

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

CWP-18349-2013 (O&M)
Date of Decision: 01.12.2023

BHANI RAM

...Petitioner

Versus

PRESIDING OFFICER, LABOUR COURT, HISAR
AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rakesh Nagpal, Advocate
for the petitioner.

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

HARSH BUNGER, J.

Petitioner-workman (Bhani Ram) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of Award dated 21.02.2011 (Annexure P-6) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar (here-in-after referred to as 'the Tribunal'); whereby the reference of industrial dispute raised by the petitioner regarding termination of services of the petitioner has been answered against him.

A further prayer has been made for issuance of direction to the respondents to reinstate the petitioner in service with full back wages and all consequential benefits.

2. Briefly, the petitioner-workman raised an industrial dispute by serving a demand notice upon respondent No.2-The Divisional Forest Officer, Sirsa (here-in-after referred to as 'the respondent-Management').

The said dispute was referred for adjudication to the Tribunal below.

3. In the claim statement, the petitioner-workman pleaded that he was engaged by the respondent-Management as Beldar-cum-Mali in the year 1986 and there was no complaint regarding his work and conduct. It was stated that the last drawn wages of the petitioner-workman was Rs.87/- per day. Petitioner claimed that at the time of his retrenchment, many junior persons have been retained by the respondent-Management and certain other persons had been appointed after the termination of his services. It was claimed by the petitioner-workman that the Management had illegally terminated the services of the petitioner-workman on 20.05.2005 without giving any charge-sheet, show cause notice and without complying with the statutory provisions of Sections 25-N, 25-G, 25-H and 25-F of the Industrial Disputes Act, 1947 (for short 'the Act, 1947'). Accordingly, the prayer was made for reinstatement of the petitioner with continuity of service and all consequential benefits.

4. The afore-said claim of the petitioner was contested by the respondent-Management by filing its reply; wherein, a categoric stand was taken that the petitioner-workman had not worked for 240 days in the twelve months preceding his termination. It was also stated that the demand notice was served by the petitioner-workman beyond the stipulated period of limitation and that the Forest Department does not fall within the definition of industry under the Act, 1947.

On merits, the claim of the petitioner-workman was denied by the respondent-management by taking a specific stand that there is nothing on record to prove that the petitioner-workman was ever issued any order of appointment as Beldar-cum-Mali in 1986. It was denied that the services of the petitioner were terminated on 20.05.2005, as claimed by the petitioner-

workman. However, it was stated that the petitioner was on work during May, 2005 vide muster roll No.12-R/2005-06 for 26 days. It was also the stand of the respondent-management that the retrenchment notice was issued to the petitioner-workman on 20.05.2005, giving him statutory one month advance notice along with amount of statutory compensation as per process of law and the said amount i.e. Rs.4056/- was given vide cheque No.170344 dated 20.05.2005, which was duly accepted by the petitioner-workman. It was stated that the petitioner-workman was engaged on daily wage basis without due process of recruitment and therefore, he cannot claim continuity of service. Reliance was placed upon the judgment rendered by the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka Vs. Uma Devi, (Appeal (civil) 3595-3612 of 1999) decided on 10.04.2006*.

Further, the attendance record of the preceding year from the date of alleged termination of the petitioner was annexed by the respondent-management as Annexure R-1, which showed that he had worked for 190 days only between the period from June 2004 till May 2005. Accordingly, the prayer was made for rejecting the claim of the petitioner.

5. On the basis of the pleadings of the parties, the issues were framed and the parties led their respective evidence.

6. In order to prove his case, petitioner-workman examined himself as WW-1 and submitted his affidavit Ex.W-1/A, wherein he reiterated his stand as mentioned in the claim petition and thereafter, the evidence from the petitioner's side was closed.

7. On the other hand, respondent No.2-management examined Sh. Mohan Lal, R.F.O. as MW-1, who tendered his affidavit Ex.MW1/A and

placed on record documents Ex.M-1 to Ex.M-51 and thereafter, the evidence from the side of respondent No.2-Management was closed.

8. After considering the material/evidence available on the record, the learned Tribunal below answered the reference against the petitioner-workman by holding that the petitioner had failed to prove that he had completed 240 days in the last twelve months preceding his alleged termination. It was observed that there has been compliance of provisions of Section 25-F of the Act, 1947 and therefore; it was held that the termination of services of the petitioner-workman cannot be said to be illegal.

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

10. Learned counsel for the petitioner submits that the learned Tribunal below has erred in law and facts in answering the reference against the petitioner-workman. It is submitted that in the instant case, there has been an apparent non-compliance of Section 25-N of the Act, 1947 as there are more than 100 persons, who are working as Beldar-cum-Mali with the Forest Department and even if, it is held that the case of the petitioner is covered under the provisions of Section 25-F of the Act, 1947, even then, the amount of Rs.4056/- paid to the petitioner-workman would be a non-compliance of Section 25-F(a) of the Act, 1947. It is submitted that the petitioner had been working since 1991 and the observations of the learned Tribunal that the petitioner had not completed service of 240 days in the preceding twelve months is wrong. It is further submitted that the respondent-Management was duty bound to produce the whole record of the employees before the learned Tribunal below; however, since respondent

No.2-Management failed to produce the complete record; accordingly, adverse inference should have been drawn against them.

Accordingly, it is prayed that the impugned Award be set aside and appropriate directions be issued for reinstating the petitioner with continuity of service and other consequential benefits.

11. Per contra, learned State counsel appearing for the respondent-Management has opposed the prayer of the petitioner by submitting that the learned Tribunal below has passed a well-reasoned and justified award. Learned State counsel submits that the onus to prove that the petitioner-workman had worked for 240 days under the Management in the last 12 months preceding his termination was upon the petitioner-workman and he had failed to discharge the said onus.

Learned State counsel has further submitted that the petitioner had worked only for 190 days upto May 2005 and the respondent-Management had issued one month's notice/order of retrenchment on 20.05.2005 along with a cheque of Rs.4056/-/4506/-. It is also submitted that the petitioner-workman was being engaged as a daily wager on availability of work. It is submitted that the petitioner is trying to take undue benefit of the Industrial Disputes Act. Accordingly, the prayer was made for dismissal of the writ petition.

12. I have heard learned counsel for the respective parties and have perused the paper-book as well as the impugned Award dated 21.02.2011 (Annexure P-6) passed by the Tribunal.

13. It is well settled law that the onus to prove the relationship of employee and employer as well as the factum regarding continuous service in terms of Section 25-B of the Industrial Disputes Act, 1947 is on the

workman and in this regard, reference can be made to the judgment rendered by the Hon'ble Supreme Court of India in the case of ***Municipal Corpn. v. Siri Niwas, 2004(4) S.C.T. 211.***

Further, the 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, has been considered by the Hon'ble Supreme Court in the case of ***Surendranagar District Panchayat v. Dahyabhai Amarsinh, 2005(8) SCC 750***, wherein the following observations were made :-

“9. To attract the provisions of Section 25F, one of the conditions required is that the workman is employed in any industry for a continuous period which would not be less than one year. Section 25B of the Act defines continuous service for the purposes of Chapter V-A "Lay-off and Retrenchment". The purport of this Section is that if a workman has put in an uninterrupted service of the establishment, including the service which may be interrupted on account of sickness, authorised leave, an accident, a strike which is not illegal, a lock-out or cessation of work, that is not due to any fault on the part of the workman, shall be said to be a continuous service, for that period. Thus the workman shall be said to be in continuous service for one year i.e., 12 months irrespective of the number of days he has actually worked with interrupted service, permissible under Section 25B. However, the workmen must have been in service during the period, i.e., not only on the date when he actually worked but also on the days he could not work under the circumstances set out in sub-section (1). The workman must be in the employment of the employer concerned on the days he has actually worked but also on the days on which he has not worked. The import of sub-section (1) of

Section 25B is that the workman should be in the employment of the employer for the continuous, uninterrupted period for one year except the period the absence is permissible as mentioned hereinabove. Sub-section (2) of Section 25B introduces the fiction to the effect that even if the workman is not in continuous service within the meaning of Clause (i) of Section 25B for the period of one year or six months he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) of sub-section (2). By the legal fiction of sub-section 2(a) (i), the workman shall be deemed to be in continuous service for one year if he is employed underground in a mine for 190 days or 240 days in any other case. Provisions of the Section postulate that if the workman has put in at least 240 days with his employer, immediately prior to the date of retrenchment, he shall be deemed to have served with the employer for a period of one year to get the benefit of Section 25F.

10. For the purposes of calculation of number of days worked by the employee, by fiction his days of absence from work have been included if the workman has been laid off under an agreement or as permitted by Standing Orders made under the Industrial Employment (Standing Orders) Act 1946 (20 of 1946), or under the Industrial Disputes Act 1947, or in any other law applicable to the industrial establishment; (ii) has been on leave with full wages, earned in the previous year; (iii) has been absent due to temporary disablement caused by accident arising out of and in the course of employment ; and (iv) has been on maternity leave, in case the employee is a female, however, that the total number of such maternity leave does not exceed 12 weeks.

XXX

XXX

XXX

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...”

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 the workman has worked for 240 days in the year in question.

14. In the instant case, the learned Tribunal below had returned the following findings :-

“7. I have heard the rival contentions.

8. Further, as per the workman, he worked as Beldar from 1986 to 20.05.2005 and that his services were terminated illegally on 20.05.2005 without following the provisions of the Act. The onus to prove his case was on the workman but he miserably failed to discharge the same. Except the self-serving statement of the workman there is nothing on record which could prove his contention. The workman did not move any application to summon the record that he has worked from 1986 to 20.05.2005 continuously as Beldar. In the absence of any cogent and clinching evidence on record the bald averments made by the workman cannot be accepted as gospel truth. Rather from the record

i.e. Ex. M-1 to Ex. M-51 produced by the respondent, it is evident that the workman has worked 190 days from June 2004 till May 2005 and thus, he has not completed 240 days in 12 preceding months of his alleged termination. As per the respondent, before terminating the services of the workman it gave one month notice and sent a cheque no.170344 dated 20.05.2005 for Rs.4506/- to his home address. The workman in his cross-examination has admitted that one month's notice and cheque of Rs.4506/- was sent to him but he did not encash it. The workman has not been able to show that the amount sent to him through cheque was short. Thus, there has been compliance of the provisions of Section 25-F of the Act. Hence the termination of the services of the workman cannot be said to be illegal. The issue is accordingly decided against the workman and in favour of the respondent.

ISSUE NO.2, 3 & 4

9. *These issues were not pressed by the ADA for the respondent department during the course of arguments and as such are decided against the management.*

RELIEF

10. *For the reasons discussed hereinbefore, the workman has not been found entitled to any relief and, therefore, reference made to this court stands decided accordingly against the workman/claimant.*

File be consigned to the record room."

15. A perusal of the impugned Award would reveal that apart from his self-serving statement in support of his claim, the petitioner has not produced any other documentary evidence, which could prove that he had worked for 240 days, either 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. Thus, the petitioner failed to discharge the onus placed upon him.

16. As regards the plea of the petitioner that adverse inference be drawn against respondent-management for not producing the whole record of the employees before the learned Tribunal below; suffice it to say that drawing of adverse inference would depend on facts of each case and is always optional and within the jurisdiction of the Tribunal below. Petitioner cannot succeed only on this plea when presumption as to adverse inference is not obligatory. It is also well settled that an adverse inference need not necessarily be drawn only because it would be lawful to do so.

Hon'ble the Apex Court in ***R.M. Yellatti v. The Asst. Executive Engineer, 2005(4) S.C.T. 695***, has held as under:

“Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workwoman will not suffice in the matter of discharge of the burden placed by law on the workwoman 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 workwoman 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.”

17. Furthermore, 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 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. Keeping in view the above said principles and also considering the totality of circumstances, this Court is of the opinion that there is no scope for interference in the factual finding recorded by the learned Tribunal below and the present writ petition is accordingly dismissed.

19. No other point has been urged.

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

December 01, 2023

gurpreet

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(HARSH BUNGER)

JUDGE