

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

CWP-16777-2023 (O&M)
Date of Decision: 04.08.2023

MUKESH KUMAR

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
LUDHIANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amandeep Singh Jawandha, Advocate
for the petitioner.

HARSH BUNGER, J.

1. Petitioner (Mukesh Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for quashing of the impugned Award dated 02.11.2022 (Annexure P-3) passed by the learned Presiding Officer, Industrial Tribunal, Ludhiana (here-in-after referred to as 'the Tribunal'); whereby, the reference of industrial dispute raised by the petitioner regarding termination of his services has been answered against him.

A further prayer has been made for directing the respondents-Management to reinstate the petitioner in service and also to grant him all consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Tribunal. The petitioner claimed that he was appointed as Sewerman with respondents No.2 and 3 (here-in-after called as 'the respondent-Management') in June, 2012. Petitioner claimed that his last drawn salary

was Rs.8400/- p.m. and his services were terminated orally on 03.09.2018. It was the pleaded case of the petitioner that he remained on leave for one month due to his acute illness and he submitted an application in this regard. After recovery from illness, when the petitioner reported for duty, he was not allowed to join. Petitioner further claimed that juniors to him had been retained in service and some other workmen in the same category had been appointed after his services were terminated; therefore, the petitioner claimed that his services were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (here-in-after called as 'the 1947 Act'). Accordingly, the petitioner prayed for reinstatement in service along with all consequential benefits.

3. The afore-said claim of the petitioner was contested by the respondents-Management, *inter alia*, on the plea that the petitioner had worked for less than 240 days during the preceding twelve calendar months from his alleged date of termination. It was stated that the petitioner was absenting from his duties in an un-authorized and illegal manner without seeking prior sanction of leave or intimation w.e.f. 01.08.2018. It was further stated that the Councillor of Ward No.12 made a complaint against the petitioner and others that they were not doing their duties properly and most of the time, they were found absenting; whereupon the matter was enquired into and it was found that the petitioner and other persons were absenting from duties without prior sanction of leave or intimation and accordingly, the petitioner was approached by the Management vide its letter dated 13.08.2018, whereby, he was asked to show cause for his un-authorized absence; however, he refused to accept that letter. Thereafter, another letter dated 06.09.2018 was sent by the Management, but he again

declined to receive the same. It is the stand of the respondents-Management that in the month of December, 2018, the petitioner gave an application that he had fallen sick and could not report for duty; however, he refused that he ever received any letter. It is the categoric stand of the respondents-Management that it is the petitioner who never reported for duty after 01.08.2018 so there was no question of termination of his services on 03.09.2018. The respondents-Management claimed that it is not a case of termination but of absenting from duties and voluntarily leaving the employment by the petitioner. It was also stated by the Management that the petitioner neither submitted any sick leave application nor any fitness certificate nor he reported for duty. Therefore, it was stated that there was no violation of the provisions of Sections 25-F, 25-G and 25-H of the 1947 Act. Accordingly, prayer for dismissal of the claim statement was made.

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

- “1. Whether the termination of the workman dated 03.09.2018 was illegal, wrong and against the principles of natural justice? OPW*
- 2. Whether the claimant has worked for less than 240 days during the preceding 12 months of his alleged date of termination ? OPW*
- 3. Whether the present case is not of a termination, but of voluntarily leaving the employment ? OPM*
- 4. Whether the reference is not maintainable due to mis-joinder of necessary parties ? OPM*
- 5. Relief.”*

5. In order to prove his case, petitioner-workman examined himself as WW-1 and submitted his affidavit Ex.W/A. He also proved the

document Ex.W1 in his testimony and thereafter, the evidence from the petitioner's side was closed.

6. On the other hand, the respondents-Management examined Sh. Parshotam Lal, XEN, Municipal Corporation, Ludhiana as MW-1, who tendered his affidavit Ex.MA and proved the documents Ex.M1/1 to Ex.M1/24 and thereafter, the evidence from the side of respondents-Management was closed.

7. The Tribunal below upon consideration of the material/evidence available on the record, answered the reference against the petitioner by holding that though the petitioner maintained that he could not attend his duties during the month of August, 2018 as he was indisposed; however, he did not move any application to the concerned authority in that regard nor produced any medical certificate. It has been further observed by the Tribunal below that the petitioner was earning his livelihood by working in some other concern; however, he concealed the said material fact in his pleadings and the evidence.

Apart from the above, the Tribunal has also held that the petitioner had failed to produce any cogent and convincing evidence that he had worked for 240 days prior to the date of his termination on 03.09.2018.

8. Being dissatisfied with the afore-said Award, the petitioner has filed the instant writ petition before this Court.

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

10. In the instant case, the petitioner had approached the Tribunal below on the plea that his services have been terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the 1947 Act.

11. It is 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 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 Cropn. v. Siri Niwas, 2004(4) S.C.T. 211*** and ***Surendranagar District Panchayat v. Dadyabhai Amarsinh, 2005(8) SCC 750.***

12. The Tribunal below, in para Nos.22 and 23 of the impugned Award, has held as under :-

“22. Having regard to my discussion above, it is held that the workman has miserably failed to adduce any worthwhile evidence that he worked for 240 days preceding the termination of service on 3.09.2018. The medical certificate Ex.W/1 does not go to help the case of the workman in any way. Firstly, the said medical certificate was delivered to the respondents in the month of December, 2018 despite the fact that the workman remained absent from his duty from 01.08.2018. Secondly, the alleged medical certificate Ex.W1 is nothing, but prescription slip and the workman remained hospitalized for one day only. Rather, the workman himself admitted that he did not produce any medical certificate issued by the doctor prescribing him rest at his residence. He also admitted in unequivocal terms that no written information was given to the respondents/employer that he was recommended medical rest by the concerned doctor. No doubt, respondents issued two letters dated 13.08.2018 and

06.09.2018 asking the workman to show cause for his unauthorized and illegal absence from duty, but the workman refused to receive the said letters for the reasons best known to him. Though, the workman approached the management in December, 2018 and moved the application that he could not attend the duty from 01.08.2018 as he had fallen sick, but he failed to turn up before the respondents after moving the application for the reasons best known to him. Thus, the present case does not pertain to termination of services of the workman, rather the workman absented from the duty unauthorizedly and willingly and, as such, voluntarily left his service with the respondents. It needs no reiteration that the workman failed to report for duty despite the issuance of two letters on 13.08.2018 and 06.09.2018 by the respondents calling upon him to show cause for his unauthorized and illegal absence from duty.

23. Besides this, it is held that the workman failed to place on the record any termination order dated 3.09.2018. Rather, it stands proved that the workman did not attend his job on 01.08.2018 and thereafter, till filing of the present petition. Astonishingly, the workman failed to attend his duty despite moving the application and the prescription slip in December, 2018 for the reasons best known to him. Thus, present case pertains to the abandonment of the duty by the workman and not of termination of his services by the respondents...”

13. A perusal of the above extracted findings of Tribunal below would make it evident that the petitioner-workman failed to discharge the onus placed upon him of proving employee-employer relationship nor it has 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 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 produced; even no co-worker has been examined by petitioner-workman in support of his claim.

14. Further, the plea of the petitioner that he could not attend his duty due to his ill health has not been believed by learned Tribunal below as the petitioner had failed to intimate the respondent-Management in that regard nor the petitioner produced any medical certificate in support of his said claim. Therefore, the learned Tribunal below held that the case does not pertain to termination of services of workman rather it is the workman who has absented from the duty unauthorizedly and voluntarily left the services. The aforesaid findings have not been dislodged by learned counsel for the petitioner.

15. As regards the plea of the petitioner that there has been a violation of the provisions of Sections 25-G and 25-H of the 1947 Act, learned counsel for the petitioner has failed to *prima facie* show as to who are the persons, who are junior to the petitioner, had been retained in service and/or the names/details of fresh hands as alleged to have been appointed by the Management after the termination of the services of the petitioner. Accordingly, in the absence of the material evidence, no finding can be returned on the afore-said contention of the learned counsel for the petitioner.

16. 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.*

17. No other point has been urged.
18. Considering the totality of circumstances as well as the legal position indicated above, I am of the considered view that there is no scope for any interference in the impugned Award; resultantly, the instant petition fails and the same is accordingly dismissed.
19. All pending application/s, if any, shall stand closed.

August 04, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No