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

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Date of Decision: 19.09.2023

Amit Kumar

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour
Court-III, Faridabad and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Anil Shukla, Advocate
for the petitioner.

Mr. D.C. Kumar, Advocate
for respondent No. 2.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Amit Kumar) has filed this petition under Articles 226/227 of the Constitution of India, for issuance of writ in the nature of *certiorari* for setting aside the impugned award dated 11.04.2014 (Annexure P-4) passed by respondent No.1-Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad (in short 'the Tribunal'); whereby the reference of the industrial dispute raised by the petitioner regarding termination of his services has been decided against him.

A further prayer has been made for issuance of a writ in the nature of *mandamus* for directing the respondents to reinstate the petitioner with all other consequential benefits.

2. Briefly, the petitioner raised an industrial dispute by serving a demand notice dated 07.12.2010 under Section 2-A, Industrial Disputes Act,

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1947 before the Labour Officer-cum-Conciliation Officer, Circle- IV, Faridabad, which was subsequently referred for adjudication to the Tribunal below after receiving the failure report vide letter dated 28.02.2011.

3. In the claim statement, petitioner claimed that he was working with respondent No.2-M/S United India Insurance Company Ltd. (hereinafter “respondent-Management”) as a sweeper from 30.07.2003 and he continuously worked upto 03.10.2010 when suddenly his services were terminated on 04.10.2010 in an illegal and arbitrary manner by adopting unfair labour practice. It was stated by the petitioner that he was not issued any appointment letter at the time of his appointment and he has worked for more than 240 days and during the long tenure of 7 years of his service, there was no complaint regarding his work and conduct. Petitioner claimed that his termination is illegal, unjustified and against principles of natural justice and contrary to the provisions of the Industrial Disputes Act, 1947 (for short, ‘the 1947 Act’). Accordingly, the petitioner prayed that he may be reinstated with full back wages and continuity of service.

4. On the other hand, the respondent- management filed its reply in which it was stated that the respondent No.2-company is a public sector undertaking, governed by its rules and regulations and the claim of the petitioner- workman does not fall under the ambit of the 1947 Act as the name of the petitioner workman has not been found in the records of the respondent- management. It was stated that the petitioner was never issued any appointment letter nor his services were availed by respondent-Management since 30.07.2003 or that he worked upto 03.10.2010. It was denied that the petitioner-workman had completed more than 240 days on monthly wages of Rs.4,500/-.

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5. From the pleadings of the parties, the Tribunal framed the following issues:

- “1. Whether the termination of services of the workman is proper and justified or not, if so then to what relief the claimant is entitled? OPW*
- 2. Relief.”*

6. In order to prove his case/claim, the petitioner/workman-Amit Kumar, examined himself as WW1 and tendered his affidavit as Ex. WW1/A and failure report as Ex. W1.

On the other hand, the respondent-management examined one Arun Mehta as MW1 who tendered affidavit as Ex. MW1/A.

7. Vide impugned award dated 11.04.2014 (Annexure P-4), the Tribunal below has answered the reference of the industrial dispute against the petitioner-workman.

8. Being aggrieved against the impugned award dated 11.04.2014 (Annexure P-4), the petitioner has filed the instant writ petition.

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

10. It is the case of the petitioner that he was appointed as a sweeper with respondent-Management on 30.07.2003 and he worked continuously till 03.10.2010 and his services were terminated on 04.10.2010 without issuing any chargesheet nor the provision of Section 25-F of the 1947 Act were complied with.

On the other hand, the stand of respondent-Management is that the petitioner was not issued any appointment by them and neither he worked with them as claimed. Respondent-Management has categorically denied that petitioner had worked for more than 240 days.

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

12. While considering an issue of existence of relationship of employer and employee between the parties, in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu & Ors., (2004) 3 SCC 514***, Hon'ble Supreme Court held as under:-

“47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Others, 1973 LIC 398, the Kerala High Court held :

"The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship."

49. In Swapan Das Gupta and Others. v. The First Labour Court of West Bengal and Others, 1975 LIC 202, it has been held :

"Where a person asserts that he was a workmen of the Company, and it is denied by the company, it is for him to prove the fact. It is not for the Company to prove that

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he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse..."

13. Further, while considering an issue as to whether the workman had completed 240 days of work under the management in terms of section 25B, so as to attract provisions of section 25F of the Industrial Disputes Act, 1947, the petitioner-workman was required to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly illegally terminated by respondent-department. In order to discharge the onus of proving the aforesaid fact of having worked for 240 days in the 12 months preceding the date of his allegedly termination, did not lead 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. The petitioner workman did not lead any evidence to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly terminated by respondent-department. It is well settled law that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. In this regard, reference can be made to the case of *Municipal Corpn. v. Siri Niwas, 2004(4) S.C.T. 211* and *Surendranagar District Panchayat v. Dahyabhai Amarsinh, 2005(8) SCC 750*.

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14. Coming to the case in hand; the Tribunal vide the impugned award dated 11.04.2014 (Annexure P-4), learned Presiding Officer, Labour Court-III, Faridabad; has returned the following findings:-

“It is the case of the claimant that he was appointed by the respondent on 30.7.2003 as a Sweeper. The respondent had not issued any appointment letter at the time of his appointment. He worked continuously from 30.7.2003 to 3.10.2010 as a Sweeper and completed 40 days in the service of respondent and worked for 7 years continuously and his last drawn salary was Rs. 4500/- P.M. He never gave any chance of complaint regarding his work and conduct to the respondent but the respondent illegally terminated his services on 4.10.2010 without issuing any charge sheet. Mandatory provisions of section 25-F of I.D. Act have also not been complied with before terminating his services. The workman Amit Kumar was cross-examined by AR for respondent and admitted that he has no documents regarding his service in the respondent establishment. He has no documents regarding his salary. He admitted that in the year 2003 his age was 16- 17 years. It was suggested by AR that he used to work for one hour under the respondent. The claimant fails to place any document to support of his oral version that he was working since the year 2003 and there is no document regarding his salary. The version of claimant is oral and not supported by any documentary evidence. The respondent firm is a Government undertaking and it is not possible for a government undertaking to employ any employee without following due procedures to make payment to him without following the procedures. The stand of the respondent is that his services were hired only for one hour as and when required and it is admitted by MW1 in his cross

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examination that the claimant is paid from the head of maintenance and petty cash. It is also admitted that when his services were required, he was called through peon. The claimant has not disclosed whether he received the payment through cheque or cash and has not placed any record regarding his salary. He also admitted that he has no documents regarding his employment with the respondent.

8. So, from the evidence on file on behalf of claimant is only oral assertions and he failed to prove that he has worked for more than 240 days under the respondent. The only evidence regarding completion of 240 days is his affidavit which cannot be taken into consideration as the same is a self serving document. In **Krishna Bhagya Jala Nigam Limited Mohammed Rafi 2006(3) SLJ (SC) 2118**, it has been held by Hon'ble Supreme Court that initial burden is on the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Further it was held that filing of an affidavit by claimant workman cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that workman had, infact, worked for 240 days in a year.

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“ I have gone through the case law relied upon by AR for the workman. The proposition of law is not disputed but they are not applicable to the present case in hand. As initial burden is on the workman to prove that he has completed 240 days of continuous service with the respondent whether part time or full time. It is the stand of the respondent that he has not completed 240 days of continuous service.

In Rajasthan State Ganganagar S. Mills Limited versus State of Rajasthan and Another 2005 (1) Apex

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Court Judgements 154 (SC) it has been held by Hon'ble Supreme Court that it is for the claimant to prove that he had in fact worked upto 240 days in the year preceding his termination. Affidavit of employee is not sufficient evidence. Mere non production of muster roll for a particular period not sufficient for Labour Court to hold that the workman had worked for 240 days as claimed.

As the respondent firm is a government undertaking and the appointment in government undertaking is as per rules and regulations as prescribed by law. As per the version of claimant he was not provided with any appointment letter and was not appointed as per any rules so relief of reinstatement cannot be granted to him."

15. A perusal of the above extracted findings of Tribunal would make it evident that the petitioner-workman failed to discharge the onus placed upon him of proving employee-employer relationship nor it was proved that the petitioner-workman had completed 240 days' work under the Management in terms of section 25B of 1947 Act, so as to attract the provisions of section 25F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by respondent-Management or any order in that regard was produced; even no co-worker has been examined by petitioner-workman in support of his claim. Rather, the petitioner-workman had admitted in his cross-examination that he has no documents regarding his service in the respondent establishment. He has no documents regarding his salary. He admitted that in the year 2003 his age was 16-17 years. Thus, once the petitioner-workman had failed to prove the employment with the management and that he had completed 240 days work under the Management, no relief could have been granted to him.

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

“15. ... The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case...”

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17. The parameters for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in cases involving challenge to the award passed by the Labour Court/Industrial Tribunal and orders passed by other judicial and *quasi-judicial* bodies are well defined. A writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of *certiorari* is a supervisory jurisdiction and not appellate one. This necessarily means that the finding of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a *quasi-judicial* authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or *quasi-judicial* authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of

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law for the purpose of a writ of *certiorari*. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of *certiorari*. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the *quasi-judicial* authority cannot be gone into by the High Court while considering the prayer for issue of a writ of *certiorari*. Likewise, the mere, possibility of forming a different opinion on re-appreciation of evidence by the parties is not sufficient for issue of a writ of *certiorari* *Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477; Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 Supreme Court 61; Jitendra Singh Rathor v. Sh. Baidyanath Ayurved Bhawan Ltd. and another, AIR 1984 Supreme Court 976; R.S. Saini v. State of Punjab and others, 1999(4) RCR (Civil) 253 (SC) : J.T. 1999(6) S.C. 507 and Mohd. Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69.*

18. When the facts and circumstances of this case and also the findings returned by the Labour Court are considered in the light of the legal position indicated above, I do not find any illegality or infirmity with the impugned award dated 11.04.2014 (Annexure P-4), 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*.

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19. No other point has been urged.
20. All pending application/s, if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

19.09.2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No