

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

CWP-15824-2016 (O/M)

Date of decision : 30.10.2023

Tarlochan Singh

..... Petitioner

Versus

The Managing Director, Punjab State Warehousing Corporation and
others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. B.P.S. Virk, Advocate
for the petitioner.

Mr. Amanpreet Singh, Advocate
for respondents No. 1 and 2.

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HARSH BUNGER, J.

1. Petitioner (Tarlochan Singh) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking quashing of impugned Award dated 29.10.2014 (Annexure P-4), passed by the Industrial Tribunal, Bathinda (hereinafter referred to as 'the Tribunal') whereby the reference has been answered against the petitioner-workman and his claim has been rejected.

A further prayer has been made for directing respondents to reinstate the petitioner-workman with continuity of service and full back wages.

2. Briefly, the petitioner-workman raised an industrial dispute, which was referred to the Tribunal below for adjudication. The petitioner-

workman claims that he was working as a Chowkidar with respondents No. 1 and 2 (hereinafter referred to as 'respondent-Management') for the last 5 years and 10½ months when his services were illegally terminated on 16.07.2003 without serving any notice, charge sheet, inquiry or payment of compensation. It was claimed that the services of the petitioner-workman have been terminated in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act').

3. The aforesaid claim was contested by respondent-Management by taking a categorical plea that the petitioner-workman was never employed by it and, therefore, no cause of action accrued in his favour. It was also denied that the petitioner-workman had worked with respondent-Management for 5 years and 10½ months, as claimed by him. Accordingly, prayer was made for dismissal of claim of the petitioner-workman.

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

- “1. Whether there existed relationship of employer and employee between the parties ? OPW*
- 2. If issue No. 1 is proved in favour of workman, whether his services were terminated validly and lawfully ? OPR*
- 3. Whether claim is not maintainable ? OPR*
- 4. Whether workman has no locus standi to file this application ? OPR*
- 5. Relief.”*

5. In order to prove his case, the petitioner-workman himself

stepped into witness box as WW1 and he further examined one Jaswinder Singh son of Darshan Singh and Gurcharan Singh son of Nachhatter Singh as WW2 and WW3 respectively. The documents (Ex.W1 to Ex.SW4) were placed on record on behalf of the petitioner-workman.

6. On the other hand, respondent-Management examined one Dilbagh Singh, Warehouse Manager as MW1.

7. After considering the case of the respective parties and also the evidence/documents placed on record, the Tribunal below rejected the claim of the petitioner-workman and answered the reference against the petitioner-workman, vide Award dated 29.10.2014 (Annexure P-4) by holding that there is no evidence to show that the petitioner-workman had served respondent-Management for a period of 240 days or more or he was ever employed by respondent-Management.

8. In the aforementioned circumstances, the petitioner-workman has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner-workman contends that the impugned award is arbitrary and illegal, hence, unsustainable in the eye of law. It is contended that the petitioner-workman was employed as a Chowkidar with respondent-Management and he worked for more than 5 years and 10½ months. He submits that the petitioner-workman had clearly proved that he worked as a Chowkidar with effect from 01.09.1999 to 15.07.2003 and his services were terminated on 16.07.2003 without any notice, charge sheet, inquiry or payment of compensation and at the time of termination of his services, he was getting Rs. 1,200/- per month

as wages.

Learned counsel for the petitioner-workman would submit that in order to prove his pleaded case that the petitioner-workman had worked with respondent-Management as a Chowkidar with effect from 01.09.1999 to 15.07.2003, he himself appeared as WW1 and also examined Jaswinder Singh as WW2, who had fully corroborated the statement of the petitioner-workman. However, the said evidence was not considered by the Tribunal below. It is submitted that even otherwise, respondent-Management had failed to produce the entire record, pertaining to the service of the petitioner-workman, inspite of filing of application for production of documents, which were in the custody of respondent-Management and accordingly, it is contended that the Tribunal below should have drawn adverse inference against respondent-Management for not producing the entire record, pertaining to the service of the petitioner-workman.

Learned counsel for the petitioner-workman has further placed reliance upon the gate passes, which were stated to have been issued by respondent-Management to the petitioner-workman to contend that the said gate passes clearly show that the petitioner-workman remained an employee of the Warehousing Corporation. It is submitted that the petitioner-workman has fully proved that he had worked for more than 240 days and his services have been wrongly terminated in violation of the provisions of 1947 Act and, therefore, the impugned award deserves to be set aside and the petitioner-workman is liable to be reinstated in

service with continuity of services and full back wages.

10. On the other hand, learned counsel representing respondent-Management has opposed the prayer of the petitioner-workman and supported the impugned award by submitting that Punjab State Warehousing Corporation (in short 'PSWC') is a statutory body established under Warehousing Corporation Act, 1962 and the petitioner-workman was never working with respondent-Management. It is submitted that the petitioner-workman had failed to prove its pleaded case and the impugned award has been passed by the Tribunal below by appreciating the material placed before it in its right perspective and no interference is required to be made by this Court. Accordingly, prayer for dismissal of this writ petition has been made.

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

12. In the instant case, it is the categorical plea of the petitioner-workman that he had worked with respondent-Management for 5 years and 10½ months before his services were terminated on 16.07.2003. It is also pleaded by the petitioner-workman that he had served the respondent-Management for a period of 240 days immediately preceding the date of his alleged termination.

13. On the other hand, the stand of respondent-Management is that the petitioner-workman was never employed with it and there was never any relationship of employee and employer between the petitioner-workman and respondent-Management and neither the petitioner-

workman had worked with it (respondent-Management) for 240 days immediately preceding the date of his alleged termination.

14. Thus, the core issue to be decided was that whether there is relationship of employee and employer between the petitioner-workman and respondent-Management and/or whether the petitioner-workman had worked for 240 days with the respondent-Management in preceding 12 calendar months from the date of alleged termination of services of petitioner-workman.

15. It is a well settled law that the onus to prove the relationship of employee and employer between the workman and respondent-Management and also to prove that the workman had worked for 240 days in the 12 calendar months immediately preceding the date of his alleged termination, is on the workman.

16. In the instant case, to substantiate its plea that there is relationship of employee and employer between the petitioner-workman and respondent-Management, reliance is placed upon the statement of petitioner-workman himself and also upon the statement of his two witnesses. Further reliance is placed upon the gate passes stated to have been issued by respondent-Management.

17. I have considered the aforestated contentions of learned counsel for the petitioner-workman. From the perusal of the statements made by the petitioner-workman himself as well as two other witnesses, it is manifest that the witness Jaswinder Singh (WW2) stated in his cross examination that the petitioner-workman was not an employee of

respondent-Management. The other witness Gurcharan Singh (WW3) had also stated that the petitioner-workman was not working with Punjab State Warehousing Corporation. Further, a perusal of statement of the petitioner-workman would reveal that he had conceded that neither appointment letter nor any termination letter was issued to him and he also did not prove the appointment of any junior to him. As regards reliance upon Gate Pass is concerned, it has come on record that Gate Pass is issued to vehicles going out of Godowns.

18. The Tribunal below has returned the following findings :-

“15. But in the instant case, there is no an iota of evidence to show that workman has ever served the respondents for a period of 240 days or more or he ever remained employee of the respondents. There is nothing on record to show that he was employed by the respondents. Rather, in the cross examination recorded on 19.08.2014, workman himself admitted that neither any appointment letter was issued to him nor any termination order was given to him. He has got no proof to show that any junior person was retained by the respondent after his termination. Another witness examined by the workman namely Jaswinder Singh WW-2 stated in his cross examination that he never worked in the Warehousing Corporation. He is agriculturist. Earlier, he used to drive a vehicle of a rice-miller. He was called by the workman to give the evidence. He used to go to the godown of warehousing Corporation and used to see so many different persons, who working

there but he cannot tell the names of said persons. It is correct to suggest that Tarlochan Singh never remained employee of the department. Another witness, who has been examined by the workman namely Gurcharan Singh WW-3, who has stated in his cross examination that he know Tarlochan Singh because he come to the godown with tractor/trail of a private rice-mill. It is correct to suggest that gate passes were issued to vehicle to go inside and outside from the godown. He has specifically stated that workman never worked with the respondents. Workman has also summoned gate passes but issuance of gate passes in favour of the workman does not mean that he ever remained employee of the respondents as it stands proved on record that gate passes are ordered to be issued to the vehicles when vehicles go out from the godown.

16. So, keeping in view the facts and circumstances of the case, this Tribunal constrained to hold that claimant never remained employee of the respondents and he has not worked with the respondents for a period of 240 days or more. Hence findings of these issues are decided against the workman and in favour of the Management.”

19. From the aforesaid findings recorded by the Tribunal below, it is observed that the petitioner-workman has failed to discharge the onus upon him to prove the relationship of employee and employer between himself and respondent-Management. It has also not been proved on record that the petitioner-workman had worked with respondent-

Management for 240 days in the 12 calendar months immediately preceding the date of his alleged termination. Once the petitioner-workman had failed to prove that there was any relationship of employee and employer between the petitioner-workman and respondent-Management or that the petitioner-workman has been in continuous service of respondent-Management in terms of Section 25-B of 1947 Act, no relief can be granted.

20. It is also contended that respondent-Management had failed to produce the entire service record pertaining to petitioner-workman, hence, adverse inference should have been drawn against respondent-Management; however, I am not convinced with this submission. The Hon'ble Apex Court in R.M. Yellati v. The Assistant Executive Engineer, 2006(1) SCC 106 has observed as under :-

“ 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 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.”

21. In the instant case, there is no plea of suppression taken by the petitioner-workman.

22. 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 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."

23. In view of the foregoing discussion, I do not find any merit in the instant writ petition and the same is accordingly dismissed.

24. Application(s), if any, pending also stand disposed of.

(HARSH BUNGER)
JUDGE

30.10.2023

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No