would not be correct for this Court to interfere with the correctness or the propriety of a finding of fact recorded by the learned Labour court, unless the said finding is not supported by any legal evidence and is wholly inconsistent with the material produced on the record and is perverse or illegal. This Court considers that the learned Labour court in the instant case has appreciated the evidence threadbare and, upon examination and weighing of such evidence has returned a categorical finding of fact. The Award passed by the learned Labour court is well reasoned

and based on cogent evidence. There is nothing in the impugned Award to show perversity, manifest illegality or any error apparent on the face of the record which requires the interference of this Court.

64. Moreover, it has been recorded in the Impugned Award that it is undisputed that the said cheque enclosed with the termination letter/ retrenchment notice of the workman was in fact received by the workman. The workman however did not encash the cheque. Thus, the management as per the terms and conditions of the appointment letter of the workman, terminated the services of the workman by way of a retrenchment notice/ termination letter, which had with it, enclosed a cheque bearing one months' salary in lieu of the notice period thereby, in compliance of the terms and conditions contained in the appointment letter and, in accordance with section 25F, ID Act. The same has been admitted by the workman and is an undisputed matter of record, as reflected vide the Impugned Award. Hence, the management can be said to have complied on their part and it was for the workman to have encashed the cheque, which he did not. If the workman did not encash the cheque, he cannot be permitted to take advantage of his own wrong. The legal maxim "*commodum ex injuria sua nemo habere debet*" implying that no party can take undue advantage of his own wrong has been considered in ***Kusheshwar Prasad Singh Vs. State of Bihar***, (2007) 11 SCC 447, whereby the Supreme Court opined:

"14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast

on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).

15. ... This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:

“It is a maxim of law, recognized and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognized in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong.”

65. The learned Labour court has considered the matter in great detail after appreciating oral and documentary evidence and submissions and pleadings of the parties, and decided that even though the claimant is a workman as per section 2 (s), ID Act, he is however not entitled to any relief, as the management has terminated his services legally and justifiably, following the terms and conditions of the appointment letter of the workman and in compliance of the provisions enumerated under section 25F, ID Act.

66. This Court in absence of any infirmity, perversity, illegality, or jurisdictional error ought not to interfere with the finding of fact as returned by the learned Labour court. Accordingly, the Award of the learned Labour Court is upheld and the present Petition along with all pending applications is dismissed.

DINESH KUMAR SHARMA, J

NOVEMBER 24, 2022

Pallavi



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