

CWP-14048-2015**222****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP-14048-2015****Date of Decision: 01.08.2023**

Om Pati

...Petitioner

Versus

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

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGERPresent : Ms. Garima Sharma, Advocate
for the petitioner.

Mr. Satish Singla, AAG, Haryana.

HARSH BUNGER, J. (ORAL)

1. Petitioner-work lady (Om Pati) 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 24.10.2013 (Annexure P-1) passed by learned Industrial Tribunal-cum-Labour Court, Rohtak (*hereinafter "The Tribunal"*) whereby, the reference of the industrial dispute with regard to termination of services of petitioner-work lady has been decided against her. A further prayer has been made for directing that the petitioner be reinstated in service with all consequential benefits.

2. Briefly, Petitioner (Om Pati) raised an industrial dispute, which was referred for adjudication to the learned Industrial Tribunal cum Labour Court, Rohatk (*herein after "the Tribunal below"*) 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 filed by petitioner, she claimed to have been appointed with respondent- department as Beldar-cum-Mali in the year 1981 and she claimed to have worked under the supervision of various guards namely Satpal, Manraj, Jagpal, Jora, Maan Singh, Satvir, Med, Pehlad, Dilbag, Hari Singh etc. Petitioner claimed that she worked continuously upto 01.05.2000, when her services were suddenly terminated in an illegal and arbitrary manner by adopting unfair labour practice. Petitioner alleged that respondent-Management manipulated her service record to show that she has not worked for 240 days. It was also claimed by the petitioner that juniors to her had been retained in service and that her services were terminated in violation of Section 25-F, 25-G and 25-H of Industrial Disputes Act, 1947 and the same is illegal, unjustified and against principles of natural justice. Accordingly, the petitioner prayed that she be reinstated on job with full back wages and continuity of service.

4. The aforestated claim of the petitioner was opposed by the respondent-department by submitting its reply wherein it was inter-alia stated that the petitioner was neither engaged against a sanctioned post nor any advertisement was issued. It was stated that the work lady was a daily wager and she never completed 240 days of continuous service. It was also stated that the engagement of worker was as per availability of work. It was next submitted that the petitioner had left the work on her own wish and she was not retrenched. Plea of delay and laches was also taken and it was stated that there was no violation of Sections 25-F, 25-G, 25-H and 25-B of the 1947 Act, accordingly prayer for dismissal of claim statement was made.

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

- “1. Whether termination of services of the work lady is justified and if not to what relief he is entitled to? OPW*
- 2. Relief.”*

6. In order to prove his case/claim, the petitioner/work lady- Om Pati, examined herself as WW-1. Thereafter, the petitioner-work lady closed her evidence.

7. On the other hand, the respondents have examined MW1 Randhir Singh, Forest Range Officer, Toshamand he stated that the work lady worked for 30 days in April 1995, 30 days in June 2, 1995 and 20 days in March 1997. Thereafter, the respondents evidence was closed.

8. Upon appreciating the material / evidence available on record, the Tribunal below rejected the claim of the petitioner-work lady and answered the reference against her vide the impugned Award dated 24.10.2013 (Annexure P-1).

9. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this court.

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

11. It is well settled law that the onus to prove that a workman/work lady has rendered continuous service i.e. 240 days in preceding 12 calendar months in terms of Section 25-B of the 1947 Act and also to prove relationship of employee and employer is on the workman/work lady.

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12. In the instant case, vide impugned award dated 24.10.2013 (Annexure P-1), learned Presiding Officer, Industrial Tribunal cum Labour Court, Rohtak; has returned the following findings:-

“9. In this regard, the learned authorized representative for the workman has vehemently contended that the work lady to prove her working summoned the record from the respondent /management but on one pretext to another they failed to produce the same as is evident from the statement of Basant Lal, Range Forest Officer recorded on 9.12.2012 and statement of Sh. Surajmal, Forester O/o DFO, Bhiwani recorded on 19.12.2012, wherein it has been stated by them that the summoned record pertaining to the work lady for the alleged period i.e. from the year 1981 to 30.04.2000 is not available in the department hence cannot be produced. It is, therefore, vehemently contended that the documentary evidence relating to the work lady was withheld by the respondent /management, an adverse inference has to be drawn against the respondent/management and it has to be held that the work lady did continuously work under the respondent/management from 1981 to 30.4.2000, thereby putting for more than 240 days in the last calendar year. Whereas the service record was deliberately withheld by the respondent/management just to deprive the petitioner/workman from his statutory right, but this court has the least hesitation to observe that no credence at all can be accorded to the aforesaid contentions raised by the work lady for the reason that though WW-1 Ompati in her statement has deposed that she had rendered service continuously from 1981 to May 2000. However, her services were illegally terminated and prior to her dismissal neither any notice was served

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nor she was paid any compensation as there is absolutely no evidence either oral or documentary on the file to support her contention. It is true that the respondent/management is the custodian of the record especially in the case of daily wagers but when the contentions raised by the work lady is disputed by the respondent /management, the onus shifts upon the work lady to prove her assertion but there is nothing on the record from which it could be inferred that the aforesaid service record of the work lady has been withheld by the management just to deprive the statutory and rightful right. Thus, on this score also no adverse inference can be drawn against the respondent/management that too especially in the circumstances when it is well settled proposition of law that it was for the work lady to prove that she had worked for more than 240 days before her termination in the last 12 preceding calendar months. Since the work lady herself had left the job, so there is no question of termination of her services as alleged by her on 01.05.2000.

10. On the contrary, it is the consistent stand of the respondent/management that the work lady has been engaged as daily wager and not against any permanent post with the department. As per the respondent /management she worked 30 days in 4/1995, 30 days in 6/1995 and 20 days in 3/1997 with heavy breaks, and these assertions of the respondent /management stand established in the clear cut from the bare perusal of the statement of MW-1 Randhir Singh, Forest Range Officer, wherein the details of the working days of the workman for the period from 1981 to 2000 clearly shows that the workman has just worked with the respondent/management for 30 days in 4/1995, 30 days in 6/1995 and 20 days in 3/1997. The aforesaid

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documentary evidence placed on the record of this file by MW-1 Randhir Singh, Forest Range Officer, Tosham wherein he has specifically mentioned the working days of the petitioner/workman. The aforesaid evidence of the respondent/management admittedly goes un-rebutted as not even an iota of evidence has been placed on the record of this file by the petitioner/work lady to rebut the credibility of the contents thereof or to prove the contrary. Resultantly it is again established that the work lady had not rendered continuous service of 240 days prior to her alleged termination and in such circumstances, there is nothing on the file except the self serving statement of WW-1 Ompati, work lady. In the Authority Range Forest Officer Versus S.T. Hadimani, 2002 (3) SCC, 25 the Hon'ble Supreme Court has laid down that mere filing of affidavit by the workman, being only his own statement in his favour, cannot be regarded as sufficient evidence for any court or Tribunal to come to the conclusion that a workman had, infact, worked for 240 days in a year.

11. The aforesaid evidence of the respondent/management admittedly goes unrebutted as not even an iota of evidence has been placed on record of this file by the petitioner/work lady to rebut the credibility of the contents thereof or to prove the contrary. Resultantly it is again established that the work lady had not rendered continuous service of 240 days prior to her alleged termination.”

13. In the instant case, the petitioner-work lady in order to seek relief in terms of Section 25-F of the Act, 1947, was required to prove that she worked for 240 days in the 12 months preceding the date when she was allegedly illegally terminated by respondent-department. Therefore, the relevant period would be 12 months prior to 01.05.2000. In order to

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discharge the onus of proving the aforestated fact of having worked for 240 days in the 12 months preceding the date of her allegedly termination, the petitioner gave her own testimony only and did not lead any other evidence either in the form of statement of any co-worker or any other evidence in the form of proof of receipt of salary or wages for 240 days or any order/record of appointment or engagement for the relevant period. Apart from the self-serving statement of the petitioner, she did not lead any other evidence to prove that she worked for 240 days in the 12 months preceding the date when she was allegedly terminated (May, 2000) by respondent- department. It is well settled law that mere affidavits or self-serving statements made by the claimant/work lady will not suffice in the matter of discharge of the burden placed by law on the work lady to prove that she 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 Amarsinh, 2005(8) SCC 750*.

14. The counsel for the Petitioner has not been able to dislodge the findings returned by Tribunal below. Neither before the Tribunal nor before this court, the Petitioner has not been able to show that she worked for 240 days in 12 months preceding the date of her termination and in absence of the same, no relief can be granted to the petitioner.

15. 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.

16. No other point has been urged.
17. 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 24.10.2013 (Annexure P-1) which may call for any interference by this Court, while exercising its writ jurisdiction. Therefore, the instant writ petition is bereft of any merit and the same is accordingly dismissed in *limine*.
18. All pending application/s, if any, shall also stand closed.

01.08.2023
Himani

(HARSH BUNGER)
JUDGE

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