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

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Date of Decision: 08.12.2023

Hardam Singh

....Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Raj Kaushik, Advocate and
Mr. Piyush Aggarwal, Advocate
for the petitioner.

Mr. Sanjeev Sharma, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J. (Oral)

1. Petitioner (Hardam Singh) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for quashing the impugned award dated 02.06.2014 (Annexure P-8), passed by Industrial Tribunal, Patiala (in short 'the Tribunal'); whereby the reference of industrial dispute raised by the petitioner regarding termination of his services by respondents No.2 and 3 (hereinafter referred to as 'respondent-Management') has been answered against him.

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

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the Tribunal below.

3. As per the claim statement, the petitioner stated that he worked with the respondent-Management as *Beldar* (Seed Farm) Nabha, from 27.11.2001 up to 28.04.2008. The petitioner claimed that his services were illegally terminated on 29.04.2008 without issuing any notice or conducting any inquiry or paying any compensation. Petitioner stated that at the time of termination of his services, he was drawing Rs.2,130/- per month as salary. Petitioner further alleged that his juniors were retained in service and even new persons had been engaged by the respondent-Management, therefore his termination was contrary to the provisions of the Industrial Disputes Act, 1947 (in short '1947 Act'). Accordingly, prayer was made by the petitioner for reinstatement with continuity of service and back wages.

4. The aforesaid claim of the petitioner was contested by the respondent-Management on the plea that the claim of the petitioner was false and frivolous as he had suppressed material facts from the Court. It was stated that the petitioner has no *locus standi* to file the claim petition. Respondent-Management stated that it was an educational institute and not an industry in terms of the 1947 Act. It was further stated that the petitioner was not a regular workman and was rather working with the University Seed Farm on daily basis as the work of Seed Farm is seasonal and the workers are engaged on daily basis as per the requirement of the Seed Farm therefore, the petitioner was not entitled to any relief. It was also stated by the respondent-Management that the petitioner was a quarrelsome person and he always created indiscipline and nuisance in the Seed Farm and try to mishandle the staff members, which was not in the interest of the Seed Farm.

A categoric stand was taken by the respondent-Management that the

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petitioner had not worked with them for 240 days in the 12 months preceeding the date of his alleged termination, accordingly, prayer for dismissal of the claim petition was made. The petitioner filed his replication reiterating his stand made in the claim petition.

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

“1. Whether the services of the workman were terminated illegally by the respondent management? OPW.

2. Whether this reference is not maintainable in the light of the preliminary objections taken by the respondents in their written statement? OPM.

3. Relief.”

6. In order to prove his case/claim, the petitioner/workman-Hardam Singh, examined himself as WW-1; tendered his affidavit as Ex. W2 and demand notice as Ex. W1. Thereafter, the evidence of petitioner-workman was closed.

7. On the other hand, the respondents have examined Vinay Kumar, Assistant Seed Production Specialist, Punjab Agricultural University (Seed farm), Ludhiana as MW1, who tendered his affidavit as Ex. M/3. The respondent-Management also relied upon Ex. M1 the authority letter, Ex. M2 reply to the statement of claim and Ex. M4 copy of FIR no. 53 dated 09.05.2008 under section 365, 353, 332, 186, 342, 148, 149IPC, which was registered against workmen as they tried to manhandle Sh. P.K. Sharma (the then Director of Seed Farm). The respondent-Management also examined Amandeep Singh Sidhu, Assistant Seed Production Specialist as MW2 and Dharampal, Tractor Driver as MW3. Respondent-Management, relied upon certificate copy of the statement and cross examination of Jaswinder Singh,

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workman as Ex. W/7 and documents Ex. M2 to Ex. M4. Thereafter, the respondents evidence was closed.

8. Upon considering the material/evidence available on record, the Tribunal below vide impugned award dated 02.06.2014, rejected the claim of the petitioner.

9. In the aforementioned circumstances, the petitioner has filed the present Writ Petition before this Court.

10. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of the petitioner. It is submitted that there was sufficient material on record to show that the petitioner had rendered 240 days service under the respondent-Management, therefore, he was entitled to the protection of Section 25-F of the 1947 Act. It is further submitted that the respondent-Management did not produce the relevant record with regard to the service of the petitioner, therefore, an adverse inference was liable to be drawn against the respondent-Management for non-production of the relevant record, which was not done by the Tribunal below. Learned counsel further contended that after the termination of the petitioner, fresh recruitment had been made by the respondent-Management, therefore, there was a violation of Sections 25-G and 25-H of the 1947 Act as well. On the basis of the aforesaid submissions, learned counsel for the petitioner submitted that the impugned award be quashed and necessary relief be granted to the petitioner.

11. On the other hand, learned counsel appearing on behalf of the respondent-Management has opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has passed a well reasoned and justified award upon appreciation of evidence placed before it, therefore,

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the same does not require any interference by this Court. It is submitted that the petitioner has failed to prove his pleaded case and therefore, he was not entitled to any relief. Accordingly, prayer for dismissal of the Writ Petition has been made.

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

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 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 Amarsinh”, 2005(8) SCC 750.**

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

“13. The respondents have taken specific plea in written statement that the claim of the workman is liable to be dismissed on the ground that the workman has not worked with the respondents for 240 days in the period of preceding twelve calendar months as required by the law.

Workman in his Demand Notice Ex. W1, Statement of claim, affidavit Ex. W2, specifically alleged that he worked with the respondent from 27.11.2001 to 28.04.2008. The fact that he worked with the respondent is not in dispute. However, Mark-1 detail of period of work i.e attendance per month, rate of daily wages and wages paid which is issued by the Director, University Seeds Farm, Nabha and relied upon by the workman reveals that the workman joined the respondent in April 2003

and not on 27.11.2001 as alleged in the demand notice, statement of claim and affidavit. This document Mark-1 also reveals that workman worked for 16 days in March 2008 and did not work thereafter. This document tendered by the workman himself reveals that he worked from April 2008 to March 2008. Reference cannot be declined simply on the ground of wrong mentioning of date of inception of workman in the respondent establishment and his last working day in the respondent establishment, because reference is to determine the legality or illegality of termination of services of the workman. Reference can be made here to observation of the Hon'ble Punjab and Haryana High Court in Rakesh Kumar Suri Vs Presiding Officer, Labour Court cited as 1994(3) Recent Services Judgments 704, wherein Hon'ble High Court held that "The matter was actually referred by the appropriate Government to the Labour court. A perusal of the order of reference shows that the Labour court had to consider and decide as to whether or not the termination of services of the workman was justified and in order. In the order of reference, there was no mention of any particular date. Even the issues framed by the Labour court related to the validity of the termination of services of the workman. There was no issue with regard to the validity of the reference. In this situation, the order passed by the Labour court cannot be sustained."

14. *One fact is clear from Mark-1 that in the last calendar year immediately preceding the last date of his work i.e. March 2008, in which he worked only for 16 days, from April 2007 to March 2008 he worked for 238 days in the year immediately preceding the last working day of the workman.*

15. *Thus Mark-1 reveals that the workman worked only for 238 days in the year immediately preceding the date of his alleged termination and he did not complete 240 days, as per Section 25-B of the I.D.A. 1947.*

16. *Workman cannot claim that new appointments have been*

made after his termination, because he failed to call the record of new appointments allegedly made after his termination.

17. *Thus, in view of the above discussion, it is held that workman failed to prove that termination of his services is illegal or unjustified, as he failed to prove that he completed 240 days in the year immediately preceding the date of his alleged termination. However, as the workman raised industrial dispute by way of filing demand notice and after failure of conciliation proceedings, the dispute was referred to this Court by the Appropriate Government for adjudication, the reference is maintainable. Accordingly. issue No. 1 is answered in favour of the workman and against the respondents and issue No.2 is answered against the respondents and in favour of the workman.*

RELIEF

18. *In the light of my findings regarding above noted issues, this reference is hereby answered against the workman to the extent that he failed to prove that termination of his services is illegal and unjustified. File be consigned to the record room.”*

15. A perusal of the above extracted findings would show that the petitioner failed to prove on record that he had rendered continuous service in terms of Section 25-B of the 1947 Act i.e. 240 days work in the 12 calendar months preceding the date of his termination, accordingly, the petitioner was not entitled to any protection under Section 25-F of the 1947 Act. As regards the claim of the petitioner that new appointments had been made after his termination, it appears that the petitioner had failed to call for the necessary record of new appointments and neither any evidence was produced in support of the said submission of the petitioner.

16. As regards the plea of petitioner that adverse inference be drawn against respondent-Management for not producing the relevant

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record, it is observed that drawing of adverse inference is optional and not obligatory and the same is within the domain of Industrial Tribunal. Further, drawing of adverse inference depends on facts and circumstances of each case and adverse inference cannot be drawn only because it is lawful to do so. In order to entitle the Court to draw inference unfavourable to the party, the Court must be satisfied that evidence is in existence and could have been proved (See: “**Surendranagar District Panchayat Vs. Dityabhai Amarsinh**” **2005(8) SCC 750**).

In the instant case, the Tribunal below has not drawn any adverse inference. Furthermore, apart from the bare plea of non-production of relevant record by the respondent-Management; there is no plea of the petitioner that respondent-Management has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent-Management. In this regard, reference can be made to the judgment of Hon’ble Apex Court in “**R.M. Yellatti v. The Asst. Executive Engineer**”, **2005(4) S.C.T. 695**, wherein it has been held as under:

“15. ... The above decisions however make it clear 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. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the

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concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case...”

17. 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 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

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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*”.

18. No other point has been urged.

19. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for any interference by this Court in the impugned award dated 02.06.2014 (Annexure P-8), while exercising

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its writ jurisdiction. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

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

08.12.2023
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No