

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

CWP-12431-2017 (O&M)
Date of Decision: 14.11.2023

CHANCHAL SINGH

...Petitioner

Versus

M/S MAHAVIR AGENCY, BAZAR LACHHMANSAR,
AMRITSAR, THROUGH ITS PROPRIETOR/PARTNER
AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vivek Sharma, Advocate
for the petitioner.

Mr. B.S. Jaswal, Advocate
for the respondents.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Chanchal Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing the impugned Award dated 01.03.2017 (Annexure P-3) passed by the learned Industrial Tribunal, Amritsar (in short 'the Tribunal'); whereby, the industrial dispute raised by the petitioner regarding termination of his services has been answered against him.

A further prayer has been made by the petitioner for directing respondent No.1-M/s Mahavir Agency (here-in-after referred to as 'the respondent-Management') to reinstate the petitioner with all consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding

termination of his services. The said dispute was referred for adjudication to the Tribunal below. As per the claim statement filed by the petitioner, he stated that he was working with the respondent-Management for the work of loading and unloading at a monthly salary of Rs.8,000/-. Petitioner claimed that he joined services on 01.01.2007 with the respondent-Management; however, his services were illegally terminated on 24.08.2014, without complying with the provisions of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Petitioner further claimed that he was un-employed since the date of his termination and therefore; he was entitled to be reinstated into service with all consequential benefits.

3. The afore-said claim of the petitioner was contested by the respondent-Management, *inter alia*, on the plea that there was no relationship of employee and employer between the parties and the claim petition was an abuse of the process of law, only to harass the management, despite the fact that the workman was never employed by the management. It was further stated that the petitioner-workman is a *Rickshaw Puller* and he was not employed by the management at any time. It was stated that the petitioner was only getting higher charges from the customers whoever wanted to get the material delivered at the place of destination. It was stated that once the workman was not their employee, there was no question of termination of his services on 24.08.2014. It was also stated that the provisions of the 1947 Act, were not at all applicable to the petitioner-workman. The other averments/allegations against the respondent-Management were denied and prayer for dismissal of the claim petition was made.

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

“1. Whether the workman is liable to be reinstated with full benefits? OPW

2. Whether the reference is not maintainable? OPM

3. Relief.”

5. In order to substantiate his claim, the petitioner-workman examined himself as WW-1 and tendered his affidavit as Ex.W1 and on the other hand, the respondent-Management examined Sh. Naval Kumar, Proprietor of Management Company as MW1, who has tendered his affidavit as Ex.MW1 and Tarun Aggarwal as MW2, who has tendered his affidavit as Ex.MW2.

6. After considering the material/evidence available on the record, the Tribunal below has rejected the claim of the petitioner.

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

8. Learned counsel for the petitioner has submitted that the learned Tribunal below has erred in law and facts in rejecting the claim of the petitioner, despite the fact that there was sufficient evidence on record to show the relationship of employer and employee between the parties. It is further submitted that the petitioner belongs to Scheduled Caste category and is an illiterate person and he should have been granted opportunity to lead evidence to show that he was on the salary with the respondent-Management. It is further submitted that the respondent-Management should have been called upon to prove the salary of the employees, however, no such exercise was carried out and therefore, adverse inference was required

to be drawn against the respondent-Management.

With the afore-said submissions, learned counsel for the petitioner prayed for setting aside of the impugned award and for grant of necessary relief to the petitioner.

9. Per contra, learned counsel appearing for the respondent-Management has opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has passed the well-reasoned and justified award, which does not call for any interference by this Court. It is submitted that the petitioner has failed to prove on record that there existed any relationship of employee and employer between the parties. It is submitted that the petitioner has not led any evidence to *prima facie* show that he was ever employed by the respondent-Management and therefore, there was no question of drawing any adverse inference against the respondent-Management. Accordingly, prayer for dismissal of the writ petition has been made.

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

11. It is well settled law that the onus to prove existence of relationship of employee and employer between the parties is upon the workman. In “*Workman of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors., (2004) 3 SCC 514*, Hon'ble Supreme Court held as under:-

“47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers'

Union and Others, 1973 LIC 398, the Kerala High Court held :

"The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship."

49. In Swapan Das Gupta and Others. v. The First Labour Court of West Bengal and Others, 1975 LIC 202, it has been held :

"Where a person asserts that he was a workmen of the Company, and it is denied by the company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse..."

It is also well settled law that the onus to prove that the workman has rendered continuous service in terms of Section 25-B of the 1947 Act, i.e. the workman has worked under the Management for 240 days in twelve months preceding the date of termination, is also on the workman. It is further 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. In this regard, reference can be made to the case of

***“Municipal Corpn. v. Siri Niwas”, 2004(4) S.C.T. 211 and
“Surendranagar District Panchayat v. Dahyabhai Amarsinh”, 2005(8)
SCC 750.***

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

“10. In order to prove his case, workman Chanchal Singh stepped into witness box as WW1 and tendered his affidavit Ex.W1, in which he has stated that he was working as Rickshaw Puller with the management from the last seven years and he was drawing salary of Rs.8,000/- per month. He has further stated that his services were terminated by the management on 24.8.2014 without any notice or charge-sheet.

In the cross-examination, he has stated that he is plying rickshaw since 1985. He has further stated that he is not having any proof to show that he has ever worked with the management. He has further stated that he is also not having any proof that he was engaged by their management for carrying the goods of the management. From the cross-examination of this witness, it is clear that there is no evidence on the file, which can show that the workman has ever worked with the management. Onus was upon the workman to prove this fact, but he has failed to do so.

11. On the other hand on behalf of management, MW1 Naval Kumar has tendered his affidavit Ex.MW1, in which he has deposed that workman Chanchal Singh was never employed as Rickshaw Puller by him at the alleged salary of Rs.8,000/- per month. He has further stated that there never came into existence any relationship of employer and employee between the parties. The workman is a Rickshaw Puller, but he used to work as a Rickshaw Puller for different persons against hire charges as settled with him by them.

Witness has further stated that the workman never worked with him for a period of seven years as alleged by him in the statement of claim. Whenever any customer used to hire the services of the workman for loading and unloading the sanitary materials, the workman used to get the requisite charges from the customer. He has further stated that it was always for the workman to decide as to whether he was to ferry the material in his rickshaw from one place to the other and he (witness) was absolutely having no say in this regard. Witness has further stated that when the workman was never employed by him, there was no question of the termination of his services by him without notice as alleged. It was entirely within the discretion of the workman whether to take the materials from his shop for unloading the same at the place of destination determined by the customers. The workman never worked regularly for him as a Rickshaw Puller. The rickshaw was of the workman himself and it was within his discretion to do a particular work or not. Witness has further stated that provisions of Industrial Disputes Act are not applicable because the petitioner never worked as a workman with him. He has further stated that the petition is totally false one and has been filed with ulterior motive and malafide intention by the workman to extort money from him. He has further stated that workman used to do the private work of rickshaw pulling from one place to the other. He was not having any fixed place for pulling the rickshaw.

12. MW2 Tarun Aggarwal is the son of MW1 Naval Kumar and he has stated in his affidavit Ex. MW2 that he has been assisting his father Naval Kumar in his sanitary business run under the name and style of Mahavir Agency at Chowk Lachhmansar, Amritsar and he has further stated in his affidavit in the same manner as deposed by his father MW1 Naval Kumar.

13. The workman has pleaded that he has worked permanently as Rickshaw Puller with the management for

eight years and he was terminated by the management without any charge-sheet or inquiry in the year 2014.

14. As already stated above, there is no evidence on the file to show that workman has ever worked with the management. So, the reference is answered in negative. Accordingly, issue no.1 is held against the workman and in favour of the management.

Issue no.2

15. Authorized representative for the management has not pressed this issue at the time of arguments and, as such, this issue is held in favour of the workman and against the management.

Relief

16. In view of my discussion, made on above issues, reference is answered in negative and is decided against the workman and in favour of the management and the reference is dismissed accordingly. Reader of this Tribunal is directed to forward three copies of this Award to Assistant Labour Commissioner/Labour-cum-Reconciliation Officer, Amritsar, as required under section 15 of the I.D. Act read with Notification No.S.O. 66/C.A.14/1947/S.17/2008 dt. 1.10.2008. File be consigned to record room.”

13. A perusal of above extracted findings would show that the petitioner failed to prove on record that he remained in the employment of respondent No.1-Management continuously from 01.01.2007 to 24.08.2014. Apart from the bald statement of petitioner in support of his claim, there is no other evidence/material on record to show that there existed relationship of employee-employer between the parties or that the petitioner rendered continuous service in terms of Section 25-B of the 1947 Act, so as to attract protection under Section 25-F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by respondent No.1-

Management or any order in that regard was produced.

14. As regards the plea of petitioner that adverse inference be drawn against respondent No.1-Management for not producing the relevant record, it is observed that drawing of adverse inference is optional and not obligatory and the same is within the domain of Industrial Tribunal. Further, drawing of adverse inference depends on facts and circumstances of each case and adverse inference cannot be drawn only because it is lawful to do so. 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 (See: **“Surendranagar District Panchayat Vs. Dityabhai Amarsingh” 2005(8) SCC 750**).

In the instant case, the Tribunal below has not drawn any adverse inference. Furthermore, apart from the bare plea of non-production of relevant record by the respondent No.1-Management; there is no plea of the petitioner that respondent No.1-Management has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent No.1-Management. In this regard, reference can be made to the judgment of Hon’ble Apex Court in **“R.M. Yellatti v. The Asst. Executive Engineer”, 2005(4) S.C.T. 695**, wherein it has been held as under:

“15. ... 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...”

15. 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***”.

16. No other point has been urged.

17. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for any interference in the impugned award dated 01.03.2017 (Annexure P-3) by this Court, while exercising its writ jurisdiction. Resultantly, the instant writ petition fails and the same is

accordingly dismissed.

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

November 14, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No