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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 29.08.2023

Jagsir Singh

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Bathinda and others

...Respondents

CORAM: HON’BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Dhirinder Chopra, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Jagsir Singh) has filed this petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for setting aside the impugned award dated 08.07.2014 (Annexure P-8) passed by Presiding Officer, Industrial Tribunal, Bathinda; whereby the reference of the industrial dispute has been decided against him. A further prayer has been made for directing the respondents to reinstate the petitioner with all consequential benefits.

2. Briefly, petitioner raised an industrial dispute, which was referred for adjudication to the learned Industrial Tribunal, Bathinda (*herein after “the Tribunal”*) under section 10(1)(c) of the Industrial Disputes Act, 1947 (*in short “the 1947 Act”*).

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3. As per the claim statement, petitioner claimed that he was appointed with respondent- department as *Work Charge Irrigation Booking Clerk*, against a permanent post on 01.09.2002 and he was getting salary of Rs.2,680/- per month on D.C. rates. Petitioner claimed to have worked continuously upto 30.04.2004 without any break; when his services were terminated in an illegal and arbitrary manner by adopting unfair labour practice. Petitioner claimed to have worked for 240 days in each year as well in the last calendar year. It was also claimed by the petitioner-workman that junior to him has been retained in service. Petitioner claimed that his termination is illegal, unjustified and against principles of natural justice and contrary to the provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947. Accordingly, the petitioner prayed that he may be reinstated on job with full back wages and continuity of service.

4. The aforestated claim of the petitioner-workman was opposed by the respondent-department by submitting its reply wherein it denied any employee-employer relationship with the petitioner-workman and respondent-Department. It was also denied that any wages/salary was paid to the petitioner-workman.

5. From the pleadings of the parties, the learned Labour Court framed the following issues:

- “1. Whether there exists relationship pf employee and employer between the parties? (OPW)
2. If issue no. 1 is proved, whether the termination of services of workman is justified and in order? (OPR)
3. Relief.”

6. In order to prove his case/claim, the petitioner/workman-Jagsir Singh, examined himself as WW-2 and Roop Singh, Zildar as WW-1 (later

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given up). Petitioner-workman relied upon the documents Ex. W1 to Ex. W4 as well as Ex. W5 and Ex. W6 in his documentary evidence. Thereafter, the petitioner-workman closed his evidence.

7. On the other hand, the respondents only filled written statement and at the stage of evidence were proceeded *ex-parte* vide order dated 11.06.2012.

8. After considering the case of respective parties and also the material on record; the Tribunal below; vide impugned award dated 08.07.2014 (Annexure P-8) decided the reference of the industrial dispute against the petitioner-workman.

9. Being aggrieved against the impugned award dated 08.07.2014 (Annexure P-8) *ibid*, the petitioner has filed the instant writ petition.

10. Learned counsel for the petitioner while reiterating the stand of the petitioner before the Tribunal below, submitted that the petitioner was appointed as Work Charge Irrigation Booking Clerk on 01.09.2002 and he worked under the respondent-department at different places, his case was even recommended for regularisation, however, the same was declined on ground that the Irrigation Department is in the process of making direct appointments of Canal Patwaris. While referring to Annexures P-1 to P-6, learned counsel for the petitioner submits that there was sufficient material on record to show relationship of employee-employer between the parties. It is submitted that the petitioner-workman continuously worked till 30.04.2004, when suddenly his services were terminated without following the mandatory provisions of the Act, 1947 despite the fact that petitioner worked in the respondent- department for more than 240 days in preceding 12 months from the date of his termination in April, 2004. Accordingly,

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counsel for the petitioner prays that the impugned award dated 08.07.2014 (Annexure P-8) passed by the Tribunal below, may be set aside being illegal and necessary directions may be issued for reinstatement of petitioner with continuity of service and full back wages.

11. Per contra, learned counsel for the respondent-department opposed the prayer of petitioner by submitting that the petitioner-workman was never appointed as work-charge Canal Patwari as alleged by him and there is no relationship of employee-employer between the parties. It is submitted that there is neither any appointment letter nor any termination letter shown by the petitioner. Learned State counsel submits that there is no evidence on record regarding payment of wages to petitioner which may *prima facie* shows any relationship between parties and neither it has been proved on record that petitioner had worked under the Department for 240 days in preceding 12 months from date of termination so as to attract provisions of Section 25-F of the 1947 Act. It is stated that the documents sought to be relied upon by petitioner are fabricated documents which have not been proved on record. It is therefore submitted that there is no merit in the petition and prayer for dismissal of the same has been made.

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

13. While considering an issue of existence of relationship of employer and employee between the parties, in *Workmen of Nilgiri Co-operative Marketing Society Ltd. v. State of Tamil Nadu, (2004) 3 SCC 514*, Hon'ble Supreme Court held as under:-

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“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...”

14. Further, while considering an issue as to whether the workman had completed 240 days of work under the management in terms of section 25B, so as to attract provisions of section 25F of the Industrial Disputes Act, 1947, in the case of **Surendranagar District Panchayat v. Dahyabhai Amarsinh**, 2005(8) SCC 750, Hon'ble Supreme Court held as under:-

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“19. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The Courts below have wrongly drawn an adverse inference for non production of the record of the workman for ten years. The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25F of the Industrial Disputes Act. The workman has never contended that he was regularly employed in the Panchayat for one year to claim the uninterrupted period of service as required under Section 25B(1) of the Act. In the fact and situation and in the light of the law on the subject, we find that the workman-respondent is not entitled for the protection or compliance of Section 25F of the Act before his service was terminated by the employer. As regards non-compliance of Sections 25G and 25H suffice is to say that

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witness Vinod Mishra examined by the appellant has stated that no seniority list was maintained by the department of daily wagers. In the absence of regular employment of the workman, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so called seniority no relief could be given to him for non-compliance of provisions of the Act. The Courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the Court. 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...”

15. In the instant case, vide impugned award dated 08.07.2014 (Annexure P-8), the Tribunal below has returned the following findings:-

“11. To prove the factum, workman himself stepped into the witness box as WW-2 and filed his affidavit EX.WW/2 along with documents Ex.W1 to Ex.W4 in which he has stated that he was appointed as work charge/ Irrigation Booking Clerk by the Respondent on 01.09.2002 and at the time of his appointment, he was getting salary of Rs. 2680/- per month on D.C. Rates. Workman was appointed against regular and permanent post and till 30.04.2004, there was no break in his service but on 30.04.2004, Respondent No. 3 without assigning any reason terminated his services and before termination, he was not served with show cause notice, charge sheet nor was any retrenchment compensation given to him. Juniors to him have been retained in service. Termination of his service is against the provisions of Industrial Disputes Act.

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12. On the other hand, no evidence has been led by the Respondents and they were proceeded against *exparte* when the case was fixed for the evidence of the workman.

13. The authorized representative of the applicant/claimant has further contended that there is a letter Ex.WW2 written by Nigran Engineer, Sirhind Nehar Circle, Ludhiana to Executive Engineer, Faridkot Nehri Mandal Faridkot for adjustment of the workman and he has also referred letter Ex.WW3, which is an application of the applicant/workman and he has further referred Ex.WW4, which are some entries and another letter Ex.W6, which is stated to be recommended for the adjustment of the workman but Respondents in their written reply took the pleas that there is no appointment letter of the workman nor there is any record regarding the payment of wages/salary to the workman by Respondents nor there is any record to show that on which temporary post, he was appointed and in the instant case, though no evidence has been led by the Respondents but it is the basic duty of the workman to prove the fact that he has served the Management for a period of 240 days or more in preceding calendar year to his termination as has been held by Hon'ble Supreme Court of India in case reported as **Municipal Corporation, Faridabad Versus Siri Niwas, 2004(4) SCT, 211: 2004(8) SCC, 195**. Such a question arose before Hon'ble Apex Court and it was held that burden to prove was on the workman to show that he worked for more than 240 days to preceding a calendar year to his retrenchment. Subsequently, in case **Manager, Reserve Bank of India, Bangalore Versus S. Mani and Ors. 2005(2) SCT 404: 2005(5) SCC 100**, Hon'ble Supreme Court considered the matter and held that initial burden of proof was on the workman to show that he had

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completed 240 days of service. Further Tribunal's view that the burden was on the employer was held to be erroneous.

14. But in the present case, there is nothing on record to show that applicant/workman has ever served the Respondents for a period of 240 days or more. Moreover, neither any appointment letter nor any termination letter has seen the light of the day. Otherwise also, there is no attendance record or payment of wages record on the file to show that applicant has ever worked with the Respondents. In the absence of such kind of record, this Tribunal constrained to hold that claimant has not serviced the Respondents for a period of 240 days or more in the preceding calendar year prior to his alleged termination. Hence, claimant is not entitled to the relief as claimed for. Hence, findings of these issues are decided against the workman and in favour of the Management.

Relief:

15. In view of the findings on the above said issues, reference preferred by the workman is without merits and the same is, accordingly, declined. Both the parties are left to bearing their own costs. ”

16. 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 employee-employer relationship nor it was proved that the petitioner-workman had completed 240 days work under the respondent- department in terms of section 25B of 1947 Act, so as to attract the provisions of section 25F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by the respondent-department in the year 2002 or any order in that regard was

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produced. Thus, once the petitioner-workman had failed to prove employee-employer relationship and / or that he had completed 240 days work under the Management, no relief could have been granted to him.

17. As regards reliance by petitioner upon Annexures P-1 to P-6 is concerned, it appears that the said documents were not proved on record. Even otherwise, a perusal of Annexure P-1 shows an entry made on 02.12.2002 in some register and Annexure P-2 is an application of petitioner seeking appointment as Patwari wherein, it finds mention that petitioner was working as W.C. Patwari since December 2002. The said averment itself demolishes the pleaded case of petitioner before the Tribunal below that he was appointed on 01.09.2002. Annexures P-3 to P-5 appear to be letters whereby the application of petitioner for appointment to the post of Patwari was dealt with and rejected. Even Annexure P-6, which is stated to be a register bearing signatures of petitioner; does not advance the case of the petitioner. In the absence of any document evidencing appointment of petitioner, the petitioner has failed to explain as to how and in what manner his alleged signatures appear thereon. A bare look at the alleged signatures of petitioner on Annexure P-6 would show that the same do not tally with the signatures of petitioner on the instant Writ Petition. Therefore, no reliance can be placed on these documents.

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

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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,

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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. When the facts and circumstances of this case and also the findings returned by the learned Industrial Tribunal are considered in the light of the legal position indicated above, I do not find any illegality or infirmity with the impugned award dated 08.07.2014 (Annexure P-8), which may call for any interference by this Court, while exercising its writ jurisdiction. Rather the impugned award dated 08.07.2014 (Annexure P-8) is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. Therefore, the instant writ petition is bereft of any merit and the same is accordingly dismissed in *limine*.

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

29.08.2023
Himani

(HARSH BUNGER)
JUDGE

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