

CWP-11668-2015

-1-

234

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

CWP-11668-2015
Date of Decision: 11.12.2023

Rajan Pal Singh

....Petitioner

Versus

Presiding Officer, Industrial Tribunal, Amritsar
and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Anupam Bhanot, Advocate
for the petitioner.

Mr. Parmbir Singh, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Rajan Pal 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 04.03.2015 (Annexure P-4) passed by the learned Industrial Tribunal, Amritsar (hereinafter '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 by the petitioner for directing respondents No.2 and 3 (hereinafter 'respondent-Management') to consider the petitioner for the post of helper.

CWP-11668-2015

-2-

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 working as a helper with the respondent-Management for the last 16 years at the monthly salary of Rs.2,500/-. Petitioner claimed that his services were terminated by respondent-Management on 13.05.2005 without any notice, charge sheet, enquiry and retrenchment compensation. It was also claimed by the petitioner that juniors to him have been retained in service and new hands have been recruited after his termination, therefore, his services 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, petitioner prayed for reinstatement in service and grant of other consequential benefits.

3. The aforesaid claim of the petitioner was contested by respondent-Management by denying the relationship of master and servant between the parties. It was stated that the petitioner was never employed by the Management. The other averments made in the claim of the petitioner was also denied by the respondent-Management, 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 the service of the workman is illegal? OPA

(2) Whether the relationship of master and servant exists between the parties? OPR

(3) Whether the disputant was employed as permanent employee of the respondent? OPR

(4) Relief.”

CWP-11668-2015**-3-**

5. In order to prove his case/claim, the petitioner/workman-Rajan Pal Singh, examined himself as WW2 and tendered his affidavit Ex.W.1 along with documents Ex.W.2 to Ex.W.13 and also examined one Agyapal Singh, Technical Officer, Punjab State Warehousing Corporation, Basant Avenue, Amritsar. Thereafter, the petitioner-workman closed his evidence.

On the other hand, the respondent-Management examined MW1 Mukhtiar Singh, Technical Assistant, Incharge of Punjab State Warehousing Corporation, Tarn Taran, who tendered his affidavit as Ex.MW1/1. Thereafter, the evidence of respondent-Management was closed.

6. Upon considering the material/evidence available on the record, the Tribunal below rejected the claim of the petitioner vide the impugned award dated 04.03.2015 (Annexure P-4) by holding that the petitioner had worked with the respondent-Management purely as a daily wager and there was no document on file to show that the petitioner had worked with the respondent-Management for a period of 240 days continuously.

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

8. Learned counsel for the petitioner submits that the Tribunal has erred in law and fact in passing the impugned award and rejecting the claim of the petitioner. It is submitted that the petitioner had duly proved the relationship of employee and employer between the parties and had falsified the claim of the respondent-Management. It is submitted that the petitioner had worked with the respondent-Management for more than 16 years, therefore, the impugned award be set aside and the necessary directions be issued to respondent-Management to consider the petitioner for the post of helper.

CWP-11668-2015

-4-

9. Per contra, learned counsel appearing for respondents No.2 and 3 has opposed the prayer made by learned counsel for the petitioner by submitting that since the petitioner had failed to prove on record that he has rendered continuous service in terms of Section 25-B of the 1947 Act, accordingly, no relief could be granted to the petitioner for the alleged violation of Section 25-F of the 1947 Act.

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

11. 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.

12. 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..."

13. 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.

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."*

CWP-11668-2015

-7-

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.

14. In the instant case, the petitioner claims that his services have been terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the 1947 Act. A perusal of the above extracted legal position would indicate that in order to claim protection of the provisions of Section 25-F of the 1947 Act, a workman has to discharge the onus of proof that he had actually worked for 240 days in a year preceding his termination in terms of Section 25-B of the 1947 Act. The Tribunal below has returned the following finding:-

“So by going through all the documents on the file, which have been produced by the workman himself, it is clear that he has worked with managements purely as daily wager and this fact is also admitted by the workman in his cross examination. There is no document on the file, which can show that the workman had work with the managements for period of 240 days continuously, in one year all the documents show that he was a casual labourer. It has been held by the Hon’ble Court of Punjab and Haryana in the authority Municipal Council, Dina Nagar, Tehsil and District Gurdaspur (Supra) that the right of reinstatement is not an automatic right and the labour court will have to take into consideration various aspects so as to nature of appointment, availability of a post, availability of work and whether appointment, availability of a post, availability of work and whether appointment was made as rules. In this case, the appointment is on daily wages. So, it is clear that termination is not illegal. The workman was never employee of the managements on permanent basis and there is not relationship of master between the parties. Accordingly,

issues No.1 to 3 are held in favour of the managements and against the workman.

Relief

13. In view of my discussion, made on above issues, reference is answered in favour of the managements and against the workman. Parties are left to bear their own cost. Reader of this Tribunal is directed to forward three copies of this Award to Assistant Labour Commissioner/Labour-cum-Reconciliation Officer, Amritsar, as required under section 15 of the I.D. Act read with notification no. S.O 66/c.a.14/1947/s.17/2008 DT.1.10.2008."

A perusal of the above extracted finding by Tribunal would show that petitioner failed to prove on record that he rendered continuous service under respondent-Management.

Neither before the Tribunal nor before this Court, the petitioner has been able to show that he has rendered continuous service of 240 days in the year preceding his date of termination as envisaged under Section 25-B of the 1947 Act. Still further, the petitioner had failed to prove on record that at the time of termination of his services, juniors to him had been retained in service or fresh hands had been recruited. In the absence of material/evidence to show that there has been non-compliance of the provisions of Sections 25-F, 25-G and 25-H of the 1947 Act, no relief can be granted to the petitioner.

15. 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

CWP-11668-2015

-9-

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,

CWP-11668-2015

-10-

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.*

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

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

11.12.2023
Himani

(HARSH BUNGER)
JUDGE

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