

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13557-2019 (O/M)

Date of decision : 20.11.2023

Satbir Singh

..... Petitioner

Versus

Presiding Officer, Labour Court, Ambala and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Viney Saini, Advocate
for the petitioner.

Mr. Satish Singla, AAG Haryana.

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HARSH BUNGER, J.

1. Petitioner (Satbir Singh) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking quashing of impugned Award dated 28.03.2018 (Annexure P-1), passed by the Labour Court, Ambala (hereinafter referred to as 'the Tribunal'), whereby the reference of an industrial dispute regarding termination of services of petitioner-workman has been answered against the petitioner-workman.

2. Briefly, the petitioner-workman raised an industrial dispute regarding termination of his services. In the claim statement, the petitioner-workman claimed that he joined the services of Forest Department, Government of Haryana (hereinafter referred to as 'respondent-Management') on 01.05.2003 in Ramgarh Forest Block in Pehowa Range as a Labourer on daily wage basis for the work of preparing nurseries, plantation, watering the plants, weeding out the unnecessary plants etc. The petitioner-workman

claimed that he joined services under Shri Raghbir, Forest Guard and Shri Balbir (Forester) under Shri Satbir, Range Officer. The petitioner-workman claimed that he continuously worked from 01.05.2003 upto year 2005 at different sites and other forest beats of Pehowa Range. The petitioner-workman further claimed that from year 2005 to year 2008, he worked in Tower Forest Beat under Shri Jagdish and Shri Suresh, Forest Guards and thereafter, from 2008 to 2009, he worked in Bhakali Forest Block of Pehowa Range under Shri Sumit and Shri Kamal, Forest Guards. It is the case of petitioner-workman that he continued to work from year 2009 to year 2015 in Diwana Forest Nursery and other sites under Shri Kamal and Shri Sumit, Forest Guards and thereafter, he worked in Sayoncer Forest Beat and other sites from year 2015 to 30.03.2017 under Shri Gurmeet and Shri Balesh, Forest Guards when he was abruptly terminated on 30.03.2017 by respondent-Management without observing the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act').

3. It is the pleaded case of petitioner-workman that after year 2005, respondent-Management issued a Notification dated 14.02.2007 for getting work done through muster roll system. The petitioner-workman alleged that respondent-Management committed mischievous acts by changing either the name of petitioner-workman or his father's name in the record i.e. muster rolls, wages bill etc. to defeat the right of petitioner-workman for regularization, therefore, respondent-Management has committed unfair labour practice by showing the petitioner-workman under some fictitious contractors without obtaining any registration certificate under the Contract

Labour (Regulation and Abolition) Act, 1970 (in short 'the 1970 Act') nor alleged contractors obtained any registration or license for supplying contract labour for doing work under the aforesaid 1970 Act. It was pleaded by petitioner-workman that the Village Forest Committees are the contractors of Forest Department and all the workers working under these committees are paid from the funds of respondent-Management through such committees. It is claimed that the services of petitioner-workman have been terminated in violation of provisions of Section 25-F, Section 25-G and Section 25-H of 1947 Act, accordingly, it was prayed that he (petitioner-workman) be reinstated in service with continuity of service and full back wages.

4. The aforesaid claim of petitioner-workman was contested by respondent-Management by filing its reply wherein a preliminary objection was taken that as per the directions of Haryana Forest Manual, Volume 2, Rule 15.25 Sr. No. 28, the old record of Pehowa and Thanesar Range of Kurukshetra Forest Division from 01.04.2003 to 31.03.2005 has been weeded out, vide office order No. 173 dated 14.03.2008. It was further stated that the Secretary to Government of Haryana, Forest Department had issued instructions, vide letter dated 06.07.2000, for implementation of piece rate contract system in Forest Department, Haryana, which came into force by 01.12.2003 and after introducing the contract system in the Forest Department, no daily wager was engaged by the Forest Department as the plantation works and other forestry operations were done through contractors and Village Forest Committees/Gram Van Samities.

Apart from raising other objections, it was also the categoric

case of respondent-Management that as per Gram Van Samiti, Neemwala, the petitioner-workman (Satbir Singh son of Shri Jeeta Ram) had worked in its Gram Van Samiti as a Labourer for 14 days in the month of Sept., 2016, 6 days in the month of Nov., 2016, 20.5 days in the month of Dec., 2016, 2 days in the month of Jan., 2017, 26 days in the month of Feb., 2017 and 26 days in the month of Mar., 2017 and thereafter, he (Satbir Singh) left the work at his own sweet will and never turned up. It was further stated that the Gram Van Samiti, Neemwala have their separate identity and have been registered under Haryana Registration and Regulation of Societies Act, 2012 and respondent-Management have no concern/control at all over the Gram Van Samiti, Neemwala.

On merit, it was inter alia stated by respondent-Management that the petitioner-workman neither joined on 01.05.2003 nor respondent-Management terminated his services on 30.03.2017, accordingly, it was contended that there was no relationship of employee and employer between petitioner-workman and respondent-Management. On the basis of aforesaid pleas, prayer was made for dismissal of the claim statement.

5. On the basis of pleadings of the parties, the issues were framed and the parties led their respective evidence.

6. The Tribunal below has decided the reference of petitioner-workman alongwith two other references, vide common award dated 28.03.2018 (Annexure P-1), whereby the reference was answered against the workman.

7. I have heard learned counsel for respective parties and have also

perused the paperbook with their able assistance.

8. Here it would be apposite to refer to a few judicial pronouncements.

9. In the case of “*Range Forest Officer v. S.T. Hadimani*”, 2002(3) SCT 382 (SC), Hon'ble Apex Court held as under:-

“2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August, 1998, came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in an year.

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratam Singh Narsinh Parmar, 2001(2) SCT 1081 (SC) : JT 2000(3) SC 326. In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the

claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot. Filing be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in an year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

10. In the case of “*Municipal Corpn. v. Siri Niwas*”, 2004(4)

SCT 211, Hon'ble Apex Court held as under:-

“12. The provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. In terms of Section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by employer for effecting a valid retrenchment :

- (i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;*
- (ii) payment of compensation equivalent to fifteen days average pay for every completed year of continuous*

service or any part thereof in excess of six months.

13. For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25-B of the Act. In terms of sub-section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did not examine any other witness in support of his case.

14. A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration in the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the Appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the Respondent.

15. No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational...”

11. In Kirloskar Brothers Limited v. Ramcharan 2023(1) SCC 463,

Hon'ble Supreme Court held as under :-

“4.5 Thus, as observed and held by this Court, neither Section 10 of the CLRA Act nor any other provision in the Act, expressly or by necessary implication, provides for

automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or any other work in any establishment and consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. It has further been observed and held by this Court in the aforesaid decision that on issuance of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour or otherwise, in case of an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefits thereunder.

4.6 In the present case, neither any notification under Section 10(1) of the CLRA Act has been issued prohibiting the contract labour, nor there are allegations and/or even findings that the contract is sham and bogus and/or camouflage.

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4.8 Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand and in the absence of any notification under Section 10 of the CLRA Act and in the absence of any allegations and/or findings that the contract was sham and

camouflage, both the Industrial Tribunal as well as the High Court have committed a serious error in reinstating the contesting respondents and directing the appellant - principal employer to absorb them as their employees. The parties shall be governed by the CLRA Act and relief, if any, could have been granted under the provisions of the CLRA Act and not under the MPIR Act."

12. In "*R.M. Yellatti v. The Asstt. Executive Engineer*", 2005(4) SCT 695, it was held as follows :

".... Drawing of adverse inference ultimately would depend thereafter on facts of each case. 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."

13. It is manifest from aforesaid judicial pronouncements that the burden of proof that a workman had worked for 240 days in a given year was on the workman. It is 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. Further, it is also the settled position in law 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.

14. In the instant case, the Tribunal below, while answering the reference against petitioner-workman, has held as under :-

“ISSUE NO. 1.

7. Workman has stated in his testimony vide affidavit Ex.WW1/A that he worked with the respondent w.e.f. 15.6.2001 to 10.2.2017 and has completed more than 240 days in the last 12 months preceding the date of his alleged termination but he has not adduced any cogent documentary evidence or his salary record to the effect that he worked for more than 240 days with the respondent.

8. Rebutting his arguments Ms. Reetika Singh, GP for the respondent has argued that the claim of the claimant is not maintainable in the eyes of law because as per available official record the claimant did not work with the Forest department for 240 days in the preceding 12 months. MW1 Sh. Dinesh Kumar, Range Forest Officer, Pehowa District Kurukshetra has appeared and has tendered his affidavit Ex.MW1/A and has stated that Commissioner and Secretary to Government of Haryana issued the instructions vide its Letter No. 3534-Ft-5-2000/11339 dated 6.7.2000, for implementation of piece rate contract system in Forest Department, Haryana. The piece rate contract system came into force by 1.12.2003 vide letter

no. 4295-FT-5/2003/23462 dated 22.10.2003.

It has been further stated that after introducing the contract system in the Forest Department no daily wager is engaged by the Forest Department because the Forest Department carrying out the plantation works and other forestry operations through contractor and Villages Forest Committees.

It has been further stated that as per record available with the respondent the claimant was not engaged for doing the forestry works by the management/respondent and he had not joined the management on 15.6.2001 in Bakhali Forest Block of Pehowa Range as a labourer on daily wages for doing plantation operations like preparing nurseries, making of ridges and watering to plants etc. and he has also not been terminated on 10.2.2017; thus there was no occasion to assess the performance of the claimant. He had not worked with the Forest officials whose names are mentioned in the claim statement. The management had not issued any appointment letter to the claimant. The claimant does not fall within the ambit of workman because the claimant has not worked with the respondent.

It has been further stated that the Schemes and projects, which are introduced from time to time by the State Government/Central Government and the method of execution of works of that projects depends upon the instructions/guidelines contained in that schemes/projects. The plantation works and other forestry operations carried out through contractor/village Forest Committees. The management have no concern/control with the labour

which is engaged by the contractor because the Village Forest Committees have their separate identity and registered under Haryana Registration and Regulation of Societies Act, 2012.

9. *Workman has not been able to prove through any cogent evidence that he has completed more than 240 days with the respondent.*

10. *The Hon'ble Supreme Court of India in case GM, BSNL Vs. Mahesh Chander 2008 (93) SLR (SC) held that the burden lies on the claimant to prove that he was engaged on 15.6.2001 by the respondent. The relationship of employer and employee between the respondent and claimant has not been proved. The claimant has not been able to prove his joining with the management on 15.6.2001.*

11. *Hon'ble High Court of Punjab and Haryana has passed the judgment in CWP No. 3545 of 2011 in Banwari Lal Versus State of Haryana and other case and laid stress on the fact that Section 25-F and Section 25-B specifically provide that preceding the date of termination, the workman has to be employed 240 days in twelve months preceding the alleged date of termination for him to agitate the fact that there has been violation of the provision of the act as held in Surender Nagar District Panchayat V/s Dahyabhai Amarsinh, 2005 (8) SCC 750. Mere self serving statement of the workman would not shift the onus which he had to discharge and neither an adverse inference could be drawn in such circumstances. "The burden of proof was on the worker to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment."*

The workman has only made self serving statement without cogent proof of the same.

12. Workman has not been able to prove that he had worked for 240 days in preceding 12 months prior to his alleged termination. Hence, issue No. 1 is answered against the workman and in favour of the respondent.

Issues no. 2 to 7

13. Neither any evidence was led on these issues nor these issues were pressed during the course of arguments by the learned counsel appearing on behalf of the respondents. Hence, these issues are decided against the respondents.

Relief

14. In the light of my aforesaid discussion, there is no merit in the claim petitions. Hence, claim petitions are dismissed. A copy of this judgement shall be kept in other case files. Copies of award be sent to the authorities concerned and the file be consigned to records after due compliance.”

15. A perusal of above extracted findings returned by Tribunal below would manifest that the workman failed to prove that there was employee-employer relationship and/or the workman had completed 240 days work with respondent-Management so as to be entitled to any relief. Neither before the Tribunal below nor before this Court, the petitioner has shown any material to prove the aforesaid fact and in the absence of the same, no relief can be granted to the petitioner.

16. As regards the plea of the petitioner-workman that the Tribunal below has failed to draw adverse inference against respondent-Management

for not producing the relevant record; suffice it to say that drawing of adverse inference is always optional and within the jurisdiction of the Tribunal below, considering the peculiar facts and circumstances of a case. In the instant case, the Tribunal below has not drawn any adverse inference.

17. Furthermore, the peripheries of certiorari jurisdiction of High Court stands authoritatively delineated in Syed Yakoob v. K. S. Radhakrishnan, AIR 1964 Supreme Court 477, wherein Hon'ble the Supreme Court held as under :-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. 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 is in excess of it, or as a result of failure to exercise jurisdiction. 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 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 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.

8. It is, of course, not easy to define or adequately

describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to

define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

18. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for interference in the findings returned by the Tribunal below in exercise of writ jurisdiction by this Court. Therefore, the instant writ petition is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

20.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No