

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-13256-2022
Date of Decision: 04.09.2023

Satender Kumar
..... Petitioner
Versus
Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and
another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Balkar Singh, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

1. Petitioner-workman (Satender Kumar) 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 22.01.2020(Annexure P-1) passed Industrial Tribunal-cum -Labour Court, Panipat (hereinafter referred to as “the Tribunal”); whereby the reference of the industrial dispute has been decided against him. A further prayer has been made for directing the respondents to reinstate the petitioner with all consequential benefits
2. Briefly, Petitioner (Satender Kumar) raised an industrial dispute, by filing a claim petition before the Tribunal below under Section 2-A(2) and (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the 1947 Act”).

3. As per the claim of petitioner, he was working as Maintenance Mechanic w.e.f 02.05.2013 with Respondent No.2 – RidhiSidhi Industries Pvt. Ltd., Sonapat. Petitioner claimed that he met with an accident on 12.08.2018 during working hours and sustained injury in his backbone and when after recovery, on 28.11.2018, when the petitioner came to join his duty, his services were terminated without any reason, notice or retrenchment compensation. Petitioner further claimed that he had completed more than 240 days of continuous service, therefore he was entitled to protection under Section 25F of the 1947 Act. Accordingly, the termination of services of the petitioner-workman was illegal, unjustified and against the provisions of the 1947 Act.

4. The respondent-management was proceeded against *ex-parte*.

5. In support of his claim, petitioner himself appeared as CW-1 and tendered the following documents in evidence:

i. *Ex.C-3 - Copy of e-Pehchaan card of the petitioner workman issued by Employees' State Insurance Corporation which shows that the name of the petitioner workman was registered on 08.01.2015 and respondent-management is recorded to be his current employee.*

ii. *Ex.C-4 - Copy of member passbook issued by Employees' Provident Fund Organization which shows that the share of employee (petitioner- workman) and employer(respondent- management) was deposited till June, 2017.*

iii. *Ex.C-5 - Copy of Application dated 21.02.2019*

iv. *Ex.C-6 - Bank Statement dated 19.09.2018 of the petitioner workman vide which he deposited Rs. 2,49,282+16,925+18,064 in response to the application dated 21.02.2019.*

6. Upon appreciating the material/evidence available on record, the Tribunal below rejected the claim of petitioner-workman and answered the reference against him vide impugned Award dated 22.01.2020 (Annexure P-1) by holding that the petitioner-workman had failed to prove that he had worked for 240 days in one year before his alleged termination on 28.11.2018.

7. In the aforementioned circumstances, the petitioner-workman has approached this Court by way of filing the instant writ petition.

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

9. It is apposite to state here that a workman is entitled to protection of Section 25F of the 1947 Act if he is able to prove that he was in continuous service under the Management in terms of Section 25B of the 1947 Act, i.e. the workman had worked for 240 days in 12 calendar months immediately preceding the date of his termination.

10. 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 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."

11. 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 therefore 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...”

12. 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 also 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.

13. In the instant case, the Labour Court below, while answering the reference against petitioner-workman, has held as under:-

“5. I have heard learned Authorised Representative for the claimant and perused the case file.

6. Main thrust of arguments advanced by learned AR for the claimant is that mere fact that the respondent opted to be proceeded against ex parte, the evidence led by the claimant remained unrebutted and unchallenged so, the same should be taken at its face value. The contention is not sustainable because it is well settled that the party, which knocks the door of the Court, has to stand on its own legs and its case cannot be allowed simply on the ground that the other party did not turn up to contest the case.

7. Ex.C-3 is copy of e-Pehchaan Card of the claimant issued by Employees' State Insurance Corporation. A perusal of this document reveals that name of claimant was registered on 08.01.2015 and respondent is recorded to be his current employer. Ex.C-4 is copy of Member Passbook issued by Employees' Provident Fund Organisation, according to which share of employee and employer i.e. claimant and respondent was deposited till June 2017. On the basis of said two documents, at the most it can be taken that the claimant had worked with respondent upto June 2017. Except the self-serving statement made by the claimant, no corroborative evidence has been. led by him that he had worked with respondent after June 2017 to 28.11.2018 i.e. date of his alleged termination.

8. Feeling tight, Id. AR for claimant drew the attention of Court two Ex.C-5 and C-6 i.e. copy of application dated 21.02.2019 as well as bank statement of the claimant dated 19.09.2018 and contended that on 19.09.2018, the respondent had got deposited an amount of Rs.-(2,49,282+16,925+18,064) in response to above said letter dated 21.02.2019. The contention is without merits because

Ld. AR failed to explain that how said amount was deposited on 19.09.2018 in response to letter dated 21.02.2019 i.e. five months before the filing of said letter.

9. From the column of remarks in Ex.C-6, it appears that the three transactions 19.09.2018 pertained to salary however, by no stretch of imagination. it can be said that the alleged deposits were got made by respondent. Another strange aspect to be noted here is that Ex.C-6 is not bearing name of claimant. In the circumstances, it cannot be said that Ex.C-6 belonged to the claimant. Suffice it to say that document Ex.C-6 cannot be taken into consideration.

10. In the case pleaded by claimant is that he remained in continuous employment of 240 working days with the respondent in the preceding year of the date of his termination. The onus to prove this plea was upon the claimant but he did not bother to lead evidence in this regard. In Municipal Corporation, Faridabad Vs. Siri Niwas, 2004 (8) SCC 195, it has been held that the burden is on the claimant to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment.... It is amply clear that the claimant miserably failed to prove that he had worked for 240 days in one year before his alleged termination on 28.11.2018.

11. In view of my observations, the claim statement dated 13.03 2019 is hereby dismissed ex parte and reference stands answered in negative. Copy of this Award be sent immediately to Deputy Labour Commissioner, Rohtak for information and necessary action."

14. A perusal of above extracted findings returned by Tribunal below would manifest that the workman failed to prove that 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. It is observed that mere bald statement by the petitioner-workman in this regard was not sufficient to prove that petitioner had worked for 240 days. Something more was required in the shape of documents, that is, appointment letters, payment vouchers, etc. to indicate that petitioner-workman had worked with the respondent management continuously for a period of 240 days in a year preceding the date of termination.

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 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 impugned award dated 22.01.2020 (Annexure P-1), 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. All pending application/s, if any, shall also stand closed.

04.09.2023*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No