

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

CWP-7787-1998 (O&M)
Date of Decision: 22.12.2023

S.K. KHARBANDA

...Petitioner

Versus

THE PRESIDING OFFICER, LABOUR COURT, BATHINDA
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sharwan Sehgal, Advocate
for the petitioner.

Mr. Deepak Agnihotri, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J.

Petitioner (S.K. Kharbanda) 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 impugned Award dated 17.10.1997 (Annexure P-20) passed by the learned Presiding Officer, Labour Court, Bathinda; whereby, the reference of the industrial dispute regarding termination of services of the petitioner was answered against him.

2. Briefly, the petitioner raised an industrial dispute by serving a demand notice dated 11.03.1988 (Annexure P-4) upon respondents No.2 to 4, herein (here-in-after referred to as 'the respondent-Management'). Subsequently, the said industrial dispute was referred for adjudication to the Labour Court, Bathinda (here-in-after called as 'the Labour Court'), under the Industrial Disputes Act, 1947 (here-in-after referred to 'the 1947 Act').

3. In the claim statement, the petitioner stated that he joined as a Trainee with the respondent-Management, which is a pharmaceutical

company, on 27.02.1987 on wages of Rs.1150/- p.m. and was posted in the Pharma Division. It was stated that the training period of the petitioner was of six weeks only and he was posted at Ferozepur City on 01.06.1987 and was given an independent charge of the area as he was appointed as a Medical Representative of the respondent-Company. It was specifically pleaded by the petitioner that his services were regularized by the respondent-Company in the regular pay scale of Rs.870-45-2400, vide letter dated 02.09.1987 (Annexure P-2). It was stated that the petitioner remained posted at Ferozepur City since 01.06.1987 till the date of his termination order dated 15.02.1988. It was further stated that the services of the petitioner were appreciated by the respondent employer and he was also a member of the Punjab Medical Representatives' Association. It is the case of the petitioner that on account of his being a member of the afore-said association, the Management became apprehensive and hostile towards him and was always on the look-out to punish him and accordingly, the services of the petitioner were terminated without any rhyme or reason on 15.02.1988 in a most biased and arbitrary manner. It was stated that the observations made in the termination order regarding unsatisfactory performance of the workman was baseless, false and mala fide. It was claimed that before termination of the services of the petitioner, no charge-sheet, enquiry, show-cause notice was issued to him and neither any retrenchment compensation was paid. It was further claimed by the petitioner that the persons junior to him were retained in service, when his services were retrenched; therefore, it was stated that the termination of the petitioner was against the provisions of the 1947 Act. Accordingly, prayer was made for reinstatement with

continuity in service along with full back wages and other consequential benefits.

4. Per contra, the afore-said claim of the petitioner was contested by the respondent-Management, on the plea that the petitioner was appointed on probation, pursuant to Company's letter dated 02.09.1987 and during the period of his probation, it was found that his performance was not satisfactory, despite having been given various opportunities to improve, accordingly, the Company terminated his services, in consonance with the appointment letter. It was clarified that initially, the appointment of the petitioner was for specified period and in view of Section 2(oo)(bb) of the 1947 Act, he was not entitled to any retrenchment compensation. It was stated that the termination of the petitioner was in accordance with the appointment letter and the same does not amount to retrenchment under the 1947 Act; therefore, there was no question of any non-compliance of Section 25-F of the 1947 Act.

5. Further objection regarding jurisdiction of the Labour Court below was also taken. It was submitted that the petitioner had voluntarily accepted the terms and conditions of his employment and his services were brought to an end in accordance with the said terms. On merits, it was reiterated that the petitioner joined the respondent-Company as a Trainee on a stipend of Rs.1150/- p.m. The plea of the petitioner that he was given independent charge as a Medical Representative was denied. It was stated that the petitioner was taken as a trainee and on the expiry of the training period, he was employed on probation but since his performance during the period of probation was not found satisfactory, he was terminated from service. It was stated that the afore-said fact was brought to the notice of the

petitioner periodically and even personal counselling was given, however, he did not show any improvement; whereupon, the respondent-Company terminated his services. The allegation of the petitioner that the management had become apprehensive and hostile against him on account of his becoming a Member of the Association, was also denied. Accordingly, prayer was made for dismissal of the claim petition.

6. On the basis of the pleadings of the parties, the following issues were framed by the learned Labour Court below :-

“1. Whether this court has not got territorial jurisdiction as pleaded in the written statement.

2. Whether Shri S.K. Kharbanda does not come within the definition of workman as pleaded in the written statement.

3. Whether Shri S.K. Kharbanda estopped from raising the dispute by his act and conduct as pleaded in the written statement.

4. Whether the termination of services of the workman is justified and in order?

5. Relief.”

7. After considering the relevant material/evidence available on the record, the learned Labour Court below has answered the reference against the petitioner by holding that the petitioner is not entitled to any relief.

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

9. Learned counsel for the petitioner has argued that the learned Labour Court below has erred in law and fact in rejecting the claim of the petitioner. It is submitted that the learned Labour Court has not considered the material/evidence available on the record in its right perspective.

Learned counsel further submits that the petitioner was appointed as a Medical Representative and his services were regularized and during the service of the petitioner, he was given appreciations as well. However, the services of the petitioner were terminated by observing that his performance was not satisfactory. It is submitted that at the time of termination of services of the petitioner, the provisions of 1947 Act was not complied with. Accordingly, it is prayed that the impugned Award be quashed and appropriate directions be issued for reinstating the petitioner along with all consequential benefits.

10. On the other hand, learned counsel appearing for the respondent-Management submitted that the learned Labour Court below has passed a well-reasoned and justified Award, which does not call for any interference by this Court. It is submitted that the learned Labour Court below has considered the relevant terms and conditions of the appointment/engagement of the petitioner and taken a note of the fact that the petitioner was on probation when his services were terminated as his performance was not satisfactory. Accordingly, the prayer has been made for dismissal of the writ petition.

11. I have considered the rival contentions of the learned counsel for the parties and also perused the paper-book with their able assistance.

12. The issue pertaining to termination of services of the probationer is no more *res integra* as the same stands settled by an authoritative judgment rendered by the Hon'ble Supreme Court in ***Unit Trust of India vs T. Bijaya Kumar 1993(2) S.C.T. 63***, wherein, it has been held as under :-

“3. We have extracted the order of termination
passed against the first respondent on 29th October, 1985

which is **ex-facie** an order of discharge simplicitor. It is evident from the facts placed on record that as the performance of the first respondent was not found to be satisfactory, he was informed about the same by the letter of 15th May, 1985, with a view to giving him an opportunity to show improvement. The probation period was, therefore, extended by another six months to enable him to do so. Unfortunately, the subsequent assessment report shows that he did not show any improvement in performance and was not suited for the job and hence the Management was constrained to terminate his services. The first respondent contends before us that the impugned order is penal and stigmatic in character and springs from bias on the part of officers of the appellant-Trust. In support of his contention he has placed reliance on the case law which was placed before the High Court. We have carefully considered this submission of the first respondent but we are afraid, we do not find any material on record to conclude that the impugned order smacks of bias or is in anyway **mala fide**. As stated earlier from the language of the order, we do not think that any stigma attaches to the first respondent. In fact, the Management showed sensitivity in not stating the reasons for termination of service but in order that the first respondent may know the reason for termination, the same was separately communicated to him by confidential letter of even date, i.e., 29th October, 1985.

4. The first respondent contends that the Court ought not to go by the plain language of the termination order but must lift the veil to ascertain the true reason which prompted the Management to put an end to his service. We have examined to backdrop in which this order came to be passed. As stated earlier even on close scrutiny of the material on record, we are not in a position to persuade ourselves to the view by the High Court. In the first place there is nothing on record to support the first respondent's

contention that the order suffers from the vice of bias, prejudice or malafides. Secondly, there is nothing in the order to conclude that it is penal or that it stigmatises the first respondent. Thirdly, the reason which weighed with the Management was his unsuitability for the job based on his unsatisfactory performance during the probation period. This is obvious from the office notice on which the decision was taken. The confidential assessment reports were called from different officers to assess his suitability for the job. The decision on suitability could only be taken from his work or performance during the probation period. We have also perused the confidential office note which preceded the decision to terminate his services and we are satisfied that no consideration which can be said to be extraneous or irrelevant had entered the decision-making. Having perused the record carefully, we do not think that the order of termination suffers from any bias as alleged by the first respondent. In the ***State of Orissa v. Ram Naryan Das, (1961) 1 SCR 606***, this Court held that the service of a probationer can be terminated in accordance with the rules because a probationer has no right to the post held by him. The very purpose of placing a person on probation is to try him during the probation period to assess his suitability for the job in question. It is settled law that an order of discharge is not an order of punishment and, therefore, there was no question of giving a hearing before termination of service. The decisions reported ***Madan Mohan Prasad v. State of Bihar, 1973(1) SLR 630 (SC)***, ***Shamsher Singh v. State of Punjab, 1974(2) SLR 701 (SC)*** and ***Anoop Jaiswal v. Govt. of India, 1984(1) SLR 426 (SC)*** do not take any different view. The decision in ***Ajit Singh v. State of Punjab, 1983(2) SLR 1 (SC)*** has no relevance or application to the facts of the present case. The facts here are simple, namely, during the probation period the performance of the first respondent was

opportunity to show improvement. Hence the Management was constrained to put an end to his service by an order of discharge simplicitor. We are, therefore, of the view that the Management had acted within the framework of the rules and law and its decision ought not to have been upset by the High Court.”

13. Coming to the instant case, the learned Labour Court has returned the following findings :-

“13. I have given my careful consideration and after going through the record, I find that the workman had totally distorted the facts in the statement of claim as given above. As is born out from the initial appointment of the workman as TMR, his training period was for six months which included six weeks training at Head Office while the remaining training was given to him in the field. The contention of the workman that his training period was only six weeks is thus totally false. Similarly the plea taken by the workman that he was given independent charge of Ferozepur w.e.f. 1.6.87 also falls to the ground as according to the management witness Shri R.G. Sharma, MWI as well as the documentary evidence, the initial training period ended in the month of August, 1987. Again, the plea of the workman that his services were regularised w.e.f. 1.9.87 is equally baseless as there is no such letter issued by the management in his favour. On the other hand, the management has issued the appointment letter of the workman as Medical Representative on probation for a period of six months. Out of the alleged appreciation letters Ex-W/1 to Ex-W/7, the letters Ex.W/1 to Ex-W/4 refer to weekly reports submitted by the workman to the management and at the same time the letter Ex-W/5 dt. 14.1.88 and another letter Ex-W/6 dt. 10.2.88 relates to the methods for boosting the sale of the product of the company. The letter Ex-W/7 dt. 14.11.1987 on which the

learned representative of the workman has laid much emphasis to suggest that the management was annoyed with Union Activities of the workman, is also baseless as the workman has not produced any documentary evidence in support of his being active member of PMRA much less of his being a treasurer as deposed by him. In fact, the language of the letter Ex-W/7 to show that it was not particularly meant for the workman whereas it appears to have been issued to all the Medical Representatives.

14. Provedly, the workman was on probation for a period of six months w.e.f. 1.9.87 and the period of his probation was governed with the appointment letter Ex-W/2. The management witness Shri R.G. Sharma as already pointed out above, has deposed in clear terms that the work of the workman during probation was not satisfactory and the workman had failed to improve upon his work despite counselling in the workshop meetings as well as during field working with the company's Executive. The witness also deposed that he used to be present in the meeting when counselling used to be done. All this, go to show that the management witness was clear and specific that the workman had failed to improve his work during probation. It may be pointed out that the workman had not questioned the management witness on these material questions. The Hon'ble Supreme Court in Unit Trust of India v/s T. Bijayakumar & another referred above by the management has held as under :-

“The facts are simple, namely, during the probation period the performance of the probationer was watched and was not found to be satisfactory, despite he having been given an opportunity to show improvement. Hence the management was constrained to put an end to his service by an order of discharge simpliciter. Thus the management had acted within the frame work of the rules.”

Similarly, in K.V. Krishnamani v/s Lalit Kala Academy's case (supra) the Hon'ble Supreme Court has held that the very object of the probation is to test the suitability and if the appointing authority finds that the candidate is not suitable, it certainly has power to terminate the services of the employee. The same authority was also followed by the Hon'ble High Court in Busching Schmitz (P) Ltd: V/s Shiv Dutt Sharma & another (referred above) where the order of termination of services of the workman was held valid as there was deterioration in the performance of his work during the extended period of probation.

In almost in a similar case referred as Sat Pal v/s Associate Vice President, Human Resources, Swaraj Foundry Division & another , 1991 FJR 250, the Hon'ble High Court held as under :-

“ The termination of service of a probationer in pursuance of a clause in the service agreement during the period of probation for unsatisfactory work and conduct would fall within the exception provided under clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947, defining 'retrenchment'. Therefore, the provisions of Section 25-F of the Act will not be attracted to such a case even if the probationer has employed for a continuous period of one year.”

15. Similarly, the Hon'ble Allahabad High Court in case Miss Anamika Sharma v/s Resident Director, Mansa Sthali, Bareilly and others, 1997-II LLJ 507 has held that it is not for the court to assess the work and conduct of the petitioner as a probationer.

16. In this case, the termination of services of the workman, who was a probationer, in pursuance of the service agreement Ex-M/2, therefore, could fall within the exception of clause (bb) of Section 2(oo) of the Industrial

Disputes Act, 1947 and would thus not attract the provisions of Section 25-F of the Act.

17. *Before I conclude, I may point out that the authority relied by the representative of the workman in case Syed Azam Hussini v/s The Andhra Bank Ltd. is not applicable on the facts and circumstances of the present case, as the order of termination of service of the workman passed in that case was not in conformity with the provisions of Section 40 and 41 of the Andhra Pradesh Shops and Commercial Establishment Act, 1966 as under section 40 the employer was bound to show reasonable cause for the termination of services of the appellant.*

18. *In view of the foregoing discussions, I hold that the order of termination of services of the workman was justified and in order and the workman is also estopped to raise the dispute by this act and conduct. Both the issues are held in favour of the management.*

RELIEF :

19. *In view of my findings on issues No.3 & 4 above, the reference is answered in the affirmative holding that the workman is not entitled to any relief. However, no order as to costs.”*

14. From the findings returned by the Labour Court below, it is evident that vide letter dated 27.02.1987, the petitioner was appointed as a Trainee and the period of training was stated to be six months w.e.f. 23.02.1987. It is further born out that initially, six weeks in-company training was to be given at the Head Office and then there was a field training and while on training, the petitioner was to be paid consolidated stipend of Rs.1150/- p.m. (all inclusive). As per letter dated 02.09.1987, governing the conditions of service of the petitioner, the petitioner was to be on probation for a period of six months from the date of his appointment and the said period could be further extended at the discretion of the

management. Clauses 6 and 7 of the terms and conditions of service of the petitioner reads as under :-

“(6) During the period of probation, including any extension thereof, your service may be terminated by the company without notice and without assigning any reason and in such case you will be entitled only to the salary earned by you upto the date of such termination.

(7) At the end of the probationary period, provided your services have been satisfactory to us and subject to reconfirmation of your medical fitness at that time by your Medical Officer, your appointment will be confirmed in writing. Unless so confirmed in writing, you will continue to be on probation.”

15. Therefore, since the petitioner was on probation for a period of six months w.e.f. 01.09.1987 and the period of probation was governed by his appointment letter (Exhibit W/2) and the performance of the petitioner having been not found satisfactory, the Management was well within its right to terminate his services, being a probationer. Accordingly, considering the legal position indicated above, the termination of services of the petitioner (being a probationer) is in consonance with the conditions of his engagement/appointment and the same would not fall within the ambit of retrenchment; accordingly, there is no question of the applicability of the provisions of Section 25-F of the 1947 Act.

16. Further, learned counsel for the petitioner was also called upon to indicate any letter/document, evidencing that the services of the petitioner were regularized upon successful completion of probation period; however, no such document was pointed out by him.

17. 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.***

18. Considering the totality of circumstances in the light of above-said legal principles, there is no scope for any interference in the findings/Award rendered by the learned Labour Court below. Resultantly, the instant petition fails and the same is dismissed.

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

December 22, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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