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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15200-2011 (O/M)

Date of decision : 21.08.2023

Sukhjinder Singh

..... Petitioner

Versus

Industrial Tribunal, Bathinda through its Presiding Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Anil Kumar Sharma, Advocate
for respondents No. 2 to 4.

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HARSH BUNGER, J.

1. Petitioner (Sukhjinder Singh) 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 impugned Award dated 20.02.2013 (Annexure P-3), passed by the Industrial Tribunal, Bathinda (hereinafter referred to as 'the Tribunal'), whereby the industrial dispute raised by the petitioner regarding termination of his services has been answered against him.

Further prayer has been made by the petitioner for directing respondent-Punjab Road Transport Corporation, Faridkot (hereinafter referred as 'respondent-Corporation') to reinstate the petitioner in service with other consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services and the said dispute was referred for adjudication to the Tribunal below. In the claim statement, the petitioner claimed that he was employed as a Conductor with respondent-Corporation on permanent post since 1981 on salary of Rs. 7,400/- per month. The petitioner claimed that his services were terminated on 05.11.2001 by respondent-Corporation without any notice, charge sheet, enquiry or compensation. It was also claimed by the petitioner that juniors to him were retained in service and new persons have been appointed, therefore, the termination of services of the petitioner was contrary to the provisions of natural justice. Accordingly, he prayed for reinstatement in service with all consequential benefits.

3. The aforesaid claim of the petitioner was contested by respondent-Corporation by submitting that the petitioner was posted as a Conductor in PRTC and he was removed from service on 05.11.2001 while he was working as a Conductor at Patiala. It was stated that a report was received against the petitioner, on the basis of which charge sheet dated 31.10.2000 was served upon him and prior to that, he was suspended, vide order dated 31.08.2000 for mis-conduct. It was submitted that the petitioner did not submit any reply to the charge sheet dated 31.10.2000. The enquiry officers were appointed, who enquired into the charges levelled against the petitioner and submitted its enquiry report on 10.08.2001, according to which, all the charges levelled against the petitioner were proved. It was stated that show cause notice alongwith the enquiry report was given to the petitioner, however, the petitioner did not submit any reply

to the said show cause notice as well. It was also stated that the petitioner was personally heard on 02.11.2001 by the competent authority and ultimately, he was removed from service, vide order dated 05.11.2001. It was submitted that order of removal from service was legal and as per rules. Accordingly, prayer for dismissal of reference was made.

4. From the pleadings of the parties, following issues were framed:-

1. *Whether a fair and proper enquiry was held before terminating the services of workman ? (OPR)*
2. *Whether services of workman stand validly terminated by the Management ? If not so, to what relief is he entitled ? (OPR)*
3. *Whether reference is incompetent in the eyes of law ? (OPR)*
4. *Whether reference is bad for non-joinder of necessary party ? (OPR)*
5. *Whether this Court has no jurisdiction to adjudicate this reference ? (OPR)*
6. *Relief.”*

In support of its claim, respondent-Corporation examined one Gurnam Singh, Junior Assistant, PRTC, Faridkot as MW-1, who has produced on record enquiry file Ex.M-1 and also placed on record documents Ex.M1/A to Ex.M1/H. Besides it, respondent-Corporation also examined Sh. Som Parkash, Station Supervisor as MW-2, who has placed on record documents Ex.MW2/A to Ex.MW2/C.

On the other hand, to rebut the evidence adduced by respondent-Corporation, petitioner himself stepped into the witness box as WW-1 and tendered his affidavit Ex.WW1/A. The petitioner also examined one Jagtar

Singh, Clerk PRTC, Faridkot as WW-2, who has placed on record documents Ex.W-1 to Ex.W-53.

5. After considering the material/evidence available on record, the Tribunal below, vide impugned award dated 20.02.2013 (Annexure P-3) has rejected the claim of the petitioner by holding as under :-

“11. I have considered the evidence produced on record and the arguments advanced by the authorized representative appearing on behalf of both the parties. It is an admitted fact that Sukhjinder Singh was posted as Conductor with PRTC. It is also an admitted fact that he was charge-sheeted vide order dated 31.10.2000. The workman claimed that no proper inquiry was conducted regarding the charge-sheet served upon him, whereas respondent/Management claimed that due procedure was followed by the Inquiry Officer. Workman was given opportunity to present his case and thereafter, Inquiry Officer had submitted his detailed report on 10.08.2001. In order to appreciate the facts of the case and the allegations leveled by the workman, inquiry filed proved on record Ex.M1 is material piece of evidence. From the zimni orders in the inquiry file, it is clear that Sukhjinder Singh joined the inquiry proceedings from very beginning and zimni orders were duly signed by him. Charge-sheet served upon him is on the file. Sukhjinder Singh during his cross-examination admitted that he joined the inquiry proceedings, which were held on different dates. He admitted the application dated 07.08.2001, whereby he requested to General Manager, PRTC that decision of General Manager was acceptable to him. However, the workman claimed that he never admitted his fault but he

admitted the fault under pressure as he was told that failing which, he will be removed from service. There is one letter written by Sukhjinder Singh to the Inquiry Officer dated 07.08.2001 Ex.MW2/B, where he admitted his guilt detailed in the charge-sheet and expressed his willingness to face the consequences of orders passed by the General Manager. He prayed that Departmental inquiry may be closed and inquiry initiated against him may be decided. There is nothing on record to show that workman ever disputed this letter written to Inquiry Officer before any Higher Authority that this letter was written by him under pressure. Now at this stage, workman cannot withdraw the abovesaid letter to avoid the termination order passed against him by respondent. Inquiry Officer gave his detailed report on the basis of which, he was served with show cause notice. Workman was provided personal hearing before passing the impugned order and after following due procedure, his services were terminated vide order dated 05.11.2001. The procedure followed by the Department does not suffer from any illegality or irregularity. The workman was given due opportunity to present his case. He himself admitted the charges framed against him. Now, workman cannot claim that no proper procedure was followed. He even preferred an appeal against the termination order, which was also declined by the Competent Authority. Keeping in view these facts, the plea raised by the workman, challenging the termination order dated 05.11.2001 is without any basis. The impugned order does not require any interference. Therefore, both these issues are decided in favour of the Management/respondent and against the workman.

Findings on Issue No. 3 to 5.

12. *Onus to prove these issues is non the Management. However, during the course of arguments, these objections raised in the written reply were neither pressed for nor claimed. Therefore, these issues are decided against the Management/respondents.*

Relief.

13. *In view of my findings on issue No. 1 and 2, I do not find any merit in the reference preferred at the instance of workman and the same is, accordingly, declined. Both the parties are left to bear their own costs.”*

6. Being aggrieved of the aforesaid award, the petitioner has filed the instant civil writ petition before this Court.

7. Learned counsel for the petitioner contends that the Tribunal below has erred in law and fact in passing the impugned award. It is submitted that the Tribunal below has failed to reappraise the evidence and has not come to a conclusion that whether any misconduct has been committed or not. It is submitted that the Tribunal below has failed to look into the allegations levelled against the petitioner and also as to whether the punishment of dismissal from service as awarded to the petitioner was proportionate to the alleged misconduct. Learned counsel further submits that the confession as referred by the Tribunal below, was not voluntary. It is also contended that the petitioner has been discriminated against in as much as that another conductor namely Ram Parkash, who was chargesheeted on allegation of embezzlement of Rs. 15/- in the matter of issuance of tickets and who had admitted his guilt, however, he was awarded punishment of only

stoppage of increments, whereas petitioner was removed from service. With the aforesaid submissions, learned counsel for petitioner submits that the impugned award be set aside and necessary directions be issued for reinstatement of petitioner in service and to grant other consequential benefits.

8. Per contra, learned counsel for respondent-Corporation has opposed the aforesaid prayer made by learned counsel for petitioner by submitting that the Tribunal below has passed a well reasoned and justified award, which does not call for any interference by this Court in exercise of writ jurisdiction. It is submitted that the petitioner had clearly admitted in his cross examination that he had joined the enquiry proceedings held on different dates. It is further submitted that the petitioner had written a letter dated 07.08.2001 (Ex.MW2/B) to the enquiry officer where he admitted his guilt and expressed his willingness to face the consequences of orders passed by General Manager. It is contended that the petitioner never disputed the aforesaid letter written to the enquiry officer at any stage so as to say that the said letter was written by him under any pressure. It is submitted that the procedure followed by respondent-Corporation does not suffer from any illegality or irregularity and due opportunity was afforded to the petitioner to represent his case. It is submitted that the petitioner had even filed an appeal against the termination order, which was also declined by the competent authority. It is submitted that once the charges levelled against the petitioner had been proved and there being no procedural illegality or irregularity then the awarding of punishment was within the domain of the Corporation. It is

stated that a conductor acts as an agent of employer and the duties performed by conductor are of utmost trust and faith. It is submitted that the petitioner had been rightly removed from service for the misconduct proved on record, which has been upheld by the Tribunal below and, therefore, prayer has been made for dismissal of the instant civil writ petition.

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

10. In *Union of India v. P. Gunasekaran*, 2015 (1) S.C.T. 5, Hon'ble the Supreme Court held as under:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations*

extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.”

11. As regards the inquiry proceedings conducted against petitioner are concerned, it has come on record that the petitioner had participated in the inquiry proceedings and during his cross-examination, he admitted that he had joined the inquiry proceedings on different dates. Infact, petitioner admitted his guilt by writing a letter dated 07.08.2001 (Ex. MW2/B) to

inquiry officer. Inquiry officer had submitted his inquiry report and thereafter a show cause notice was given to petitioner and a personal hearing was also given to petitioner before passing order of removal from service. It is evident that there is no procedural illegality or irregularity in Department proceeding carried out against petitioner. Even the appeal filed by petitioner against order of removal from service, was dismissed. Therefore, the inquiry proceedings are held to be fair and proper.

12. The other contention raised by learned counsel for petitioner is that the punishment awarded to the petitioner is disproportionate to the misconduct alleged against him. In this regard, it would be gainful to refer to a few judicial pronouncement. In *U.P.S.R.T.C. v. Mahendra Nath Tiwari*, 2005(4) SCT 715; Hon'ble the Supreme Court observed as under :-

“7. It is a misconception to consider that the amount involved in an offence of this nature has a material bearing, while considering whether there has been misconduct on the part of an employee. It may be relevant in a criminal prosecution when considering the quantum of punishment to be imposed. When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to a clear violation of the duty imposed on him. It is really a breach of the duty cast on the conductor who is acting on behalf of the employer. Whether it be one passenger or ten passengers it would make no difference in principle in the absence of any explanation in that

behalf. It was simply the case of a conductor who had violated the Regulations or the terms of his employment and had betrayed his employer, which in any event, is a grave misconduct justifying a dismissal.”

13. In *U.P. State Road Transport Corporation v. Vinod Kumar*, 2008(1) S.C.T. 158; Hon'ble the Supreme Court held as under :-

“10. As stated in the preceding paragraphs, the respondent had confined his case only to the conclusions reached by the Enquiry Officer as well as the quantum of punishment. Therefore, since the respondent had not challenged the correctness, legality or validity of the enquiry conducted, it was not open to the Labour Court to go into the findings recorded by the Enquiry Officer regarding the misconduct committed by the respondent. This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment.”

14. In *Uttaranchal Transport Corporation v. Sanjay Kumar Nautiyal*, 2008(2) SCT 174 Hon'ble Supreme Court held as under:-

“4. In V. Ramana v. A.P. SRTC and Ors., 2005(4) SCT 353 : (2005(7) SCC 338) it was held as follows:

"4. In Karnataka State Road Transport Corporation v. B.S. Hullikatti, 2001(1)

SCT 787 : (JT 2001(2) SC 72), it was held that misconduct in such cases where the bus conductor either had not issued tickets to a large number of passengers or had issued tickets of lower denomination, punishment of removal is proper. It is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The factual position shows that the appellant's conduct in collecting fare at the designated place and not collecting fare from persons who had already travelled were in violation of various Regulations contained in The Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (in short 'Regulations'). In the Karnataka State Road Transport case (supra) it was held that it is misplaced sympathy by Courts in awarding lesser punishments where on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It was finally held that the order of dismissal should not have

been set aside. The view was reiterated by a three Judge Bench in Regional Manager, RSRTC v. Ghanshyam Sharma, 2001(2) SCT 1057: (2002(1) LLJ 234), where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and Bus Conductors who by their actions or inactions cause financial loss to the Corporations are not fit to be retained in service.”

15. In the instant case, the following charges were against the petitioner :-

“1) That on 22.8.2000 while going from Faridkot to Kaithal in Bus No. PB11-P9077, four passengers who were travelling from Faridkot to Sangrur, when they were at Bus Stand Barnala, they were made to sit in Prince Bus and the tickets issued to them were taken and in this manner you had intention to commit theft of Rs. 72/-.

2) Misconduct.

3) Breach of Discipline and violation of law.”

Concededly, petitioner had admitted his guilt by writing a letter dated 07.08.2001 (Ex. MW2/B) to Inquiry Officer. Therefore, once the petitioner had admitted his guilt and the Department had passed an order of removal from service against petitioner, which was confirmed by Appellate Authority as well, accordingly, keeping in view the legal position indicated above, there is no scope for any interference in the impugned Award, passed by the Tribunal below.

16. 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 in properly, 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."

17. In view of above discussion, the instant writ petition fails and the same is dismissed.

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

(HARSH BUNGER)
JUDGE

21.08.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No