

107

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

CWP-8685-2023

Date of Decision: 09.08.2023

Rai Singh

..... Petitioner

Versus

Presiding Officer, Labour Court, Panipat and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sube S.Kaushik, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

1. Petitioner (Rai Singh) has filed the instant writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of Certiorari seeking quashing of impugned award dated 27.07.2022 (Annexure P-5) passed by learned Industrial Tribunal-cum-Labour Court, Panipat (for short 'the Tribunal'), whereby the reference/claim statement filed by the petitioner, challenging termination of his services, has been rejected.

A further prayer has been made by petitioner for directing respondents No.2 and 3 (hereinafter to be referred as 'the respondent-Management') to reinstate him in service with continuity thereof and full back wages.

2. Briefly, the petitioner raised an industrial dispute by filing his

claim petition under Section 2-A(2) and (3) of the Industrial Disputes Act, 1947 (for short 'the 1947 Act') on the plea that he was appointed as Peon and posted at the Office of Deputy Excise and Taxation Commissioner (EX), Panipat on a salary of Rs.9,000/- per month. Petitioner claimed that he worked from 2015 up to January, 2019; and had completed more than 240 days of continuous service with the respondent-Management, however, his services were terminated on 18.01.2019 in an illegal manner, without serving any notice or paying any retrenchment compensation to him; and therefore, he was entitled to protection under Section 25-F of the 1947 Act. Accordingly, he prayed for reinstatement in service along with other consequential benefits.

3. On the other hand, the aforesaid claim of petitioner was contested by the respondent-Management by filing its written statement, wherein it was stated that an agreement was executed between the Deputy Excise and Taxation Commissioner (ST) on behalf of the Haryana Government and M/s J.S. Security Services, Panipat (Service Provider) to provide house keeping services, courier services and security services. The respondent-Management claimed that petitioner was working as per the aforesaid agreement, which remained from 07.12.2017 up to 06.12.2018. It was the categorical case of respondent-Management that petitioner worked as an employee of the aforesaid service provider and his wages and tenure in the Management were also worked out as per the said service agreement; and after expiry of the service agreement on 06.12.2018, petitioner was not entitled to any relief, as claimed by him.

4. Thereafter, petitioner filed rejoinder to the aforesaid written statement filed on behalf of the respondent-Management.

5. From pleadings of the parties, the Tribunal below framed the

following issues:-

- “1. Whether the claimant falls within the definition of 'Workman' as defined u/s 2(s) of the Industrial Disputes Act, 1947? OPC*
- 2. Whether the services of claimant was illegally terminated? OPC*
- 3. Relief.”*
6. Thereafter, both the parties led evidence in support of their respective case. Petitioner examined himself as CW-1, Sh. Manjeet, Clerk as CW-2 and Sh. Satyawar as CW-3. On the other hand, respondent-Management examined Sh. Anil Kumar Bishnoi, Excise and Taxation Officer as RW-1.
7. Upon considering the material/evidence available on record, Tribunal below answered the reference against the petitioner vide award dated 27.07.2022 (Annexure P-5).
8. Being aggrieved against the aforesaid award, petitioner has filed the instant writ petition before this Court.
9. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of petitioner. It is submitted that findings returned by the Tribunal are contrary to the evidence available on record. It is further submitted that the Tribunal below has failed to consider and appreciate the Attendance Register placed on record of the case. Learned counsel for the petitioner contends that services of the petitioner have been terminated in violation of the provisions of 1947 Act.
- With the aforesaid submissions, learned counsel for the petitioner has prayed for allowing the instant writ petition by setting aside award dated 27.07.2022 (Annexure P-5) and granting necessary relief to the petitioner.
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 existence of relationship of employer and employee between the parties is upon the workman. In ***“Workman 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 the 1947 Act, i.e. the workman has worked under the Management for 240 days in twelve 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 cases of **“Municipal Corpn. v. Siri Niwas”, 2004(4) S.C.T. 211** and **“Surendranagar District Panchayat v. Dahyabhai Amarsinh”, 2005(8) SCC 750.**

12. In the instant case, the Tribunal below vide award dated 27.07.2022 (Annexure P-5) held as under:-

“12. Keeping in view the arguments extended by the Ld. ARs for both the parties, in my considered opinion it was incumbent upon the claimant to prove that he was appointed as Peon by the respondents however, the verbal statement made by the claimant (CW-1) has not been corroborated by any documentary evidence like appointment letter, attendance record, payment of salary etc. from the respondents. It is pertinent to mention here that during his cross-examination, the claimant (CW-1) admitted that neither the post of Peon was advertised nor appointment letter was issued to him. The witness disclosed that the respondents used to deposit his salary in his bank account through cheque. Had, the claimant placed on record the bank record, the same would have clarified the name of his employer. Mere fact that the most relevant document i.e. the bank record of the claimant has not seen the light of day, is speaking volumes against him. Suffice it to say that there is no iota of evidence that the claimant was engaged as Peon by the respondents. That RW-1 Sh. Anil Kumar Bishnoi, Excise & Taxation Officer from the O/o the respondents has categorically stated that there did not exist relationship of employee and employer between the claimant and the respondents. It implies that the case of the claimant that he was an employee of the respondents and that there existed relationship of employee and employer between him

and the respondents, stood falsified.

13. In the present case, since the attendance register Ex.C-6 also shows that the same was meant for outsourcing staff, as written on top of the register and further there being no appointment letter or termination letter of the claimant from the respondents and the claimant having failed to bring forth the proof of his salary being paid by the respondents, as such no occasion arises to see as to whether the claimant had completed 240 working days or not. In the given circumstances, there was no obligation on the part of the respondents to comply with Section 25-F of the Act. Resultantly, this issue stands decided against the claimant.

Relief:

14. In view of my findings upon above-said issues, the claim statement dated 08.09.2020 is hereby dismissed and reference stands answered in the negative. Copy of this Award be sent immediately to Deputy Labour Commissioner, Panipat for information and necessary action.”

A perusal of the above extracted findings would reveal that the Tribunal below has considered the evidence available on record and returned a finding of fact that there is no documentary evidence like appointment letter, attendance record, proof of salary etc. issued to the petitioner from the respondent-Management, so as to show the relationship of employee and employer between the petitioner and respondent-Management. The Tribunal below, upon considering the Attendance Register (Ex. C-6) produced by the petitioner, held that the said register was meant for outsourcing staff, as found mentioned on the register, and since no proof of appointment of petitioner by the respondent-Management has been placed on record, accordingly, there was no occasion to see as to whether the petitioner completed 240 working days or not; and therefore, there was no violation of the provisions of Section 25-F of the 1947 Act.

13. Learned counsel for the petitioner has failed to dislodge the aforesaid findings returned by the Tribunal below.

14. In the instant case, the petitioner would have been entitled to protection under Section 25-F of the 1947 Act, in case he had raised a plea that the contract executed between the respondent-Management and Service Provider (M/s J.S. Security Services, Panipat), through whom the petitioner is stated to have been engaged, was sham and camouflage, so as to defeat the rights of workers; however, no such plea was taken by petitioner before the Tribunal below. Petitioner has also failed to place on record the copy of rejoinder filed by him to the written statement filed on behalf of the respondent-Management, so as to show that any such plea was taken by him before the Tribunal below; and in the absence of same, no relief can be granted to the petitioner.

15. Further, 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”*.

16. Considering the totality of circumstances in the light of legal principles indicated above, there is no scope for any interference in the findings/Award rendered by the Tribunal below. Resultantly, the instant writ petition fails and the same is dismissed.

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

09.08.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No