

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-1064-2023 (O&M)
Date of Decision: 23.11.2023

HEAD MASTER GOVT. PRIMARY SCHOOL,
SECTOR-12, SRINAGAR, SONIPAT ...Petitioner

Versus

ANITA AND ANOTHER ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

Mr. Balkar Singh, Advocate
for respondent No.1.

HARSH BUNGER, J. (ORAL)

1. Instant petition under Articles 226/227 of the Constitution of India, has been filed by the petitioner seeking a writ of *certiorari* for setting aside the Award dated 06.04.2022 (Annexure P-1) passed by the learned Industrial Tribunal-cum-Labour Court, Panipat (here-in-after referred to as 'the Tribunal') in Reference No. 61 of 2019, whereby learned Tribunal below has answered the reference in favour of respondent No.1/Anita (here-in-after, 'worklady') by holding that her termination was bad for want of compliance of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the 1947 Act') and accordingly, respondent No.1 was ordered to be reinstated with continuity in service and full back wages w.e.f. 16.10.2018 i.e. date of her termination till the date of her reinstatement.

2. Briefly, respondent No.1-worklady raised an industrial dispute regarding termination of her services by the employer. Respondent no. 1 – worklady, by way of her statement of claim filed before learned

Tribunal below, claimed that she was employed as Mid-day Meal Helper by the employer from 2007 on salary of Rs.3,500/- per month. It was stated that on account of her illness, she was on leave on 25.09.2018 and after recovery, she rejoined on 15.10.2018, however on 16.10.2018, she was verbally terminated by the employer without giving any reason despite the fact that the worklady had completed more than 240 days continuous service. Respondent no. 1–worklady claimed that she was neither served with any notice nor any retrenchment compensation was paid, accordingly, her services were termination in violation of provisions of Section 25F, 25H, 25N and 25G of the 1947 Act.

3. On the other hand, the employer *inter-alia* took a stand that respondent No.1–worklady was habitual absentee without seeking prior permission and in that regard notices dated 27.09.2018, 01.10.2018 and 15.10.2018 were served on her but she refused to accept the same. It was denied that respondent No.1–worklady had worked for 240 days in a calendar year. Accordingly prayer was made for rejection of the claim statement of respondent No.1–worklady.

4. Respondent no. 1 – worklady filed her replication and from the pleadings of the parties the following issues were framed:-

"1. Whether the claimant falls within the definition of 'workman' as defined u/s 2(s) of the Industrial Disputes Act, 1947? OPC

2. Whether the service of claimant was illegally terminated? OPC

3. Relief."

5. The parties led their respective evidence in support of their claim.

6. The learned Tribunal below, vide impugned Award dated 06.04.2022 (Annexure P-1), allowed the reference and held the termination of respondent No.1 – worklady bad for want of compliance of Section 25F of the 1947 Act and accordingly, ordered her reinstatement with continuity in service and full back wages w.e.f. 16.10.2018 i.e. date of her termination till the date of her reinstatement.

7. In the aforesaid background, employer has assailed the award by way of present petition.

8. Learned counsel for petitioner submitted that the Tribunal below has erred in law and fact in deciding the reference in favour of respondent No. 1 – worklady without taking into consideration the fact that she had not completed 240 days work in any calendar year as she was working only for three hours i.e. as part-time worker and therefore she was not entitled to get benefit of Section 25F of 1947 Act. It is further submitted that there were many complaints against respondent No. 1 – worklady and her work and conduct was not found satisfactory by the management committee. It is next submitted that respondent No. 1 – worklady was habitual absentee without seeking prior permission and in that regard notices dated 27.09.2018, 01.10.2018 and 15.10.2018 were served on her but she refused to accept the same. Accordingly, learned counsel for petitioner prayed that the impugned award be set aside.

9. *Per contra*, learned counsel for respondent no. 1 – worklady submitted that the impugned award is well reasoned and justified in the peculiar facts and circumstances of the case and the same does not call for any interference by this Court. Accordingly, prayer for dismissal of writ petition was made.

10. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

11. The tribunal below vide the impugned award 06.04.2022, returned the following findings: -

“Issue No.1:

8. *Since, it is not disputed by respondent that claimant was covered by the definition of ‘Workman’ as defined under Section 2(s) of the Act, it is held that claimant was worker, as per the Act. Hence, issue stands decided in favour of claimant.*

Issue No.2 :

9. *While stepping in the witness box as CW-1, the claimant has testified that she had joined as Mid-day meal-cum-Helper by the respondent from 2007 but her service was illegally terminated by the respondent on 16.10.2018 without following the provision of Section 25-F of the Act. As against this stand taken by respondent is that she was habitual absentee, who fail to mend her ways and also refused to accept three notices dated 27.09.2018, 01.10.2018 and 15.10.18 issued by respondent.*

10. *At the very outset, ld. GP for respondent contended that the claimant had never worked for a period for 240 days in a calendar year. Summoned witness Monika, Clerk from the office of respondent appeared as CW-2 and produced on file copy of salary record of claimant as Ex.C-3 (running into 100 pages). A bare perusal of Ex.C-3 reveals that claimant was being paid salary from October 2007 to October 2018, which has proved the case pleaded by claimant. Mere fact that the claimant was paid full wages in the year 2017 for the month of October, November and December whereas in the year 2018 for the month of February, March, April, May, July, August and September, makes it amply clear that she had worked for a period for*

240 days in the last calendar year preceding the date of her termination i.e. from 17.10.2018 to 16.10.2018.

11. Another argument raised on behalf of respondent is that the claimant was habitual absentee and she failed to mend her ways despite issuance of three notices dated 27.09.2018, 01.10.2018 and 15.10.2018. The argument is not tenable because no efforts were made by respondent to prove that said notices were ever issued. So much so that said letters were not put to the claimant, when he stepped in the witness box as CW-1. In the circumstances, it cannot be said that any letter was ever issued by the respondent. It is correct that respondent has placed on record some report dated 21.02.2019 as Mark-1 however, the same cannot be read into evidence because no efforts were made by respondent to get exhibited documents Mark-1, while following the rules of evidence. Even otherwise, said report was prepared 4 months after the termination of claimant and as such, the same is not relevant in this case.

12. The last limb of argument raised on behalf of respondent is that the appointment of claimant was null and void because she was neither resident of locality/village/colony wherein she was appointed nor she was member of self helping group and belong to scheduled caste. To my mind, this argument cannot be taken into consideration because in the instant case, the Court has to decide the validity of termination of claimant and it is not the question before this Court to decide the validity of appointment of claimant. Even otherwise, if the appointment of claimant was null and void, the appointing authority could have dismissed the claimant, while following due procedure.

13. Another important point to be noted here is that it is not the case of respondent that at the time of her termination, the claimant was either given one month notice in writing indicating the reasons for retrenchment or paid

wages for the period of notice and paid compensation equivalent to 15 days' average pay for every completed year of continuous service. Suffice it to say that termination of claimant is bad for want of compliance of Section 25-F of the Act. Reliance in this regard can be placed upon State of Punjab Vs. Mohinder Singh and another 2004(5) SLR 162 and M.C.D. Vs. Praveen Kumar Jain 1999(2) SCT 289.

14. In the circumstances, the claimant is entitled to claim the benefit and protection under Section 25-F of the Act. Resultantly, this issue stands decided in favour of claimant.

Relief :

15. In view of my findings upon above-said issue, the claim statement dated 13.03.2019 is hereby allowed and reference stands answered in positive to the effect that the respondent is directed to reinstate the claimant with continuity of service alongwith full back wages w.e.f. 16.10.2018 i.e. date of her illegal termination till the date of her reinstatement. Copy of this Award be sent immediately to Deputy Labour Commissioner, Rohtak for information and necessary action.”

12. A perusal of the above extracted findings would reveal that the summoned witness namely Monika, Clerk from the office of employer appeared as CW2 and produced on record copy of the salary record of respondent no.1 – worklady as Ex. C-3, which revealed that respondent No. 1 – worklady was being paid salary from October 2007 to October 2018. The Tribunal below while relying upon the fact that since respondent No. 1 – worklady was being paid full wages for the months of October, November and December of the year 2017 and then for the months of February, March, April, May, July, August and September of the year 2018; therefore, held that respondent No.1 had worked for 240 days in the last calendar year preceding the date of her termination i.e. 16.10.2018. The learned counsel

for the petitioner-employer has failed to dislodge the aforesaid finding of fact returned by the Tribunal below.

13. As regards the employer’s plea that respondent no. 1 – worklady was working only for three hours i.e. as part-time worker and therefore she was not entitled to benefit of Section 25F of 1947 Act; suffice it to say that the said plea is untenable in law in view of the judgment rendered by Hon'ble Supreme Court in case titled ***Divisional Manager, New India Assurance Co. Ltd. v. A. Sankaralingam, 2008(4) S.C.T. 373***, wherein it was held as under:-

"7. ...the question for consideration, which has been hotly debated, is the status of a part time employee and as to whether such an employee falls within the definition of "workman". Section 2(s) of the Act deals with the definition of "workman" whereas section 25B talks about "continuous service"....

XXX XXX XXX

8. A bare perusal of the two definitions would reveal that their applicability is not limited to only full time employees but all that is required is that the workman claiming continuous service must fulfill the specific conditions amongst others laid down in the two provisions so as to seek the shelter of Section 25F.

XXX XXX XXX

10.the preponderance of judicial opinion that a workman working even on a part time basis would be entitled to benefit of Section 25F of the Act is clear from the various judgments which we have referred to above.

XXX XXX XXX

12. It will be seen from a perusal of the afore-quoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a

workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise..."

In the light of the aforesaid judicial pronouncement and considering the factual finding recorded by the Tribunal below that respondent No. 1 – worklady had worked for 240 days in twelve months preceding her termination and she was neither given one month's notice nor paid wages for the period of notice nor she was paid retrenchment compensation, therefore, respondent No. 1 – worklady is entitled to claim the protection of Section 25F of 1947 Act.

14. As regards the plea of abandonment raised on behalf of employer, it is observed that the employer had failed to prove that the notices dated 27.09.2018, 01.10.2018 and 15.10.2018 were issued to respondent No. 1 – worklady and neither the said notices were put to respondent No. 1 – worklady when she appeared in the witness box as CW-1. It is settled law that mere plea of abandonment taken by employer may not be sufficient to prove abandonment, rather it is necessary for the employer to place on record that specific notice was issued to the workman before alleged abandonment asking the workman to join duty within a stipulated period. In this regard, reliance is placed upon the judgment rendered by Hon'ble Bombay High Court in case titled ***Ocean Creations v. Manohar Gangaram Kamble 2013(15) S.C.T. 372***. It is profitable to reproduce paras No. 8, 9 and 10 of the said judgment, which reads as under: -

"8. The legal position is also settled that 'abandonment or relinquishment of service' is always a question of intention and normally such intention cannot be attributed to an employee without adequate evidence in that behalf. This is a question of fact which is to be determined in the light of

*surrounding circumstances of each case. It is well settled that even in case of abandonment of service, unless the service conditions make special provisions to the contrary, employer has to give notice to the workman calling upon him to resume duties and where he fails to resume duties, to hold an enquiry before terminating services on such ground **Gaurishanker Vishwakarma v. Eagle Spring Industries Pvt. Ltd. and another, 1987 (55) FLR 689, 1991 (63) FLR 679, 1998 (79) FLR 874.***

*9. In somewhat similar circumstances a Division Bench of this court comprising P. B. Sawant, J. (as he then was) and V. V. Vaze, J. in the case of **Gaurishanker Vishwakarma v. Eagle Spring Industries Pvt. Ltd. & Anr.** observed thus :*

".... It is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case the employer has done neither. It was for the employer to prove that the workman had abandoned the service.

.....It is therefore difficult to believe that the workman who had worked continuously for six to seven years, would abandon his service for no rhyme or reason. It has also to be remembered that it was the workman who had approached the Government Labour Officer with a specific grievance that he was not allowed to join his duty. It was also his grievance that although he had approached the company for work from time to time, and the company's partner Anand had kept on promising him that he would be taken in service, he was not given work and hence he was forced to approach the Government Labour Officer. In the circumstances, it is difficult to believe that he would refuse the offer of

work when it was given to him before the Labour Officer..."

*10. Again a learned Single Judge of this court R. M. Lodha, J. (as he then was) in the case of **MahamadshaGanishah Patel &Anr. v. Mastanbaug Consumers' Co-op. Wholesale & Retail Stores Ltd. and another** 1997 (3) ALL MR 719 : 1998 (79) FLR 874 observed thus :*

"..The legal position is almost settled that even in the case of abandonment of service, the employer has to give notice to the employee calling upon him to resume his duty. If the employee does not turn up despite such notice, the employer should hold inquiry on that ground and then pass appropriate order of termination. At the time when employment is scarce, ordinarily abandonment of service by employee cannot be presumed. Moreover, abandonment of service is always a matter of intention and such intention in the absence of supportable evidence cannot be attributed to the employee. It goes without saying that whether the employee has abandoned the service or not is always a question of fact which has to be adjudicated on the basis of evidence and attending circumstances. In the present case employer has miserably failed to discharge the burden by leading evidence that employee abandoned service. The Labour Court has considered this aspect, and, in my view rightly reached the conclusion that the employer has failed to establish any abandonment of service and it was a clear case of termination. The termination being illegal, the Labour Court did not commit any error in holding the act of employer as unfair labour practice under Item - 1, Schedule IV of the MRTU & PULP Act..."

Therefore, the plea of abandonment raised by employer

remained unsubstantiated and was rightly rejected by Tribunal below.

15. As regards the relief of reinstatement and other consequential benefits granted to respondent No. 1 – worklady, it would be apposite to refer to the judgment rendered by Hon'ble Supreme Court in "***M/s. Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. (1979) 2 SCC 80***", wherein the following observation was made:

"9. ... The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer."

Furthermore, in "***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (2013) 10 SCC 324***" it is held:

"38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.5. *The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Articles 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.*

38.6. *In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for*

*prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in **Hindustan Tin Works (P) Ltd. v. Employees (1979) 2 SCC 80.***

*38.7. The observation made in **J.K. Synthetics Ltd. v. K.P. Agrawal (2007) 2 SCC 433** that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches (1979) 2 SCC 80, (1980) 4 SCC 443 referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."*

When the impugned award granting relief of reinstatement with continuity of service and full back wages is tested on the anvil of the decisions in *M/s. Hindustan Tin Works Pvt. Ltd. (supra)* and *Deepali Gundu Surwase (supra)*, the same cannot be faulted with.

16. Further, in *Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 Supreme Court 477*, the Constitution Bench of Hon'ble Supreme Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari, by observing as under :

"...A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with

the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised..."

17. Considering the totality of circumstances in view of legal position indicated above, I do not find any illegality or perversity in the

impugned Award dated 06.04.2022 passed by the learned Tribunal, which may call for any interference by this Court in exercise of its writ jurisdiction.

Consequently, the instant petition fails and is dismissed.

18. All pending application/s, if any, shall also stand closed.

November 23, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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