

CWP-17090-2011 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17090-2011 (O&M)
Date of Decision: 07.08.2023

Satish Kumar

...Petitioner

Versus

The Presiding Officer, Labour Court, Ambala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ajay Chaudhary, Advocate for
Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Arvind Seth, Advocate
for respondents No.2 to 4.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Satish Kumar) 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 03.05.2011 (Annexure P-1) passed by learned Labour Court, Ambala; whereby the reference of the industrial dispute raised by petitioner regarding termination of his services 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, Petitioner (Satish Kumar) raised an industrial dispute regarding termination of his services by respondent No.2- Haryana State Co-operative Supply and Marketing Federation Limited (in short 'respondent No.2-Management').

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3. As per the claim statement filed by petitioner, he claimed that he was appointed with respondent No.2-Management as *Chowkidar* at Ladwa in August, 1998 as a daily wager and was paid Rs. 1,605 per month. Petitioner claimed that subsequently he was given the work of *Mistri* in the Rice Sheller of respondent No.2 at Ladwa and he was paid Rs. 3,000/- p.m. Petitioner claimed to have worked upto 31.03.2004, when suddenly his services were terminated in an illegal and arbitrary manner. Petitioner claimed to have worked for 240 days and stated that his services were terminated in violation of Section 25-F of Industrial Disputes Act, 1947 (in short '1947 Act'). Accordingly, petitioner prayed that he may be reinstated with continuity of service and full back wages.

4. The aforestated claim of the petitioner-workman was opposed by the respondent No.2-Management by *inter alia* submitting that the workman was employed through a contractor and he was never directly working under the respondent No.2-Management. It was stated that petitioner never worked continuously and after 31.03.2004, the Rice Sheller was given on lease and thus there was no question of employment by respondent No.2-Management. Further, claim for reinstatement and back wages was stated to be false.

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

“1. *Whether the termination of the services of workman is liable to be set aside being wrong illegal, null and void etc. and the workman is entitled to reinstatement in service with full back wages and all the benefits including the continuity of service? OPW*

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2. *Whether the workman has no locus-standi to file the present claim statement? OPM*
3. *Whether the reference is time bar? OPM*
4. *Whether the claim statement is not maintainable in the present form? OPM*
5. *Whether the workman is estopped from filing the claim statement? If so its effect OPM*
6. *Whether the workman has no cause of action to file the present claim statement? OPM*
7. *Relief.”*

6. In order to prove his case/claim, the petitioner/workman- Satish Kumar, examined himself as WW-1 and relied upon his affidavit Ex. WW-1/A. On the other hand, the respondents have examined Rajinder Gupta as MW-1. Thereafter, the evidence was closed.

7. After considering the case of respective parties and also the material on record; the learned Labour Court below vide impugned award dated 03.05.2011 (Annexure P-1) decided the reference of the industrial dispute against the petitioner-workman.

8. Being aggrieved against the impugned award dated 03.05.2011 (Annexure P-1) *ibid*, the petitioner has filed the instant writ petition.

9. Learned counsel for the petitioner while reiterating the stand of the petitioner before the Labour Court, submitted that the petitioner was appointed as Chowkidar in August, 1998; thereafter he was employed by the respondent No.2-Management in the Rice Sheller as Mistri and he continuously worked till 31.03.2004, when suddenly his services were terminated in an illegal and arbitrary manner without following the mandatory provisions of the 1947 Act. He submits that the petitioner worked in the respondent No.2-Management for more than 240 days in

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preceeding 12 months from the date of his termination in March, 2004. It is next submitted that the respondent No.2-Management was deducting EPF of the petitioner-workman under the name of Sushil Kumar which is sufficient to prove that the workman was in fact an employee of the respondent No.2-Management. Accordingly, counsel for the petitioner prays that the impugned award dated 03.05.2011 (Annexure P-1) passed by the Tribunal below be set aside and necessary relief be granted to him.

10. Learned counsel for the respondent No.2-Management submits that the petitioner was initially employed as *chowkidar* and later he worked in the Sheller through contractor from September, 2001 to August, 2002, from September, 2002 to March, 2003 and then from September, 2003 to March, 2004 under Krishan Lal, Raj Kumar and Pala Ram contractor. It is submitted that after March, 2004, the Sheller was given on lease. It is submitted that petitioner did not complete 240 days in any calendar year. Accordingly, prayer for dismissal of claim statement was made.

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

12. In the instant case, it is the pleaded case of petitioner that he was appointed in the respondent No.2-Managment as *Chowkidar* in August, 1998 and thereafter the respondent-department shifted/employed him in the Rice Sheller and that he continuously worked till 31.03.2004, when suddenly his services were terminated in an illegal and arbitrary manner without following the mandatory provisions of the 1947 Act. On the other hand, the stand of respondent No.2-Management was that the petitioner was a daily wager and initially he was engaged as a *chowkidar*, however, subsequently he served at the Sheller through different Contractors. It is the

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pleaded case of respondent No.2-Management that petitioner never completed 240 days work in any calendar year.

13. It is well settled law that the onus to prove existence of relationship of employee and employer between the parties is upon the workman. In ***“Workman 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 employeremployee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employeremployee 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

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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 the 1947 Act, i.e. the workman has worked under the 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 Amarsingh”, 2005(8) SCC 750.**

14. In the instant case, vide impugned award dated 03.05.2011 (Annexure P-1), learned Labour Court, Ambala; has returned the following findings:-

“Issue No.1

5. To prove this issue, workman tendered the affidavit Ex.WW-1/A as examination-in- chief. He stated that he worked continuously from 1.8.98 to 31.3.2004. After that his services were terminated abruptly and illegally. So far as the employment is concerned, it is admitted between the parties that the workman was employed on daily wages. He admitted during his cross-examination that he was a daily wager. He also stated that in the Sheller he was a helper. He changed his stand because in the claim statement he pleaded that he was employed as a Mistri.

6. For the management Rajinder Gupta appeared as MW-1 and stated that the workman had worked for 87 days in 1998, 29 days in 1999, 58 days in 2000 and 28 days in 2001. The

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workman was initially employed as Chowkidar thereafter he worked in the Sheller through contractor from September 2001 to August 2002, from September, 2002 to March 2003 and then from September, 2003 to March 2004 under Krishan Lal, Raj Kumar and Pala Ram contractor. After March 2004 the Sheller was given on lease. No notice was served on him he was a daily wager. He did not complete 240 days in any calendar year.

7. In the cross-examination the witness stated that no appointment and/or termination letter was given to the workman and he explained that since he was a daily wager, there was no need to issue any such letter.

8. AR for the workman relied on the document Ex-X stating that the management used to ask the workman to sign as Sushil Kumar and he got information under the RTI Act showing that Sushil Kumar had worked from March, 1999 to August, 2001. He also relied on the document Ex-Y, which is information given to the workman by the Employees Provident Fund Organisation. The account number of the workman was given and account number was shown to be entered in 2004. Both the said documents are of no avail to the workman because it is not believable that he was made to sign as Sushil Kumar though his name was Satish Kumar. No reason has been given by the workman for that and also no such thing was pleaded. Any evidence in that regard being out of pleadings is not admissible. The E.P.F. account started in 2004 and thus cannot be connected to the period of alleged service with the respondent. Rather this shows that the workman took employment some where else and he was given an account number in 2004.

9. The workman therefore, failed to prove that he had worked for 240 days in any calendar year much less in the year preceding alleged termination. He was a daily wager and since the Sheller was given away on lease his services were not required by the respondent.

10. This issue is decided against the workman."

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15. A perusal of the above extracted findings of Labour Court 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 respondent No.2-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 the respondent-department in the year 1998 or any order in that regard was produced. 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. As regards the contention of petitioner that he has an E.P.F. account number, the learned Labour Court has returned a finding that this E.P.F. account was started in the year 2004 and thus could not be connected with the period of alleged service of the petitioner-workman with the respondent No.2-Management.

It is required to be noticed here that although the petitioner has placed on record information gathered by him regarding E.P.F. deductions from his salary, however, even then the said information does not indicate that the petitioner had rendered 240 days service in 12 months immediately preceding the date of his alleged termination. Furthermore, respondent No.2-Management had taken a categorical stand that petitioner was not engaged directly but through different contractors.

It is apposite to state here that a perusal of the definition of “Employee” as provided under Section 2(f) along with Section 6 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 read with paragraph No.30 of the Employees’ Provident Funds Scheme, 1952

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would clearly indicate that the responsibility and statutory obligation is on the principal employer to remit the PF contributions even in respect of contractor's employees, therefore, it would not create a relationship of employer and employee between the Management and the Workman. In this regard, reference can also be made to the judgment rendered by the Delhi High Court in the case of ***Ranbir Singh Vs. M/s Sh. Ganga Ram Hospital 2015(23) S.C.T. 904.***

16. Further, 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

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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 issuance 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*

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17. Considering the totality of circumstances in light of the legal position indicated above, there is no scope for any interference in the impugned award dated 03.05.2011 (Annexure P-1); resultantly, the instant petition fails and the same is accordingly dismissed.
18. All pending application/s, if any, shall also stand closed.

07.08.2023

Himani

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(HARSH BUNGER)

JUDGE