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

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Date of Decision: 05.09.2023

Gurdeep Singh

...Petitioner

Versus

Presiding Officer, Labour Court, Ambala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Fateh Saini, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner-workman (Gurdeep Singh) has filed this petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for setting aside the impugned award dated 21.05.2019 (Annexure P-5) passed by Labour Court, Ambala (*hereinafter "Labour Court"*); whereby the reference of the industrial dispute with regard to termination of service of the Petitioner-workman has been decided against him.

A further prayer has been made for directing the respondents to reinstate the petitioner with full back wages and continuity of service along with all the admissible benefits.

2. Briefly, the petitioner-workman raised an industrial dispute regarding termination of his services. In the claim statement, the petitioner-workman claimed that under the scheme of supply of clean and drinking water of Government of Haryana in pursuance of the policies of WHO,

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United Nations for maintaining good and sound health of the citizen of different countries, Public Health Engineering Department, Govt. of Haryana had installed deep tube wells in almost each and every village of Ambala District and the petitioner- workman was employed on 01.01.2014 as tubewell operator by the respondent-Gram Panchayat with the consent of respondent-Department (Department of Public Health Engineering) at tubewell no. 1, Village Talheri Rangran, Tehsil Barara, District Ambala. Petitioner claimed to have worked upto 04.05.2016, when suddenly his services were terminated by respondent-Gram Panchayat at the instance of other respondents in an illegal and arbitrary manner without following the mandatory provisions of the Industrial Disputes Act, 1947. Petitioner claimed that he was not given any one month's notice or one month's advance wages or any retrenchment compensation before his termination. It was further claimed by the Petitioner-workman that one Rajinder had been appointed in place of the petitioner-workman by the management on temporary basis. Petitioner claimed that his termination is illegal, unjustified and against principles of natural justice and contrary to the provisions of the Industrial Disputes Act, 1947. Accordingly, the petitioner prayed that he may be reinstated on job with full back wages and continuity of service.

3. The aforestated claim of the petitioner-workman was opposed by the respondent-Department (Department of Public Health Engineering, Ambala) by submitting its reply wherein it was *inter alia* stated that the petitioner- workman was never employed by the respondent-Department and the sole authority to engage or remove the part time attendant for running of the tubewell is completely upon the Respondent-Gram Panchayat. In essence, respondent-Department denied that there was any

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employee-employer relationship between the parties. Accordingly, prayer for dismissal of claim was made.

4. The claim of the petitioner-workman was also opposed by respondent- Gram Panchayat by submitting its separate reply wherein it was stated that many villagers made written complaints against the unsatisfactory, inefficient and irresponsible work of the petitioner-workman and therefore Gram Panchayat was compelled to issue a notice dated 18.04.2016 to the workman, however, he refused to receive the said notice from Chowkidar Sh. Bhagat Ram. Upon this another notice dated 22.04.2016 was issued to the petitioner-workman which he again refused to receive. It was further submitted by respondent-Gram Panchayat that thereafter they passed a resolution dated 04.05.2016 under compulsion to remove the petitioner- workman in the interest of whole village community. On the basis of aforesaid pleas, it was submitted that the removal of the petitioner- workman is in order and accordingly, prayer was made for dismissal of the claim statement.

5. The claim of the petitioner- workman was further opposed by Block Development & Panchayat Officer on the plea that the petitioner-workman was the employee of the respondent-Gram Panchayat and his salary was being paid by the respondent- Department.

6. From the pleadings of the parties, the learned Labour Court framed the following issues:

“1. Whether the termination of the services of the 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

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2. *Whether the claimant has no locus standi to file the present claim statement? OPM*

3. *Whether the claimant has no cause of action to file the present claim statement? OPM*

4. *Whether the claim statement is bad for mis-joinder of necessary parties? OPM*

5. *Whether the workman has not come clean hands and concealed the true and material facts from the court? OPM*

6. *Whether the workman is estopped by his own act and conduct for filing the present claim statement? OPM*

7. *Whether the claim statement is not maintainable in the present form? OPM*

8. *Relief?*

7. Before the Labour Court, it was stand of the petitioner-workman that he worked with the respondents w.e.f. 2014 to 2016.

On the other hand, the stand of respondents before the Labour Court was that there has been a fictitious entry in the resolution dated 02.12.2013 vide which the petitioner workman was employed as tubewell operator by the mother of the petitioner workman namely Roshni Devi who was serving as Sarpanch of the Village Telhi Rangran at that time. It was also argued before the Labour court that Roshni Devi is facing enquiries for embezzlement of Rs. 15 lacs and Rs.4.5 lacs for the charges that she has got awarded three salaries to her son i.e., the petitioner workman and she has fraudulently entered the name of the petitioner workman in lower portion of the resolution dated 02.12.2013. The complaints given by the villagers against the petitioner workman were marked as Ex. MX and Ex. MY and a witness appeared as MW4 and tendered his affidavit as Ex. MW4/A.

8. Upon appreciating the material / evidence available on record, the Tribunal below rejected the claim of the petitioner-workman and

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answered the reference against the petitioner-workman vide the impugned Award dated 21.05.2019 (Annexure P-5) by holding that the petitioner had not been able to prove his valid appointment as Tubewell Operator and he also could not prove the completion of 240 days with the respondents.

9. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this court.

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

11. It is well settled law that the onus to prove that a workman has rendered continuous service i.e. 240 days in preceding 12 calendar months in terms of Section 25 B of the 1947 Act and also to prove relationship of employee and employer is on the workman.

12. In the instant case, the petitioner-workman in order to seek relief in terms of Section 25 F of the Act, 1947, was required to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly terminated by respondents. Therefore, the relevant period would be 12 months prior to 04.05.2016. In order to discharge the onus of proving the aforestated fact of having worked for 240 days in the 12 months preceding the date of his allegedly termination, the petitioner did not lead evidence either in the form of statement of any co-worker or any other evidence in the form of proof of receipt of salary or wages for 240 days or any order/record of appointment or engagement for the relevant period. 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***

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Corpn. v. Siri Niwas, 2004(4) S.C.T. 211 and Surendranagar District Panchayat v. Dahyabhai Amarsinh, 2005(8) SCC 750.

13. In the instant case, vide impugned award dated 21.05.2019 (Annexure P-5), learned Presiding Officer, Labour Court, Ambala; has returned the following findings:-

“ISSUE NO.1

7. *Sh. Gurjit Singh, learned counsel for the workman has argued that the workman worked with the respondents w.e.f. 2014 to 2016.*

8. *Ms. Reetika Singh, Learned Government Pleader has stated that the mother of Gurdeep Singh claimant Smt. Roshni Devi was the Sarpanch of the village Telheri Rangran. It has been argued by Sh. Jasdev Singh Saini that there is a fictitious entry in the resolution dated 2.12.2013 vide which Gurdeep Singh has employed as Tubewell Operator by the mother of Gurdeep Singh who was the Sarpanch of the village. It has been argued that Smt. Roshni Devi is facing enquiry for the embezzlement of Rs. 4 1/2 lacs of village Telheri Rangran. She is facing another enquiry for the embezzlement of Rs. 15 lacs in which she has deposited Rs. 4 1/2 lacs. She has got awarded three salaries to her son Gurdeep Singh, claimant in this case for doing work in MENRAGA and doing for cleanliness in the village and third for working as Tubewell Operator. It has been further argued that there were two posts of Tubewell Operators while Smt. Roshni Devi has withdrawn three salaries of three operators. It has been stated that Dinesh and Satnam were also working as Tubewell Operators while doing fraud Sarpanch Roshni Devi entered the name of her son Gurdeep Singh in the lower portion of the page in the resolution dated 2.12.2013. ExMX and ExMY are the complaints given by the villagers against the claimant Gurdeep Singh that Gurdeep Singh was never seen working as Tubewell Operator being absent from*

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the Tubewell. Sometimes he start the Tubewell and not come to stop operation of the tubewell and Tubewell shall stop when electricity will go in the village. Due to negligence of the claimant lots of water spread in the street causing floods and inconvenience to the people, Sh. Chander Dutt has appeared as MW4 and filed his affidavit ExMW4/A in which he has stated that Gurdeep Singh claimant never operated the Tubewell in time. Sometimes he will not start the Tubewell due to which there used to be scarcity of water for villagers as well as for their cattles. Sometimes the Tubewell would run in the whole night due to which water used to collect in the streets because of this reason pipe of water supply would break down and the dirty water of drains get mixed with the drinking water. Hence, resident of the villagers complaint against Gurdeep Singh for his removal and he was removed.

9. Claimant has not been able to prove his valid appointment as Tubewell Operator through any appointment letter. He has not been able to prove the completion of 240 days with the respondents. In view of the aforesaid discussion, the findings on issue no. 1 are answered against the workman and in favour of the respondents.

Issues no. 2 to 7

10. 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, the findings on these issues are answered against the respondents.

Relief

11. As a sequel of my aforesaid discussion, there is no merit in the claim petition. Hence, claim petition is dismissed. Copies of award be sent to the authorities concerned and the file be consigned to records after due compliance.”

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14. The counsel for the petitioner has not been able to dislodge the aforestated findings returned by the Labour Court below. Neither before the Labour Court nor before this court, the Petitioner has been able to show that he worked for 240 days in 12 months preceding the date of his termination and in absence of the same, no relief can be granted to the petitioner.

15. 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

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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*.

16. When the facts and circumstances of this case and also the findings returned by the Labour Court are considered in the light of the legal position indicated above, I do not find any illegality or infirmity with the

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impugned award dated 21.05.2019 (Annexure P-5),which may call for any interference by this Court, while exercising its writ jurisdiction. Therefore, the instant writ petition is bereft of any merit and the same is accordingly dismissed in *limine*.

- 17. No other point has been urged.
- 18. All pending application/s, if any, shall also stand closed.

05.09.2023
Himani

(HARSH BUNGER)
JUDGE

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