

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17469-2014 (O/M)

Date of decision : 28.11.2023

Duli Chand

..... Petitioner

Versus

The Presiding Officer, Labour Court-I, Gurgaon and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. Satish Singla, DAG Haryana
for respondents No. 2 and 3.

HARSH BUNGER, J.

1. Petitioner (Duli Chand) has filed the instant writ petition under Articles 226/227 of Constitution of India seeking a writ in the nature of certiorari for setting aside the Award dated 28.01.2014 (Annexure P-2), passed by the Industrial Tribunal-cum-Labour Court-I, Gurgaon (hereinafter referred to as 'the Tribunal') whereby the claim of the petitioner-workman for reinstatement in service has been rejected.

A further prayer has been made for directing respondent No. 2 (Principal Chief Conservator of Forest) to reinstate the petitioner-workman in service with continuity and full back wages from the date of termination of his services i.e. 01.10.2006.

2. Briefly, the petitioner-workman raised an industrial dispute regarding termination of his services, which was referred to the Tribunal below under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') for adjudication.

3. As per the claim of the petitioner-workman, he joined respondents No. 2 and 3 herein (hereinafter referred to as 'respondents No. 2 and 3-Forest Department'), with effect from 01.01.1989 on the post of Mali-cum-Chowkidar in Bawal Range. It is the categorical case of the petitioner-workman that no appointment letter and attendance card were issued to him nor any wage slips were given to him. It is the case of petitioner-workman that his services were terminated in an illegal manner on 01.10.2006 and at that time, he was getting monthly salary of Rs. 2,850/-. It was stated that no show cause notice was given to him; neither any domestic enquiry was conducted against him nor any retrenchment compensation was given to him and his services were terminated without complying with the mandatory provisions of Section 25-F of 1947 Act. Accordingly, prayer for reinstatement in service with back wages was made.

4. The aforesaid claim of petitioner-workman was opposed by respondents No. 2 and 3-Forest Department on the plea that the petitioner-workman had worked only for 17 days i.e. from 15.07.1998 to 31.07.1998 as a daily wager and that the work of Department was seasonal on need basis. It was stated that as the petitioner-workman had never worked continuously with respondent-Forest Department, therefore, he would not

be entitled to any back wages.

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

“1. Whether the services of workman were illegally terminated and if so to what relief, he is entitled to any relief ? OPW

2. Whether the reference is not maintainable in the preset form ? OPM

3. Relief ?”

6. In order to prove his case, the petitioner-workman examined one Sudhir Kumar, Deputy Ranger as PW-1 and Rohtash Singh, Deputy Ranger Officer as PW-3 and the petitioner-workman examined himself as PW-2 and tendered his affidavit Ex.P-2.

On the other hand, respondent-Forest Department examined Dharam Singh, Range Forest Officer as MW-1 and Rohtash Singh, Range Forest Officer as MW-1, who tendered their affidavits Ex.MW-1/A and Ex.MW-1/A.

7. After considering the relevant material/evidence placed on record, the Tribunal below dismissed the reference of the workman, vide its impugned Award dated 28.01.2014 (Annexure P-2).

8. In the aforementioned circumstances, the petitioner-workman has approached this Court by way of filing the instant writ petition.

9. Learned counsel for petitioner-workman submits that the Tribunal below has erred in law and on the facts in dismissing his claim without considering that he had appeared as witness wherein he had specifically stated that he was appointed on 01.01.1989 and worked

continuously till 30.09.2006. Learned counsel for petitioner-workman submits that the petitioner-workman had categorically stated that juniors to him, namely, Shri Parkash, Shri Satish Kumar, Shri Harmesh Kumar and Shri Dayanand, who were appointed after his appointment, are still continuing and it was also stated that the petitioner-workman had completed more than 240 days in the last preceding year of his termination and that his services were terminated in violation of Section 25-F, Section 25-G and Section 25-H of 1947 Act, however, same was not considered by the Tribunal below. Learned counsel for petitioner-workman next submits that service record of petitioner-workman was in possession of respondent-Forest Department and he had moved an application for summoning his attendance record from 01.01.1989 to 01.10.2006. It is submitted that although Shri Rohtash Singh, Range Forest Officer, Bawal appeared as a summoned witness, however, he did not bring the record and he produced record Ex.P-3/1 to Ex.P-3/7 and stated that as the workman had not worked for the said period, therefore, he had not brought the record from 01.01.1989 to 30.09.2006. It is submitted that the Tribunal below should have drawn adverse inference against respondent-Forest Department for not producing the summoned record. Accordingly, prayer has been made for quashing of the impugned award with a further prayer to reinstate the petitioner-workman in service with all consequential benefits.

10. On the other hand, learned State counsel appearing for respondent-Forest Department has opposed the prayer of the petitioner-workman by supporting the findings returned by the Tribunal below.

Learned State counsel has submitted that the petitioner-workman had failed to prove on record that he had worked for more than 240 days with respondents No. 2 and 3-Forest Department in a calendar year. It has been submitted that the petitioner-workman had not produced any appointment letter, muster rolls, identity card, wage slips or duty chart and neither any co-worker was examined in support of his claim. It is further submitted that once the petitioner-workman had failed to prove continuous service in terms of Section 25-B of 1947 Act, accordingly, no relief for violation of Section 25-F of 1947 Act could have been granted to the petitioner-workman.

As regard the plea of the petitioner-workman that adverse inference should have been drawn against respondent No. 2 and 3-Forest Department by the Tribunal below for not producing the relevant record pertaining to the service of the petitioner-workman, it is submitted that the drawing of adverse inference is not obligatory but optional and the same is within the domain of the Tribunal below and adverse inference cannot be drawn only because it is lawful to do so. It is submitted that the petitioner-workman had failed to show that he worked for 240 days with respondents No. 2 and 3-Forest Department and since the petitioner-workman had prima facie failed to prove the same and also lead evidence regarding existence of record for the relevant period of work of 240 days, coupled with the plea of suppression, the Tribunal below was justified in not drawing any adverse inference. Accordingly, it is prayed that the award passed by the Tribunal below is justified and no interference is required in

the same by this Court in exercise of its writ jurisdiction.

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

12. Here, it would be relevant to refer certain judicial pronouncements. In the case of “*Range Forest Officer Versus 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 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.

13. In the case of “*Municipal Corpn. Versus 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 25-F 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 25-B 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...”

14. Now, coming to case in hand, the Tribunal below has returned the following findings :-

“8. I have given considerable thought to the arguments advanced by ARs for both the parties and have also gone through the record of the case file.

9. In support of his case, workman examined Sudhir Kumar, Dy. Ranger as PW-1, who has brought the summoned record, which was available. He has stated that I have not brought the record from 01.01.1989 to 31.05.2004 and 01.04.05 to 30.09.06 because the workman had never worked during the above said period. The workman Duly Chand himself stepped into the witness box as PW-2, who tendered his affidavit Ex.P-2. During cross-examination, he has stated that it is correct that no appointment letter was issued to him. It is correct that I was paid for the period for which I had worked. I have no proof regarding receiving salary of Rs. 2,800/- per month. Rohtash Singh was also examined by the workman as PW-3, who has stated that I have brought the summoned record Ex.P-3/1 to Ex.P-3/7. It is correct that as per record, the workman had worked with the department only for 17 days.

10. On the other hand, the mgt. has examined Dharam Singh, Forest Officer as MW-1, who tendered his affidavit Ex.MW-1/A stating therein that the workman had never completed 240 days in one calendar year. It is further mentioned that the

nature of work in the forest department was of seasonal nature, therefore, there is no requirement of regular labour. Hence, there was no violation of Section 25-F of the I.D. Act, 1947. Sh. Rohtash, Forest Officer, Incharge Bawal Range was also examined by the mgt. as MW-1 who tendered his affidavit Ex.MW-1/A by taking similar pleas as detailed above.

11. Onus lied heavily upon the workman to prove that the workman had actually worked with the respondents for more than 240 days in a calendar year preceding the date of his alleged termination but he has failed to prove that he had continuously worked for a period of more than 240 days in one calendar year and his services were terminated in an illegal manner. Such a law was laid down by Hon'ble Supreme Court of India in case G.M., B.S.N.L. and others V/s Mahesh Chand, 2008, LLR-435. On the same point, reliance was placed upon authority of law from Hon'ble Supreme Court of India in case Sita Ram and others V/s Moti Lal Nehru Farmers Training Institute, 2008, LLR-549 wherein law was laid down that burden of proof would be on the workman to prove that he had worked for 240 days in one calendar year. On the same point, reliance was also placed upon authority of law from our Hon'ble Punjab and Haryana High Court in case Assistant Provident Fund Commissioner, Rohtak V/s Presiding Officer, Central Government, Industrial Tribunal-cum-Labour Court-II, New Delhi and another, 2009, LLR-425. Law was also

laid down by Hon'ble Madhya Pradesh High Court in case Hemraj V/s Director, Sericulture, Bhopal and another, 2008, LLR-332 that mere affidavit or self-serving statement will not be sufficient. Applying the same principles of law to the present facts, workman in this case has not been able to prove in any way that he had worked with the respondents for more than 240 days in 12 months preceding the date of his termination or that his services were terminated in illegal manner.

12. Quite identical are facts of the case in the present case because in his case, onus was upon the workman to show that he had worked with the respondent for more than 240 days in the year preceding the order of termination. But workman failed to prove that he had worked for 240 days in one calendar year and his services were terminated in an illegal manner. There is nothing on the file to prove that he had actually worked for more than 240 days in a calendar year. No co-worker has been examined by the workman nor appointment letter, muster rolls, identity card, wage slips or duty chart were produced by the workman. Even the workman has examined Sudhir Kumar, Dy. Ranger as PW-1 and Rohtash Singh, Forest Officer as PW-3, but they have stated that the workman had worked only for 17 days. The workman has also placed on filed documents Ex.P-3/1 to Ex.P-3/7, but from these documents, it is not proved that the workman had worked with the respondents for 240 days in a calendar year.

13. *So far as the question of taking adverse inference against the forest department is concerned, suffice it to say that the mgt. has taken up specific plea to the effect that the workman had never worked during relevant period and he had worked only for 17 days. PW-1 and PW-3 have categorically stated that the workman had not worked with the mgt. for the period as alleged by him and he had worked only for 17 days. They have further stated that no record pertaining to the workman was available in the department because he had not actually worked for the period as alleged by him. Hence, no adverse inference can be drawn against the mgt.*

14. *Thus, in view of above discussion, this issue is decided against the workman and in favour of the respondents.*

Issue No. 2

15. *Though onus to prove this issue was upon the mgt. but there is nothing on the file by way of evidence that the present reference is not maintainable . Hence, this issue is ordered to be decided against the mgt.*

Relief

16. *As a result of my findings on various issues and discussion above, the reference made for the workman is hereby ordered to be decided against the workman and in favour of respondents.”*

15. A perusal of above extracted findings would reveal that the petitioner-workman has not discharged the initial onus to show that he had worked with respondent-Forest Department for 240 days in the last

preceding year from the date of his alleged termination. No appointment letter, identity card, wage slips or duty chart etc. have been produced neither any co-worker has been examined in support of his claim. It is a well settled law that self-serving statement of the workman to prove that he had worked for 240 days in the preceding year from the date of his termination will not suffice.

16. I have considered the plea of the petitioner-workman that adverse inference should have been drawn by the Tribunal below against respondents No. 2 and 3-Forest Department for non production of relevant record, however, I do not find any merit in the same. The petitioner-workman had failed to discharge the initial burden of proving that he had worked for 240 days immediately preceding 12 months from the date of his termination and the drawing of adverse inference was optional and within the domain of the Tribunal below, depending upon the peculiar facts and circumstances of the case and no straight jacket formula can be applied thereto. In the instant case, the Tribunal below has not drawn any adverse inference and neither the petitioner-workman had led any evidence to prima facie show that the record, which he claim had not been produced by respondent-Forest Department, was actually in existence. There is also no plea of suppression raised by petitioner-workman.

Hon'ble the Supreme Court in the case R.M. Yellatti v. The Asstt. Executive Engineer, 2005(4) SCT 695, had observed 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."

17. Moreover, 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 the 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 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."

18. Considering the totality of circumstances in view of the aforesaid legal principle, there is no scope of interference in the findings/award rendered by the Tribunal below. Resultantly, the instant civil writ petition fails and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

28.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No