

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

CWP-21085-2023 (O&M)
Date of Decision: 04.10.2023

CYGNUS J.K. HINDU HOSPITAL

...Petitioner

Versus

SH. BIJENDER KUMAR SHARMA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sahil Khunger, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Cygnus J.K. Hindu Hospital) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of Award dated 23.01.2020 (Annexure P-4) passed by the learned Industrial Tribunal-cum-Labour Court, Panipat (here-in-after referred to as 'the Tribunal'); whereby the reference of industrial dispute raised by respondent No.1-Bijender Kumar Sharma regarding termination of his services has been answered in his favour and he was held entitled to reinstatement with continuity of service from the date of his termination.

2. Briefly, respondent No.1, herein raised an industrial dispute regarding termination of his services, which was referred for adjudication before the learned Tribunal below. Respondent no.1 claimed that he joined the services of respondent No.3 herein (M/s Hindu Charitable Hospital, Sonapat) as Multi Task worker on 15.01.1990 and he was confirmed as X-Ray Technician in January, 1992. However, on 10.06.2013, he was not

allowed to perform his duties without any reasonable cause and without any prior notice. Accordingly, he claimed reinstatement with continuity of service and full back wages.

3. The afore-said claim was contested by respondent No.3 herein by admitting that respondent No.1 had joined their hospital on 15.01.1990 and since January, 1992, he was working as Technician. Further, it was stated that respondent No.3 herein had stopped managing the affairs of the hospital since 30.11.2012 and the new Management had taken over where the respondent No.1 had joined. Accordingly, respondent No.3, herein stated that the relationship of master and servant between respondent No.1 and respondent No.3 herein came to an end on 30.11.2012.

4. It is relevant to mention here that while the proceedings were pending before the Tribunal below, the respondent No.1 herein had moved an application on 07.10.2015 for impleading the petitioner-hospital as a party to the reference, which was allowed by the Tribunal below vide order dated 18.05.2016.

5. Petitioner-hospital also contested the claim of respondent No.1 herein by submitting that it had taken over the hospital activities w.e.f. 01.12.2012 and on the same day, the respondent No.1 herein had joined as a fresh entrant. It was stated by the petitioner-hospital that on 07.06.2013, respondent No.1-workman was found in a drunken state in the hospital. It was stated that respondent No.1 had not worked for a period of 240 days with the petitioner-hospital. Therefore, prayer for dismissal of the claim of respondent No.1 was made.

6. On the basis of the pleadings of the parties, the following issues

were framed :-

“(1) Whether the termination of the services of workman Sh. Bijender Kumar is legal and valid. If not so, to which relief, the workman is entitled ? OPW

(2) Relief.”

7. In order to prove his case, respondent No.1-workman examined himself as WW-1 and led documentary evidence. He further examined Sh. Inderjeet Singh as MW-1; whereas, respondent No.2 produced Sh. Puneet Khanna, Senior Manager as MW-2. They also led documentary evidence.

8. The learned Tribunal below upon considering the material/evidence available on the record, answered the reference in favour of respondent No.1-workman. The findings returned by the learned Tribunal below can be summed up as under :-

(a) By placing reliance upon document dated 01.12.2012, executed between the petitioner-hospital and respondent No.3-hospital i.e. Exhibit WX and also the statements made by Management witnesses namely, Inderjeet Singh (MW-1) and Puneet Khanna (MW-2), it was found that respondent No.3 had not sold the hospital to petitioner rather the same was given to the petitioner for Management and there is no fundamental change.

(b) Despite claiming that respondent No.1-workman was appointed by the petitioner afresh, no appointment letter was issued to him.

(c) It has been held that respondent No.1-workman was continuously working in the hospital since the year 1990, irrespective of the fact that the Management was changed in December, 2012; therefore, respondent No.1 was an employee of the hospital since 15.01.1990 and changing over of Management from respondent No.3,

herein to the petitioner has not affected rights of respondent No.1 herein in any way.

(d) There existed a relationship of employer and employee between the parties.

(e) Respondent no.1, herein had completed more than 240 working days in a year.

(f) The services of respondent No.1 had been terminated illegally without giving him any notice or pay in lieu of notice and retrenchment compensation; therefore, the termination amounted to violation of law.

(g) As regards the allegation that respondent No.1 was found in a drunken state, it has been observed by the learned Tribunal below that had that been the situation, then the proper course available to the petitioner was to seek his explanation and if the same was not satisfactory then the Management was at liberty to take action in accordance with law.

(h) Due procedure was not following before removing respondent No.1, herein.

9. On the basis of the afore-said findings, the learned Tribunal below granted the following relief to respondent No.1, herein :-

“17. As a sequel of findings on the issue, the Reference/claim statement dated 07.04.2014 filed by the claimant is accepted to the effect that he is held entitled to reinstatement with continuity of service on the same post which was being occupied by him on 10.06.2013 i.e. the date of his termination. He is also entitled to full back wages from the date of filing of claim statement i.e. 07.04.2014 from the respondent No.2. Resultantly, reference stands answered in positive. Copy of this Award be sent immediately to Deputy Labour Commissioner, Rohtak for information and necessary action.”

10. Being aggrieved against the afore-said award, the petitioner has filed the instant writ petition before this Court.

11. Learned counsel for the petitioner has submitted that the learned Tribunal below has erred in law and facts in allowing the claim of respondent No.1, herein without considering the fact that the petitioner had taken over the activities of hospital from respondent No.3 w.e.f. 01.12.2012 and respondent No.1-workman had joined the petitioner-hospital from 01.12.2012 as a fresh entrant. It is further submitted that the findings of the learned Tribunal below on the issue of relationship of employer and employee between the parties as well as the finding that respondent No.1-workman had worked for more than 240 days, was incorrect as respondent No.1 had joined as a fresh entrant on 01.12.2012 and upto 07.06.2013, he had not worked for 240 days; therefore, he was not entitled to any relief whatsoever. In this regard, learned counsel for the petitioner has referred to Annexure P-6, which is a copy of letter dated 01.12.2012 (Ex. WX).

With the afore-said submissions, learned counsel for the petitioner has prayed for setting-aside the impugned award.

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

13. In the instant case, there is no dispute about the fact that respondent No.1-workman was employed with respondent No.3 since 1999 and he worked with respondent No.3 upto 30.11.2012. There is also no dispute about the fact that on 01.12.2012, the petitioner had taken over the Management of the hospital from respondent No.3, herein. The petitioner claims that from 01.12.2012, the respondent No.1 was taken as a fresh entrant and till the time of termination of his services i.e. 07.06.2013, respondent No.1 had not worked for 240 days; therefore, he was not entitled

to any relief. The petitioner places reliance upon Annexure P-6, which reads as under :-

“CHANGE OF MANAGEMENT

This is to inform all the employees that with effect from 01.12.2012 the affairs of the Hospital will be managed by M/s Cygnus Medicare Pvt. Ltd. under the name of the Cygnus J.K. Hindu Hospital.

Accordingly, with effect from 01.12.2012, all the employees of the Hospital will be working under supervision and control of M/s Cygnus Medicare Pvt. Ltd. on the same terms and conditions of employment as before.

Sd/-

Sd/-

For JK Hindu Charitable Hospital For Cygnus Medicare Pvt. Ltd.”

14. The above extracted document (Exhibit WX) clearly shows that the same relates to Change of Management, inasmuch as that M/s Cygnus Medicare Pvt. Ltd. had taken over the Management of the hospital, which was earlier being run by respondent No.3.

15. A perusal of the above extracted letter would leave no manner of doubt that with effect from 01.12.2012, all the employees of the hospital were taken under the supervision and control of M/s Cygnus Medicare Pvt. Ltd. on the same terms and conditions of employment as before. Since all the employees working in the hospital (including respondent No.1, herein) were taken under the supervision and control of the petitioner, herein and that too, on the same terms and conditions of employment as were existing earlier; accordingly, the same cannot be considered as a new service altogether. The learned Tribunal below has rightly rejected the contention of the petitioner by observing that had the respondent No.1 been taken as a new or a fresh entrant, then atleast, a fresh appointment letter should have been issued to him. Neither before

this Court nor before the learned Tribunal below, any fresh appointment letter issued to respondent No.1, herein had been placed on record. In the absence of the same, no fault can be found with the findings returned by the learned Tribunal below that respondent No.1 has been an employee of the hospital since 15.01.1990 and changing over of Management has not affected his rights in any way.

16. Once, it is held that respondent No.1 had continued to be an employee since 1990 till the date of his termination from services; accordingly, there can also be no dispute that respondent No.1 had rendered continuous service i.e. 240 days of work under the Management in the year preceding his termination. Furthermore, since the petitioner had failed to produce any material before the learned Tribunal below that while terminating the services of respondent No.1, the compliance of Section 25-F of the Industrial Disputes Act, 1947 was made; therefore, it has to be held that the services of respondent No.1 were terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947.

17. As regards the relief of reinstatement and other consequential benefits as granted by the learned Tribunal below is concerned, it would be appropriate to refer to the judgment rendered by the Hon'ble Supreme Court in the case of "**Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (2013) 10 SCC 324**" wherein, it has been held as under:

"38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

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38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Articles 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave

*injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in **Hindustan Tin Works (P) Ltd. v. Employees (1979) 2 SCC 80.***

*38.7. The observation made in **J.K. Synthetics Ltd. v. K.P. Agrawal (2007) 2 SCC 433** that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches (1979) 2 SCC 80, (1980) 4 SCC 443 referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."*

When the impugned award granting relief of reinstatement with continuity of service and full back wages is tested on the anvil of the decision in **Deepali Gundu Surwase (supra)**, the same cannot be faulted with.

18. Considering the peculiar facts and circumstances of this case and also the judgment rendered by the Hon'ble Supreme Court in **Deepali Gundu Surwase's case (supra)**, I am of the considered view that the learned Tribunal below was justified in granting reinstatement and other benefits to respondent No.1.

19. 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.*

20. Keeping in view the above said principles and also considering the totality of circumstances, this Court is of the opinion that there is no scope for interference in the factual finding recorded by the learned Tribunal below and the present writ petition is accordingly dismissed.

21. No other point has been urged.

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

October 04, 2023

gurpreet

Whether speaking/reasoned:

Whether reportable:

(HARSH BUNGER)
JUDGE

Yes/No

Yes/No