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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 03.11.2023

Arun Kumar

....Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another

....Respondents

CORAM: HON’BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Dharamveer Phour, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Arun Kumar) 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 22.01.2020 (Annexure P-7) passed by the learned Industrial Tribunal-cum-Labour Court, Panipat (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 respondent No.2-Divisional Forest Officer, Seed Collection Range, Karnal (hereinafter ‘respondent-Management’) to reinstate the petitioner and to grant other consequential benefits.

Briefly, the petitioner raised an industrial dispute by submitting

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his claim before the Tribunal below. Petitioner claimed that he was appointed on 01.01.1998 and he worked under the respondent-Management. Petitioner claimed that his services were illegally terminated on 15.05.2007 despite the fact that he had completed more than 240 days continuous service. It was submitted that the services of the petitioner have been terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter '1947 Act'). Accordingly, prayer was made for reinstatement and for grant of other consequential benefits.

3. The aforesaid claim of the petitioner was contested by respondent-Management by submitting that the petitioner was engaged as a part time sweeper only for few hours a day. It was stated that the petitioner himself had left the service on 20.04.2004 without any intimation, accordingly, there was no occasion for serving any notice upon him or terminating him, 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 termination of services of workman Sh. Arun Kumar is legal and valid. If not so, to which relief, the workman is entitled? OPW

(2) Whether the management has not followed the principle ‘last come first go’? OPW

(3) Whether the respondent-management does not fall within the definition of ‘Industry’ under the Industrial Disputes Act? OPM

(4) Relief.”

5. In order to prove his case/claim, the petitioner/workman-Arun

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Kumar, examined himself as WW-1 and also examined one Vinod Kumar, Range Officer (Seed Collection) as WW-2.

On the other hand, the respondent-management examined one Vinod Kumar, Range Forest Officer, Seed Collection as MW-1 and tendered some documents.

6. The Tribunal below upon considering the material/evidence available on the record, rejected the claim of the petitioner. The findings returned by the Tribunal below can be summed up as under:-

(a) No evidence has been led by the claimant (petitioner herein) to prove that any appointment letter was issued to him.

(b) There is no documentary evidence that claimant (petitioner herein) had served under the respondent from 01.01.1998 up to 15.05.2007.

(c) The claimant (petitioner herein) admitted during his cross-examination that he was not having either the appointment letter or the termination letter.

(d) Claim statement filed by the claimant (petitioner herein) is barred by limitation.

(e) Claimant (petitioner herein) failed to prove that he had actually worked under the respondent for a period of 240 days during a period of 12 calendar months preceding the date with reference to which calculation is to be made and as such he was not entitled for the protection of the provisions of 1947 Act.

7. In the aforementioned circumstances, the petitioner has filed the

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instant Writ Petition before this Court.

8. Learned counsel for the petitioner submits that the Tribunal has erred in law and fact in rejecting the claim of the petitioner. It is submitted that the petitioner was working as mali-cum-chowkidar continuously for a period of 9 years i.e. from 01.01.1998 up to 15.05.2007 and his services have been terminated without complying with the provisions of Section 25-F of the 1947 Act. It is therefore submitted that the impugned award be set aside and the necessary instructions be issued to respondent-Management for reinstating the petitioner and for granting other consequential benefits.

9. I have heard learned counsel for the petitioner and perused the paper book.

10. 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 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.

11. 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..."

12. 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 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.

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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.

13. In the instant case, the Tribunal below has rejected the claim of the petitioner primarily on the ground that the petitioner had failed to prove on record that he had rendered 240 days work under the respondent-Management so as to seek protection of the provisions of Section 25-F of the 1947 Act. It has also been observed by the Tribunal that as per the pleaded case of the petitioner, his services were terminated on 15.05.2007 whereas the claim petition had been filed after almost 10 years, therefore it was held that the claim was barred by limitation.

14. On a pointed query being raised to learned counsel for the petitioner to refer to any material/evidence which was placed on record before the Tribunal below which may show that the petitioner has rendered continuous service in terms of Section 25-B of the 1947 Act, however, he has failed to point out any such material. In the absence of any material/evidence available on the record to show that the petitioner had worked for 240 days in the 12 months preceding his termination, no relief can be granted to the petitioner.

15. Furthermore, the parameters for exercise of jurisdiction by the

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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

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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.*

16. Considering the totality of circumstances in the light of the legal principle indicated above, there is no scope for any interference by this Court in the impugned award passed by the Tribunal below, accordingly, the instant Writ Petition fails and the same is dismissed.

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

03.11.2023
Himani

(HARSH BUNGER)
JUDGE

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