

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

CWP-19533-2022 (O&M)
Date of Decision: 02.09.2023

SH. CHHAVI PARKASH

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
LABOUR COURT, U.T. AT CHANDIGARH AND
OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amit Kaith, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Chhavi Parkash) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for quashing of Award dated 12.12.2019 (Annexure P-1), published on 24.02.2020; passed by learned Industrial Tribunal-cum-Labour Court, U.T. Chandigarh (for short 'the Tribunal'); whereby the industrial dispute raised by the petitioner regarding termination of his services, has been answered against him.

Petitioner further seeks a writ of *mandamus* for directing respondents No.2 and 3 (here-in-after called as 'the respondent-Management') to pay the wages from the date of termination of the petitioner till the date of superannuation and thereafter, release full pension and pensionary benefits along with interest from the date of accrual thereof till its realization along with interest.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by filing his claim petition under Section 2-A(2) of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the 1947

Act'). Petitioner claimed that he was charge-sheeted on 27 counts on the allegations of irregularities committed by him while he was posted as advance Booker at ISBT. The substance of the charge sheet was that he has not deposited complete dockets in the office on various dates, made cutting in the dockets, made double entry of tickets in the dockets and pocketed the sale proceeds on various dates. On the same allegations, a case FIR No.102 dated 14.03.2007 under Sections 420, 467, 468, 471 of the Indian Penal Code (for short 'the IPC') and Section 13(i)(d) of the Prevention of Corruption Act, 1998, was also registered.

3. It appears that pursuant to the charge-sheet, an Enquiry Officer was appointed and the enquiry proceedings were initiated. Enquiry Officer submitted his enquiry report against the petitioner on 27.04.2011.

It is borne out from the impugned Award that the petitioner apprised the punishing authority that no fair and proper enquiry was conducted; whereupon the punishing authority ordered fresh enquiry.

4. Thereafter, fresh Enquiry Officer was appointed vide order dated 23.08.2011. It appears that the petitioner-workman did not appear before the Enquiry Officer and accordingly, he was proceeded against *ex-parte*.

5. The petitioner claimed that he had been appearing before the Enquiry Officer on each and every date, except on 23.05.2013 and 31.05.2013. It is stated by the petitioner that he could not appear on 23.05.2013 due to the death of his maternal aunt and thereafter, the case was adjourned to 31.05.2013; however, on 31.05.2013, there was '*bhog*' of his maternal aunt, so he made a request to the Enquiry Officer in that regard and he was assured that the enquiry proceedings shall be adjourned to the next

date. It was stated that the enquiry officer proceeded *ex-parte* against the petitioner and recorded the statement of PWs in the absence of the petitioner without giving any opportunity of cross-examination to the petitioner-workman and also did not afford any opportunity to the petitioner-workman to lead defence. According to the petitioner-workman, he was shocked to learn about the *ex-parte* enquiry report, against which, he submitted a detailed representation; however, the punishing authority without considering the same, passed the punishment order dated 10.10.2013; whereby the petitioner was dismissed from service.

Thereafter, the petitioner claims to have filed an appeal against the order of punishment; however, the same was also dismissed by the Appellate Authority as per order dated 19.12.2013/03.01.2014.

6. Petitioner further stated that in the criminal case i.e. FIR No.102 dated 14.03.2007, he was acquitted vide judgment dated 20.03.2015 passed by the Special Court, Chandigarh. Petitioner claimed that if an employee is acquitted by the Court in a criminal case on the same set of allegations, the departmental enquiry proceedings also goes automatically. Petitioner maintained that the Enquiry Officer acted with a biased mind and he was wrongly proceeded against *ex-parte*; therefore, the whole proceedings against him deserve to be set aside.

Accordingly, prayer was made for setting aside of the punishment order dated 10.10.2013 (Annexure P-2) as well as the order of the Appellate Authority dated 19.12.2013/03.01.2014 (Annexure P-3) being illegal, arbitrary, against the rules and law; with a further prayer that petitioner should be reinstatement with continuity of service and full back wages along with interest.

7. The afore-said claim of the petitioner was contested by the respondent-Management on the plea that the petitioner was charge-sheeted vide Memo dated 07.11.2008 for grave misappropriation of Rs.3,08,370/- from the Government Revenue by way of selling fake tickets, while he was posted as advance booker at ISBT, Sector 17, Chandigarh and even an FIR was lodged against him. Respondent-management stated that the Inspectors of the Chandigarh Transport Undertaking scrutinized the record of the workman very carefully and it was found that the workman did not deposit the different dockets in the office and some of the dockets were missing and there were so many discrepancies in the official record of the petitioner-workman. It was stated that a detailed report was made against the petitioner-workman, which was submitted to the competent authority and after enquiry, as per the report of the Inspector, it was found that the petitioner-workman had been performing the duty with *mala fide* intent by corruption against the State Exchequer; whereby he caused a grave misconduct and petitioner-workman sold a number of fake tickets to different conductors. Respondent-management stated that initially the enquiry proceedings were conducted against the petitioner; however subsequently, an order of fresh enquiry was passed by the competent authority on the request of the petitioner-workman only to meet the ends of natural justice, as in the earlier enquiry, the petitioner had disappeared from the departmental proceedings and the enquiry officer had proceeded against him *ex-parte*. It was further stated by the Management that in the fresh enquiry as well, the petitioner-workman again disappeared from the proceedings, which were held for the second time; therefore, the petitioner did not want to participate in the departmental proceedings and wanted to

distract the same and to prevent it from proceeding further. It was submitted that even in the second enquiry, the petitioner-workman made number of unnecessary requests for postponement of the proceedings and most of his requests were accepted; therefore, he adopted the delaying tactics. It was stated that the petitioner was again proceeded against *ex-parte* as he did not come present and participate in the enquiry proceedings and rather, he disappeared intentionally so that the same may not be culminated. It was stated that the petitioner did not take any single step to get restored the *ex-parte* enquiry proceedings, either before the enquiry officer or before the punishing authority and all documents, charge-sheet etc. were duly supplied to the petitioner-workman. As per the Management, the enquiry was conducted in a proper manner after following the due procedure by examining all prosecution witnesses in the departmental enquiry in the presence of the petitioner-workman. It was stated that the petitioner-workman was afforded due opportunity to cross-examine the witnesses; however, he did not do so. Ultimately, the punishing authority passed the punishment order and an appeal filed by the petitioner against the afore-said punishment order was also dismissed.

8. As regards the acquittal of the petitioner in criminal proceedings is concerned, it was submitted that the departmental proceedings and criminal proceedings are both of different nature and in case, an official is acquitted in the criminal proceedings that does not mean that he will be exonerated in the departmental proceedings as well. It was stated that all departmental proceedings have been carried out after following due procedure of law and there was no illegality or irregularity in

the same; therefore, prayer was made for rejecting the claim of the petitioner.

9. From the pleadings of the parties, the following issues were framed :-

*“1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any? OPW
2. Relief.”*

10. In order to prove his case/claim, the petitioner-workman examined himself as AW1.

11. On the other hand, the respondent-Management relied upon the inquiry file of the workman.

12. After considering the relevant material/evidence on the record, the Tribunal below, rejected the claim of the petitioner.

13. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

14. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

15. As regards the scope of interference in disciplinary proceedings by High Courts, Hon'ble Supreme Court in ***Union of India v. P. Gunasekaran, 2015(1) S.C.T. 5***, held as under:-

*“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the **disciplinary proceedings**, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a*

second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate 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;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

16. As regards the *ex-parte* enquiry proceedings are concerned, the Hon'ble Supreme Court in ***Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup, AIR 1957 Supreme Court 82*** held that where a workman intentionally refuses to participate in the inquiry, cannot complain that the dismissal is against the principles of natural justice. It was held that once the inquiry proceed *ex parte*, it is not necessary for the Inquiring Authority to again ask the charged officer to state his defence orally or in writing. Court observed that it cannot appreciate the conduct of the charged officer in the case, who did not appear before the Inquiring Authority and offered any explanation to the charges levelled against him but approached the High Court stating that the principles of natural justice had been violated.

17. Still further, in ***State of Haryana and another v. Rattan Singh, AIR 1977 Supreme Court 1512***, it has been held by Hon'ble Supreme Court that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the

court to look into because it amounts to an error of law apparent on the record.

The said was also a case where a bus conductor of a State Transport undertaking was charge-sheeted for not collecting fares from certain passengers and on his guilt being established there was simple termination of his services because of his long services and young age. It was held that merely because statements of passengers were not recorded by the Inspector of the flying squad the order that followed was invalid. The evidence of the Inspector was some evidence which had relevance to the charge against the bus conductor.

18. In the instant case, concededly, the petitioner was charge-sheeted on 27 counts for misappropriation. The department has taken action against the petitioner after conducting departmental enquiry. The petitioner chose not to participate in the departmental proceedings and as per Inquiry Report, the charges against the petitioner were proved. The Disciplinary Authority upon considering the matter, passed the punishment order which was upheld by Appellate Authority. The learned Tribunal below has held that the enquiry was conducted in a fair and proper manner and no illegality in the enquiry has been found.

19. In such like cases of misappropriation, the Hon'ble Supreme Court in ***Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane, 2004(4) SCT 438***, has held as under :-

"Coming to the question of quantum of punishment, One should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found

guilty of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

In ***Bank of India v. Apurba Kumar Saha, 1994(1) S.C.T. 692 :***

(1994) 2 SCC 615, Hon'ble Supreme Court held:

"A bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and honesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the bank employer had resulted in violation of principles of natural justice of fair hearing".

20. Therefore, once the petitioner despite being aware of Inquiry proceedings, failed to appear/participate therein and at no point, any effort was made by him for setting aside of *ex-parte* proceedings initiated against him during inquiry, no fault can be found with the Inquiry report, where charges of misappropriation were held to be proved against the petitioner. The Disciplinary Authority upon considering the matter in its entirety, proceeded to pass the dismissal order against the petitioner; which, considering the charges of misappropriation being found proved against the petitioner, cannot be said to be shockingly disproportionate to the charges. The Tribunal below has found the inquiry to be just, fair and proper; therefore, I do not find any justifiable reason to interfere in the impugned award.

21. Furthermore, the parameters for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in cases involving

challenge to the award passed by the Labour Court/Industrial Tribunal and orders passed by other judicial and *quasi-judicial* bodies are well defined. A writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of *certiorari* is a supervisory jurisdiction and not appellate one. This necessarily means that the finding 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 except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a *quasi-judicial* authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or *quasi-judicial* authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of *certiorari*. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused

to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of *certiorari*. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of *certiorari*. Likewise, the mere, possibility of forming a different opinion on re- appreciation of evidence by the parties is not sufficient for issue of a writ of *certiorari* *Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477; Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 Supreme Court 61; Jitendra Singh Rathor v. Sh. Baidyanath Ayurved Bhawan Ltd. and another, AIR 1984 Supreme Court 976; R.S. Saini v. State of Punjab and others, 1999(4) RCR (Civil) 253 (SC) : J.T. 1999(6) S.C. 507 and Mohd. Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69.*

22. No other point has been urged.
23. Considering the totality of circumstances in the light of the legal principles indicated above, I do not find any illegality or perversity in the impugned Award passed by the learned Tribunal below, resultantly, the instant writ petition fails and the same is accordingly dismissed.
24. All pending application/s, if any, shall also stand closed.

September 02, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No