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

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Date of Decision: 05.07.2023

Rajinder

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Sonia G. Singh, Advocate
for the petitioner.

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

HARSH BUNGER, J. (Oral)

1. Petitioner (Rajinder) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India *inter alia* seeking quashing of impugned award dated 03.06.2014 (Annexure P-7) passed by the Industrial Tribunal-cum-Labour Court, Rohtak (herein after “the Tribunal”) whereby the reference was answered against the petitioner-workman. Further prayer has been made for directing the respondent-Department to allow the petitioner to continue in service, as his services have been terminated

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illegally and arbitrarily in violation of provisions of the Industrial Disputes Act, 1947 (hereinafter “1947 Act”) and also for grant of continuity of service, etc.

2. Briefly, the petitioner raised an Industrial Dispute by way of Demand Notice and thereafter he filed a claim petition before the Tribunal below on the plea that he is more than 80% handicapped and was appointed by respondent-Management as a typist in 1998 and later on worked as computer operator. Petitioner claims to have worked continuously up to 2nd April, 2006; however on 03.04.2006, the services of the petitioner were terminated verbally without any notice or payment of compensation in utter violation of provisions of the Industrial Disputes Act. It is the categorical plea of the petitioner that he had worked continuously for 240 days preceding the date of termination of his services. Accordingly, it was prayed that his termination be set aside and he be reinstated with full back wages and continuity of service.

3. The aforesaid claim of the petitioner was contested by the respondent-Management on the plea that the petitioner was not appointed by the respondent-Department rather the petitioner is stated to have been appointed on contract basis through M/S Meera Communication, Rohtak.

4. In order to prove his claim, the petitioner examined himself as WW-1 and also examined one Joginder Singh, Clerk, O/o PWD, B&R, Division No.1 of Rohtak and one Jitander Kumar Jain, retired SDE, O/o PWD, B&R, Branch Rohtak.

On the other hand, the Management examined J.R. Singhla, SDE, PWD, B&R, Division No.9, Rohtak.

5. That the Tribunal below, while appreciating the evidence and

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the material placed on the record, dismissed the reference of the petitioner-workman vide award dated 03.06.2014 (Annexure P-7).

6. In these circumstances, the petitioner has filed the instant Writ Petition before this Court.

7. Learned counsel for the petitioner submits that the impugned award is wrong, arbitrary and illegal as the same is contrary to evidence and law, It is submitted that the Tribunal below has failed to appreciate evidence on record and had wrongly held that the petitioner is an employee of Meera Communications. It is submitted that the alleged contract as espoused by the Management is a sham and the learned Tribunal without examining as to whether there was any contract between the Management and M/s Meera Communication (*in Award, mentioned as "Meena Communications"*), has wrongly held that the petitioner was not an employee of the Management and has arbitrarily declined the reference. Learned counsel for the petitioner further contends that there is no document on record to show that M/S Meera Communication was working with the Management or any payment was given to the said company. It is accordingly submitted that the impugned award be set aside and appropriate direction be issued for reinstating the petitioner with full back wages and continuity of service.

8. On the other hand, learned State counsel has opposed the claim of the petitioner by submitting that the petitioner was never appointed against any post by the respondent-Department nor the petitioner has ever marked his attendance and neither any salary has been paid by the respondent-Department to the petitioner. It is submitted that the respondent-Department had got some urgent work done through M/s Meera Communication, Rohtak on contract basis; which had deputed computer

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operator in the respondent-Department as an employee of the said firm and not as an employee of the respondent-Department. It is submitted that the petitioner never worked for 240 days as claimed by him and neither there has been any violation of the provisions of the Industrial Disputes Act.

Learned State counsel has further submitted that the petitioner had himself admitted in his testimony that he was not given any appointment letter and the petitioner further failed to produce any attendance record or salary proof to show that he was an employee of the respondent-Department. Accordingly, it is submitted that there is no merit in the instant Writ Petition and prayer for dismissal of the same has been made.

9. I have heard learned counsel for the petitioner as well as learned State counsel and perused the paper book and the impugned award.

10. In the instant case, the petitioner claims that he was appointed by the respondent-Department in the year 1998 and he worked as a typist and later on he worked as a computer operator and he claims to have worked up to 02.04.2006, however on 03.04.2006 his services were terminated. On the other hand, it is the stand of the respondent-Department that the petitioner was never appointed by the respondent-Department and in fact the respondent-Department had given the work to one Meera Communication for doing some urgent computer related work and the petitioner was deputed in the office of the respondent-Department by Meera Communication as an employee of the said firm and not of the respondent-Department. Thus, there is a dispute regarding the relationship of employee and employer between the petitioner and the respondent-Department.

11. It is well settled law that the onus to prove relationship of employee and employer is on the workman. In the instant case, apart from

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the statement of petitioner-workman himself, the petitioner has not led any evidence either in the shape of any statement of a co-worker or any proof regarding salary, appointment letter, etc. It is also well settled law that the self serving statement of the workman is not sufficient to prove the relationship of employee and employer between a workman and the Management.

12. The learned Industrial Tribunal-cum-Labour Court, Rohtak has decided the reference against the petitioner-workman and in favour of the respondent-Management by holding as under:

“Issue No.1

6. *The workman in his testimony as WW-1 has stated that he was appointed by the Executive Engineer but the Executive Engineer did not give him any appointed letter. The salary was given to him in cash by the Junior Engineer. He used to mark his attendance in the register of Junior Engineer.*

7. *WW-2 Joginder Singh, Clerk O/o PWD, B&R, Division No.1, Rohtak in his testimony stated that the workman was deputed as typist in the management department by Meena Communication company. No attendance of the workman was marked in the management-department. The workman was not on the management roll. The management never gave any salary to the workman. The salary was paid to the workman by Meena Communication.*

8. *WW-3 Jitander Kumar Jain, retired SDE O/o PWD, B&R, Branch Rohtak in his testimony has stated that he has not seen any appointment letter of the workman. He does not know whether the workman was appointed through Meena Communication.*

9. *The management-respondent witness J.R. Singhla, SDE, Div. No.9, PWD (B&R) Rohtak MW-1 in his testimony has stated that the workman was deputed in the management-*

department by Meena Communication. He used to work for Meena Communication.

10. *The learned authorized representative for the workman banking on the letters Ex.W-2 and Ex.W-3 written by the Executive Engineer, Provl. Div. No.2, Rohtak, viz-a-viz the relieving and payment of salary to the workman has vehemently argued that the workman was the employee of the management-respondent because otherwise there was no need of relieving or paying to the workman by the management.*

11. *On the other hand the learned authorized representative for the management-respondent has submitted that the workman was the employee of M/s Meera Communication. It was Meera Communication, who used to pay salary to the workman.*

12. *The workman in his testimony, himself stated that no appointment letter was given to him. The workman has also failed to produce any attendance record or salary for proving that he was the employee of the management-respondent. In the absence of appointment letter, attendance record or salary record no inference of workman being the employee of the management-respondent can be drawn by this Court. On the contrary on the basis of testimony of WW-2 Joginder Singh, Clerk O/o PWD, B&R, Division No.1, Rohtak and MW-1 J.R. Singla, SDE, Div. No.9, PWD, (B&R), Rohtak, it can be concluded that the workman was working for M/s Meena Communication in the management department. The necessary corollary that follows is that the workman was not the employee of the management-respondent but was the employee of Meena Communication. Consequently, letters Ex.W-2 and Ex.W-3, viz-a-viz the relieving and payment of salary to the workman do not in any way show workman to be an employee of the management-respondent. In the aforesaid letters it has been merely stated that the pay of the official may be drawn in the office as usual as per the directions of Superintending Engineer, Rohtak. These letters Ex.W-2 and Ex.W-3 nowhere speak of making payment of salary to the workman from the account of*

the management-respondent. The management- respondent has admitted that the workman was working in its department as an employee of M/s Meena Communication. Therefore, reliving of workman vide letter Ex.W-2 and Ex. W-3 is more in context of workman, who was working for Meena Communication in the management-respondent.

13. *On the basis of above discussion, it can be concluded that no right of the workman has been infringed by the management-respondent. Hence, issue No.1 is accordingly decided against the workman.*

Issue No.2

14. *At the time of argument issue No.2 was neither pressed by the learned authorized representative for the management-respondent nor any evidence in this regard has been adduced by the management-respondent. Here it is pertinent to mention that management witness MW-1 J.R. Singla, SDE Div. No.9, PWD. B&R, Rohtak in his testimony has nowhere stated that the management-respondent is not an industry. Hence, issue No.2 is accordingly decided against the management.*

Relief

15. *For the foregoing reasons, it is held that no right of the workman has been infringed. Therefore, he is not entitled to any relief. The reference is decided against the workman and in favour of the management-respondent. Award is passed accordingly. File be consigned to record room."*

13. A perusal of the findings returned by the Tribunal below would manifest that the workman in its testimony as WW-1 stated that the Executive Engineer did not give him any appointment letter. It has come on record by way of statement of WW-2 Joginder Singh, clerk o/o PWD (B&R), Division No.1, Rohtak that the workman was deputed as typist in the department by Meena Communications company and no attendance of workman was marked in the department and workman was not on the

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Management roll. It has further come in evidence that the Management never gave any salary to the workman and the salary was paid by Meena Communications. Thus, in the absence of the appointment letter, attendance record or salary record, no inference can be drawn that the petitioner-workman was an employee of the respondent-Department.

14. As regards, the plea of the petitioner that the contract as espoused by the Management with M/s Meera Communication is a sham, suffice it to say that no such plea was taken by the petitioner before the Tribunal below either in the claim statement or in the replication filed to the written statement filed by the respondent-Department. The only plea taken by the petitioner in response to the stand taken by the respondent-Department in its written statement was of denial that the Management gets some urgent and emergent work done through M/s Meera Communication on contract basis. It is well settled law that any plea raised by the workman that the contract between the Management and the contractor is a sham and a camouflage is required to be taken before the Industrial Adjudicator. However, in the absence of any such plea having been taken before the Tribunal below, there is no merit in the said submission and the same is accordingly rejected.

15. The peripheries of certiorari jurisdiction of High Court stands authoritatively delineated in *Syed Yakoob v. K. S. Radhakrishnan*, AIR 1964 Supreme Court 477, wherein Hon'ble Supreme Court held as under :-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting

errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The

adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or

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always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

16. Keeping in view the above said principles, this Court is of the opinion that there is no scope for interference in the factual finding recorded by the Tribunal below. Accordingly, the present writ petition is dismissed.

17. No other point has been urged.

18. All pending application/s, if any, shall stand closed.

05.07.2023

Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No