

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

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**CWP-14436-2016**

**Date of Decision: 22<sup>nd</sup> December, 2023**

Market Committee, Khanna, Ludhiana and another

..... Petitioners

Versus

The President/General Secretary, Punjab Sannati Mazdoor Sangthan,  
Ludhiana and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Parambir Singh, Advocate  
for the petitioners.

Mr. Sharwan Sehgal, Advocate  
for respondent No.1.

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**HARSH BUNGER J. (ORAL)**

1. Present writ petition has been filed under Articles 226/227 of the Constitution of India seeking setting aside of impugned award dated 09.03.2016 (Annexure P-8) passed by the Presiding Officer, Industrial Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'), whereby resolution dated 12.07.1993 and order dated 06.08.1992 have been set aside and the workman (Shri Ram) is held entitled to retirement benefits by counting his service rendered from 15.07.1964 to 12.07.1993 also. It was

further ordered that the workman (Shri Ram) shall not be entitled to any monetary benefits during the period when he remained under suspension, except the subsistence allowance.

A further prayer has been made to stay the operation of impugned award dated 09.03.2016 (Annexure P-8) during pendency of the instant writ petition.

2. Briefly, respondent No.1 – Punjab Sannati Mazdoor Sangthan, Ludhiana raised an industrial dispute by raising demand notice dated 19.04.2005 upon the Chairman, Punjab Mandi Board as well as the Secretary, Market Committee, Khanna, District Ludhiana. As per the demand notice, workman-Shri Ram was appointed as a Peon by the Market Committee, Khanna on 08.07.1965 and was promoted as Moharrir w.e.f. 01.06.1967; thereafter he was promoted as Mandi Supervisor-cum-Fee Collector by the Market Committee, Khanna w.e.f. 31.05.1972. It appears that on 20.11.1988, while working as Mandi Supervisor-cum-Fee Collector, Shri Ram was implicated in a criminal case bearing FIR No.200 dated 20.11.1980 under Sections 409 and 467 of the Indian Penal Code. Thereafter, Shri Ram was placed under suspension vide resolution dated 15.02.1980 by the Market Committee, Khanna; and later on, he was reinstated pending inquiry in the year 1983. The workman-Shri Ram faced trial in the aforesaid case under two different challans before the trial Court and was convicted and sentenced under Section 409 of the Indian Penal Code vide judgments dated 26.02.1990; and he was again placed under suspension. It is borne out from the paper book that Shri Ram preferred two criminal appeals against the aforesaid judgments dated 26.02.1990, before the Additional District Judge, Ludhiana, whereby sentence imposed upon him was reduced to one year of rigorous imprisonment vide judgment dated

06.11.1990. Thereafter workman-Shri Ram filed two criminal revision petitions before this Court, which were decided vide two separate judgments dated 26.04.1991, wherein the conviction of Shri Ram was confirmed, however, his sentence was reduced to the already undergone. Further, it appears that Shri Ram was reinstated in service on 12.07.1993 as Mandi Supervisor-cum-Fee Collector by the Market Committee, Khanna and he was allowed to join his duty upon submitting his joining report dated 12.07.1993. Thereafter, Shri Ram retired from service on 30.04.2001 after attaining the age of superannuation.

3. It is manifest that Shri Ram filed an appeal dated 25.08.2003 before the Chairman, Punjab Mandi Board, Chandigarh against order dated 12.07.1993 passed by the Market Committee, Khanna, thereby denying continuity of service rendered by the workman-Shri Ram before his reinstatement, however, it appears that the said appeal was rejected vide order dated 21.03.2004. Subsequently, respondent No.1 – Punjab Sannati Mazdoor Sangthan, Ludhiana raised an industrial dispute by serving demand notice dated 18.04.2005, wherein a demand was raised to count the entire service of Shri Ram in the employment, w.e.f. 08.07.1965 till his retirement, and that he be paid all arrears and retiral benefits with arrears @ 18% interest along with all the consequential benefits.

4. The aforesaid claim of Shri Ram was contested by the petitioners herein on the various pleas which can be summarised as under:-

- (I) The Punjab Sannati Mazdoor Sangthan, Ludhiana was not competent/authorized to espouse the cause of workman-Shri Ram.
- (II) The claim raised by the Union on behalf of the concerned workman was stale, highly belated and an afterthought.
- (III) On account of conviction of workman-Shri Ram under Section 409

of the Indian Penal Code, he was liable to be dismissed from service and could not be reinstated in service as per the Rules.

(IV) Market Committee, Khanna allowed the workman-Shri Ram to join his duties as Mandi Supervisor-cum-Fee Collector in terms of Resolution No.9 dated 12.07.1993, wherein it was made clear that the concerned workman shall not be entitled to any benefit of his past service prior to the date of his rejoining the Market Committee, Khanna.

(V) That upon the conviction of workman-Shri Ram, with regard to misappropriation of funds of the Market Committee, Khanna, was upheld by the Hon'ble High Court, his conduct was proved and he was neither entitled to any show cause notice nor any charge-sheet was required to be served nor any regular departmental enquiry in respect of concerned workman/employee was essential before passing of resolution dated 12.07.1993.

(VI) No prejudice was caused to the concerned employee with non-grant of opportunity of personal hearing before passing of the resolution dated 12.07.1993.

(VII) Concerned employee is not entitled to the retiral benefits, like pension, commutation of pension, D.C.R.G. and leave encashment, etc.

With the aforesaid pleas, it was prayed that the claim of workman-Shri Ram be rejected.

5. On the basis of pleadings and material/evidence available on record, the Tribunal below decided the reference by its award dated 09.03.2016 (Annexure P-8) by setting aside resolution dated 12.07.1993 and order dated 06.08.1992 and further held that workman-Shri Ram was

entitled to retirement benefits by counting his service rendered from 15.07.1964 to 12.07.1993, as well.

Being aggrieved against the aforesaid award dated 09.03.2016 (Annexure P-8), petitioners filed the instant writ petition before this Court.

6. Learned counsel for the petitioners, by reiterating its objections raised before the Tribunal below, submits that the Tribunal has erred in law and fact in accepting the claim in respect of the workman-Shri Ram, without taking note of the fact that the Union had no authority to espouse the cause of workman-Shri Ram. It is submitted that workman-Shri Ram was working as a Mandi Supervisor-cum-Fee Collector and he performed various administrative/managerial/supervisory duties like collection of fees, accounts checking of dealers when authorised by Secretary, Mandi inspection, enforcement of the Act, Rules and Bye-Laws, supervising the auction, weighment and market transactions, In-charge of the work in the market area and seasonal arrangement. Learned counsel for the petitioners further submits that the Tribunal below has wrongly entertained and decided the claim of workman-Shri Ram despite the fact that the same was stale and highly belated.

With the aforesaid submissions, learned counsel for the petitioners has prayed for allowing the instant writ petition by setting aside award dated 09.03.2016 (Annexure P-8) passed by the Tribunal.

7. Per contra, learned counsel for respondent No.1 has opposed the prayer made by learned counsel for the petitioners by submitting that the Tribunal below has passed a detailed, well reasoned and justified order, which does not call for any interference by this Court while exercising its limited *certiorari* jurisdiction. It is further submitted that the Tribunal below has returned the findings which are in consonance with the evidence as well

as the law on issue; and the same do not call for any interference by this Court. Accordingly, learned counsel for respondent No.1 has prayed for dismissal of the instant writ petition.

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

9. In the instant case, the Tribunal below has returned the findings that from the evidence on record, it is made out that workman-Shri Ram was never dismissed or removed from service on account of his involvement in the criminal case rather he was suspended on 15.02.1980 and thereafter, he was reinstated, pending enquiry, vide order dated 09.02.1983. It is further stated that upon conviction, workman-Shri Ram was again suspended on 02.03.1990 and after his sentence was reduced by this Court, he was again reinstated on 12.07.1993. Accordingly, a finding has been returned by the Tribunal that no inquiry was held against workman-Shri Ram and there is neither any order nor resolution of the Department with regard to removal or dismissal of workman-Shri Ram from service at any time prior to 12.07.1993 due to his conviction in a criminal case; therefore, it cannot be said that workman-Shri Ram rejoined on 12.07.1993 as fresh appointment, more so when no order was passed regarding his removal or dismissal from service. Consequently, the Tribunal held that the service rendered by workman-Shri Ram from 15.07.1964 to 12.07.1993 is to be counted for grant of retiral benefits to him.

As regards to the objection that Union is not competent to raise industrial dispute as regards the workman-Shri Ram, it has been held that one Shri Swaran Singh (official of the Office of Labour-cum-Conciliation, Ludhiana) was examined as WW-1, who had brought on record Demand Notice dated 19.04.2005 (Ex.W-1) issued by the Union and also copy of

resolution dated 18.04.2005 (Ex.W-2) of the Punjab Sannati Mazdoor Sangthan, wherein Union had resolved to raise an industrial dispute on behalf of the workman. Further Ex.W-4 and W-5, being reports of the Assistant Labour Commissioner, Ludhiana, were also placed on record and workman-Shri Ram examined himself as WW-2, in support of his claim. Accordingly, the Tribunal held that workman-Shri Ram was a member of Union, which had raised industrial dispute on his behalf, accordingly, the reference was maintainable.

As regards the plea that workman-Shri Ram was working as a Mandi Supervisor-cum-Fee Collector and was performing the administrative/managerial/supervisory duties, hence, he was not covered under the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act'), it has been held by the Tribunal that there is nothing on record to show that workman-Shri Ram was performing any administrative/managerial/supervisory duties; and his main duty was of fee collection, therefore, he was a 'workman' as defined under Section 2(s) of the 1947 Act.

Learned counsel for the petitioners has failed to point out any fact/material/document which has not been considered by Tribunal below in returning the aforesaid findings. Petitioners' counsel has also not been able to dislodge the said findings. In my considered view, the findings of Tribunal below are based upon evidence placed before it and I do not find any illegality or perversity in the same.

10. Still further, the Tribunal below, while considering the objection raised by the petitioners herein that claim raised on behalf of workman-Shri Ram was a stale one, has held that if the employer had any grievance that the workman raised a stale claim then the employer should

have challenged the reference by way of a writ petition to contend that the claim was belated and there was no industrial dispute. The aforesaid observations made by the Tribunal below is in consonance with the judgments rendered by the Hon'ble Supreme Court of India in "**Karan Singh Vs. M/s Executive Engineer Haryana State Marketing Board**", 2007(4) SCT 328 and "**U.P. State Electricity Board Vs. Rajesh Kumar**", 2005(4) SCT 465.

11. Further, 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*”.

12. Keeping in view the totality of facts and circumstances, I am of the considered view that the Tribunal has returned the findings by correctly appreciating the material/evidence available on record in the right perspective and in no way, the impugned award in question can be held as perverse or against the evidence. Accordingly, I do not find any merit in the instant writ petition and the same is dismissed.

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

**22<sup>nd</sup> December, 2023**

*Apurva*

**(HARSH BUNGER)  
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No