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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11504-2016 (O/M)

Date of decision : 16.11.2023

Anil Kumar

..... Petitioner (s)

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another
..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sandeep Parkash Chahar, Advocate
for the petitioner.

Mr. Satish Singla, DAG Haryana.

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HARSH BUNGER, J.

1. Petitioner (Anil Kumar) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the Award dated 19.09.2013 (Annexure P-1), passed by the Ld. Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by petitioner regarding termination of his services, has been answered against him.

A further prayer has been made by petitioner for directing respondent No. 2-The Executive Engineer, PWD, Public Health, Division No. 2, Rohtak (hereinafter referred to as 'respondent No. 2-Management') to

reinstate the petitioner in service on the post of Mali-cum-Chowkidar with effect from the date of his termination i.e. 01.09.2004 alongwith continuity of service and all other consequential benefits.

2. Briefly, petitioner-workman raised an industrial dispute regarding termination of his services. Said dispute was referred for adjudication to Tribunal below. In the claim statement, petitioner-workman claimed that he was appointed by respondent No. 2-Management as Mali-cum-Chowkidar on 07.01.2001 on daily wages basis and he had rendered service to the satisfaction of respondent No. 2-Management, however, on 01.09.2004, his services were suddenly terminated without assigning any reason. The petitioner-workman claimed that he had completed 240 days in a calendar year and his termination was against the provisions of Section 25-F of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). Petitioner-workman alleged that some junior persons are still working and there was also violation of Section 25-G and Section 25-H of 1947 Act. Accordingly, he prayed for reinstatement in service alongwith all consequential benefits.

3. The aforesaid claim of petitioner-workman was contested by respondent No. 2-Management wherein it was stated that petitioner-workman had worked with the contractors, namely, Rakesh Kumar and Ramesh Chander for a few months and some workmen of respondent No. 2-Management, namely, Chaman Lal and Jagbir Singh had purchased some material through petitioner-workman from Chitkara Auto Store, Meham and the petitioner-workman being a clever person had misused the slips. It was

further stated that some official record of respondent No. 2-Management such as log book, attendance register etc. were stolen from the Water Works, Bhaini Bharrow in March, 2004 and respondent No. 2-Management had made oral as well as written request to concerned police official on 06.09.2005 regarding theft of these records, but no action was taken thereon. Respondent No. 2-Management categorically stated that since the petitioner-workman was never appointed, therefore, there was no question of completion of 240 days. Accordingly, it was stated that there was no violation of any provision of 1947 Act and prayer for dismissal of claim statement was made.

4. On the basis of the pleadings of the parties, the Tribunal below framed the following issues :-

“1. Whether termination of services of Sh. Anil Kumar is justified and, if not, to what relief he is entitled to ? OPW

2. Whether the mgt. does not fall within the definition of industry ? OPM

3. Relief. “

5. Upon considering the material/evidence available on record, the Tribunal below, vide impugned Award dated 19.09.2013 (Annexure P-1), rejected the claim of the petitioner-workman.

6. In the aforementioned circumstances, petitioner-workman has filed the instant writ petition before this Court.

7. I have heard learned counsel for the parties and have also perused the paperbook with their able assistance.

8. In the instant case, petitioner-workman had approached the

Tribunal below with the plea that he was appointed by respondent No. 2-Management on the post of Mali-cum-Chowkidar on 07.01.2001 on daily wage basis and though he had completed 240 days work under the respondent No. 2-Management in a calendar year preceding his termination on 01.09.2004, however, his services were terminated without complying with the provisions of 1947 Act.

9. On the other hand, the stand of respondent No. 2-Management was of total denial that the petitioner-workman was ever appointed by respondent No. 2-Management. Rather, it was stated that the petitioner-workman had worked with some contractors and therefore there was no question of completion of 240 days and for that matter, there was no violation of provisions of 1947 Act.

10. It is well settled proposition that the onus to prove the issue regarding relationship of employee-employer and/or the issue of proving continuous service by workman under the Management in terms of Section 25-B of 1947 Act so as to attract the provisions of Section 25-F of 1947 Act, rests upon the workman.

11. 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 and Ors.*, (2004) 3 SCC 514, Hon'ble the 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..."

12. Further, while considering an issue as to whether the workman had completed 240 days of work under the management in terms of Section 25-B, so as to attract provisions of section 25-F of Industrial Disputes Act, 1947, the workman was required to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly terminated by Management. It is well settled law 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. In this regard, reference can be made to

the case of *Municipal Corpn. v. Siri Niwas*, 2004(4) S.C.T. 211 and *Surendranagar District Panchayat v. Dahyabhai Amarsingh*, 2005(8) SCC 750.

13. In the instant case, the Tribunal below has held that the petitioner-workman had failed to prove that he had rendered continuous service of 240 days under respondent No. 2-Management in a calendar year preceding the date of his termination.

14. Learned counsel for petitioner-workman has failed to dislodge the aforesaid finding returned by the Tribunal below. Petitioner-workman has not produced any appointment letter or termination order or any salary slip/statement for the relevant period or any other evidence, which may prima facie suggest that he had actually rendered continuous service in terms of Section 25-B of 1947 Act under respondent No. 2-Management, so as to claim the benefit of Section 25-F of 1947 Act. In the absence of any material/evidence on record, no relief could be granted to the petitioner-workman.

15. Learned counsel for petitioner-workman has also raised a plea that since the entire record was with respondent No. 2-Management, accordingly, it was for respondent No. 2-Management to produce the entire record and since respondent No. 2-Management had failed to produce the entire record, accordingly, adverse inference should have been drawn against them.

16. As regards the plea of the petitioner that adverse inference be drawn against respondent No. 2-Management for not producing relevant record, it is observed that drawing of adverse inference is optional and not

obligatory and the same is within the domain of Industrial Tribunal. Further, drawing of adverse inference depends on facts and circumstances of each case and adverse inference cannot be drawn only because it is lawful to do so. In the instant case, the Tribunal below has not drawn any adverse inference. Furthermore, apart from the bare plea of non-production of relevant record by respondent No. 2-Management; there is no plea of the petitioner that respondent No. 2-Management has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent No. 2-Management. In this regard, reference can be made to the judgment of Hon'ble Apex Court in ***R.M. Yellatti v. The Asst. Executive Engineer, 2005(4) S.C.T. 695***, wherein it has been held as under:

“15. ... 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...”

17. 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 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.*

18. In view of above discussion and in the light of the legal position indicated above, there is no scope for any interference in the impugned award dated 19.09.2013 (Annexure P-1) by this Court, while exercising its writ jurisdiction. Therefore, the instant writ petition is bereft of any merit and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

16.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No