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

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Date of Decision: 06.11.2023

Ram Kishan

....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court
Rohtak and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sandeep K. Sharma, Advocate
for the petitioner.

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

HARSH BUNGER, J. (ORAL)

1. Petitioner (Ram Kishan) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in nature of Certiorari for setting aside the award dated 15.09.2015 (Annexure P-6) passed by the learned Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter 'the Tribunal'), whereby the reference of industrial dispute raised by the petitioner regarding termination of his services 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 the Tribunal below. The petitioner claimed that in the year 2006, he was employed as a gardener by respondents No.2 and 3 (hereinafter 'respondent-

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Management') on D.C. rate basis in the Computer Building, Polytechnic Institution, Jhajjar. Petitioner stated that subsequently he was employed as a sweeper by the respondent-Management and he was getting a salary of Rs.4,200/- per month. Petitioner stated that his wife namely Smt. Bimla was also employed as a sweeper in Girls Hostel, Polytechnic Jhajjar by the respondent-Management and on 02.11.2008, one Sunil Kumar, who was the then Supervisor of Polytechnic Institute; misbehaved with his wife, whereupon, the petitioner made a complaint to the principal, however, no heed was paid to it and on the contrary, on 03.11.2008, the services of the petitioner were terminated. The petitioner claimed that he had worked continuously for 3 years and had completed 240 days of working in a calendar year. Accordingly, the petitioner prayed for reinstatement in service and grant of other consequential benefits.

3. The aforesaid claim of the petitioner was contested by the respondent-Management by submitting that the petitioner was employed as a beldar through Bhartia Sainik Security. As regards the allegation of misbehavior by one Sunil Kumar with the wife of the petitioner, it was explained that Sunil Kumar had given apology on the ground that if by asking her to work, she felt bad, then he tendered his apology for ending the dispute. It is submitted that there were various complaints against the petitioner and his wife, made by the staff and the students and they used to quarrel with them. It was stated that their services were terminated by the Bhartia Sainik Security, which is a private firm and the respondent-Management had no concern with them, 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

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framed the following issues:-

- “i) Whether termination of services of the workman is justified and if not, to what relief he is entitled to ?OPW
ii) Relief.”

5. The parties led their respective evidence in support of their claims.

6. Upon considering the material/evidence available on the record, the Tribunal below rejected the claim of the petitioner by holding as under:-

“14. Its the workman case that he worked with the management-respondent from the year 2006 till 03.11.2008 and that he had also worked for 240 days in calendar year. Therefore the onus to prove the same is on the workman. Despite the fact that WW-2 brought the entire attendance record and payment vouchers summoned by the workman; the workman has not placed on record any such attendance record or payment voucher to show that he worked with the management-respondent from year 2006 till 03.11.2008 or that he worked for 240 days in a calendar year proceeding the date of his termination. The attendance record and the payment voucher of the month of October, 2008, January 2008 and September, 2007 Ex.WW2/A to Ex.WW-2/F do not in any way proves that the workman worked for 240 days in a calendar year preceding the date of his termination. Consequently, the workman has failed to make out any case violation of section 25 F of the Act against the management-respondents. The workman has failed to prove that his services were illegally terminated by the management-respondents. Hence, issue no.1 is accordingly decided against the workman.

Relief.

15. For the foregoing reasons, it is held that no right of the workman has been infringed by the management-

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respondent. Therefore, he has 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 the record room.”

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

8. A perusal of the above extracted findings of Tribunal would make it evident that the petitioner-workman failed to discharge the onus placed upon him of proving that the petitioner-workman had completed 240 days' work 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. No appointment letter or proof of receipt of salary or wages or any record of engagement by the respondent –Management or any order in that regard was produced in support of his claim, therefore, no relief could have been granted to him.

9. 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.

10. 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

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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."

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.

11. In the absence of any material/evidence available on the record to show that the petitioner had worked for 240 days in the 12 months preceding his termination, no relief can be granted to the petitioner and therefore, the Tribunal below was justified in rejecting the claim of the petitioner.

12. 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

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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

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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 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.

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

06.11.2023
Himani

(HARSH BUNGER)
JUDGE

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