

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

CWP-14030-2011
Date of Decision: 19.07.2023

Rajesh Sharma

...Petitioner

Versus

The Presiding Officer, Labour Court-II, Faridabad and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Anil Shukla, Advocate
for the petitioner.

Mr. Arvind Seth, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J. (ORAL)

Petitioner-workman (Rajesh Sharama) 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 12.02.2008 (Annexure P-3) passed by respondent No.1-Presiding Officer, Labour Court-II, Faridabad; 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, the Petitioner raised an industrial dispute qua his illegal termination by serving a demand notice dated 03.08.1997. Thereafter, reference No. 248/99 was made to the Labour Court for adjudication, however this reference was withdrawn by the Petitioner- workman on

22.05.2002 on the ground that the date of appointment and termination were wrongly recorded in the demand notice. The Petitioner- workman submitted a fresh demand notice and ultimately the following reference was made to the Labour Court for adjudication:

“Whether the termination of services of Sh. Rajesh is legal and justified? If not, whether he is entitled to any relief?”

3. In the claim statement filed by petitioner, he claimed that he was appointed with respondent-department as *Tubewell Operator* under J.E., O.P. Verma on 01.12.1996 but no joining letter was issued. Petitioner claimed that he continuously worked upto 31.07.1997, when suddenly his services were terminated in an illegal and arbitrary manner by adopting unfair labour practice. It was claimed that the petitioner worked for 240 days and his services were terminated in violation of Section 25-F of Industrial Disputes Act, 1947 and is illegal, unjustified and against principles of natural justice. Accordingly, the petitioner prayed that he may be reinstated on job with full back wages and continuity of service.

4. On the other hand, the respondent-Municipal Corporation, Faridabad, contested the claim of the petitioner by filing its reply wherein, *inter-alia*, the following stand was taken :-

a) The petitioner was a temporary muster roll employee;

b) The petitioner is making an incorrect statement; as in the previous dispute, it was alleged that he worked from 01.01.1997 to 31.07.1998 and that his services were terminated on 03.08.1998. Now, the petitioner in the present dispute alleges that he joined service w.e.f 01.12.1996 and worked upto 31.07.1997; and that his services were terminated on 01.08.1997.

c) *Petitioner was not employed as Tubewell Operator as for Tubewell Operator the qualification was Matriculation with ITI Course in trade of Mechanical or Electric Trade.*

d) *The petitioner never worked under J.E. O.P Verma at any time.*

e) *Petitioner worked from 01.11.1996 to 30.04.1997 and he did not complete 240 days attendance.*

f) *Petitioner was not in employment after 30.04.1997 and it was denied that he was terminated on 01.08.1997.*

5. From the pleadings of the parties, the learned Labour Court framed the following issues:

“1. Whether the termination of services of Sh. Rajesh is legal and justified?? If not, whether he is entitled to any relief.

2. Relief.”

6. In order to prove his case/claim, the petitioner/workman-Rajesh Sharma, examined himself as WW-1 and relied upon the following documents in his documentary evidence :-

S.No.	Exhibit	Document
<i>1</i>	<i>W1</i>	<i>Copy of demand notice dated 03.08.1998</i>
<i>2</i>	<i>W2</i>	<i>Copy of letter dated 27.08.1998</i>
<i>3</i>	<i>W3</i>	<i>Copy of failure report.</i>
<i>4</i>	<i>W4</i>	<i>Copy of earlier reference dated 18.07.1999.</i>
<i>5</i>	<i>W5</i>	<i>Copy of claim statement filed by the claimant in earlier reference No. 248/99.</i>
<i>6</i>	<i>W6</i>	<i>Copy of written statement filed by corporation in reference No. 248 of 1999.</i>
<i>7</i>	<i>W7</i>	<i>Copy of application filed by the claimant in reference No. 248 of 1999 for amendment in claim statement.</i>
<i>8</i>	<i>W8</i>	<i>Copy of amended claim statement</i>
<i>9</i>	<i>W9</i>	<i>Copy of report under Section 12(4) of the Act.</i>
<i>10</i>	<i>W10</i>	<i>Copy of failure report</i>
<i>11</i>	<i>Mark 1 to Mark 30</i>	<i>Photocopies of log book.</i>

Thereafter, the petitioner-Workman closed his evidence.

7. On the other hand, the respondents have examined one Om Parkash Verma, SDO of the corporation as MW1 and further produced original muster roll pertaining to December, 1996 to July, 1997 (Ex. MW-1/1 to MW-1/14). Thereafter, the respondents evidence was closed.

8. After considering the case of respective parties and also the material on record; Learned Presiding Officer, Labour Court-II, Faridabad vide impugned award dated 12.02.2008 (Annexure P-3) decided the reference against the petitioner-workman.

9. Being aggrieved against the impugned award dated 12.02.2008 (Annexure P-3) *ibid*, the petitioner has filed the instant writ petition.

10. Learned counsel for the petitioner while reiterating the stand of the petitioner before the Labour Court, submitted that the petitioner was appointed as Tubewell Operator and he continuously worked till 31.07.1997, when suddenly his services were terminated in an illegal and arbitrary manner without following the mandatory provisions of the Act, 1947. He submits that the petitioner worked in the respondent- department for more than 240 days in preceding 12 months from the date of his termination in July, 1997 and he produced photo copy of log book from 01.12.1996 to 30.07.1997 as Mark-1 to Mark-30 showing that he worked continuously on the post of Tubewell Operator. Accordingly, counsel for the petitioner prays that the impugned award dated 12.02.2008 (Annexure P-3) passed by Learned Presiding Officer, Labour Court-II, Faridabad, may be set aside being illegal and necessary directions may be issued for reinstatement of petitioner with continuity of service and full back wages.

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

12. In the instant case, it is the pleaded case of petitioner that he was appointed in the respondent-department as Tubewell Operator on 01.12.1996 and he continuously worked till 31.07.1997, when suddenly his services were terminated in an illegal and arbitrary manner without following the mandatory provisions of the Act, 1947. Thus, in order to seek relief in terms of Section 25F of the Act, 1947, the petitioner was required to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly illegally terminated by respondent-department. Therefore, the relevant period would be 12 months prior to July 1997.

13. In order to discharge the onus of proving the aforestated fact of having worked for 240 days in the 12 months preceding the date of his allegedly termination, the petitioner gave his own testimony only and did not lead any other evidence either in the form of statement of any co-worker or any other evidence in the form of proof of receipt of salary or wages for 240 days or any order/record of appointment or engagement for the relevant period. Apart from the self-serving statement of the petitioner, he did not lead any other evidence to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly terminated (in July, 1997) by respondent- department. It is well settled law 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.*

14. In the instant case, vide impugned award dated 12.02.2008 (Annexure P-3), learned Presiding Officer, Labour Court-II, Faridabad; has returned the following findings:-

“13. As per claim of the claimant set up in demand notice and claim statement he was appointed as Tubewell Operator on 01.12.1996 and his services were illegally terminated on 01.08.1997 and he worked during this entire period under Sh. OP Venna JE The onus to prove his case was on the claimant that he has continuously worked 240 days in 12 months preceding from the date of his termination and reliance can be placed on judgments 2006, LLR, 175 (SC), Sundergarh District Panchayat and another Vs Jethabhai Pitambarbhai, UP Avas Evam Vikas Prishad Vs Kanak and another 2003 LLRI (SC), Manager RBI Bangalore Vs S. Mani and others 2005, LLR, 737 (SC) and Rajasthan State Ganga Nagar Mills Ltd Vs State of Rajasthan and another 2004 SCC, (L&S), 1055.

14. It is admitted in cross examination by the claimant himself as WW-1 Rajesh Sharma that he was appointed as temporary and he was not appointed through any Employment Exchange. The claimant has produced documents regarding his service as photocopies of log book Mark 1 to Mark 30. Admittedly, original log book has not been produced on record and hence, in such circumstances, the photo copies of documents (log book) as such cannot be taken into consideration in absence of original log book or other connecting documentary evidence. It has claimed by the workman that entire service was performed by him under Sh. O.P. Verma, J.E. This witness (O.P, Verma) has come in witness box as MW-1 and proved copies of muster rolls Ex. MW-1/1 to MW-1/14

from original records and as per these muster rolls, claimant never worked under him as name of the claimant does not figure therein. Further even this witness has denied service of the claimant under him as Tubewell Operator.

15. The claimant as WW-1 Rajesh Sharma stated in examination in chief that he worked along with two other operators namely Gyan Chand and Gurucharan but he has not examined any of them to corroborate his statement and factum of log book on material particulars. Hence, from the entire evidence oral as well as documentary produced on record by the claimant, it is not conclusively proved that he had continuously worked 240 days with the respondents in 12 months preceding from the date of his termination.

16. From the cross examination of WW-1 Rajesh Sharma claimant, it is proved that present claimant was engaged purely as temporary employee on muster roll and he was never appointed through proper selection process. The respondent corporation is an instrumentality of the State and governed with certain rules and regulations in case of appointments as well as certain qualifications and other prescribed standards are required to be fulfilled by the candidates for seeking employment. From the statement of MW-1 Om Parkash, SDO and copy of muster rolls Ex. MW-1/1 TO MW-1/14, claimant has not been established to have worked with Sh. O.P. Verma, J.E. as claimed in his reference and hence, the present claimant was appointed purely temporary on muster roll and he cannot claim on post as a matter of right.

17. No doubt, the claimant has failed to prove his continuous service of 240 days in 12 months preceding from the date of his termination in the present case but in case, he had been completed 240 days, he was not entitled on the post as a matter of right... ”

15. The counsel for the petitioner has not been able to dislodge the aforestated findings returned by Tribunal below. Neither before the Tribunal nor before this court, the Petitioner has been able to show that he worked for 240 days in 12 months preceding the date of his termination and in absence of the same, no relief can be granted to the Petitioner.

16. As regards the plea of the petitioner that he produced the photo copies of the log book from 01.12.1996 to 30.07.1997 (Mark-1 to Mark-30) showing that he worked continuously on the post of Tubewell Operator and that the existence of said log book is not denied; suffice it to that photocopies of documents (log book) are inadmissible in evidence in the absence of original thereof. In this regard, reference can be made to ***Makhan Singh vs. Narainpura Co-operative Argicultural Service Society Ltd., 1987 AIR (SC) 1892.***

17. Further, the peripheries of this court to exercise *Certiorari* jurisdiction stands authoritatively delineated in ***Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 Supreme Court 477***, wherein Hon'ble 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 a 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; but 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 is 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 cases and upon the nature and*

scope of the legal provision which is alleged to have been misconstrued or contravened.”

18. No other point has been urged.

19. When the facts and circumstances of this case and also the findings returned by the learned Industrial Tribunal are considered in the light of the legal position indicated above, I do not find any illegality or infirmity with the impugned award dated 12.02.2008 (Annexure P-3), 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*.

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

19.07.2023

Himani

**(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No