

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4906-2022 (O/M)

Date of decision : 12.12.2023

Gian Chand

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vineet Choudhary, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Additional A.G. Haryana.

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HARSH BUNGER, J.

1. Petitioner (Gian Chand) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the Award dated 28.09.2021 (Annexure P-5), passed by the Industrial Tribunal-cum-Labour Court, Ambala (hereinafter referred to as 'the Tribunal'); whereby the industrial dispute raised by the petitioner regarding termination of his services by respondent No. 3-HAFED, (hereinafter referred to as 'respondent-Management'), has been answered against him.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by filing his claim petition directly under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). The petitioner claimed that he joined the services of

respondent-Management on 01.10.1997 as a Chowkidar in the office of Manager/Food Inspector at Cheeka. The petitioner stated that he used to perform his duty in the office and godown of respondent-Management at Guhla Road, HAFED, Cheeka, where he continuously worked till 31.03.2017 without any break or interruption, however, his services were terminated abruptly on 31.03.2017 without serving one month's notice or paying one month's salary in lieu of notice or retrenchment compensation. The petitioner alleged that respondent-Management had committed unfair labour practices, showing him under some fictitious name by changing his name in the records and further obtained his signature on blank papers to prepare false material as per their requirement. The petitioner further alleged that juniors to him had been retained in service and new persons have been recruited after his termination. Accordingly, petitioner claimed that his termination was in violation of provisions of Section 25-F, Section 25-G and Section 25-H of 1947 Act and he prayed for reinstatement and other consequential benefits.

3. The aforesaid claim of the petitioner was contested by respondent-Management wherein preliminary objections regarding maintainability of claim petition, locus standi of the petitioner, mis-joinder/non-joinder of necessary parties were taken. On merits, the claim of the petitioner was contested by denying that the petitioner joined the services under respondent-Management on 01.10.1997 as a Chowkidar and it was stated that the petitioner had worked only for a period with effect from 01.08.1998 upto 31.07.1999 at Cheeka Centre HAFED, therefore, it was denied that the petitioner had worked upto 31.03.2017, as claimed by

him. It was categorically stated that there was no relationship of employer and employee between respondent-Management and petitioner, and, therefore, prayer for dismissal of the claim of the petitioner was made.

4. From the pleadings of the parties, the Tribunal below framed the following issues :-

- “1. *Whether the termination of the services of workman is liable to be set-aside being wrong, illegal, null and void etc. and the workman is entitled to reinstatement in service with full back wages and all the benefits including the continuity of service ? OPW*
2. *Whether the applicant has no locus standi to file the present claim statement ? OPM*
3. *Whether the applicant has concealed the true and material facts from the court ? OPM*
4. *Whether the applicant has no cause of action to file the present claim statement ? OPM*
5. *Whether this court has no jurisdiction to entertain and try the claim statement ? OPM*
6. *Whether the claim statement is bad for mis-joinder and non-joinder of necessary parties ? OPM*
7. *Whether the applicant is estopped by his own act and conduct for filing the present claim statement ? OPM*
8. *Whether the claim statement is time barred ? OPM*
9. *Whether the claim statement is not maintainable in the present form ? OPM*
10. *Relief.”*

5. The Tribunal below, vide impugned award dated 28.09.2021 (Annexure P-5), rejected the claim of the petitioner.

6. In these circumstances, the petitioner has filed the instant writ petition before this Court.

7. I have heard learned counsel for respective parties and have also perused the paperbook with their able assistance.

8. The petitioner had raised an industrial dispute with a specific plea that he was working with respondent-Management since 01.10.1997 as a Chowkidar without any break or interruption and his services were terminated abruptly on 31.03.2017.

On the other hand, it was pleaded case of respondent-Management that the petitioner had worked only for the period with effect from 01.08.1998 upto 31.07.1999 at Cheeka Centre HAFED. It was denied that there was any relationship of employer and employee between respondent-Management and petitioner.

9. It is well settled proposition that the onus to prove the issue regarding relationship of employee-employer and/or the issue of proving continuous service by workman under the Management in terms of Section 25-B of 1947 Act, so as to attract the provisions of Section 25-F of 1947 Act, rests upon the workman.

10. While considering an issue of existence of relationship of employer and employee between the parties, in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors., (2004) 3 SCC 514***, Hon'ble the Supreme Court held as under:-

“47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship

of employer and employee, the burden would be upon him.

48. In N.C. John v. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Others, 1973 LIC 398, the Kerala High Court held :

"The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship."

49. In Swapan Das Gupta and Others. v. The First Labour Court of West Bengal and Others, 1975 LIC 202, it has been held :

"Where a person asserts that he was a workmen of the Company, and it is denied by the company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse..."

11. Further, while considering an issue as to whether the workman has rendered continuous service under the management in terms of Section 25-B, so as to attract provisions of section 25-F of Industrial Disputes Act, 1947; the workman is required to prove that he worked for 240 days in 12 calendar months preceding the date of his termination. It is well settled law that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden

placed by law on the workman to prove that he had worked for 240 days in a given year. In this regard, reference can be made to the case of ***Municipal Corpn. v. Siri Niwas, 2004(4) S.C.T. 211 and Surendranagar District Panchayat v. Dahyabhai Amarsingh, 2005(8) SCC 750.***

12. Coming to the case in hand, the Tribunal below, has returned the following findings :-

“24. I have heard the arguments advanced by both the parties and have gone through the file with utmost care and circumspection. After marshalling the entire evidence viz oral and documentary on record, I find that it is the claim of the petitioner that he had been working with the respondent since 1.10.1997 and that the respondent had been showing him under different name in order to disentitle him from the benefit of continuity. He has further averred in his petition that he was being paid by the respondent directly in cash and the Provident Fund was being deducted by the respondent-Federation.

25. On the other hand the respondent-Federation alleged the petitioner to have worked only for a definite period w.e.f. 1.8.1998 till 31.7.1999 and thus denied his appointment in October 2007 and his continuity till 31.7.2017 as alleged by the petitioner by further stating that the respondent-Federation being under the Government of Haryana, has adopted the policy of the Government for outsourcing the manpower and since the year 2006 the manpower is being outsourced through different service provider/security agencies. So, alleged that the attendance sheet Mark-A produced by the claimant does not pertain to him and the attendance sheet

Mark B has been forged and fabricated by the claimant for his own gain.

26. *This plea of the respondent-Federation cannot be ignored, as a careful scanning of the documents Mark A by taking microscopic view of the name Gian Chand entered at serial No. 4 for the month of October 2007, I find that the same pertains regarding one Gian Chand who is son of Rakesh while the father name of the claimant-petitioner is Sh. Rulia Ram which is different from that of initial entry of the month he has alleged to have joined the respondent-Federation. Similarly, in Mark B the photocopy of the attendance register w.e.f. April 2016 to March 2017, I find that on all the pages the entry had been made in the end except for the entry of one month i.e. for the month of December 2016 and in all these months where his name appears at the end of the list, it overlaps the signature of the Field Inspector, giving an inference that it is a subsequent addition and even the formation of letter 'P' (short form of presence) against Gian Chand appears to be different that the formation of letter 'P' against the name of other employees as the line drawn for writing 'p' against the Gian Chand is straight while against the name of other employees is a little bit oval thereby showing a difference in the handwriting in these two hand writing, so, the same cannot be taken as a conclusive proof in view of the additional fact that the documents so produced are the photocopies of the photocopies and nothing had been brought on record as to how they were procured and when they procured from the office of respondent-department. In his cross-examination, the claimant has simply stated that some employees had*

given him those documents whose name is Vikram and now he is posted as Inspector but he did not examine the said Vikram in his evidence. So, in order to refute his contention the respondent-Federation examined witness Sh. Vikram in their evidence and as already discussed above, this witness did not authenticate the veracity of these pages of attendance register. Even at that stage too, no question was put by the petitioner to this witness in his cross-examination in order to prove that these documents had been provided by him to the claimant.

27. Therefore, in these circumstances, the authenticity of the attendance register which has not been proved by the claimant-petitioner can not be relied upon. Moreover, the claimant has been unable to produce any appointment letter issued by the respondent-Federation to him. He has alleged that he was given the salary of Rs. 10,182/- in cash and his Provident Fund was deducted by the respondent-Federation but in his cross-examination, he denied to have any documents to show that his PF was deducted by the respondent-department by simply stating that he had moved an application to the department to provide the PF Number but the same was not provided by the department. Regarding the salary he stated that he used to receive it in cash. Initially, he stated that he was being paid the salary by Hafed but showed his inability to bring on record any document and he stated that one Sinhma Security and Placement Security used to give him salary as the Security Agency was providing manpower to Hafed. He was unable to produce on record that in the year 2011 or in the year 2012 the salary was being paid to him by Hafed and admitted that during these years there was different Security Agency which was providing

manpower to respondent-Federation and denied that he had ever worked under those Service Provider. He admitted that since the year 1997 he has not received any receipt vide which Hafed had been deducting his PF.

28. *The authorized representative for the claimant-petitioner has contended that the appointment letter is not requirement of law as the employer is in dominant position to provide him the same and regarding the other documents pertaining to the attendance sheet w.e.f. April 2016 to March 2017, he submitted that Vikram Singh was the best person to explain but he has tried to evade the answer being the employee of the respondent-Federation. In support of his contention, he referred to the case laws titled M/s Bharat Heavy Electrical Ltd. Versus State of U.P., (SC): 2003 AIR (SC) 3024, HSIIDC Limited Versus Ram Dhan (P&H) 2013 (2) PLR 659: 2013 (16) S.C.T. 61, State of UP Versus Sri Surender Kumar (Uttarakhand) 2017 LabLR: 2017 (153) FLR 769: 2017 LIC 3636.*

29. *This plea of the claimant does not hold any ground as the entire evidence is to be seen collectively one with another leading to a definite conclusion as the beads in a thread. But here in this case nothing has been brought on record by the claimant to show his employment with the respondent-Federation. On other hand, he alleged that he was being (paid – not typed) the salary in cash and has no proof of deduction of Provident Fund. Both the things are improbable as in case PF is being deducted the salary would be received in the account of the employee. The plea that the salary was being paid in cash to the claimant is highly vague and converse. The facts of the cases referred to above by the*

petitioner/claimant are also not para materia (material – typed) to the facts of this case.

30. *Moreover, even if the salary is paid in cash or through any other mode, no account statement has been produced by the claimant to show regular inflow of definite amount in his account. A simple averment without any base or any documentary proof regarding his employment cannot be given any weightage coupled with the fact that even in the documentary evidence pertaining to the attendance register produced by the claimant is surrounded by suspicious circumstances and thus cannot be relied upon. Therefore, he has miserably failed to prove his case and cannot be held to be entitled to any relief. So, this issue is decided against the claimant.”*

A perusal of above extracted finding would reveal that the petitioner had failed to prove the authenticity of attendance register produced by respondent-Management and neither the petitioner produced any appointment letter issued by respondent-Management. The claim of the petitioner that he was being paid salary in cash and his provident fund was also being deducted by respondent-Management, was considered by the Tribunal below and it has been held as a matter of fact that the petitioner has showed his inability to bring on record any document with regard to aforestated facts. The petitioner further admitted that since year 1997, he had not received any receipt, vide which HAFED had been deducting his provident fund. Accordingly, the Tribunal below has observed that nothing has been brought on record by the petitioner to show his employment with respondent-Management and in case provident fund was being deducted then the salary would be received by the petitioner in his account and not in cash.

The Tribunal below has further observed that apart from the simple averment regarding petitioner's employment, no documentary proof has been shown nor any account statement was produced to show regular inflow of definite amount in petitioner's account. Neither before the Tribunal below nor before this Court, the petitioner has produced any document to prima facie indicate that he had remained employed with respondent-Management with effect from 01.10.1997 upto 31.03.2017, as claimed by him.

13. Leaned counsel for petitioner has been unable to controvert the findings returned by the Tribunal below. Once the petitioner has failed to prove his pleaded case nor it has been shown that there exists any relationship of employer and employee between the parties or that the petitioner has rendered continuous service in terms of Section 25-B of 1947 Act i.e. 240 days' work in the 12 calendar months preceding the date of his termination, therefore, no relief can be granted to petitioner. Consequently, once the petitioner has failed to prove the relationship of employee and employer between them, therefore, there is no question of any violation of provisions of Section 25-G and Section 25-H of 1947 Act.

14. 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.*

15. Considering the totality of circumstances in the light of the legal position indicated above, there is no scope for any interference by this Court in the impugned award dated 28.09.2021 (Annexure P-5). Resultantly, the instant writ petition fails and the same is accordingly dismissed.

16. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

12.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No