

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

CWP-13639-2011 (O&M)
Date of Decision: 21.12.2023

AJMER SINGH

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
GURDASPUR AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. R.S. Bajaj, Advocate
for the petitioner.

Ms. Kavita Arora, Advocate
for respondent No.4.

HARSH BUNGER, J.

Petitioner (Ajmer Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for setting aside the impugned Award dated 17.01.2011 (Annexure P-4) passed by the learned Industrial Tribunal, Gurdaspur (here-in-after referred to as 'the Tribunal'); whereby, the reference of industrial dispute raised by the petitioner regarding termination of his services has been rejected.

A further prayer has been made for issuance of direction to the respondents to reinstate the petitioner and to grant all consequential benefits.

2. Briefly, the petitioner raised an industrial dispute by filing his claim petition before the learned Tribunal below on the plea that he was appointed by respondent No.2-Gram Panchayat Village Talwara, Tehsil Batala, District Gurdspur, as *Fee Collector* at Adda Talwara, Sri Hargobindpur, Tehsil Batala on 01.10.1994 at the rate of Rs.600/- per

month. The petitioner claimed that he was appointed on regular and permanent basis on a permanent post and he performed his duties efficiently and to the satisfaction of his superiors. It was stated that the services of the petitioner-workman were terminated on 01.10.2003, without any sufficient cause and at that time, the petitioner was getting Rs.1200/- p.m. as salary. It was further stated that at the time of termination of services of the petitioner, no notice, notice pay or retrenchment compensation was paid to him. It was alleged by the petitioner that juniors to him had been retained in service and even new person had been appointed in his place; therefore, his termination was illegal, arbitrary and against the provisions of Sections 25-F and 25-N of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Accordingly, prayer was made by the petitioner for his reinstatement with continuity in service along with full back wages and other consequential benefits.

3. The afore-said claim of the petitioner was contested by respondents No.2 and 3 (Gram Panchayat/Sarpanch) by submitting that the petitioner was appointed as *Fee Collector* at Adda Talwara, Sri Hargobindpur, Tehsil Batala on 01.10.1994 at the rate of Rs.20/- per day and not on monthly salary of Rs.600/-. It was denied that the petitioner was appointed on regular and permanent basis on the permanent post. It was stated that the services of the petitioner were terminated w.e.f. 30.09.2003 and at that time, he was getting Rs.40/- per day and not monthly salary of Rs.1200/-. It was stated that the petitioner was neither collecting the Adda fee from all the buses passing through the Bus Stand Talwara nor depositing the same with the Gram Panchayat and therefore, he owed substantial amount to the Gram Panchayat. It was next submitted that the petitioner had violated the terms and conditions of his appointment by

failing to deposit regularly and timely the money collected by him and he had misappropriated the cash of the Gram Panchayat. It was the categorical case of the respondent-Gram Panchayat that the petitioner was relieved/discharged in accordance with the terms of his appointment after he was found misappropriating the collected amount. It was stated that there was no violation of any provision of law and the petitioner was gainfully employed somewhere else; accordingly, prayer for dismissal of the reference was made.

4. On the basis of the pleadings of the parties, the following issues were framed :-

“1. Whether the respondent is industry and the applicant is a workman?

2. Whether the reference is bad for non-joinder of necessary parties?

3. Whether the demand notice has been served upon the respondents ?

4. Whether the termination of services of workman is justified and in order ?

5. Relief.”

5. After considering the material/evidence available on the record, the learned Tribunal below vide impugned Award (Annexure P-4), answered the reference against the petitioner-workman by holding that the petitioner was not appointed against any regular and permanent post and he was not a permanent employee of the respondents-Gram Panchayat, rather he was appointed @ Rs.20/- per day and later on that rate was increased to Rs.40/- per day. Accordingly, the petitioner was not held entitled to any protection of Section 25-F of the 1947 Act.

6. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

7. Learned counsel for the petitioner submits that the learned Tribunal below has erred in law and facts in rejecting the claim of the petitioner. It is submitted that there was ample evidence on record showing payment of salary to the petitioner; however, the said evidence has been misread. It is further submitted that the petitioner had performed his duties from 01.10.1994 to 01.10.2003 i.e. for about nine years, on regular basis and without any break; however, since the provisions of Section 25-F of the 1947 Act were not complied with at the time of termination of services of the petitioner; accordingly, his termination was bad in law. It is next submitted that the Tribunal below has also not considered the plea of the petitioner that there was violation of Sections 25-G and 25-H of the 1947 Act. It is also contended that respondent No.4-Municipal Council, Sri Hargobindpur, Tehsil Batala, District Gurdaspur, had failed to produce the complete record pertaining to the services of the petitioner; therefore, adverse inference was required to be drawn in this case.

With the afore-said pleas, the petitioner had prayed for setting aside the impugned Award dated 17.01.2011 (Annexure P-4) passed by the learned Tribunal below with a further prayer for issuance of direction to the respondents to reinstate the petitioner with continuity in service and full back wages.

8. Per contra, learned counsel appearing for respondent No.4-Municipal Council, Sri Hargobindpur, has opposed the prayer of the petitioner by submitting that the engagement of the petitioner was on daily wage basis and was only temporary in nature and his services were liable to be discontinued without issuing any notice. It is, therefore, submitted that the Tribunal below has passed a well reasoned and justified Award and no

interference is required in the same. Accordingly, prayer has been made for dismissal of the writ petition.

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

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

“10. The case of the workman is that he was appointed on regular and permanent basis on permanent post with the respondent on 1/10/94 and later on his services were illegally terminated on 1/10/2003. Earlier he was getting Rs.600/- per month and then at the time of his termination he was getting Rs.1200/- per month as salary.

11. On the other hand, the case of the respondent is that the workman was appointed @ Rs.20/- per day and not on monthly wages of Rs.600/- and he was not appointed on regular and permanent basis against the permanent post. At the time of his termination he was getting Rs.40/- per day and not salary of Rs.1200/- per month.

12. So, it was for the workman to prove that he was appointed on regular and permanent basis against the permanent post. But while appearing as WW1 it has been admitted by the workman that he has no appointment letter or any other documentary proof that he was given the appointment as permanent employee. As such there is nothing on record to prove that the workman was appointed on regular and permanent basis against the permanent post by the respondents. WW2 Surinder Singh, Clerk M.C. Sri Hargobindpur has proved on record cash book entries Ex.WW2/1 to WW2/50. In the written arguments submitted by workman it has been contended that all these entries are pertaining to the salary which was being paid to the workman. But this contention of the

workman is devoid of any merits. Perusal of these cash book entries proved on record as Ex.WW2/1 to WW2/50 rather show that these entries are pertaining to the depositing of Adda fee collected by the workman.

13. It has also been contended by AR for workman that the payment of salary to the workman also stands proved by receipts Ex. WW2/51 to WW2/104 that has been proved on record by WW2. But again I find that this contention of the AR for workman is devoid of any force. The perusal of the receipts Ex.WW2/51 to WW2/104 rather show and these rather lend/support to the plea of the respondents that the workman was appointed @ Rs.20/- per day and then later on this rate was increased to Rs.40/- per day. The perusal of the receipt Ex. WW2/51 shows that it is from Sept, 94 to May, 95 for 9 months amounting to Rs.5460/-. So, this receipt proves that the payment has been made to the workman @ Rs.20/- per day. In some of the receipts Ex. WW2/53 to Ex. WW2/62 it has been mentioned in the receipts itself that the payment has been made @ Rs.20/- per day. The perusal of receipt Ex. WW2/88 onwards shows that the payment has been made @ Rs.40/- per day. So, it rather proves the case of the respondent that later on the rate of payment was increased @ Rs.40/- per day and the workman was not being paid any salary.

14. As such it transpires from the evidence on record that the workman was not appointed against any regular and permanent post and he was not permanent employee of the respondent. Rather he was appointed @ Rs.20/- per day and later on that rate was increased to Rs.40/- per day and as such the protection of section 25-F of the I.D. Act, 1947 is not available to the workman. So this issue is decided against the workman.”

11. A perusal of the above extracted findings would show that the

petitioner had failed to prove on record that he was appointed on regular and

permanent basis against a permanent post and that he is a permanent employee of the respondent-Management. Rather it has come on record that he was working as a daily wager.

12. It is well settled that as regards a workman who was working on daily-wage basis; even after he is reinstated, he has no right to seek regularisation [see **State of Karnataka v. Umadevi (3) [2006(2) S.C.T. 462 : (2006) 4 SCC 1]**], thus when he cannot claim regularization, he has no right to continue even as a daily-wage worker.

13. As regards the submission of the counsel for the petitioner that while terminating the services of petitioner, compliance of Section 25-F of the 1947 Act, was not made out; it is observed that in order to attract the provisions of Section 25-B of the 1947 Act, the workman has to show that he has rendered continuous service under the Management in terms of Section 25-B of the 1947 Act. In the instant case, the learned counsel for the petitioner could not point out any material to indicate that he has worked for 240 days in the twelve calendar months preceding his termination i.e. on 01.10.2003, therefore, no relief can be granted to the petitioner for violation of Section 25-F of the 1947 Act.

14. As regards the plea of the petitioner that there was violation of Sections 25-G and 25-H of the 1947 Act, it is observed that the petitioner has not led any evidence to prove the said plea before the Tribunal below except relying on statement of Surinder Singh (WW2). The date of appointments of juniors to the petitioner or of newly appointed persons, have not been proved on record.

Still further, the Hon'ble Apex Court in ***Surendranagar District Panchayat v. Dahyabhai Amarsingh (2005) 8 SCC 750*** in paragraph no. 18 thereof, observed as under:-

“18.As regards non-compliance of Sections 25G and 25H suffice is to say that Witness Vinod Mishra examined by the appellant has stated that no seniority list was maintained by the department of daily wagers. In the absence of regular employment of the workman, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so called seniority no relief could be given to him for non-compliance of provisions of the Act. The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the court. In order to entitle the court to draw inference unfavourable to the party, the court must be satisfied that evidence is in existence and could have be proved...”

Therefore, in the absence of any cogent material on record to show violation of Sections 25-G and 25-H of the 1947 Act, the aforesaid contention of learned counsel for the petitioner is rejected.

15. As regards the plea of petitioner that adverse inference be drawn against respondent(s)-Management for not producing the relevant record, it is observed that drawing of adverse inference is optional and not obligatory and the same is within the domain of Industrial Tribunal. Further, drawing of adverse inference depends on facts and circumstances of each case and adverse inference cannot be drawn only because it is lawful to do so. In order to entitle the Court to draw inference unfavourable to the party, the Court must be satisfied that evidence is in existence and could have been

proved (See: ***“Surendranagar District Panchayat Vs. Dityabhai Amarsinh” 2005(8) SCC 750***).

In the instant case, the Tribunal below has not drawn any adverse inference. Furthermore, apart from the bare plea of non-production of relevant record by the respondent(s)-Management; there is no plea of the petitioner that respondent(s)-Management has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent(s)-Management. In this regard, reference can be made to the judgment of Hon’ble Apex Court in ***“R.M. Yellatti v. The Asst. Executive Engineer”, 2005(4) S.C.T. 695***, wherein it has been held as under:

“15. ... The above decisions however make it clear 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. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case...”

16. 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*.

17. Considering the totality of circumstances in the light of legal principles indicated above, there is no scope for any interference in the impugned Award dated 17.01.2011 (Annexure P-4), resultantly, the instant petition fails and the same is hereby dismissed.

18. All pending application/s, if any, shall also stand closed.

December 21, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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