

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

CWP-14345-2014 (O&M)
Date of Decision: 12.10.2023

ASHWANI KUMAR AND OTHERS

...Petitioners

Versus

PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashwani Bakshi, Advocate
for the petitioners.

Mr. Anil Rathee, Advocate
for respondents No.2 to 4.

HARSH BUNGER, J.

1. Petitioners (Ashwani Kumar and others) have filed the instant writ petition under Article 226 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for quashing the Award dated 26.09.2013 (Annexure P-18) passed by respondent No.1-Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I (for short 'the CGIT'), Chandigarh, whereby the reference of industrial dispute has been decided against them.

2. Briefly, the petitioners raised an industrial dispute, which was referred for adjudication to the CGIT, Chandigarh. The said reference came to be decided vide Award dated 27.04.2010 (Annexure P-16) against the workmen; however, the same was challenged before this Court by way of filing ***CWP-10665-2011*** by the petitioners-workmen herein. The afore-said writ petition (***CWP-10665-2011***) came to be decided by this Court

vide order dated 23.05.2013 and the matter was remanded for fresh decision. Accordingly, upon remand, the matter was taken up by the learned Tribunal below.

3. In the claim petition filed by the petitioners, it was stated that they were appointed as Labourer(s) on different dates (as detailed in Annexure P-1) during 1994-1998 under the Chief General Manager Telecom, Punjab Telecom Circle, Chandigarh; however, their services were terminated on 27.02.1999 without any notice and without any compensation, in violation of Section 25-F of the Industrial Disputes Act. Petitioners claimed that they had already completed 240 days. They further claim that though their appointment was shown to be made through a Contractor, which was a *sham* transaction and they were working directly under the supervision and control of the department and the work on which, they were engaged, was of perennial nature. Petitioners claimed that their case was squarely covered by the judgment rendered by the Hon'ble Supreme Court in the case of ***Air India Statutory Corporation vs United Labour Union and others 1997(9) SCC 377***. It was also claimed by the petitioners that after the termination of their services, new appointments have been made without offering them any opportunity for further employment and thus; it was the violation of Section 25-H of the Industrial Disputes Act, as well. Accordingly, the petitioners sought re-instatement with continuity of service along with full back wages.

4. The afore-said claim of the petitioners was contested by the respondent-Management/department; wherein, an objection was raised that the department was not an industry and was not governed under the

Industrial Disputes Act and also that the Department of Telecom Services was no longer in existence as a Public Sector Undertaking, known as 'Bharat Sanchar Nigam Limited' (BSNL) was constituted w.e.f. 01.10.2000 and as such, the claim petition was not maintainable. It was the categoric plea of the respondent-department that the petitioners were neither engaged nor recruited by the management/Department and they were also not the Members of the service. It was stated that no appointment letter was issued nor the services of the petitioners were terminated by the management/Department and even no payment was made to the petitioners by the respondent-Management/Department. It was pleaded by the management/Department that it had entered into a contract with a contractor for supply of labour/man power for the performance of emergency work in the department and that they were not aware about the petitioners as to whether they were supplied to the department by the contractor. It was specifically stated by the department that the petitioners herein have not produced any record/letter to prove that they were appointed by the respondent-department; thus, the relationship of the employee and employer between the petitioners and the respondent-department was disputed. It was also disputed that the petitioners had completed 240 days with the department of Telecommunications. It was also denied by the respondent-department that any new appointment has been made; accordingly, prayer for dismissal of the claim petition was made.

5. After considering the case of the respective parties and also the evidence/material available on the record, the learned Tribunal below vide impugned Award dated 26.09.2013 (Annexure P-18) answered the reference against the petitioners-workmen by holding that the workmen had failed to

establish relationship of employee and employer between the petitioners and the respondent-department.

6. In the afore-mentioned circumstances, the instant writ petition has been filed before this Court.

7. Learned counsel for the petitioners submits that the learned Tribunal below has erred in passing the impugned Award. It is submitted that the learned Tribunal below has failed to consider and appreciate the evidence available on the record and has wrongly held that the petitioners have failed to prove the relationship of employee and employer between them and the management/Department. It is submitted that there was enough evidence on the record to prove that the petitioners-workmen were working for the respondent-department under the control and supervision of its officers and payment of its wages was also made to them by the department officials. It is submitted that the alleged agreement propounded by the respondent-department is a mere camouflage and even otherwise, the original of the contract was not produced on the record. It is submitted that even if the plea of the management is to be accepted that there was a contract with the contractor, even then there is nothing on record to show that the department as well as the contractor were registered with the competent authority, in terms of the provisions contained in the Contract Labour Regulation and Abolition Act, 1970 (in short 'the Act, 1970'). It is submitted that the management had failed to produce the original record and in the absence of the same, the petitioners-workmen ought to have been held to be the employees of the respondent-department. It is, accordingly, contended that the services of the petitioners have been terminated in

violation of the provisions of the Industrial Disputes Act; hence, the impugned award is liable to be set aside and an appropriate direction be issued for directing re-instatement of the petitioners with continuity of service and full back wages.

8. On the other hand, learned counsel for the respondent-management/Department has opposed the submissions made by learned counsel for the petitioners and has submitted that the onus to prove the relationship of employer and employee as well as the onus to prove that the petitioners had worked for 240 days in the last 12 calendar months preceding the date of the alleged termination is on the workmen, in terms of Section 25-B of the Industrial Disputes Act. It is submitted that the petitioners-workmen had failed to discharge the said onus and apart from their bald statement, there is nothing on record to even indicate that they were ever employed by the management/Department. Learned counsel for the respondent-management/Department has referred to the cross-examination of petitioner No.1-Ashwani Kumar to contend that the statement of the petitioner in his cross-examination has completely demolished his own case as he has clearly admitted that he has no document in his possession to show that he was appointed by the respondent-department. Learned counsel for the respondents further submits that as regards the plea of the petitioners that the department as well as the contractor was not registered under the Act, 1970, the same has no relevance, especially in view of the fact that the onus to prove the relationship between the petitioners and the management/Department was on the workmen, which has not been discharged. It is contended that even if the department as well as the contractor were not registered under the Act, 1970, even then at best, only

penal clauses can be invoked against them and the same would not entitle the petitioners to claim automatic absorption in the department. It is also contended that the petitioners had failed to give the details of any person appointed by way of new appointment so as to claim that there is a violation of the provisions of Section 25-H of the Industrial Disputes Act. Accordingly, prayer has been made for dismissal of the instant writ petition.

9. I have heard learned counsel for the parties and have perused the paper book with their able assistance.

10. It is well settled law that the onus to prove the relationship of employee and employer between the workman and the Management is upon the workman by adducing evidence in the form of appointment letter or record of the engagement of workman by Management for 240 days or more in a Calendar year preceding the date of termination or such evidence in the form of receipt of salary for 240 days etc.

11. Coming to the case in hand, I have gone through the cross-examination of petitioner No.1-Ashwani Kumar, wherein he had stated that he has no document in his possession to show appointment made by any officer of the department. He further admitted that he is not having in his possession certificate or any other document to show his employment from 06.03.1996 to 27.02.1999 with the management. It is also submitted by him that neither he is having any document to show that the wages were paid to him (workman) directly by any officer nor the termination letter was given to him.

12. A perusal of the afore-said cross-examination of petitioner-Ashwani Kumar would manifest that he had clearly admitted that he had no document in his possession to show that he was appointed by the

department. He further admitted that he had no document to show his employment from 06.03.1996 to 27.02.1999 with the management/Department. Petitioner has further admitted that he has not brought any document to show his performance of duties, as claimed by him and neither, did he possess any document to show that the wages were paid to him directly by any officer. Petitioner further did not produce any duty chart to support his pleaded stand. It was also admitted by the petitioner that no termination letter was given to him. The petitioner further failed to produce any seniority list of the labours engaged nor he could give the names of any junior(s) retained or regularized.

13. Once the petitioners have not proved on the record that they were employed by the department or they were paid wages by the department or any other document to show their employment with the department, it cannot be held that there was a relationship of employee and employer between the petitioners and the management/Department. It is well settled position of law that mere affidavit or self-serving statement made by the claimant/workmen will not suffice in the matter of discharge of the burden placed by law on the workmen to prove that they had worked for 240 days in a given year or there is a relationship of employee and employer between the workmen and the Management. In this regard, reference can be made to the judgment rendered by Hon'ble Supreme Court of India in the case of ***Municipal Corpn. v. SiriNiwas, 2004(4) S.C.T. 211***, wherein, the Hon'ble Apex Court held as under:

“12. The provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the

principles of natural justice are complied with. The burden of proof was on the respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. In terms of Section 25F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by employer for effecting a valid retrenchment :

(i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof :

(ii) payment of compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.

13. For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25-B of the Act. In terms of sub-section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25B of the Industrial Disputes

Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did not examine any other witness in support of his case.

14. 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 in 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.

15. No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a

Tribunal unless the same is found to be illegal or irrational...”

14. Further, in the case of ***Surendranagar District Panchayat v. Dahyabhai Amarsinh***, 2005(8) SCC 750, Hon'ble Apex Court held as under:

“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 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. As regards the contention regarding non-registration of the contractor as well as the department under the Act, 1970 is concerned, the said issue is no more *res integra* as the position stands settled by the Hon’ble Supreme Court by authoritative judgment in the case of “***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.

16. Still further, the effect of non-registration of contractor under the 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...”

17. 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.”

18. No other point has been urged.
19. Keeping in view the above, I do not find any illegality in award

dated 26.09.2013 (Annexure P-18) passed by the CGIT, Chandigarh, 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.

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

Ocober12th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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