

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

***CWP-16768-2023 (O&M)***  
**Date of Decision: 04.08.2023**

BIRWATI

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT-III, FARIDABAD AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Deepak Sonak, Advocate  
for the petitioner.

**HARSH BUNGER, J. (ORAL)**

1. Petitioner-workman (Birwati W/o Karambir) has filed this petition under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of *certiorari* for setting aside the impugned award dated 31.01.2023 (Annexure P-3) passed by respondent No.1-Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad; whereby the reference of the industrial dispute has been decided against her.

A further prayer has been made for issuance of a writ in the nature of *mandamus* for directing the respondents to reinstate the petitioner with continuity of service and full back wages.

2. Briefly, the petitioner raised an industrial dispute qua her illegal termination by serving a demand notice dated 23.02.2017, which was subsequently referred to Industrial Tribunal-cum-Labour Court-III, Faridabad (in short 'the Tribunal') for adjudication.

3. In the claim statement, petitioner claimed that she was working with respondent-Forest Department as *Mazdoor* in Reserve Forest Area of Palwal since year 2005 and she continuously worked upto August, 2016 when suddenly her services were terminated in an illegal and arbitrary manner by adopting unfair labour practice. It was stated that during the long tenure of 11 years of her service, the State of Haryana has framed Policy of regularization of employees who were having service of more than 10 years in his/her credit, but the respondents have never considered the name of the petitioner, who remained as daily wager during this tenure. Petitioner alleged exploitation and claimed that though the respondent-Forest department is liable to regularize her as she fulfills the criteria, however when the petitioner asked for regularization of her services then her services were terminated. Petitioner stated that earlier respondents were paying wages to her on Muster Roll but later on, they stopped payment on Muster Roll. Petitioner claimed that her termination is illegal, unjustified and against principles of natural justice and contrary to the provisions of the Industrial Disputes Act, 1947 (in short, 'the 1947 Act'). Accordingly, the petitioner prayed that she may be reinstated with full back wages and continuity of service.

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

- a) *There was no relation of employer and workman between the respondent-department and petitioner;*
- b) *The Forest Department adopted piece rate contract system from the year 2003 and does not engage labour directly. The work is either executed through village Forest Committee or through contractors;*
- c) *The petitioner-workman was never appointed as Mazdoor in Reserve Forest Area of Palwal from July, 2005 and never worked up to August 2016, as alleged by petitioner;*
- d) *The petitioner was never appointed against any regular post;*
- e) *The petitioner has not been engaged for all twelve preceding calendar months continuously during any year;*
- f) *The petitioner has not worked for 240 days in twelve preceding calendar months from the date of dispute (August 2016) with the respondent-department.*

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

- 1. *Whether the services of the lady worker were terminated illegally? If so, to what relief she is entitled to ? OPW*
- 2. *Whether there exists no relationship of employee and employer between the claimant and respondents? OPR*
- 3. *Whether the present claim is bad on account of non joining of the Village Forest Committee and the contractors, with whom, the workman had worked, as alleged in para no.5 of the preliminary objections of the written statement? OPR*
- 4. *Relief.”*

6. In order to prove her case/claim, the petitioner/workman-Birwati, examined herself as WW1 and also examined one Vikram (summoned witness) as WW2 and relied upon the following documents in her documentary evidence :-

| <b><i>Sr. No.</i></b> | <b><i>Exhibit</i></b> | <b><i>Document</i></b>                                                                                                  |
|-----------------------|-----------------------|-------------------------------------------------------------------------------------------------------------------------|
| <i>1</i>              | <i>W1</i>             | <i>Copy of order of CWP No.28362 of 2013 passed by this Court.</i>                                                      |
| <i>2</i>              | <i>W2</i>             | <i>Copy of Office order No.62 dated 31.03.2015 passed by Sh. Sunder Lal, H.F.S., Divisional Forest Officer, Palwal.</i> |
| <i>3</i>              | <i>W3</i>             | <i>Copy of failure report dated 31.03.2017 of Assistant Labour Commissioner, Palwal.</i>                                |
| <i>4</i>              | <i>W4</i>             | <i>Copies of statements of witness and record produced in the case titled as Prempal Vs. D.F.O. Palwal and others.</i>  |
| <i>5</i>              | <i>WW2/1</i>          | <i>Copy of letter dated 06.07.2000 for implementation of contract system in Forest Department, Haryana.</i>             |
| <i>6</i>              | <i>WW2/2</i>          | <i>Copy of FIR No.0008 dated 05.01.2017.</i>                                                                            |
| <i>7</i>              | <i>WW2/3</i>          | <i>Copy of certificate issued by Divisional Forest Officer.</i>                                                         |
| <i>8</i>              | <i>W5</i>             | <i>Copy of legal notice dated 20.11.2012.</i>                                                                           |

Thereafter, the petitioner-Workman closed her evidence on 20.01.2022.

7. On the other hand, the respondents have examined one Amardeep, Forest Ranger, Forest Department, Palwal as RW1 and have also adduced following documents in their documentary evidence :-

| <b><i>Sr. No.</i></b> | <b><i>Exhibit/s</i></b> | <b><i>Document</i></b>                                                        |
|-----------------------|-------------------------|-------------------------------------------------------------------------------|
| <i>1</i>              | <i>R1</i>               | <i>List of documents (Annexure-1)</i>                                         |
| <i>2</i>              | <i>R2 &amp; R3</i>      | <i>Copies of attendance record of Birwati along with copies of cash book.</i> |
| <i>3</i>              | <i>R4</i>               | <i>Copy of letter dated 02.06.2011</i>                                        |

|   |    |                                                                                                                                                       |
|---|----|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | R5 | <i>Copy of certificate issued by Sh. K.C. Meena, I.E.S. Chairman, Forest Development Agency, Palwal along with list of Village Forest Committees.</i> |
| 5 | R6 | <i>Copy of bill.</i>                                                                                                                                  |
| 6 | R7 | <i>Copy of letter dated 06.07.2000 for implementation of contract system in Forest Department, Haryana.</i>                                           |
| 7 | R8 | <i>Copy of letter Memo no.4295-Pt-5-2003/23675 dated 22.10.2003.</i>                                                                                  |

Thereafter, the respondents evidence was closed on 11.10.2022.

8. Vide impugned award dated 31.01.2023 (Annexure P-3) passed by the Tribunal; the reference of the industrial dispute has been decided against the petitioner-workman.

9. Being aggrieved against the impugned award dated 31.01.2023 (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 on daily wage basis in the respondent-Forest department as Labourer (Mazdoor) in the year 2005 and she continuously worked till August, 2016, when suddenly her services were terminated in an illegal and arbitrary manner without following the mandatory provisions of the Act, 1947. It is submitted that the petitioner has worked continuously in the department from the date of her initial appointment and she was appointed directly and always worked under the direct control and supervision of the respondent-department and payment to the petitioner was always made by respondent-department. It is next submitted that the petitioner never worked under any contractor or Village Forest Committee. It is stated that the petitioner worked for more than 240 days in the last 12 months preceding her termination and no proper attendance register/Muster Roll was

maintained by respondent-department nor any such record was produced by the respondent-department. It is contended that in the absence of any contract between the contractor/Village Forest Committee and respondent-department, the workman is an employee of department. It is also contended that an adverse inference should have been drawn against respondent-department for not producing record. Accordingly, counsel for the petitioner prays that the impugned award dated 31.01.2023 (Annexure P-3) passed by the Tribunal, may be set aside 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 petitioner and perused the paper-book with his able assistance.

12. It would be apposite to refer to a few judicial pronouncements, as would be germane to the issue in hand.

13. While considering an issue of existence of relationship of employer and employee between the parties, in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu & 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..."**

**In *Kirloskar Brothers Limited v. Ramcharan* 2023(1) SCC**

**463, Hon'ble Supreme Court held as under:-**

*"4.5 Thus, as observed and held by this Court, neither Section 10 of the CLRA Act nor any other provision in the Act, expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or any other work in any establishment and consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. It has further been observed and held by this Court in the aforesaid decision that on issuance of prohibition notification under Section 10(1) of the*

*CLRA Act, prohibiting employment of contract labour or otherwise, in case of an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefits thereunder.*

*4.6 In the present case, neither any notification under Section 10(1) of the CLRA Act has been issued prohibiting the contract labour, nor there are allegations and/or even findings that the contract is sham and bogus and/or camouflage.*

xxx

xxx

xxx

*4.8 Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand and in the absence of any notification under Section 10 of the CLRA Act and in the absence of any allegations and/or findings that the contract was sham and camouflage, both the Industrial Tribunal as well as the High Court have committed a serious error in reinstating the contesting respondents and directing the appellant - principal employer to absorb them as their employees. The parties shall be governed by the CLRA Act and relief, if any, could have been granted under the provisions of the CLRA Act and not under the MPIR Act.*

14. Further, while considering an issue as to whether the workman had completed 240 days of work under the management in terms of section 25B, so as to attract provisions of section 25F of the Industrial Disputes Act,

1947, in the case of *Surendranagar District Panchayat v. Dahyabhai Amarsinh*, 2005(8) SCC 750, Hon'ble Supreme Court held as under:-

*“9. To attract the provisions of Section 25F, one of the conditions required is that the workman is employed in any industry for a continuous period which would not be not less than one year. Section 25B of the Act defines continuous service for the purposes of Chapter V-A "Lay-off and Retrenchment". The purport of this Section is that if a workman has put in an uninterrupted service of the establishment, including the service which may be interrupted on account of sickness, authorised leave, an accident, a strike which is not illegal, a lock-out or cessation of work, that is not due to any fault on the part of the workman, shall be said to be a continuous service, for that period. Thus the workman shall be said to be in continuous service for one year i.e., 12 months irrespective of the number of days he has actually worked with interrupted service, permissible under Section 25B. However, the workmen must have been in service during the period, i.e., not only on the date when he actually worked but also on the days he could not work under the circumstances set out in sub-section (1). The workman must be in the employment of the employer concerned on the days he has actually worked but also on the days on which he has not worked. The import of sub-section (1) of Section 25B is that the workman should be in the employment of the employer for the continuous, uninterrupted period for one year except the period the absence is permissible as mentioned hereinabove. Sub-section (2) of Section 25B introduces the fiction to the effect that even if the workman is not in continuous service*

*within the meaning of Clause (i) of Section 25B for the period of one year or six months he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) of sub-section (2). By the legal fiction of sub-section 2(a) (i), the workman shall be deemed to be in continuous service for one year if he is employed underground in a mine for 190 days or 240 days in any other case. Provisions of the Section postulate that if the workman has put in at least 240 days with his employer, immediately prior to the date of retrenchment, he shall be deemed to have served with the employer for a period of one year to get the benefit of Section 25F.*

*10. For the purposes of calculation of number of days worked by the employee, by fiction his days of absence from work have been included if the workman has been laid off under an agreement or as permitted by Standing Orders made under the Industrial Employment (Standing Orders) Act 1946 (20 of 1946), or under the Industrial Disputes Act 1947, or in any other law applicable to the industrial establishment; (ii) has been on leave with full wages, earned in the previous year; (iii) has been absent due to temporary disablement caused by accident arising out of and in the course of employment ; and (iv) has been on maternity leave, in case the employee is a female, however, that the total number of such maternity leave does not exceed 12 weeks.*

*xxx*

*xxx*

*xxx*

*19. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer*

*for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The Courts below have wrongly drawn an adverse inference for non production of the record of the workman for ten years. The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25F of the Industrial Disputes Act. The workman has never contended that he was regularly employed in the Panchayat for one year to claim the uninterrupted period of service as required under Section 25B(1) of the Act. In the fact and situation and in the light of the law on the subject, we find that the workman-respondent is not entitled for the protection or compliance of Section 25F of the Act before his service was terminated by the employer. 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 been proved...”*

15. Coming to the case in hand; the Tribunal vide the impugned award dated 31.01.2023 (Annexure P-3) has returned the following findings:-

*“14. On appreciation of the evidence led by both the parties and after hearing the rival contentions of learned ARs for the parties, the position which emerges is that it is the case of claimant that she was appointed as “Mazdoor” by the respondents in the Reserve Forest Area of Palwal in the year 2005 and she had worked continuously till August 2016 and thereafter her services were terminated by respondents in an illegal and arbitrary manner. On the other hand, according to the respondents, claimant was never engaged directly by the respondents. She had never been appointed on any sanctioned post. Rather she had worked with the respondents either through contractors or through Village Forest Committees. Respondents also claimed that the claimant had not worked with the*

*respondents for a period of 240 days preceding the 12 calendar months from the date of her alleged termination.*

*It is well settled law that the onus of proving the relationship of employee and employer and continuous working of 240 days during 12 calendar months immediately preceding the date of illegal termination of service, lies upon the claimant.*

*15. to 20.        xxx                    xxx                    xxx*

*21.        In view of the above discussed legal position, now it is to be seen whether the claimant has succeeded to prove the relationship of employee and employer between her & the respondents and whether she had worked with respondents for 240 days in preceding 12 calendar months from the alleged date of termination of her service by the respondents. This Court finds that apart from her own oral testimony as WW1, claimant has not produced any other cogent and satisfactory oral or documentary evidence which could prove the fact that she was ever engaged by the respondents as a muster roll daily labourer or otherwise worked with respondents on daily wages since year 2005 till August 2016 or that she had worked continuously for a period of 240 days in a year preceding date of her alleged termination by the respondents. No doubt that claimant has also examined one other witness Vikram S/o Satbir Singh, however he is a formal witness from the office of D.F.O. Palwal who had produced the summoned record. No appointment letter, wages slip or record of engagement of claimant by the Forest Department has been produced on record by the claimant. It is improbable that claimant who has claimed that she had worked with the respondents for such a long period would not possess any documentary proof of her engagement and period of work she had under taken with her employer. Even no co-worker has been examined by the claimant in support of her claim. Statement of claimant*

*in the shape of affidavit Ex.WW1/A cannot be held sufficient evidence to come to the conclusion that claimant was engaged by the respondents in the year 1990 or that he had worked continuously with the respondents till August 2016. Workman during her cross-examination admitted that she is not having any identity card or appointment letter issued by the department (Forest). She further stated that she was not appointed on any post by the Forest Department. However, she voluntarily stated that she had worked as a “Mazdoor”. She further admitted that she has not worked on any sanctioned post in the Department.*

*On the other hand respondents have proved details of attendance record of claimant from year 2014-2015 till year 2016-17 (prepared as per cash book) alongwith copies of cash book as Ex.R2 & Ex.R3. A perusal of the same reveals that present claimant had worked with respondents between period December 2014 till December 2016 either through contractors or through Village Forest Committees. She had never worked continuously for 240 days in any year.*

*It has been proved on record from the evidence led by the respondents that after year 2003 as per the directions of Haryana Government, a piece rate of contract system was adopted by the Forest Department and the work was being executed either through contractors or through Village Forest Committees. Necessary entries were being made by the Forest Department in the cash book after making payment as per the details submitted by the contractors/Village Forest Committees. There is nothing on record to suggest that attendance record of claimant produced by respondents is false and fabricated. Hence, there is no reason to disbelieve the same.*

22. *In view of my above detailed discussion, this Court considers that the evidence led by the lady-worker is not at all sufficient to prove her case/claim. Lady-worker has failed to produce any cogent and satisfactory evidence which could prove that she was engaged by the respondents as daily wage labourer as per muster rolls system in year 2005 and worked till August 2016. Claimant has failed to prove that there was relationship of employee and employer between the claimant and respondents. She has also failed to prove that she had worked continuously for a period of 240 days in twelve calendar months preceding the date of her alleged termination by the respondents. Thus, she is not entitled to the protection of Section 25-F of the I.D. Act. Accordingly, issue No.1 is decided against the claimant and in favour of respondents and issue no.2 is decided in favour of respondents and against the claimant.”*

16. A perusal of the above extracted findings of Tribunal would make it evident that the petitioner-workman failed to discharge the onus placed upon her of proving employee-employer relationship nor it was proved that the petitioner-workman had completed 240 days work under the Management in terms of section 25B of 1947 Act, so as to attract the provisions of section 25F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by Forest Department since 2005 till August, 2016 or any order in that regard was produced; even no co-worker has been examined by petitioner-workman in support of his claim. Rather, the petitioner-workman had admitted in his cross-examination that neither any identity card nor any appointment letter was issued by Forest Department. Thus, once the petitioner-workman had failed to prove employee-employer relationship and / or that he had

completed 240 days work under the Management, no relief could have been granted to her.

17. As regards the plea of the petitioner that adverse inference be drawn against respondent-department for not producing Muster Rolls, it is observed that apart from the bare plea of non-production of muster roll by respondent-department; there is no plea of the petitioner that respondent-department has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent-department. 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...”*

18. It is trite that this court, in such matters, exercises certiorari jurisdiction, the peripheries of which stand authoritatively delineated in ***Syed Yakoob v. K. S. Radhakrishnan, AIR 1964 Supreme Court 477*** :

*"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 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; 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 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 case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."*

19. Upon considering the facts and circumstances of this case and also the findings returned by the learned Industrial Tribunal in the light of the legal position indicated above, I do not find any illegality or infirmity with the impugned award dated 31.01.2023 (Annexure P-3), which may call for any interference by this Court, while exercising its writ jurisdiction. Accordingly, the instant writ petition is dismissed in *limine*.

20. No other point has been urged.

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

**August 4<sup>th</sup>, 2023**  
Gurpreet/Apurva/Himani

**(HARSH BUNGER)**  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No