

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

CWP-15477-2023 (O&M)
Date of Decision: 21.07.2023

SHIV KUMAR

...Petitioner

Versus

PT. B.D. SHARMA, PGIMS ROHTAK AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ankur Dua, Advocate
for the petitioner.

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

HARSH BUNGER, J.

1. Petitioner (Shiv Kumar) has filed the present petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* and/or any other appropriate writ/order for quashing the award dated 28.03.2023 (Annexure P-5) passed by respondent No.3- Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in Ref. No.213 of 2017, whereby the reference of industrial dispute has been decided against the petitioner.

A further prayer has been made for issuance of a writ in the nature of *mandamus* for directing the respondents to reinstate the petitioner and also grant him the due benefits from the date of termination of his services i.e. 15.06.2017, till the date of his reinstatement and also to treat the period for which he had remained out of service as a period of duty. The petitioner has also sought release of full pay and allowances.

2. Briefly, the petitioner raised an industrial dispute by filing a claim statement by stating that he was appointed by respondent No.1 (Pt.

B.D. Sharma, Post Graduate Institute of Medical Sciences, Rohtak) on the post of Mali on 03.03.2015. As per the petitioner, he has performed his duties honestly and to the best of his abilities and there was no complaint by any of the officials of respondent No.1-Institute against the petitioner. He claims that his services were illegally terminated by respondent No.1-Institute on 15.06.2017 without assigning any reason or reasonable cause, which amounts to punishment and unfair labour practice. It is alleged that petitioner-workman had not been paid salary of 15 days. It is the case of petitioner that he has continuously worked with respondent No.1-Institute and has completed more than 240 days in the year preceding the date of his termination and some juniors are still working; thus his services are liable to be regularized. Petitioner alleges that before illegal termination of his services, no notice, notice pay and/or retrenchment compensation was given to him and thus, the respondent has violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short, '1947 Act').

3. The said claim petition was contested by respondent No.1, wherein it was categorically pleaded that there was no relationship of employer and employee between respondent No.1-Institute and the petitioner and the petitioner was not an employee of respondent No.1-Institute. It was the pleaded case of respondent No.1 that the petitioner was hired by the outsourcing agency, i.e. M/s Delta Guard Pvt. Ltd. (respondent No.2). It was also pleaded by respondent No.1 that the petitioner never completed 240 days of regular service in a calendar year. It was further stated that the petitioner was never engaged by respondent No.1-Institute to do the work of Mali nor any appointment letter was issued to him.

4. From the pleadings of the parties, the Industrial Tribunal-cum-Labour Court, Rohtak framed the following issues :-

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

5. In order to prove his case, petitioner examined himself as WW-1 and submitted his affidavit Ex.WW1/A, wherein he reiterated his stand as mentioned in the claim petition. The petitioner further examined Sh. Sudhir Katyal, Superintendent, Estate Office, P.G.I.M.S., Rohtak and Sh. Naveen Kumar, Trainee Officer O/o State Bank of India, Medical College, Rohtak, who placed on record the account statement of petitioner as Ex.W-1 and thereafter, the evidence from the petitioner’s side was closed.

6. On the other hand, respondent No.1-Institute examined Sh. Ranbir Singh, Assistant from the Office of P.G.I.M.S., Rohtak as MW-1, who tendered his affidavit Ex.MW1/A and placed on record documents Ex.M1 to Ex.M4 and Mark ‘A’ to Mark ‘G’ and thereafter, the evidence from the side of respondent No.1-Institute was closed.

7. After conclusion of the evidence led by petitioner and respondent No.1-Institute, the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak passed the impugned award dated 28.03.2023 (Annexure P-5) against the petitioner-workman and he was held not entitled to any relief.

8. Being aggrieved against the said impugned award dated 28.03.2023 (Annexure P-5), the petitioner has filed the instant writ petition.

9. Learned counsel for the petitioner submits that the petitioner was appointed by respondent No.1-Institute on the post of Mali on

03.03.2015. It is submitted that the petitioner had worked for a period of more than 240 days in the year preceding the date of his termination. Learned counsel for the petitioner further submits that neither respondent No.1-Institute nor respondent No.2 (M/s Delta Guard Pvt. Ltd.) gave any notice before terminating the services of petitioner nor any notice pay or retrenchment compensation was given to the petitioner, thus services of the petitioner were terminated without following the due procedure as provided under Sections 25-F, 25-G and 25-H of the 1947 Act, which is illegal and not sustainable in the eyes of law. It is the contention of learned counsel for the petitioner that initially the contract between respondent No.1 and respondent No.2 was for one year and thereafter no document was shown by the respondent-Institute that the said contract was renewed. It is submitted that the existence of relationship of workman and employer can be seen by applying the doctrine of 'lifting of veil' and the intermediary contract was just an eye wash. It is further contended that nothing has been brought on record to indicate that at the relevant time, even respondent No.1-Institute was registered as the principal employer under the Contract Labour Regulation and Abolition Act, 1970. It is argued by learned counsel for the petitioner that after illegal termination of the services of petitioner, new appointments have been made on the post of Mali/Class IV from the month of November, 2017. Accordingly, it is submitted that impugned award dated 28.03.2023 (Annexure P-5) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak may be set aside and necessary directions may be issued for reinstatement of the petitioner with continuity in service and full back wages and other benefits due to him.

10. I have heard learned counsel for the petitioner and gone through the paper book with his able assistance.

11. It is the pleaded case of the petitioner that he was appointed by respondent No.1-Institute on the post of Mali on 03.03.2015 and his services were illegally terminated on 15.06.2017, without following the mandatory provisions of the 1947 Act. Petitioner claims that he had worked for more than 240 days in the year preceding the date of his termination i.e. 15.06.2017. On the other hand, respondent No.1-Institute took a stand that there is no relationship of employer and employee between petitioner-workman and respondent No.1-Institute. It was also disputed that petitioner had worked for 240 days in preceding twelve calendar months from the date of alleged termination.

12. It is well settled that the onus to prove relationship of employer and employee is on the workman. However, in order to discharge the onus to prove the aforesaid fact, the petitioner gave his own testimony and did not lead any evidence either in the form of statement of any co-worker or any proof of salary or any order of appointment or engagement for the relevant period evidencing relationship of employee and employer between petitioner and respondent No.1-Institute. It is well settled position of law that mere affidavits or self serving statements given by the workman could not be made a basis to hold that there is relationship of employer and employee or that the workman has worked for 240 days in the year in question.

13. Vide, the impugned award dated 28.03.2023 (Annexure P-5), the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak has returned the following findings :-

“10. Petitioner’s case is that he was appointed by the respondent No.1 on the post of Mali on 03.03.2015 and

was performing his duties with honesty and satisfactorily but the respondent No.1 illegally terminated his service on 15.06.2017 without assigning any reason while retaining his juniors in violation of Sections 25F, 25G and 25H of the Act. On the other hand, as per the respondent No.1 the petitioner was never engaged by it on the post of Mali rather the petitioner was hired on outsource basis by the out-sourcing agency i.e. M/s Delta Guard Pvt. Ltd. and thus, there was no relationship of employer-employee between the parties. At the outset, it must be mentioned that the onus was on the petitioner to prove the relationship of employer-employee between the respondent No.1 and him. By now, through a catena of judgments it has been settled by the Hon'ble Apex Court that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. Reliance in this connection has been placed on authority titled as Balwant Rai Saluja V Air India Ltd. 2014(9) SCC 407; Bharat Heavy Electricals V Mahendra Prasad Jakhmola & Ors in Civil Appeal Nos.1799-1800 of 2019 of Supreme Court of India, Date of decision 20.02.2019 and Kirloskar Brothers Limited V Ramcharan and Ors. in Civil Appeal Nos.8446-8447 of 2022 of Supreme Court of India, Date of decision 05.12.2022. In the case on hand the petitioner in his cross-examination has admitted that the respondent did not ever advertise any vacancy nor did he apply. Though the petitioner initially denied that the contractor used to pay him salary but on further cross-examination he stated that he was paid Rs.8100/- but the petitioner could not tell as to how much amount was being deducted by the contractor. On further cross-examination he

admitted that he has no document to show that he was worker of PGIMS (respondent No.1). Thus, from cross-examination of the petitioner it is evident that he was being paid salary by the contractor. It is also evident from his cross-examination that he was appointed by outsourcing agency as a labourer for few days. Further, the petitioner stated that he has no document in which his attendance was marked. From the documents placed on record Ex.W1 (Pages 1-6), it is not clear as to who had been crediting the salary in the account of the petitioner. Further, the document Ex.M1 would show that the petitioner was an employee of outsourcing agency M/s Delta Guard Pvt. Ltd. The document Ex.M2 entered into between the Registrar on behalf of the respondent No.1 and M/s Delta Guard Pvt. Ltd. is Award of contract for providing of Horticulture Services at Pt. B.D. Sharma, University of Health Sciences, Rohtak, which also shows that the contract of work for providing horticulture services in PGIMS (respondent No.1) was awarded to the outsourcing agency M/s Delta Guard Pvt. Ltd. and as per terms and conditions of the said contract the agency was to submit bill upto 7th day of every month for releasing timely payment of wages and after depositing of EPF and ESI contribution. Thus, it is clear from the Award of contract Ex.M2 that payment of salary was not being paid to the petitioner by the respondent No.1. Further, the document Ex.M3 i.e. photocopies of attendance register would show that the attendance of the petitioner was being marked by Delta Guard Pvt. Ltd. Moreover, from the document Ex.M4 i.e. photocopies of Payment Wages Register it is also evident that the said register was being maintained by Delta Guard Pvt. Ltd. Thus, for all intents and purposes the petitioner would be deemed an employee of M/s Delta Guard Pvt. Ltd. and not of the respondent No.1. Hence, there is no relationship of employer-employee between the respondent No.1 and the petitioner. As already

elucidated above, 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 and thus the petitioner having failed to establish the same, is not entitled to any relief from the respondent No.1.

11. Further, from the cross-examination of MW-1 it is evident that the petitioner had worked on the post of Mali with effect from 03.03.2015 to 15.06.2017 with the outsourcing agency i.e. respondent No.2. However, in his pleading the petitioner has not claimed any relief against the said respondent No.2 M/s Delta Guard Pvt. Ltd. as after impleading the respondent No.2 as a party, the petitioner did not file any amended claim statement claiming any relief against the respondent No.2 and simply adopted the claim statement filed by him against the respondent No.1 as claim statement against respondent No.2. Hence, the petitioner is also not entitled to any relief including salary from the respondent No.2.

The issue is accordingly decided against the petitioner and in favour of the respondent. In the circumstances, facts of the authorities cited supra by Ld. AR for the petitioner are not applicable to the case on hand.”

14. A perusal of the above extracted findings returned by the Industrial Tribunal-cum-Labour Court, Rohtak would manifest that the petitioner had failed to discharge the onus of proving the relationship of employer and employee between respondent No.1-Institute and himself. Rather in his cross-examination, the petitioner admitted that respondent No.1-Institute never advertised any vacancy nor did he apply. Further, it appears that initially the petitioner denied that the contractor used to pay him salary, however in his cross-examination, petitioner stated that he was paid Rs.8,100/- but he could not tell as to how much amount was being deducted by the contractor. Petitioner further admitted that he has no document to

show that he was a worker of respondent No.1-Institute. The Industrial Tribunal-cum-Labour Court, Rohtak has recorded in its findings that as stated by the petitioner in his cross-examination, he was being paid salary by the contractor and he was appointed by the outsourcing agency as a labourer for a few days. Petitioner has also not shown any document in which his attendance was marked. As regards the account statement of the petitioner (Ex.W1), it has been observed that is not clear from the same as to who had been crediting the salary in the account of petitioner. On the other hand, the document Ex.M1 produced by respondent No.1-Institute showed that petitioner was employee of the outsourcing agency-M/s Delta Guard Pvt. Ltd. (respondent No.2) and Ex.M2 is the document entered into between the Registrar on behalf of respondent No.1-Institute and M/s Delta Guard Pvt. Ltd. regarding award of contract for providing of Horticulture Services at Pt. B.D. Sharma, University of Health Sciences, Rohtak. Still further, the document Ex.M3 (attendance register) showed that attendance of petitioner was being marked by M/s Delta Guard Pvt. Ltd. (respondent No.2) and document Ex.M4 (payment wages register) showed that the said register was also being maintained by the M/s Delta Guard Pvt. Ltd. After considering the evidence available on record, the Industrial Tribunal-cum-Labour Court, Rohtak returned a finding that there was no relationship of employer and employee between respondent No.1-Institute and petitioner and it was further held that petitioner had worked on the post of Mali with the outsourcing agency-M/s Delta Guard Pvt. Ltd; accordingly, finding no merit in the claim made by the petitioner, award dated 28.03.2023 (Annexure P-5) was passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak against the petitioner.

15. The petitioner has not been able to dislodge the findings returned by the Industrial Tribunal-cum-Labour Court, Rohtak. The reliance placed on Payment Wages Register for the month of June, 2017 (Annexure P-4 also does not help the petitioner as a bare perusal of the said document would show that the same reflects the name and address of contractor as M/s Delta Guards Pvt. Ltd. (respondent No.2). In my considered view, once the petitioner has failed to prove that there was any relationship of employee and employer between him and respondent No.1-Institute, then no relief can be granted.

16. As regards the plea of the petitioner that the contract between petitioner and M/s Delta Guards Pvt. Ltd. was only for a period of one year and there is no document on record to show that the said contract was renewed; suffice it to say that the onus to prove the relationship of employee – employer was on the petitioner, which he failed to discharge as noticed above. Further, the aforesaid plea that the contract was only for one year and was not renewed rather falsifies the stand of the petitioner and gives credence to the stand of the Respondent No. 1- Institute that petitioner was not their employee.

17. As regards the submission of the counsel for the petitioner that there is nothing on record to indicate that Respondent No. 1- Institute was registered under the Contract Labour Regulation and Abolition Act, 1970, it is observed that the effect of the provisions of the said Act was considered by the Hon'ble Supreme Court of India in ***“Steel Authority of India Ltd. v. National Union Water Front Workers”***, 2001(4) SCT 1, wherein the following findings were returned: -

“124. The upshot of the above discussion is outlined thus :

(1) (a) Before January 28, 1986, the determination of the question whether Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oil field or the establishment of banking or insurance company ? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government.

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act, if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by railway company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2) (a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in the any establishment has to be issued by the appropriate Government :

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and;

(2) *having regard to*

(i) *conditions of work and benefits provided for the contract labour in the establishment in question; and*

(ii) *other relevant factors including those mentioned in sub-section (2) of Section 10;*

(b) *inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the aforesaid requirements of Section 10 it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.*

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

(4) *We over-rule the judgment of this court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment of in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.*

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of the having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation of other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

18. In the instant case, neither any notification issued under Section 10 of the Contract Labour Regulation and Abolition Act, 1970 has been shown in respect of respondent No. 1-Institute (establishment) nor any such plea was raised / proved before the Labour Court; thus the said argument on behalf of the petitioner is rejected.

19. Still further, the effect of non-registration of contractor under the Contract Labour Regulation and Abolition Act, 1970 was considered by a Division Bench of this Court in *Balwinder Singh v. Punjab State Electricity Board*, 2011(4) S.C.T. 231, wherein it was observed as under:-

“6. The absence of any registration of the labour contractor under the provisions of the Act, in our considered view, will not alter the situation. The same may make the labour contractor liable for penal and other action contemplated by the provisions of the Act. The absence of any such registration of the labour contractor cannot obliterate the engagement of workmen by the contractor; neither the said fact can alter the status of the workmen to one of regular employees under the principal employer...”

20. As regards the plea of the petitioner that the learned Industrial Tribunal below has erred in not granting any relief to the petitioner atleast qua respondent No. 2 herein (M/S Delta Guards Pvt. Ltd.); it is observed that the petitioner has not shown any demand notice having being served upon Respondent No. 2 (M/S Delta Guards Pvt. Ltd.). In my considered view, serving a demand notice upon the employer is a pre-requisite for raising an industrial dispute and in the absence of the same, mere impleading Respondent No. 2 herein (M/S Delta Guards Pvt. Ltd.) before the Industrial Tribunal during pendency of the claim petition against respondent No. 1 herein and also by merely adopting the claim statement filed against

Respondent No. 1 to be considered against respondent No. 2 herein, would not amount to raising of an Industrial Dispute by petitioner against Respondent No. 2 herein (M/S Delta Guards Pvt. Ltd.) as the categorical case of petitioner was that he was employed by respondent No. 1-Insitute and even the claim petition was filed initially only against respondent No. 1-Insitute only. In this regard, reference can be made to the judgment rendered by the Hon'ble Supreme Court of India in ***“Prabhakar v. Joint Director Sericulture Department” 2015(4) SCT 493***, wherein the following observation was made: -

“28. In this process, let us first examine as to what would constitute 'industrial dispute' because of the simple reason that the appropriate Government has power to refer what is known as an 'industrial dispute' and likewise the Labour Court/Industrial Tribunal has jurisdiction to decide if there is an industrial dispute. We are not going into the entire gamut of what constitutes 'industrial dispute' within the meaning of Section 2(k) of the Act. Our focus is only on the aspect that what can be referred should be the dispute which is existing and in praesenti when the reference is sought. To put it otherwise, if it no longer remains an industrial dispute or industrial dispute 'does not exist' at that time, there would not be any question on making reference or adjudicating the matter as it is not an industrial dispute.

29. Section 2(k) of the IDA defines 'industrial dispute' and it reads as under :

"'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of

employment or with the conditions of labour, of any persons;"

30. *As per Section 2A dispute relating to discharge, dismissal, retrenchment or termination of an individual are also deemed as industrial dispute and, therefore, an individual is given right to raise these disputes.*

31. *The term 'industrial dispute' connotes a real and substantial difference having some element of persistency, and likely, if not adjusted, to endanger the industrial peace of the community. The expression 'dispute or difference' as used in the definition, therefore, means a controversy fairly definite and of real substance, connected with the employment or non-employment or with the terms of employment or the conditions of labour of any person, and is one in which the contesting parties are directly interested in maintaining the respective contentions.*

32. *To understand the meaning of the word 'dispute', it would be appropriate to start with the grammatical or dictionary meaning of the term :*

'Dispute': "to argue about, to contend for, to oppose by argument' to call in question - to argue or debate (with about or over), - a contest with words; an argument; a debate; a quarrel;

33. *Blacks law dictionary, 5th Edition, page 424 defines 'dispute' as under :*

" A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined."

34. *Thus, a dispute or difference arises when demand is made by one side (i.e. workmen) and rejected by the*

other side (i.e. the employer) and vice versa. Hence an 'industrial dispute' cannot be said to exist until and unless the demand is made by the workmen and it has been rejected by the employer. How such demand should be raised and at what stage may also be relevant but we are not concerned with this aspect in the instant case. Therefore, what would happen if no demand is made at all at the time when the cause of action arises? In other words, like in the instant case, what would be the consequence if after the termination of the services of petitioner on April 01, 1985, the petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for number of years? Can it still be said that there is a dispute? Or can it be said that workmen can make such demand after lapse of several years and on making such demand dispute would come into existence at that time. It can always be pleaded by the employer in such a case that after the termination of the services when the workmen did not raise any protest and did not demand his reinstatement, the employer presumed that the workmen has accepted his termination and, therefore, he did not raise any dispute about his termination. It can be said that workmen, in such a case, acquiesced into the act of the employer in terminating his services and, therefore, accepted his termination. He cannot after a lapse of several years make a demand and then convert it into a 'dispute' what had otherwise become a buried issue...”

Thus, in the absence of any demand being raised against respondent No.2; the petitioner is also not entitled to any relief qua respondent No. 2 (M/s Delta Guards Pvt. Ltd.).

21. Furthermore, the peripheries of this court to exercise *Certiorari* jurisdiction 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 misinterpretation 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 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.”

22. No other point has been urged.

23. Keeping in view the above, I do not find any illegality in award dated 28.03.2023 (Annexure P-5) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, which may call for interference by this Court while exercising its writ jurisdiction, therefore, the present writ petition, being bereft of any merits, is dismissed in *limine*.

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

July 21st, 2023
gurpreet/Apurva/Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No