

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-21928-2010 (O&M)
Date of Decision: 4th December, 2023

Gurnam Singh
..... Petitioner

Versus

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

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Abha Rathore, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

HARSH BUNGER J. (ORAL)

1. Petitioner (Gurnam Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ of *certiorari* for setting aside of award dated 27.07.2009 (Annexure P-5) passed by respondent No.1 – the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as 'the Tribunal'), whereby the reference regarding termination of services of the petitioner-workman has been decided against him. A further prayer has been made for directing respondent No.2 to reinstate the petitioner with continuity in service and full back wages.
2. Briefly, the petitioner-workman raised an industrial dispute with

regard to termination of his services by serving demand notice dated 03.06.1993. Subsequently, the matter was referred by the appropriate Government under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act') to the Tribunal below, for adjudication.

3. In the claim statement, the petitioner-workman stated that he was appointed with respondent No.2 – Haryana Roadways (hereinafter referred to as 'the Management') as Labourer on daily wage basis on 01.01.1986, for construction of Bus Queue Shelter and he continuously worked up to 20.11.1988. He claimed that his services were terminated on account of his involvement in a criminal case (FIR No.946 dated 24.11.1988); and thereafter he filed a writ petition, being CWP No.10262 of 1988, before this Court, wherein he was granted the relief of interim injunction and he was taken back in service w.e.f. 01.12.1988; and he worked up to 26.12.1988. Petitioner-workman pleaded that he had completed continuous service of more than 240 days, however, no notice, pay in lieu of notice or retrenchment compensation was granted to him before termination of his services. It was further claimed by the petitioner-workman that juniors to him, namely Sultan and Mahabir, had been retained in service and the Management had also appointed new workers in place of the petitioner-workman, therefore, services of the petitioner-workman were terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the 1947 Act. Accordingly, the petitioner-workman prayed for reinstatement in service along with all the consequential benefits.

4. On the other hand, the aforesaid claim of petitioner-workman was opposed by the respondent-Management on the ground that the petitioner-workman had not completed continuous service of 240 days in a

calender year preceding the date of his alleged termination, i.e. 15.11.1988.

A categoric stand was taken by the respondent-Management that services of the petitioner-workman were not terminated on account of his involvement in the criminal case rather his term was not renewed after 15.11.1988 due to lack of construction activities. It was clarified that though interim injunction was granted on 28.11.1988 by this Court in the writ petition (CWP-10262-1988), filed by the petitioner-workman, wherein a direction was issued that services of the petitioner-workman be not terminated till further orders, however, the petitioner-workman was not in service on the said date, accordingly, he was never taken back in service and finally the aforesaid writ petition was dismissed as withdrawn on 30.10.1992. It was also denied by the respondent-Management that no new worker had been recruited in place of the petitioner-workman, and therefore, the petitioner was not entitled for the protection under the 1947 Act. Accordingly, prayer was made by the respondent-Management for dismissal of claim statement of the petitioner-workman.

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

“1. Per terms of reference?OPP

2. Relief”

6. Thereafter, both the parties led their respective evidence before the Tribunal below.

7. It would be apposite to state here that initially the reference was answered against the petitioner-workman vide award dated 14.11.2003, which was challenged by him by way of filing a writ petition (CWP-5318-2004), however, the same was also dismissed by this Court on 18.01.2008, whereupon the petitioner preferred an Intra Court Appeal (LPA) No.218 of

2008. It appears that the said LPA was disposed of on 14.01.2009, whereby order dated 18.01.2008 passed in CWP-5318-2004 as well as the initial award dated 14.11.2003 passed by the Tribunal was set aside and the matter was remanded back to the Tribunal below for fresh adjudication.

On remand, the Tribunal below considered the matter afresh and again answered the reference against the petitioner-workman vide impugned award dated 27.07.2009 (Annexure P-5). Accordingly, petitioner filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of petitioner-workman and answering the reference against him. It is submitted that the petitioner had worked continuously from 01.01.1986 up to 20.11.1988 and he proved his claim *qua* violation of Sections 25-F and 25-G of the 1947 Act by making his own statement that his juniors, namely Mahabir and Sultan, were still working in the Management. It is further submitted that the Tribunal below has wrongly held that the petitioner had not completed continuous service of 240 days. Learned counsel states that for the purposes of Section 25-G of the 1947 Act, the compliance of Section 25-F is not required. Learned counsel for the petitioner contends that the respondent-Management had not produced the seniority list or the appointment letters of the petitioner's juniors to disprove the allegations levelled by the petitioner and his claim was wrongly rejected by holding that the same was covered under Section 2(oo)(bb) of the 1947 Act.

With the aforesaid submissions, learned counsel for the petitioner has prayed for allowing the instant writ petition by setting aside order dated 27.07.2009 (Annexure P-5) passed by the Tribunal and further directing respondent No.2-Management to reinstate the petitioner in service

along with all the consequential benefits.

9. Per contra, learned State counsel has opposed the prayer made by learned counsel for the petitioner by submitting that the Tribunal below has passed a well reasoned and justified order, which does not call for any interference by this Court while exercising its writ jurisdiction. Learned State counsel submits that the petitioner-workman had not led any evidence in support of his claim apart from his self serving statement. It is submitted that the petitioner had failed to discharge the onus of proving that he had rendered continuous service of 240 days as envisaged under Section 25-B of the 1947 Act and had further led no evidence to prove that the workers, namely Sultan and Mahabir, who were alleged to be the juniors of petitioner, had been retained in service. It is next submitted that even an application filed on behalf of the petitioner for production of copies of orders or dates of appointment of some employees was rejected by the Tribunal, and no challenge was also made to the said order. Accordingly, prayer for dismissal of the instant writ petition has been made.

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

11. It is well settled that the burden of proof to prove that a workman had worked for 240 days in a given year is on the workman. It is also 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 during the relevant period. Further, mere non-production of muster rolls *per se* without any plea of suppression by the workman is not a ground for the Tribunal to draw an adverse inference against the Management.

12. In the case of “**Range Forest Officer v. S.T. Hadimani**”, **2002(3) SCT 382 (SC)**, Hon'ble Apex Court held as under:-

“..... It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot. Filing be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in an year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.”

13. In the case of “**Municipal Corpn. v. Siri Niwas**”, **2004(4) SCT 211**, Hon'ble Apex Court held as under:-

“..... The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section [25B](#) of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working

during the aforementioned period. He even did not examine any other witness in support of his case.

14. 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 in 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.

15. No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational..."

14. In ***"R.M. Yellatti v. The Asstt. Executive Engineer"***, 2005(4) ***SCT 695***, it was held as follows:

".... Drawing of adverse inference ultimately would depend thereafter on facts of each case. 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 concurrent findings of fact recorded by the labour Court unless they are perverse. This exercise will depend upon facts of each case."

15. Coming to the case in hand, a perusal of impugned award dated 27.07.2009 (Annexure P-5) would reveal that the Tribunal below non-suited the petitioner on the ground that he had failed to prove on record that he completed continuous service of 240 days as envisaged under Section 25-B of the 1947 Act. The petitioner had only examined himself in support of his claim and no other cogent evidence was placed on the file. It has been observed by learned Tribunal below that the petitioner had failed to specify the exact date and month of termination of his services and had nowhere specifically deposed that he had worked continuously for the relevant 240 days; and the petitioner had further shown ignorance regarding his work in the years 1986, 1987 and 1988. The Tribunal further held that the petitioner-workman was engaged as a daily wager and by referring to the judgments with regard to daily wager passed in ***“Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others” AIR 1997 (SC) 3657, “Reserve Bank of India Vs. Gopinath Sharma and another”, 2006 (6) SCC 221, “HUDA Vs. Jagmal Singh”, 2006(5) SCC 764 and “Secretary, State of Karnataka and others Vs. Uma Devi and others”, 2006(4) SCC 1***, it was held that such workman cannot claim his right to the post.

16. As regards the plea raised by the petitioner-workman that his juniors had been retained in service, and therefore, there was violation of provisions of Section 25-G of the 1947 Act, the Tribunal below has returned

the following findings:-

“16. As regards the plea of the workman regarding the alleged violation of the provisions of Section 25-G by the respondent while terminating his services, the workman, as WW-1. has stated that the workers, junior to him, namely Mahabir and Sultan Singh, are still working with the department. MW-1 Shri Yograj has also admitted the employment of the above-said persons but he has shown his ignorance regarding the factum of their being junior or senior to the workman. However, the fact remains that in the present Reference, it is the workman who has sought relief on the basis of the aforesaid plea and therefore, it was entirely for him to produce some specific, positive and cogent evidence on the file to substantiate this plea but except his own afore-discussed oral and self-serving depositions as WW- 1. he has failed to lead any other cogent evidence on the file. at the time of leading his evidence, to prove the above-said plea/allegations. While leading his evidence, he could have summoned the seniority list or the office-record of the respondent regarding the dates of appointment of both the above- said employees which would have set the actual controversy between the parties, on the aforesaid point, at rest effectively and precisely and it could have been easily available to him but he has failed to do so and has also not come forward with any fair, candid and plausible explanation for the same. Again, it is explicit that he has with-held the best possible evidence from being produced on the file which unequivocally warrants to draw an adverse inference against him. In these circumstances, his own oral depositions, as WW- 1. cannot be taken to be sufficient at all to substantiate his afore-said plea/allegation.

17. Even if for the sake of arguments, he is presumed to be senior to the afore-named Mahabir and Sultan, even then the fact remains that as discussed earlier, the workman was engaged as daily wager only. He has also not led any evidence

on the file to show that he had been appointed/engaged by the respondent against any sanctioned or regular post and that too, after following the prescribed rules and procedure, as laid down for such like appointments. In these circumstances, it is explicit that his appointment can safely be termed to be a "back door entry in the job. It has been held by the Division Bench of our own Hon'ble High Court in 1998 (2) RSJ 449 Brij Bhushan Versus Industrial Tribunal-cum-Labour Court, Panipat and another that "where the Court finds that the workman is a back door appointee, the prayer for reinstatement may be refused even though the termination of the service of such an employee may have been brought about without compliance of the mandatory provisions contained in Sections 25-F and 25-G of the Act." It has also been held by the Division Bench of our own Hon'ble High Court in 2009 (1) CLR 217 Superintending Engineer, PWD B&R, Bhiwani Versus Surender & another that "where in a Reference over discharge of respondent No.1, daily wager, the Tribunal passed Award for reinstatement with 50% back wages, the reasoning given by the Labour Court that there was a violation of Section 25-G of the Act, cannot be sustained in case of a daily wager and even if there is a violation of Section 25-F of the Act, then also, the workman is not entitled to reinstatement." The observations, as made by their Lordships in both the above-mentioned cases, are fully applicable to the present case because as discussed above, the workman. admittedly, was engaged as a daily wager and that too, without following the prescribed rules and procedure, as laid down for such like appointments in the respondent-department. In view of these observations, the workman cannot be held to be entitled to any relief even if he is presumed to be senior to both the above-named persons.

18. In the light of the fore-going discussion, it is held that the workman has not been able to lead any cogent and sufficient evidence on the file to establish that he had completed the continuous service of 240 days with the respondent during the

preceding 12 calendar months from the date of alleged termination of his services and that the alleged termination of his services by the respondent is illegal and invalid. Resultantly, this issue stands answered against the workman.”

17. It is, therefore, evident that the petitioner had failed to prove his pleaded case. The Tribunal below has dealt with all the contentions raised on behalf of the petitioner-workman in detail and in reference to the material/evidence available on record. Learned counsel for the petitioner has failed to dislodge the findings returned by the Tribunal below.

18. 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”.

19. Considering the totality of circumstances in the light of legal principles referred above; there is no scope for any interference in the impugned Award as the learned Tribunal has returned the findings by correctly appreciating the material/evidence available on record and in no way, the impugned award in question can be held as perverse or against the evidence. Accordingly, I do not find any merit in the instant writ petition and the same is dismissed.

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

4th December, 2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No