

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-163-2001 (O/M)

Date of decision : 22.08.2023

Jagbir Singh and others

..... Petitioners

Versus

Presiding Officer, Labour Court-II, Faridabad and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Abhilaksh Gorver, Advocate
for the petitioners.

Mr. Vivek Saini, Advocate
for respondents No. 2 and 3.

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HARSH BUNGER, J.

1. Petitioners (Jagbir Singh and others) have filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the impugned Award dated 19.09.2000 (Annexure P-30), passed by the Labour Court-II, Faridabad (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by petitioners regarding termination of their services, has been answered against them and their claim has been rejected.

Further prayer has been made by the petitioners for directing respondent-Haryana State Electricity Board (hereinafter referred as 'respondent-Board') to reinstate the petitioners with full back wages.

2. Briefly, the petitioners raised individual industrial dispute regarding termination of their services, which was referred for adjudication to the Tribunal below. The Tribunal below consolidated the references, vide order dated 06.06.1995 and it was ordered that the proceedings be taken in reference No. 34/94 titled as Jagbir Versus HSEB.

3. The petitioners claimed that they were working in Haryana State Electricity Board, Sub Division, Palwal Chant Line and they were doing the work of digging pits, erecting poles/towers and drawing electricity lines. The petitioners claimed that their date of appointment and date of termination are as under :-

Name	Date of Appointment	Date of Termination
1. Jagbir Singh	27.4.89	15.5.93
2. Santvijay	4.3.89	15.5.93
3. Brahamdutt	4.3.89	16.12.93
4. Mahesh	15.11.88	16.12.93
5. Varinder Singh	20.10.90	16.12.93
6. Kishan Chand	1.1.90	15.5.93
7. Nand Kisore	24.3.89	15.5.93
8. Keshavdutt	1.1.89	15.5.93
9. Sukh Ram	6.4.88	16.12.93
10. Nanak	2.7.88	16.12.93
11. Lakha	4.2.89	16.12.93
12. Budh Ram	20.6.88	16.12.93
13. Raj Pal	31.10.90	16.12.93
14. Budh Ram s/o Dhalu	2.8.88	16.12.93
15. Mahavir	15.6.90	16.3.93
16. Jai Chand	10.10.91	15.5.93
17. Ghirraj	20.1.89	16.12.93
18. Jagat Singh	5.1.91	16.12.93
19. Karan Jeet	4.4.91	16.12.93
20. Teej Singh	2.2.89	15.5.93
21. Babu Ram	25.12.89	15.5.93
22. Hanif	4.3.89	16.12.93
23. Mahipal	1.1.88	16.12.93
24. Mahinder	20.10.90	16.12.93

4. Petitioners claimed that at the time of termination of their services, they were neither given any notice/notice pay nor any retrenchment compensation was paid to them, therefore, their services have been terminated in violation of Section 25-F of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act').

5. The claim of the petitioners was contested by respondent-Board by filing its written statement wherein a categorical stand was taken that there was no relationship of employee and employer between the parties as the petitioners were never appointed by it. It was stated that some work was got done through some contractors. Claim of petitioners was denied and prayer for dismissal of claim was made.

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

“(1) Whether there does not exist a relationship of and servant and if so, its effect ?

(2) Whether the claimants are not covered within the definition of workman as defined under Section 2(a) of the Act ?

(3) Whether the reference is bad for non-joinder or necessary parties ?

(4) As per reference ?

(5) Relief.”

7. It appears that respondent-Board did not lead any evidence.

8. On the other hand, petitioners examined themselves in support of their claims. The petitioners further examined one Manohar and Subhash as WW1 and WW2, who deposed that the petitioners were the employees of the contractor. The petitioners further tendered in evidence photographs Ex.WA

to Ex.WF and Ex.W1 to Ex.W27.

9. After considering the material/evidence available on record, the Tribunal below, vide impugned award dated 19.09.2000 (Annexure P-30) has returned the following findings :-

“12. As per the case of the claimants, they were appointed on regular basis by the respondent board. Strangely enough, the claimants have not produced their appointment letters during the trial of the case. The claimants also not produced their attendance sheets/registers for this purpose. They could make applications to the court during the trial of the case for summoning their attendance register/muster rolls if they were employed on daily wages from the office of the respondent but during the trial of the case no such application was made by the claimants to the court. The best evidence is with-held by the claimants as such inference can be drawn against the claimants. The claimants while examined above said WW-1 to WW-18 and WW-21 to WW-38 have stated that their salary at the relevant time was paid by the respondent board. But during the trial of the case, they had not summoned the salary/wages registers from the office of the respondent to prove this fact. They had not even produced the Photostat copies of such documents during the trial of the case. Hence inference can be drawn against the claimants since they have with-held best evidence, in view of the above fact, by no stretch of imagination, it can be held that the claimants were the employees of the respondent. It is settled law that the burden to prove the fact that they were the employees of the Board was on the claimants. It was also burden

on the claimant to prove that they had completed more than 240 days in a calendar year. On both counts, the claimants has miserably failed to prove that they were the employees of the respondent and they had completed 240 days service in a calendar year in order to attract the provisions of Section 25-F of the Act.....”

In view of the aforesaid observations, the Tribunal below held that the provisions of Section 25-F of 1947 Act were not applicable. It has been further observed that the petitioners had not produced in evidence any termination order allegedly passed by respondent-Board and the said fact also goes against the petitioners. As regards the relationship of employee and employer between the parties, the Tribunal below has returned the following findings :-

“13. Authorized representative for the claimant has contended that the claimants were the employees of the respondent at the relevant time. Their services were terminated by the respondent wrongly and illegally in different dates as mentioned in the claimants statements. He has referred to me statements of WW-1 to WW-18 and WW-21 to WW-38. I have already discussed that WW-1 to WW-18 and WW-21 to WW-38 are the claimants themselves. Their statements are not corroborated by any independent evidence oral or documentary evidence. Authorized representative for the claimants have also referred to me photographs Ex.W-A to Ex.W-F and Ex.W-1 to Ex.W-27. It may be noted that these photographs can not prove the facts that the claimants were employees of the respondent. Such photographs can be procured easily. Photographs can be taken easily while standing near

the Electric Pole of the Board. From those photographs, it cannot be established that the claimants are the employees of the respondent Board. Authorized representative for the claimants has stressed on statement of WW-19 and WW-20 who are the employees of the respondent. I have already discussed that in cross-examination they categorically stated that they did not know whether the claimants were the employees of the Board or the contractor. Hence their statements are also of no help to the case of the claimants. Statements of WW-1 to WW-38 cannot be believed in the absence of documentary evidence as referred to above, which were not summoned by the claimants during the trial of the case. Authorised representative for the claimants has further contended that the respondent has not led any evidence to prove the case. Hence inference can be drawn against the respondent. I have already discussed that in the present case, the burden was on the claimants to prove that there was no relationship of employer and employee between the parties and the claimants at the relevant time had completed 240 days in a calendar year. Authorised representative for the respondent has contended that the claimants are not the workmen as defined under Section 2(s) of the Act. The provisions of Section 2(s) of the Act are re-produced below :-

“Workman” means any persons (including an employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purpose of

any proceedings under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence or, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

It is evident from the provisions of Section 2(s) of the Act that if it was proved that the claimants were employees of the respondent in that case, it could be held that they were workmen. However, in the present case, the claimants have failed to prove that they were employees of the respondent as discussed above. Hence it can not be held that the claimants were workmen as defined under Section 2(s) of the Act.

13. Taking an overall view of the facts and circumstances which emerged from the oral and documentary evidence place on record, issue No. 1 to 4 are decided in favour of the respondent and against the claimants.”

10. Being aggrieved against the aforesaid common award, the petitioners have filed the instant civil writ petition before this Court.

11. Learned counsel for petitioners, while referring to the facts as noticed above, submits that the Tribunal below has failed to consider and appreciate that the petitioners had given statements on oath that they had worked with respondent-Board for more than 240 days prior to their termination and that their attendance was being marked by the J.E. on muster rolls. It is submitted that respondent-Board had failed to produce the muster

rolls for the relevant period, accordingly, adverse inference was required to be drawn against respondent-Board, which was not done. It is further submitted that the statements made by the petitioners were wrongly rejected by the Tribunal below by observing that the same were not corroborated by any independent witness orally or documentary evidence. With the aforementioned submissions, learned counsel for petitioners submits that the impugned award is not sustainable in the eye of law and the same be set aside and necessary directions be issued for reinstatement of the petitioners and to grant other consequential benefits.

12. On the other hand, learned counsel for respondent-Board has opposed the prayer made by learned counsel for petitioners by submitting that the Tribunal below has rendered a well reasoned and justified award, which does not call for any interference by this Court in exercise of writ jurisdiction. It is submitted that the petitioners had failed to prove their pleaded case as neither the relationship of employee and employer has been proved on record nor it has been shown that the petitioners had worked for more than 240 days in the year preceding their termination, so as to attract the provisions of Section 25-F of 1947 Act. It is submitted that once the petitioners had failed to discharge the onus placed upon them, no relief could have been granted. Accordingly, it is prayed that the instant civil writ petition is bereft of any merit and same be dismissed.

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

14. It is well settled law that the onus to prove existence of

relationship of employer and employee between the parties is upon the workman. In *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors.*, (2004) 3 SCC 514, Hon'ble 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..."

It is also well settled law that the onus to prove that the workman

has rendered continuous service in terms of Section 25-B of 1947 Act i.e. the workman has worked under Management for 240 days in 12 months preceding the date of termination is also on the workman. It is further well settled 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 Amarsinh*, 2005(8) SCC 750.

15. Coming to the case in hand, it was the pleaded case of the petitioners that they were appointed by respondent-Board on different dates and their services have been terminated in violation of Section 25-F of 1947 Act.

16. On the other hand, it is the case of respondent-Board that there was no relationship of employee and employer between the petitioners and respondent-Board.

17. In order to substantiate the claim made by the petitioners, the petitioners examined themselves in support of their case. Apart from that there is no independent corroboration to the stand taken by the petitioners. No appointment letter or proof of receipt of salary or wages or any record of engagement by respondent-Board or any order in that regard has been produced before the Tribunal below or before this Court.

18. Keeping in view the legal position indicated above, it is evident that the petitioners have failed to discharge the onus to prove that there was

relationship of employee and employer between the parties and neither it has been proved on record that the petitioners have rendered continuous services in terms of Section 25-B of 1947 Act so as to attract the provisions of Section 25-F of 1947 Act. In the absence of any material/evidence available on record, no fault can be found with the findings returned by the Tribunal below.

19. As regards the plea of the petitioners that adverse inference be drawn against respondent-Board for not producing Muster Rolls, it is observed that drawing of adverse inference is optional and not obligatory and the same is within the domain of Industrial Tribunal. Further, drawing of adverse inference depends on facts and circumstances of each case and adverse inference cannot be drawn only because it is lawful to do so. In the instant case, the Tribunal below has not drawn any adverse inference. Furthermore, apart from the bare plea of non-production of muster roll by respondent-Board; there is no plea of the petitioners that respondent-Board has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent-Board. In this regard, reference can be made to the judgment of Hon'ble Apex Court in *R.M. Yellatti v. The Asst. Executive Engineer, 2005(4) S.C.T. 695*, wherein it has been held as under:

“15. ... The above decisions however make it clear 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. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case...”

20. 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.

21. No other point has been urged.

22. When the facts and circumstances of this case and also the findings returned by the Tribunal below are considered in the light of the legal position indicated above, I do not find any illegality or infirmity with the impugned award dated 19.09.2000 (Annexure P-30), which may call for any interference by this Court, while exercising its writ jurisdiction. Therefore, the instant writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

22.08.2023

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No