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

CWP-10035-2016
Date of Decision: 03.10.2023

Ramesh Chand

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad and
another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Bharat Bhushan Sharma, Advocate
for the petitioner.

Mr. Jagjeet Beniwal, Advocate
for respondent No.2.

HARSH BUNGER J. (ORAL)

1. Petitioner (Ramesh Chand) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari seeking modification of impugned award dated 18.12.2015 (Annexure P-3) passed by learned Industrial Tribunal-cum-Labour Court-I, Faridabad (for short 'the Tribunal'), whereby the reference of industrial dispute raised by the petitioner, regarding termination of his services, has been answered in his favour and he has been granted the relief of reinstatement with continuity of service, however, back wages have been granted to him from the date of judgment.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. The said dispute was referred to the Tribunal below, for adjudication.

3. As per the claim statement of petitioner, he was working with respondent No.2 – M/s Blue Stampings and Forgings Limited (hereinafter to be referred as 'the respondent-Management') since 01.10.1997 against the post of Turner and his last drawn salary was Rs.3,000/- per month. Petitioner claimed that the Management had three hundred workers and during his service tenure, his work was good and satisfactory. Petitioner further claimed that his services were revengefully terminated by the respondent-Management on 05.12.2007 without giving any notice, which was totally illegal and against the provisions Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Accordingly, petitioner prayed for reinstatement in service with continuity thereof and other consequential benefits.

4. On the other hand, the aforesaid claim of petitioner was contested by the respondent-Management by filing its written statement, wherein a preliminary objection was raised that petitioner was discharged from services in September, 2001, after conducting domestic enquiry against him, wherein he had duly participated, however, he raised the demand notice after a gap of seven years. On merits, the respondent-Management stated that petitioner was appointed on 01.12.1997 and his last drawn salary was Rs.2,450/- per month instead of Rs.3,000/-, as claimed by him. The other averments made by petitioner were denied by the respondent-Management and prayer for dismissal of the claim of petitioner was made.

5. From pleadings of the parties, the Tribunal below framed the following issues:-

- “1. Whether the enquiry conducted against the workman as not fair and proper? OPW*
- 2. As per reference.*
- 3. Relief.”*

6. Thereafter, both the parties led evidence in support of their respective case. Petitioner examined himself as WW-1. On the other hand, respondent-Management examined Sh. Satya Narain Tiwari, Personnel Manager as MW-1.

7. Upon considering the material/evidence available on record, Tribunal below, *inter alia*, observed that enquiry conducted against the petitioner was vitiated as no subsistence allowance was paid to him. It was also held that services of the petitioner were terminated in an illegal manner without following the provisions Section 25-F of the 1947 Act. Accordingly, the Tribunal below granted the following relief to petitioner vide impugned award dated 18.12.2015 (Annexure P-3) :-

“Relief:

12. As a sequel of my aforesaid discussion while deciding issue no.1 and 2, the enquiry conducted against the workman is held to be vitiated as no subsistence allowance was paid to the claimant and services of claimant were terminated without following the mandatory provisions of ID Act. In view of the above the reference petition is accepted holding that the claimant is entitled to be reinstated in service with continuity of service along with wages from the date of judgment. Costs are assessed to be Rs.5000/-. Award is padded accordingly. A copy of award be sent to the authorities concerned and the file be consigned to records after due compliance.”

8. In the aforementioned circumstances, petitioner has filed the instant writ petition before this Court, seeking modification of impugned award dated 18.12.2015 (Annexure P-3) to the extent whereby back wages have been granted to him from the date of judgment.

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

10. As regards the entitlement to back wages upon setting aside of

the termination order is concerned, the law is well settled. In the case of ***“Haryana Urban Development Authority Vs. Om Pal”***, 2007 (2) SCT 749, it was held that despite a wide discretionary power conferred upon the Industrial Courts under Section 11-A of the 1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

11. In the case of ***“Management of Regional C.E. P.H.E.D. Ranchi Vs. Their Workmen Rep. By District Secretary”***, 2018 (4) SCT 427, Hon'ble Supreme Court held as under:-

“11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back

wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, **M.P. State Electricity Board v. Jarina Bee (Smt.)**, 2003(3) S.C.T. 625 : (2003) 6 SCC 141, **G.M. Haryana Roadways v. Rudhan Singh**, 2005(3) S.C.T. 559 : (2005) 5 SCC 591, **U.P. State Brassware Corporation v. Uday Narain Pandey**, 2006(1) S.C.T. 77 : (2006) 1 SCC 479, **J.K. Synthetics Ltd. v. K.P. Agrawal & Anr.**, 2007(2) S.C.T. 79 : (2007) 2 SCC 433, **Metropolitan Transport Corporation v. V. Vankatesan**, 2009(3) S.C.T. 749 : (2009) 9 SCC 601, **Jagbir Singh v. Haryana State Agriculture Marketing Board & Anr.**, 2009(3) S.C.T. 790 : (2009) 15 SCC 327) and **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.**, 2013(4) S.C.T. 716 : (2013) 10 SCC 324.

14. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages, and if so, to what extent.

15. Coming now to the facts of the case at hand, we find that neither the Labour Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material facts required for award of the back wages enabling the Court to award the back wages.

16. On the other hand, we find that the Labour Court in one line simply directed the appellant (employer) to pay full back wages for a long period to 37 workmen while directing their reinstatement in service.

17. We, however, find that the High Court in para 9 of the order placed reliance on the decision of this Court in *Deepali Gundu Surwase (supra)* for holding that the question of back wages is covered by this decision. In our view, the High Court erred in so observing. It should have seen that in the case of *Deepali Gundu Surwase (supra)* itself, this Court referred

decision, which we have mentioned in para 13 above and then in para 38 of Deepali Gundu Surwase, this Court culled out the ratio of all the cited cases. Thereafter, this Court in Deepali Gundu Sarwase' case granted relief to the concerned workers on the facts involved in that case. In our opinion, the High Court did not apply the ratio of the decision in Deepali Gundu Surwase (supra) to the facts of this case properly and only quoted one para of the judgment in Deepali Gundu Surwase (supra) which contained general observations. Those observations had to be read in juxtaposition with para 38 which culled out the ratio of all the case law on the subject.

18. We cannot, therefore, concur with such direction of the Courts below awarding full back wages to the workman which, in our opinion, has certainly caused prejudice to the appellant (employer).

19. However, having regard to the facts and circumstances of the case, we consider it just and proper and in the interest of justice to award to these 37 workmen 50% of the total back wages...”

A perusal of the aforesaid legal position would indicate that in order to claim back wages, it is necessary for the workman to plead and prove with the aid of evidence that after his dismissal from service he was not gainfully employed anywhere and had no earnings to maintain himself or his family; however in the instant case, the claim petition filed by petitioner nowhere indicates that any such plea was taken by him; and accordingly, he had no right to claim back wages from his employer, moreso, when he has been granted back wages with effect from the date of judgment, by the Tribunal below.

12. 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 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*”.

13. Considering the totality of circumstances in the light of legal principles indicated above, there is no scope for any interference in the findings/Award rendered by the Tribunal below. Resultantly, the instant writ petition fails and the same is dismissed.

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

03.10.2023

Apurva

(HARSH BUNGER)

JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No