

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11182-2013 (O/M)

Date of Decision: 26.07.2023

Lakhmir Singh

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal and Labour Court, Union
Territory, Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. S.K. Sud, Advocate
for the petitioner.

Mr. Chandandeep Singh, Advocate
for respondent No. 5.

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HARSH BUNGER, J.

Petitioner (Lakhmir Singh) 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 24.08.2011, published on dated 12.10.2011 (Annexure P-12) passed by Ld. Industrial Tribunal-cum-Labour Court, Chandigarh; whereby the reference of the industrial dispute raised by petitioner regarding termination of his services, has been answered against him.

2. Briefly, petitioner (Lakhmir Singh) raised an industrial dispute by serving Demand Notice dated 20.11.2001. The said dispute was referred for adjudication to the learned Industrial Tribunal-cum-Labour Court, Chandigarh (hereinafter referred to as 'the Tribunal') under section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter

referred to as '1947 Act'). Demand notice was got treated as statement of claim.

3. As per the petitioner, he was appointed as Machine Operator- III on daily wage basis in January, 1998 by Modern Food of India Ltd. (hereinafter referred to as 'respondent-Management'). Petitioner claimed to have worked continuously upto 15.10.2001 and his services were terminated on 16.10.2001 in an illegal and arbitrary manner by adopting unfair labour practice. Petitioner claimed that junior to him had been retained in service and even new appointments had been made by management therefore his services were terminated in violation of Sections 25-F, 25-G and 25-H of 1947 Act. Accordingly, petitioner prayed for reinstatement in service with full back wages and continuity of service.

4. The aforestated claim of the petitioner-workman was opposed by the respondent-Management by submitting its reply. The respondent-Management stated that it is engaged in manufacturing of bread and has sufficient number of regular employees, however to meet the casual and varying demand of the market, the respondent-management occasionally employs labour to meet the requirement of the market. It was further stated that the petitioner-workman (Lakhmir Singh) was never engaged on daily wage basis and it was denied that he worked for 4 years continuously. It was submitted that petitioner was engaged as casual labourer at the time of requirement. On 16.10.2001, no casual work was available, hence he could not be provided work and thereafter he never reported for work. It was also stated that the

petitioner had not rendered continuous service of one year under Section 25-B of 1947 Act, therefore, there was no question of compliance of Section 25-F of 1947 Act. Other averments/allegations made by petitioner were denied and prayer was made for dismissal of claim of petitioner.

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

- “1. Whether the services of the workman were terminated illegally by the management; if so, to what effect and to what relief the workman is entitled to? OPW*
- 2. Whether the reference is bad for mis-joinder of the parties? OPM*
- 3. Whether the reference is bad for non-joinder of the necessary parties? OPM*
- 4. Relief.”*

6. In order to prove his case/claim, the petitioner/workman-Lakhmir Singh, examined himself as AW-3. The petitioner-workman also examined Sh. Surjit Sharama, Enforcement Officer as AW-1, Sh. Surinder Kumar, UDC, Office of Employees State Insurance Corporation, Chandigarh as AW2 and Sh. DK Bajaj, Accounts Manager of the Management as AW4. Thereafter, the petitioner-Workman closed his evidence.

7. On the other hand, the respondents also examined Sh. D.K. Bajaj, Accounts Manager as MW1. Thereafter, the respondents evidence was closed.

8. After considering the case of respective parties and also the material/evidence on record; Learned Tribunal below, vide impugned award dated 12.10.2011 (Annexure P- 12), decided the reference against the petitioner-workman.

9. Being aggrieved against the impugned award dated 12.10.2011 *ibid*, the petitioner has filed the instant writ petition before this Court.

10. I have heard learned counsels for the respective parties and perused the paper-book with their able assistance.

11. In the instant case, it is the pleaded case of petitioner that he was appointed in the respondent-Management as Machine Operator-III in January, 1998 and he continuously worked till 15.10.2001, when suddenly his services were terminated in an illegal and arbitrary manner without following the mandatory provisions of 1947 Act. On the other hand, it was stand of respondent-Management that petitioner was engaged as a casual labourer and that the petitioner had not rendered continuous service in terms of Section 25-B of 1947 Act, therefore, petitioner is not entitled to protection of Section 25-F of 1947 Act. Thus, in order to seek relief in terms of Section 25-F of 1947 Act, the petitioner was required to prove that he worked for 240 days in the 12 months preceding the date of his alleged termination by respondent-Management.

12. 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.

13. Coming to the case in hand, vide impugned award dated 12.10.2011 (Annexure P-12), Ld. Tribunal below has returned the following findings:-

“.....Shri Charandeep Singh has referred to zimini order dated 24th September, 2008 passed by this Court whereby only DK Bajaj witness was ordered to be summoned along with record for the period January, 2000 to October 2001 as mentioned in application of the workman. Record was accordingly produced by the witness and only relevant period for accounting of 240 days as ordered by the Court was proved in evidence which shows that in twelve calendar months preceding 16th October, 2001 the workman actually worked for 153 ½ days in the calendar year 2001 and for twenty five days in December 2000. Total comes to 208 days as such the workman failed to

complete number of 240 days and the management did not violate the mandatory provisions of ID Act. Even otherwise as admitted by the workman in his cross-examination he does not have any qualification of Machine Operator. He did not have any appointment letter showing that he was appointed as Machine Operator. He used to work as casual labourer some times in Sales and some time in Production Department. In the middle of his cross-examination he categorically admitted that as per attendance record Exhibit W3 from January 2000 to October 2001 he had not completed 240 days in preceding twelve months from the date of his alleged termination. He admitted that establishment where he had been working has ceased to exist and he was admittedly withdrawn the amount Rs. 1,887 from the provident fund account no. CHN 0629068. He admitted his signatures on final settlement of letter dated 24th October, 2001 Exhibit M2 showing receipt of Rs. 3,124 towards final settlement of CPF. The workman has failed to prove any violation of law by the management and the establishment stands closed. Alleged offer of post of Mali to the workman by the management before the Conciliation Officer does not mean that the management admitted the right of employment of the workman in the conciliation proceedings. Reinstatement on any post is not relevant at this stage because the establishment concerned has ceased to exist. Offer to the post of Mali in the conciliation proceedings has no relevance regarding the case on merits. The workman is not

entitled to relief. Reference is liable to be answered against him.

12. In the instant case the witness summoned by the workman produced the record as ordered by the Court relating to period of one calendar year preceding the alleged retrenchment of the workman. Exhibit W3 contains copies of attendance register from January 2000 to October 2001. The workman was disengaged on 16th October, 2001. The calendar year relevant for completing 240 days is the period of twelve calendar months preceding 16th October, 2001. Attendance register Exhibit W3 and wage register Exhibit W4 for the relevant period show that the workman did not complete number of 240 working days in any calendar year and more particularly in the calendar year preceding 16th October, 2001. Authorities quoted on behalf of the management are applicable in this. There is no force in the arguments advanced on behalf of the workman containing that the management has violated the provisions of Section 25-F of the ID Act. The concerned establishment has ceased to exist. There is question of reemployment of workman. The management has not violated any provision of law. The demand raised by the workman in the demand notice is neither genuine nor justified. This issue is decided against the workman and in favour of the management.

Issue No. 2 and 3

13. No arguments have been advanced on the issue of non-joinder or mis-joinder of the parties.

Both these issues are decided against the management.

Relief

14. In the light of findings on issue No. 1 above, this reference is declined and answered against the workman. Appropriate Government be informed. File be consigned to the record room.”

14. A perusal of the above extracted findings of Tribunal would make it evident that the petitioner-workman failed to discharge the onus placed upon him 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 25-B of 1947 Act, so as to attract the provisions of section 25-F of 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by the respondent-Management in the year 2000-2001 or any order in that regard was produced. It was rather admitted by the petitioner-workman that the establishment which engaged his services, had ceased to exist. 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 him.

15. As regards violation of Section 25-G and Section 25-H of 1947 Act is concerned, the petitioner had failed to substantiate the said plea before the Tribunal below as well as before this Court.

16. As regards the plea of the petitioner that adverse inference be drawn against respondent-Management for not producing 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 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 respondent-Management; there is no plea of the petitioner that respondent-Management has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent-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...”

17. 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.***

18. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for interference in the findings returned by the Tribunal below in exercise of writ jurisdiction by this

Court. Therefore, the instant writ petition fails and the same is accordingly dismissed

19. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

26.07.2023
sjks

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