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

**CWP-11718-2013**  
**Date of Decision: 17.11.2023**

Sukhmander Singh

....Petitioner

Versus

Industrial Tribunal, Bathinda through its  
Presiding Officer and another

....Respondents

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

Present : Mr. A.S. Pannu, Advocate for  
Mr. Vikas Singh, Advocate  
for the petitioner.

Mr. Rohit Rathee, Advocate for  
Mr. Ashish Yadav, Advocate  
for respondent No.2.

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

1. Petitioner (Sukhmander Singh) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in nature of Certiorari for quashing the award dated 21.11.2011 (Annexure P-4) passed by the learned Industrial Tribunal, Bathinda (hereinafter 'the Tribunal'), whereby the reference of industrial dispute raised by the petitioner regarding termination of his services has been answered against him and his claim has been rejected.

A further prayer has been made by the petitioner for directing reinstatement of the petitioner with continuity of service and full back

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wages.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication to the Tribunal below. The petitioner claimed that he was appointed as a Pump Operator and he served in that capacity for a period of nine years and one month and his services were terminated w.e.f. 01.04.1992. Petitioner claimed that while terminating his services, neither any show cause notice was issued nor any charge sheet was served upon him nor any retrenchment compensation was paid. Petitioner claimed that he was getting wages of Rs.1,800/- per month at the time of termination of his services, accordingly, the petitioner prayed for reinstatement in service and full back wages.

3. The aforesaid claim of the petitioner was contested by the respondent No.2-Municipal Council, Talwandi Bhai, District Ferozepur (hereinafter 'respondent-Management') by raising preliminary objection that the petitioner was not a workman in terms of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter '1947 Act') and neither respondent-Management was an Industry as defined under Section 2(j) of the 1947 Act. Objection regarding maintainability of the reference was also made by stating that in a previous reference No.74/87, which was decided vide award dated 03.05.1998 as well as an application No.12/89 under Section 33 (C) of the 1947 Act, the petitioner was reinstated on the post of fitter collie and he remained in service in that capacity till September, 1992 and thereafter, he voluntarily abstained from duty and no order of termination of services of the petitioner was passed, as alleged by him. On merits, respondent-Management denied the claim of the petitioner by submitting that the petitioner was unqualified for holding the post of Pump Operator,

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accordingly, prayer for dismissal of the claim of the petitioner was made.

4. On the basis of the pleadings of the parties, the Tribunal below framed the following issues:-

*“1. Whether the reference is not maintainable as alleged in preliminary objections?*

*2. Whether the reference is time barred?*

*3. Whether the order of termination of services of the workman is justified and in order?*

*4. Relief.”*

5. In order to prove his case/claim, the petitioner examined himself as WW-2, who tendered his affidavit Ex.WA/A along with the documents EXC. WA-11 and Ex. WA-2. Thereafter, he closed the evidence.

On the other hand, respondent-Management examined one Vijay Kumar, Accountant, M.C. Talwandi Bhai, District Ferozepur as MW-1, who tendered affidavit Ex. MW-1/A and also proved on record documents Ex. M-1 to Ex. M-6. Respondent-Management also examined one Ashok Kumar, Clerk, M.C. Talwandi Bhai, District Ferozepur as MW-2, who proved on record photocopy of letter and dispatch register, Ex. M-7 and Ex. M-8. Thereafter, respondent-Management closed the evidence.

6. Upon considering the material/evidence available on the record, the Tribunal below rejected the claim of the petitioner vide impugned award.

7. Being aggrieved against the aforesaid award, the petitioner has filed the instant Writ Petition before this Court.

8. I have heard learned counsel for respective parties and have also perused the paper book with their able assistance.

9. It is well established by now that the onus to prove the existence of relationship of employee and employer between the workman and the

Management and also the onus to prove the factum that the workman had

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rendered continuous service under the Management in terms of Section 25-B of the 1947 Act so as to attract the provisions of Section 25-F of the 1947 Act is on the workman.

10. In *Municipal Corporation, Faridabad v. Siri Niwas, 2004(4) SCT 211*, it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment.

In *M.P. Electricity Board v. Hariram, 2004(4) SCT 482*, the position was again reiterated in paragraph 11 as follows :

*"The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas, JT 2004(7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard :*

*"A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional*

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*non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."*

In ***Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors., 2005(2) SCT 404***, a three-Judge Bench of Hon'ble Supreme Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous.

In ***Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh, 2006(1) SCT 539***, it was held as follows:

*"So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in **Range Forest Officer v. S.T. Hadimani, (2002(3) SCC 25)** the onus is on the workman."*

The position was examined in detail in ***Surendranagar District Panchayat v. Dehyabhai Amarsingh, (2005(7) Supreme 307)*** and the view expressed in the cases of *Siri Niwas, M.P. Electricity Board(supra)* was reiterated.

11. In the instant case, the Tribunal below returned following findings:-

*"13. Reverting back to the fact of the case in hand, there is not an iota of evidence, what to talk of any cogent evidence to prove that claimant has worked continuously for 240 days preceding his termination. Various documents have been placed on record by the Management as well as workman. Claimant has claimed that he was appointed as Pump Operator but this version*

*of the claimant is not substantiated from any documentary evidence. Rather Ex. M-6 appointment letter dated 30.11.1984 makes it evident that vide resolution No. 366 dated 30.11.1984, he was appointed as Sewadar in the grade of Rs. 300/- plus allowances for a period of 89 days and in pursuance thereof, he joined with the Management/respondent, thereafter, he was appointed as fitter collie as daily wager @15/- per day vide letter Ex. M-8 dated 22.08.1998 and he joined as per the terms and conditions of the said appointment. He never worked continuously for 240 days at any point of time with the Management/respondent. His statement in this regard is also relevant. He has denied his appointment as Sewadar, in pursuance of the resolution No. 366 dated 30.11.1984, which is absolutely against the documentary evidence. Similarly, he also denied his appointment as fitter Collie. He has also claimed himself to be Pump Operator but there is nothing on the record to suggest that he was working as Pump Operator at the time of termination of his services. No doubt, he has placed on record Attendance Certificate Ex.WA-, in which he has shown to be employed as Pump Operator and worked as such from 17.09.1984 to 21.09.1984. In fact, he does not fulfill the minimum qualifications required for the post of Pump Operator. As is evident from Ex. M-3, minimum qualifications required for the post of Pump Operator are that a person should be Matriculate with two years Diploma Certificate as Electrician from I.T.I or equivalent or higher qualification if available from recognized institute. But he is not having any diploma or degree in the field of Electrician issued by recognized institute. Ex WA-II has been placed on record by the claimant according to which he passed I.T.I. in the Trade of Fitter. So, when he is not having basic qualifications for the post of Pump Operator he cannot be appointed as*

*Pump Operator. Moreover from the various documents it is clear that he worked as Sewadar intermittently. It is also well entitled that when the case of the claimant does not fall within the section 25 (B) or the I.D. Act, he is not entitled to any benefit provided under section 25-f of the I.D. Act, therefore, it can be said without any hesitation that order of termination of the services of the claimant is absolutely justified and in order and neither any notice/charge sheet was required to be served nor any enquiry was required to be conducted. Similarly, there was no need for payment of retrenchment compensation. Accordingly, both these issues are decided in favour of the Management/respondent and against the workman/claimant.*

**Issue No.2**

*14. onus to prove this issue lies upon the Management but during the course of arguments neither this issue has been pressed nor any arguments have been advanced by the Management. Accordingly, this issue is decided against the Management.*

**Relief**

*15. In view of my findings on the aforementioned issues, instant reference is answered in favour of the Management/respondent and against the workman/claimant. Consequently same is dismissed but with no order as to costs.”*

12. 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 that the petitioner-workman had completed 240 days' work under the Management in terms of Section 25-B of the 1947 Act, so as to attract the provisions of Section 25-F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by the respondent –Management or any order in that regard was

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produced in support of his claim, therefore, no relief could have been granted to him.

13. Neither before the Tribunal below nor before this Court, the petitioner has referred to any material/evidence on record to show that he had worked for 240 days in the 12 months preceding his termination as envisaged under Section 25-B of the 1947 Act.

14. 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

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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.*

15. Considering the totality of circumstances in the light of the legal principle indicated above, there is no scope for any interference in the

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impugned award by this Court in exercise of its writ jurisdiction, accordingly, the instant Writ Petition fails and the same is dismissed.

16. All pending applications (if any) shall stand closed.

17.11.2023  
*Himani*

(HARSH BUNGER)  
JUDGE

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|------------------------------|---|--------|
| 1. Whether speaking/reasoned | : | Yes/No |
| 2. Whether reportable        | : | Yes/No |