

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12803-2011 (O/M)

Date of Decision: 09.10.2023

Dhara Singh

..... Petitioner

Versus

The Chief Engineer, Haryana Urban Development Authority,
Panchkula and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Mukesh Kumar Verma, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Additional A.G. Haryana.

Mr. Ashok Singh Chaudhary, Advocate
for respondents No. 1 to 3.

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HARSH BUNGER, J.

1. Petitioner (Dhara Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, for issuance of writ in the nature of certiorari for quashing the Award dated 17.02.2010 (Annexure P-3), passed by learned Industrial Tribunal-cum-Labour Court-II, Gurgaon (hereinafter referred to as 'the Tribunal'); whereby the reference of the industrial dispute raised by petitioner regarding termination of his services, was answered against him and his claim was rejected.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication to the learned Tribunal below. The petitioner claimed that he joined the services with respondent No. 3 (Sub Divisional Engineer, Haryana Urban Development Authority, Rohtak) in March, 1983 on the post of Mali,

however, at the time of joining, neither any appointment letter was issued to him nor attendance card and wages slips were given to him. The petitioner claimed that his services were terminated by respondent No. 3 on 18.05.1989 and at that time, he was getting Rs. 13.70 per day as salary. The petitioner claimed that his services have been terminated in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). Accordingly, he prayed for reinstatement with continuity of service alongwith all consequential benefits.

3. The aforesaid claim of the petitioner was contested by respondents No. 1 to 3-HUDA (hereinafter referred to as 'respondent-Management') by filing its written statement wherein a preliminary objection was taken that respondent-Management does not fall within the definition of 'industry', as envisaged under 1947 Act and neither the petitioner comes within the definition of 'workman', as provided in 1947 Act. It was submitted that the petitioner had worked purely on daily wages on Temporary Muster Roll (TMR) and no appointment letter or any termination letter was ever issued to him.

On merits of the claim of the petitioner, it was stated that no appointment letter or wage slip was given to the petitioner as he worked purely on daily wage TMR as a casual labour. It was stated that all wages for the period for which the petitioner had worked as a casual labourer or daily wage worker, had been paid to him. It was stated that there was no violation of Section 25-F of 1947 Act. It was contended that infact the petitioner had left the work on his sweet will and did not turn up again and failed to report for duty. It was also stated that the petitioner had not worked for 240 days in one calendar year. Accordingly, prayer for dismissal of the claim of the

petitioner was made. Replication was also filed by the petitioner.

4. From the pleadings of the parties, the Tribunal below framed the following issues:

- “1. *Whether the termination of the services of the petitioner/workman is illegal and unjustified, if so to what effect ? OPW*
2. *Whether the Management is not an industry as defined in I.D. Act ? OPM*
3. *Relief.”*

In order to prove his claim, the petitioner examined himself as PW1 and also examined Ramesh Kumar as PW-2. He also tendered documents Ex. P2 to Ex. P4.

On the other hand, respondent-Management examined one Jogi Ram as RW-1 and tendered documents Ex. R-2 to Ex. R-20.

5. Upon considering the material/evidence available on record, the learned Tribunal below, vide impugned Award dated 17.02.2010 (Annexure P-3), rejected the claim of the petitioner.

6. In the aforementioned circumstances, the petitioner has filed the instant writ petition.

7. Learned counsel for the petitioner has submitted that the Tribunal below has erred in law and fact in rejecting the claim of the petitioner. It is submitted that the petitioner had worked for more than 240 days in a calendar year preceding the date of his termination and, therefore, he was entitled to the benefit of Section 25-F of 1947 Act. It is further submitted that although the petitioner may be a daily wager, still the provisions of 1947 Act were applicable to him and he was entitled to the protection thereof. Learned counsel for the petitioner has further submitted

that the judgments relied upon by the Tribunal below, are not applicable to his case. Accordingly, he prayed that the impugned Award be set aside and necessary relief be granted to the petitioner.

8. Per contra, learned counsel appearing for respondent-Management has opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has considered the relevant material/evidence available on record and has passed a well reasoned and justified Award, which does not call for any interference by this Court. It is submitted that the petitioner has neither proved on record that his services were engaged on regular basis nor he has proved on record that he had rendered continuous service of 240 days in a calendar year preceding the date of his termination. It is submitted that once the petitioner has not proved his pleaded case, therefore, he has rightly been denied the relief of reinstatement with continuity of service and all consequential benefits by the Tribunal below. Accordingly, it is submitted that there is no merit in the instant writ petition and prayer for dismissal of the same was made.

9. I have heard learned counsel for respective parties and have also perused the paper book with their able assistance.

10. 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 *Workmen 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 1947 Act i.e. the workman has worked under Management for 240 days in 12 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 case of *Municipal Corpn. v. Siri Niwas, 2004(4) S.C.T. 211* and *Surendranagar District Panchayat v. Dahyabhai Amarsinh, 2005(8) SCC 750*.

11. In the instant case, the petitioner had approached the Tribunal below with the plea that he was appointed on the post of Mali in March, 1983

and his services were illegally terminated on 18.05.1989 despite the fact that the petitioner had worked for more than 240 days in a calendar year preceding the date of his termination, therefore, he was entitled to protection of Section 25-F of 1947 Act.

12. On the other hand, it was the categoric plea of respondent-Management that the petitioner was engaged on daily wage basis and no regular appointment was made. It was further submitted that the petitioner had not rendered continuous service under respondent-Management in terms of Section 25-B of 1947 Act i.e. 240 days' continuous service in 12 months preceding the date of his termination; therefore, the petitioner was not entitled to any relief.

13. In the instant case, the Tribunal below, after considering the material/evidence on record, returned the following findings :-

“9. Workman Dhara Singh has appeared in the witness box as PW-1 and tendered his affidavit Ex. P-1 and documents Ex. P-2 to Ex. P-4. PW-1 deposed that he was appointed as Mali in March 1983 with the respondent department. But no appointment letters etc. were issued to him. However, his services were wrongly and illegally terminated on 18.5.1989 without payment of retrenchment compensation and notice pay.

PW-1 in cross-examination admitted that he was working with the respondent department against the Muster Roll. This admission is a clincher piece of evidence, thereby, showing that the services of the workman were engaged on daily wages basis.

10. The workman has also examined PW-2 Ramesh Kumar, who tendered his affidavit Ex. PW-2 wherein he deposed that he was appointed with the respondent department in the month of November, 1982 and retired

on 29.7.2009. PW-2, further, stated that the workman had worked with him in the respondent department from 1983 to 1989. PW-2 has proved his identity card Ex. PW-2. Furthermore, PW-2 stated that he used to mark the attendance of the workman and it was checked from time to time by the Junior Engineer and as per attendance the workman was paid salary by the Junior Engineer.

11. PW-2 has also admitted in cross-examination that he had not brought any document to prove that the workman was appointed with him in the respondent department in the year 1983. However, PW-2 has categorically admitted that the workman was appointed on daily wages basis against Muster Roll and he was paid for the period he had actually worked with the respondent department. This is again a clincher piece of evidence and supports the case of the respondent department that the services of the workman were engaged on daily wages basis.

12. Moreover, it is also pointed out that the respondent has examined RW-1 Jogi Ram, who has tendered his affidavit Ex. R-1 and muster rolls Ex. R-2 to Ex. R-20. RW-1 deposed that the services of the workman were engaged on daily wages basis and he was paid wages for the period he had actually worked with the respondent department. The statement of RW-1 is duly corroborated by the Muster Rolls Ex. R-2 to Ex. R-20. Furthermore, the material placed on file shows that the workman has not rendered more than 240 days of continuous service in any calendar year and more specifically in the preceding 12 months from the date of alleged termination.

13. Learned Authorized Representative for the workman has drawn my attention on the cross-examination of RW-1 and argued that RW-1 has no personal knowledge about the case and, accordingly, the documents placed on file by him can not be considered.

14. *I am not convinced with the arguments advanced by learned Authorized Representative for the workman. It is pointed out that RW-1 has brought the summoned record and made a statement on the basis of document and not from his personal knowledge. It is pointed out that neither there is pleading nor any evidence brought on record by the workman, thereby, challenging the genuineness and veracity of the Muster Rolls Ex. R-2 to Ex. R-20. Hence, there is nothing on the file which makes the statement of RW-1 and documents Ex. R-2 to Ex. R-20 inadmissible in evidence. Hence, the arguments advanced by learned Authorized Representative for the workman is devoid of any force.*

15. *Learned Authorized Representative for the workman has also argued that in this case an exparte award was passed on 12.8.2005 Ex. P-2 wherein, the workman was found to be reinstated with continuity of service and also entitled to 50% of the back wages. The workman has, accordingly, made an application Ex. P-3 for joining in compliance of award dated 12.8.2005. Accordingly, it is contended that now the workman can not be denied the relief of reinstatement.*

16. *I am not convinced with the arguments advanced by learned Authorized Representative for the workman. There is no doubt that in this case an ex-parte award dated 12.8.2005 Ex. P-2 was passed in favour of the workman, whereby he was held entitled to reinstatement with continuity of service alongwith 50% back wage. However, the ex-parte award was set-aside vide order dated 5.3.2008. Hence, the award Ex. P-1 ceased to be in existence and accordingly, no relief can be claimed by the workman under the same. Furthermore, the application dated 9.2.2005 Ex. P-3 also do not create any right in favour of the workman because he had simply sought*

reinstatement in execution of award dated 12.8.2005 Ex.P-2. But it is admitted case of the parties that the workman was not reinstated on the basis of award dated 12.8.2005 no relief can be claimed by the workman under the same. Furthermore, the workman can not be granted relief simply because he was granted relief under the ex-parte award because while passing order on merit, the court has to pass final award after appraising the evidence brought on record by the parties. But as mentioned above, the workman has failed to discharge the onus to prove that his services were engaged on regular basis and further that he had rendered continuous services of 240 days in any calendar year or more specifically in the 12 months just preceding the alleged date of termination. Hence, the workman is not entitled to any relief whatsoever. Accordingly, the arguments advanced by learned Authorized Representative for the workman is not tenable in the eyes of law.”

A perusal of the aforesaid findings would indicate that the petitioner had failed to prove on record that he has rendered continuous service of 240 days in a calendar year preceding the date of his termination.

14. Learned counsel for the petitioner has failed to point out any material/document to dislodge the findings returned by the Tribunal that the petitioner has not rendered service of 240 days in the calendar year preceding the date of his termination on 18.05.1989. Petitioner has not shown any proof of salary/wages for the aforesaid period nor any attendance sheet or any other document or record has been produced to show that petitioner has rendered continuous service with the management in terms of Section 25-B of the 1947 Act. It is improbable that the workman, who claimed to have worked under a Management, would not possess any documentary evidence

to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, once the petitioner has failed to prove its pleaded case, no relief can be granted to him.

15. Furthermore, 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 by this Court in the findings/Award rendered by the Tribunal below, in exercise of writ jurisdiction. Therefore, the instant writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

09.10.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No