

106

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13229-2023

Date of decision : 06.07.2023

Indian Red Cross Society

..... Petitioner

Versus

Rekha Rani and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Abhishek Jindal, Advocate
for the petitioner.

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HARSH BUNGER, J.

1. Petitioner (Indian Red Cross Society) 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 Award dated 03.02.2023 (Annexure P-10), passed by the Industrial Tribunal, Bathinda (respondent No. 5 herein) whereby the claim statement of respondent No. 1-worker herein (Rekha Rani) was allowed and she was ordered to be reinstated in service with 50% back wages from the date of termination of her services till she joined her duty.

2. Briefly, respondent No. 1-worker raised an industrial dispute by serving a demand notice dated 10.09.2018 upon the petitioner-Society against her unlawful termination of services with effect from 30.04.2018, however, the matter was pending even after the expiry of 45 days from the date of issuance

of demand notice, accordingly, respondent No. 1-worker herein filed her claim statement for adjudication of her dispute pertaining to termination of her services under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') wherein it was pleaded that respondent No. 1-worker worked as a Helper under the Indian Red Cross Society-petitioner from 04.12.1996 to 30.06.1998 and thereafter, she was appointed as Hostel Warden on 01.07.1998, for which the post was advertised in the Press and interview was held. Respondent No. 1-worker claims that she served as a Hostel Warden from year 01.07.1998 to 30.04.2018 and thus, she had served the petitioner-Society for more than 20 years. According to respondent No. 1-worker, she performed her duties sincerely and honestly and while holding the post of Hostel Warden, she used to collect fee from the students staying in hostel, maintained account of the same, performed duties of telephone operator and other clerical duties. Respondent No. 1-worker further stated that she was a 'Workman' as defined under 1947 Act and Indian Red Cross Society (petitioner herein) is an 'Industry' under the said Act.

It is pleaded case of respondent No. 1-worker that petitioner-Society, vide its letter dated 01.05.2018, had terminated her services w.e.f. 30.04.2018. It was claimed that before termination of services, respondent No. 1-worker was not given one month notice and neither pay in lieu of notice nor any compensation was paid to her. It was also claimed by respondent No. 1-worker that she worked for more than 240 days in the last 12 months preceding the date of her termination. It is further claimed that juniors to respondent No. 1-worker had been retained in service and new persons have

been appointed after termination of her services. Accordingly, it was alleged that the services of respondent No. 1-worker were terminated in violation of Sections 25-F, 25-G and 25-H of 1947 Act. It was also stated that at the time of termination of her services, respondent No. 1-worker was getting wages at Rs. 9,600/- per month. With the aforesaid pleas, respondent No. 1-worker herein sought reinstatement in service with full back wages with effect from 01.05.2018 till the date of her reinstatement.

3. The aforesaid claim statement of respondent No. 1-worker was contested by petitioner-Society by submitting its reply wherein it was contended that Indian Red Cross Society (petitioner) is a charitable and non profitable Organization and does not fall within the definition of Industry under 1947 Act. It was further submitted that respondent No. 1-worker was appointed against a project on contract basis and the said contract was being renewed from time to time. It was alleged by petitioner-Society that the work of respondent No. 1-worker was not upto the mark and she was warned to improve her work, but she did not carry out the orders properly.

The averment of respondent No. 1-worker that she had worked as a Helper from 04.12.1996 to 30.06.1998 and then as a Hostel Warden from 01.07.1998 to 30.04.2018 was admitted by saying that the said service was on contract basis, which was renewed from time to time and that respondent No. 1-worker was appointed for a specific project. With the aforesaid pleas, petitioner-Society sought dismissal of the claim statement filed by respondent-worker.

4. After considering the rival stands of the parties and also upon

considering the evidence/material on record, the learned Tribunal below, vide its Award dated 03.02.2023 (Annexure P-10), allowed the claim statement, filed by respondent No. 1-worker and it was ordered that respondent No. 1-worker be reinstated in service with 50% back wages from the date of her termination till she joined her duties. Respondent No. 1-worker was further held entitled to interest at the rate of 6% per annum on back wages till payment.

5. In the aforementioned circumstances, petitioner-Society has filed the instant writ petition before this Court.

6. Learned counsel for the petitioner-Society submits that the impugned award is unsustainable in the eye of law as it (petitioner-Society) does not fall within the definition of 'Industry' as defined under 1947 Act. Learned counsel for the petitioner-Society further submits that the learned Tribunal below has erred in holding that respondent No. 1-worker was appointed on contract basis against a specific project and the said contract was being renewed from time to time, which had the effect of break in service and thus, the provisions of Sections 25-F, 25-G and 25-H of 1947 Act were not applicable in this case. It has also been contended that the work and conduct of respondent No. 1-worker was not satisfactory and rather, the same was willful neglect of duties and her services were terminated as her work was not upto the mark. In this regard, learned counsel for petitioner-Society has referred to warning letters dated 08.03.2011 and 19.11.2011 (Annexure P-5 and Annexure P-6 respectively) and also apology letter dated 17.04.2018 (Annexure P-7).

Learned counsel for petitioner-Society also contends that the learned Tribunal below has failed to appreciate the evidence especially the cross examination of respondent No. 1-worker wherein she had clearly admitted that she was engaged by petitioner-Society for a period of 6 months each on contract basis and she also admitted the written apology dated 17.04.2018 (Annexure P-7). It is submitted that the impugned award be set aside.

7. I have heard learned counsel for the petitioner-Society and with his able assistance, have also perused the paper book.

8. As regards the contention of learned counsel for petitioner-Society that Indian Red Cross Society (petitioner) does not fall within the definition of 'Industry' under 1947 Act, the learned Tribunal below has returned the finding against the petitioner-Society that the petitioner-Society herein has failed to lead any evidence in that regard.

Learned counsel for petitioner-Society has further failed to raise any worth argument nor produced any law on the issue that Indian Red Cross Society (petitioner) was not covered under the definition of 'Industry' under 1947 Act. Accordingly, the said submission of petitioner-Society is rejected.

As regards the second contention of learned counsel for petitioner-Society that respondent No. 1-worker was employed on contract basis for 6 months each and thus, there was a break in service and respondent No. 1-worker had not worked continuously, it is observed that as per the impugned award, petitioner-Society did not produce any record to show that there was

actual break in her service. Infact, the learned Tribunal below has observed that witness of petitioner-Society i.e. RW1 (Gurmit Singh) had admitted in clear words in his cross examination that respondent No. 1-worker had worked with petitioner-Society as a Hostel Warden from 01.07.1998 to 30.04.2018. It has been further observed by the Tribunal below that if the service agreement was being renewed from time to time, as claimed by petitioner-Society, even then the same is presumed to be a continuous service. It was also not shown that the respondent No. 1-worker was appointed for some specific task or project. Accordingly, in the absence of any proof, the service of respondent No. 1-worker was held to be continuing for the period from the date when she joined as a Hostel Warden i.e. 01.07.1998 to 30.04.2018.

As regards the contention of learned counsel for petitioner-Society that work and conduct of respondent No. 1-worker was not upto the mark and she was given warning letters and she had also submitted apology letter in that regard, the learned Tribunal below has returned the finding that issuance of warning letter does not take away the right of respondent No. 1-worker to continue as employee of petitioner-Society and petitioner-Society had no right to terminate the services of respondent No. 1-worker without conducting inquiry into allegations. Accordingly, it has been held that the action of petitioner-Society was a clear cut violation of Section 25-F of 1947 Act and accordingly, respondent No. 1-worker was held entitled to continue in service.

After considering the totality of the case, the learned Tribunal below has returned the finding that respondent No. 1-worker has been removed unauthorisedly in violation of Sections 25-F, 25-G and 25-H of 1947 Act and

accordingly, she was ordered to be reinstated in service with 50% back wages from the date of termination of her services till she joined her duty.

9. The learned Tribunal below has returned the following findings :-

“11. Onus to prove all these issues was upon the respondents. These issues are interconnected with each other and therefore are taken together to avoid unnecessary repetition. The claim of the workman that she worked as Helper from 04.12.1996 to 30.06.1998 and thereafter she worked as Hostel Warden w.e.f. 01.07.1998 to 30.04.2018 are admitted to be correct by the respondents. The claim of the workman is that her services have been terminated by the respondents w.e.f. 30.04.2018 vide order dated 01.05.2018 without any notice, enquiry or payment of compensation and therefore the same amounts to violation of Section 25-F of Industrial Disputes Act. Further, since the respondents retained junior in service and also appointed new persons after her termination, therefore the same amounts to violation of Section 25-G & 25-H of the Industrial Disputes Act. The respondents on the other hand alleged their action to be justified with the submission that the workman was appointed on contract basis and the same was being renewed from time to time. The appointment of the workman was against specific project and her services were terminated as her working was not up to the Mark. In this manner the respondents tried to justify their order of termination i.e. Exh. R-4.

12. *From the record produced on file, it is proved that the workman joined as Hostel Warden and served, as such from 01.07.1998 to 30.04.2018. The respondents have produced on file the copies of service agreements i.e. Exh. R-7 to Exh. R-19 to prove that the service contract of the workman was being renewed from time to time. The contention of the learned authorized representative of the respondents that the workman was appointed on contract basis, is discarded by the Tribunal, as the workman continuously worked as Hostel Warden, though on the basis of service agreements from 01.07.1998 to 30.04.2018, but there is no record produced by the respondents that there was any actual and effective breaks in her service. The witness of the respondent RW1 admitted in clear words in her cross-examination that the workman worked as Hostel Warden from 01.07.1998 to 30.04.2018. This fact is even admitted by the respondents in the reply filed by them. Even if the service agreement was being renewed from time to time as alleged by the respondents, the same would be presumed to be continuous service. There is nothing on file that the workman was appointed to complete some specific task or project and in the absence of any such proof or assertion, the service of the workman would be presumed to be in continuity from the day, when she joined as a Hostel Warden and i.e. 01.07.1998 to 30.04.2018.*

13. *Since the workman had already completed about 21 years of service at the time of termination*

of services, therefore, the respondents were legally bound to issue notice, charge-sheet, to be followed by the enquiry. But nothing has been done by the respondents before termination of services of the workman. Even if any letter or warning such as Exh. R-1 & Exh. R-3 were written by the respondents, the same does not take away the right of the workman to continue as employee of the respondents and the respondents had no right to terminate her services without conducting inquiry into the allegations. Thus the action of the respondents is clear cut violation of Section 25-F of the Industrial Disputes Act and therefore the workman is entitled to continue in service. Accordingly all these issues are decided against the respondents.

Relief

In view of my findings on aforementioned issues, the workman is found to be removed unauthorizedly in violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act and therefore she is ordered to be reinstated in service with 50% of back wages from the date of termination of her services till she joins her duty. The workman is further held entitled for interest @ 6% per annum on the back wages as ordered till payment. The respondents are directed to make the payment of the back wages within three months from the date of decision along with costs. The award will be enforceable after 30 days from its publication. File be consigned to the Record Room.”

10. I have gone through the findings returned by the learned Tribunal below and do not find any illegality or perversity in the same and rather the same have been found to be in accordance with law as well as evidence available in this case.

11. 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."

12. In view of the aforesaid discussion, I do not find any merit in the instant writ petition and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

06.07.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No