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

CWP-24021-2011

Date of Decision: 20th November, 2023

Rajpati @ Rajo

..... Petitioner

Versus

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

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Piyush Khanna, Advocate
for the petitioner.

Mr. Satish Singla, A.A.G., Haryana.

HARSH BUNGER J. (ORAL)

1. Petitioner (Rajpati @ Rajo) has filed the instant petition under Articles 226/227 of the Constitution of India seeking quashing of impugned award dated 12.03.2010 (Annexure P-4) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, whereby the reference has been answered against the petitioner/workman. A further prayer has been made for directing respondent No.2 to reinstate the petitioner with all consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of her services, which was referred for adjudication to the

Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter referred to as 'The Tribunal').

3. In the claim statement, petitioner claimed that she was working with respondent No.2 – the Executive Engineer, P.W.D., B&R, Division No.3 (N.H.) Rohtak (hereinafter referred to as 'Management') since 01.11.1990 as a Beldar/Coolie and during this period, her work and conduct was satisfactory, however, her services were verbally terminated by the Management on 01.09.2001, without assigning any reason or reasonable cause, and accordingly the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act') were violated by the Management. The petitioner claimed that she was appointed against a regular post by the Management and had worked for 240 days in each calender year. It was further claimed by the petitioner that her juniors were retained in the service by the Management, and accordingly there was violation of the provisions of Sections 25-G and 25-H of the 1947 Act, as well. Consequently, the petitioner prayed for reinstatement with continuity in service and all consequential benefits.

4. On the other hand, the claim of petitioner was contested by the Management on the plea that the said claim was time barred. On merits, it was denied that the petitioner ever worked with the Management in the year 1990. It was also denied that her services were verbally terminated on 01.09.2001. It was the categoric stand of the Management that the petitioner has not completed 240 days in any calendar year and also that no person junior to the petitioner was appointed by the Management, as claimed by her. Accordingly, it was contended that there was no violation of the provisions of Sections 25-F, 25-G and 25-H of the 1947 Act and prayer for dismissal of the claim statement of the petitioner was made.

5. From the pleadings of the parties, following issues were framed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak:-

“(i) As per terms of reference?

(ii) Whether the claim statement is time barred?

(iii) Relief”

6. Thereafter, both the parties led evidence in support of their case. The petitioner examined herself as WW-1 and Sh. Suraj Mal, S.D.C. O/o Xen. Provincial Division No.3, Rohtak as WW-2. On the other hand, respondent-Management examined one Prem Singh Kataria, Sub Division No.3, (N.H.) P.W.D., B&R, Rohtak as MW-1.

7. After considering the respective stands of the parties and also the evidence available on record, the Tribunal decided the reference against the petitioner vide impugned award dated 12.03.2010 (Annexure P-4). Accordingly, petitioner filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in passing the impugned award dated 12.03.2010 (Annexure P-4). It is submitted that it was incumbent upon the Management to produce the muster roll, so as to prove that the petitioner had not worked for 240 days in a calendar year and since the Management failed to do so, accordingly adverse inference was liable to be drawn against it. Learned counsel has referred to another award dated 30.05.2008 (Annexure P-5) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, in the case of one Suresh, whereby, in somewhat similar circumstances, the Tribunal had drawn adverse inference against the Management therein. Learned counsel for the petitioner contends that the claim of petitioner has wrongly been rejected as being time barred since there is no limitation provided under the 1947 Act. Further, it is contended by learned counsel that it was also clearly stated by the Management

witness, namely Prem Singh Kataria, Sub Division No.3, (N.H.) P.W.D., B&R, Rohtak that after terminating the services of petitioner, some other persons were also appointed by the Management.

9. With the aforesaid submissions, learned counsel for the petitioner has prayed for allowing the instant writ petition by quashing impugned award dated 12.03.2010 (Annexure P-4) and directing respondent No.2-Management to reinstate the petitioner with all consequential benefits.

10. Per contra, learned State counsel has opposed the prayer made in the instant petition by supporting the findings recorded by the Tribunal below. It is submitted that the petitioner has failed to discharge the onus placed upon her to the effect that she had worked for 240 days in the last preceding 12 months from the date of her alleged termination. It is further submitted that there is no illegality or perversity in the findings recorded by the Tribunal below and even otherwise, this Court exercises limited jurisdiction against the award passed by the Industrial Tribunal. Accordingly, prayer for dismissal of the instant writ petition has been made.

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

12. Before considering the case in hand, it would be apposite to refer to a few judicial pronouncements.

13. In the case of “**Range Forest Officer v. S.T. Hadimani**”, **2002(3) SCT 382 (SC)**, Hon'ble Apex Court held as under:-

“2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August,

1998, came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in an year.

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratam Singh Narsinh Parmar, 2001(2) SCT 1081 (SC) : JT 2000(3) SC 326. In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot. Filing be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in an year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

14. In the case of **“Municipal Corpn. v. Siri Niwas”, 2004(4) SCT 211**, 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..."

15. In ***"R.M. Yellatti v. The Asstt. Executive Engineer", 2005(4) SCT 695***, it was held as follows :

".... 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/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."

16. It is thus well settled that the burden of proof that a workman had worked for 240 days in a given year was on the workman. It is also well settled 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. Further, it is also the settled position in law 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.

17. In the instant case, the Tribunal below while answering the reference against the workman has held as under:-

"8. As per terms of reference under this issue the Court has to decide "Whether termination of services of Smt. Rajpati is illegal or not? If re-instated to what amount of wages she is entitled to? Now the crucial question that is to be seen is whether the workman has completed 240 days of continuous service in the preceding year of his termination, so as to entitle her the benefit of Section 25-F of the Industrial

Disputes Act, 1947. The workman has specifically pleaded that she has worked from 01.11.1990 to 01.09.2001 but despite that her service were verbally terminated without giving any notice, notice pay and retrenchment compensation though she has completed 240 days in every calendar year. She has not mentioned the places and duration of her job in the petition. However, when she appeared in the witness box she could not tell the date and month of joining her job and the date and month of her termination. She has not produced any documentary evidence to substantiate her claim. The workman to corroborate her version also examined WW-2 Surajmal, SDC 0/0 Xen. provincial Div No.3, Rohtak who has stated that record from 6/1993 to 12/1993 and from 1/1994 to 2/1995 has been destroyed in the flood. A perusal of testimony of WW-2 Surajmal, SDC shows that the workman has never worked upto the year 2001 but she has worked from 1993 to 1995 with heavy breaks. In his cross-examination he has stated that since the workman has not worked in Bahadurgarh and Jhajjar sub division, so he has not brought the record of the said sub divisions.

9. The management on the other hand examined Sh. Prem Singh Kataria, Sub Divisional Engineer, O/o Executive Engineer, Sub Div. No.3, (N.H.1 PWD, BER, Rohtak as MW-1 who has proved the working detail Ex. M-2 which show that the workman has worked only from 1992 to 1995 with heavy breaks and she has never completed 240 days in any calendar year A perusal of the testimony led by both the parties clearly goes to show that the workman has worked only from 1992 to 1995 with heavy breaks. It is also clear from the testimony of WW-2 Surajmal, SDC that only some record prior to the year 1995 has been destroyed in the flood as stated above. There is nothing to show that in the preceding year of her termination she has continuously worker for 240 days. The demand notice was served on 22.06.2004 that is after a period of 9 years of her termination. This inordinate unexplained delay in filing the demand notice makes the case of the workman suspicious

and doubtful, therefore, the workman is not entitled to any relief. Hence I decide these issue against the workman and in favour of the management.

11. No other point is pressed before me.

Relief.

12. In view of my finding on the foregoing issue, it is held that no right of the workman has been infringed, therefore, she is not entitled to any relief. Hence, I decide this reference against the workman and in favour of the management. Award is passed accordingly. File be consigned to record room.”

18. When the case of petitioner is considered in the light of the legal position indicated above, it is manifest that the petitioner has not been able to prove that she has worked for 240 days immediately preceding her alleged termination. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the worker. Apart from muster rolls, she could have shown the terms and conditions of her offer of appointment and the remuneration received by her for working during the aforementioned period, but she failed to produce any documentary evidence to substantiate her claim. Further, the Tribunal has returned the finding that from the evidence available on record, it is evident that the petitioner-workman had worked only from the year 1992 upto 1995, with heavy breaks; and since the Demand Notice was served on 22.06.2004, which was after a period of nine years from her termination, accordingly there was also an unexplained delay in filing the Demand Notice.

19. As regards the submissions of learned counsel for the petitioner that in Award dated 30.05.2008 (Annexure P-5), the Tribunal had drawn adverse inference whereas in the instant case the Tribunal below has not drawn adverse inference for non-production of record; 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.

20. Furthermore, the peripheries of certiorari jurisdiction of High Court 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 mis-interpretation 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."

21. Keeping in view the aforesaid discussion, I am of the considered view that once the petitioner-worker has failed to discharge the onus placed upon her to prove that she has worked for 240 days immediately preceding her alleged termination, no relief can be granted to her.

22. Accordingly, I do not find any reason to interfere with the

impugned award dated 12.03.2010 (Annexure P-4) passed by the Tribunal below, resultantly, the present writ petition is dismissed.

23. All pending application(s), if any, shall also stand closed.

20th November, 2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No