

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

CWP-1789-2014 (O&M)
Date of Decision: 31.07.2023

RAM KUMAR

...Petitioner

Versus

M/S OSWAL ELECTRICALS PUMP AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vinod Verma, Advocate
for the petitioner.

Ms. Amrita Nagpal, Advocate
for respondent No.1.

HARSH BUNGER, J. (ORAL)

Petitioner (Ram Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of Award dated 21.01.2013 (Annexure P-1) passed by the learned Presiding Officer, Labour Court, Panipat (here-in-after referred to as 'the Tribunal'); whereby the reference regarding termination of services of the petitioner-workman was decided against him.

2. Briefly, petitioner-Ram Kumar raised an industrial dispute through his demand notice dated 27.12.2005, which was subsequently referred to the learned Industrial Tribunal-cum-Labour Court, Panipat for adjudication. The petitioner-workman claimed that he was employed by the respondent-Management from 01.10.2000 in Mono-bloc Section as Field Mechanic and was getting wage of Rs.2,310/- per month and there was no complaint against him. However, on 14.10.2005 at 02:30 noon, his services were certainly terminated by the respondent-Management. The petitioner

claims that the termination of his services was illegal and against the law as no retrenchment compensation was paid to him. Accordingly, he claimed his reinstatement with continuity of service and full back wages along with all consequential benefits.

3. The afore-said claim of the petitioner was contested by the respondent-Management by raising a categorical plea that there was no relationship of employer and employee between the parties and thus, no cause of action had accrued to the petitioner-claimant. It is the further stand of the respondent-Management that the petitioner had concealed material facts and was running his own business. It is further submitted that the petitioner was not employed by the respondent-Management and was neither getting wages from them. It is also the stand of the respondent-Management that the petitioner was not a member of ESI/EPF and he did not work for 240 days so as to claim any relief. Accordingly, it was contended that the reference made by the Government was wrong.

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

“1. Whether the services of Sh. Ram Kumar have been terminated validly or not? If not, whether he is entitled to any relief? OPW

2. Whether there is no relationship of employer and employee between the parties? OPM

3. Whether there is no cause of action in favour of workman as alleged? OPM

4. Relief.”

5. In order to substantiate his pleaded case, the petitioner-claimant examined himself as WW1 and tendered documents as Exhibit WW1/1 to

Exhibit WW1/5. He further examined one Vijay Kumar as WW2.

6. On the other hand, the respondent-Management examined Vinod Kumar as MW-1 and also produced ESI and PF return from 01.04.2002 to 31.03.2006, to contend that the petitioner-workman was never engaged by them in the factory and neither the name of the petitioner-workman is appearing in the returns. The respondent-Management produced the ESI record as Exhibit MW1/1 to Exhibit MW1/8 and also produced 6-A record of EPF as Exhibit MW1/9 to Exhibit MW1/11.

7. After considering the pleaded case of the respective parties and also the material/evidence available on the record, the Tribunal below rejected the claim of the petitioner vide Award dated 21.01.2013.

8. In the afore-mentioned circumstances, the present writ petition has been filed before this Court.

9. Learned counsel for the petitioner has argued that the Tribunal below has erred in rejecting the claim of the petitioner-workman by relying upon ESI and PF returns. It is contended that ESI and PF returns cannot be the conclusive proof of the fact regarding working of the petitioner-workman with the respondent-Management. It is submitted that the learned Tribunal below has failed to consider Annexures P-3 to P-8, which showed that respondent-Management was providing spare parts to the workman for repairing of pumps. Learned counsel further submits that the respondent-Management had failed to produce the muster rolls and the wage register in its evidence, in terms of Section 25-D of the Industrial Disputes Act; thus, adverse inference should have been drawn against the respondent-Management. It is also argued that the learned Tribunal below has wrongly calculated the 240 days' work of the petitioner-workman, by ignoring the

fact that the respondent-Management had failed to produce the muster rolls.

It is submitted that that the learned Tribunal had failed to consider the evidence placed on the record and has wrongly passed the impugned Award.

10. On the other hand, learned counsel appearing for the respondent-Management has contended that there is no illegality or perversity in the impugned Award as the petitioner had failed to prove his pleaded case. It is submitted that petitioner-workman was not engaged by the respondent-Management in Factory rather petitioner was running his own business. It is next submitted that as and when there was any complaint from a dealer, arrangement used to be made with individual for carrying out such service and there was no relationship of employee and employer. It is submitted that the findings returned by the learned Tribunal are based upon correct appreciation of evidence and in accordance with law; thus, no interference is required to be made in the same. Accordingly, prayer has been made for dismissal of the writ petition.

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

12. It is the case of the petitioner-workman that he had worked with the respondent-Management and his services have been wrongly terminated, in violation of the provisions of Industrial Disputes Act; whereas, on the other hand, it is the case of the respondent-Management that the petitioner-workman had never worked with them. Thus, the core issue to be considered is as to whether there is a relationship of employee and employer between the petitioner and the respondent-Management.

13. It is the settled law that the onus to prove the relationship of employee-employer is upon the worker himself. A perusal of the paper-book

would show that apart from the statement of the petitioner, in support of his claim, the petitioner has also relied upon the statement of one Vijay Kumar. However, a perusal of the statement of Vijay Kumar would manifest that he (Vijay Kumar) was engaged in August-2001 as a Coil Man and he worked upto October-2002, whereas the claim of the petitioner is that his services have been illegally terminated on 14.10.2005 at 02:30 p.m.; thus, the petitioner cannot derive any benefit from the said statement as Vijay Kumar was not in employment after October, 2002.

14. Further vide impugned award dated 21.01.2023 (Annexure P-1), the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipathas returned the following findings :-

“11...Here in the instant case, the stand of the management is that the workman was not the employee of the management. It was the bounden duty of the workman to bring some appointment letter or some wage slips to prove this crucial aspect of the matter, but no effort at all was made by the workman to summon the said record from the concerned quarter. Even no other effort was made to place on file the record pertaining to deposit of the Provident Fund. Had the workman been employee of the management, then of course the aforesaid documents would have been prepared in the natural course of business by the concerned authorities.

12. Ld. AR for respondent has argued that workman in his cross examination has admitted that was not having any technical diploma and has only studied up to 8th standard and was working in M/s Parkash Corporation, Panipat and was working in the shop with LalaPadamSain and was going to parties to attend complaint and was getting report from said party and admitted that there ESI and EPF deduction are made of employees of the company

and he was not member of the ESI or EPF and he has no other proof of employment except Ex. AW1/2 to AW1/5 and said documents were given to him for taking material out and said documents is not proof of employment and workman could not produce any proof of his employment or claiming wages from respondent from 1.10.2000 to 14.10.2005 from respondent. He further averred that documents Ex. WW1/1 to Ex. WW1/5 are in the nature of doing work with party at Narwana, Faridabad etc. on particular date and not proof of employment with respondent.

13. *Learned Authorised Representative for the respondent then asserted that the onus to prove that workman was engaged in the year, 2000 lies with him and except producing Vijay Kumar WW-2 and further producing documents Ex. WW1/1 to Ex. WW1/5 there is no evidence to prove working by workman with respondent for 5 years. He then argued that Vijay Kumar during cross examination admitted that workman was having his own shop at Gharaunda and said evidence also proves that worker was not in employment with respondent and was running his own shop and further workman has admitted that he was not member of ESI/EPF and a person working for more than 5 years as per his saying was not able to produce any record of employment in the nature of attendance card of wage slip. It has been held by the Hon'ble Apex Court in **Range Forest Officer Versus S.T. Hadimani 2002(2) SCC 25** that “mere filing of affidavit by the workman, being only his own statement in his favour, 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 a year”. Similar views were taken by Hon'ble Supreme Court of India in **State of Haryana Versus Ramesh Kumar 2009(2) RSJ** wherein it has been held that “termination of continuous service-burden of proof – it lies*

on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment-it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of employer.” Similar views were also taken in Essen Deinki V. Rajiv Kumar 2002(4) SCT 900 (SC); AIR 2003 S.C. 38 and Rajasthan State Ganganagar S. Mills Ltd., V. State of Rajasthan and another, 2004(4) SCT 214 (SC); 2004(III) LLR 832 (S.C.); Municipal Corporation Faridabad Vs. SiriNiwas, (2004) 8 SCC 195 and M.P. Electricity Board Vs. Hariram, (2004)8 S.C.C. 246. There is similar view expressed in the judgment reported in 2006 SCC (L&S) page 38 in the case of Sundernagar District Panchayat vs. Dahyabhai Amarsign, copy enclosed for ready reference. At page 45-46 in para 17 and 18 it is held that onus to prove requirement of working for 240 days is upon workman and it is for workman to adduce evidence apart from examining himself and such evidence may be in the form of receipt of salary or wages for 240 days or record of appointment or engagement for that year to show that he worked for 240 days with the employer. These judgments of Hon’ble Supreme Court is fully applicable to the facts of the case in hand.

14, Learned Authorised Representative for the respondent-management has argued that the burden to prove issue No.1 has been cast upon the workman by the Court while framing issues in the present reference and therefore, it is entirely for him to lead cogent and sufficient evidence on the file to prove that he worked and claimed wages from respondent from 2000 to 14.10.2005. Rather, in the light of the above-discussed documents, moreover particularly record of ESI/PF returns it is more than explicit that the workman was not in employment with respondent.

15. In the light of fore-going discussions, it is held that the workman has not been able to lead any cogent

and sufficient evidence on the file to prove that he was in service of respondent on 14.10.2005 and respondent allegedly terminated his services illegally or that he worked for 240 days and rather, it stands duly proved on the file that workman was not in employment with respondent on the said date. Resultantly, both these issues are decided against the workman.”

15. A perusal of above extracted findings returned by learned Tribunal below would manifest that the petitioner-workman had failed to bring on record any evidence to prove that he was in service of respondent-Management on 14.10.2005, i.e. the day of his alleged termination and neither it has been proved that petitioner-workman had worked for 240 days in last preceding 12 calendar months from the date of his alleged termination. Even before this Court, learned counsel for the petitioner has failed to point out any material to show that there was relationship of employee and employer between the petitioner and the respondent-Management.

16. Reference to Annexures P-3 to P-8 also does not advance the case of the petitioner-workman as Annexures P-3 to P-6 are not letters (as claimed in writ petition) rather the same are bills issued in the name of petitioner-workman. It is not forthcoming nor explained as to why these bills are in the name of petitioner-workman, if it is claimed that petitioner was in service of respondent-Management. In any case, the said bills cannot be treated as proof of employment.

17. As regards the contention of the petitioner that the respondent-Management should have produced the entire record to show that the petitioner had not worked with them and regarding drawing of adverse inference; suffice it to say that the onus to prove the relationship of

employee-employer as well as working for 240 days is on the petitioner and the workman cannot rely on the plea that the respondent-Management has not produced the entire record.

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."

18. The Hon'ble Apex Court in *R.M. Yellati v. The Assistant Executive Engineer, 2006(1) SCC 106* laid down the principles that the drawing of adverse inference would depend upon the facts of each case and normally, the record of the employment is with the management and this Court is not to interfere under Article 226 of the Constitution of India in the finding of the Labour Court unless they are perverse. The following principles were laid down :-

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore stated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workwoman stepping in the witness box. This burden is discharged upon the workwoman adducing cogent evidence, both oral and documentary. In case of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of

payment. Thus in most cases, the workwoman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. 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/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 workwoman 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.”

19. 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."

20. Keeping in view the above said principles, this Court is of the opinion that there is no scope for interference in the well reasoned order and in the factual finding, which has been recorded by the Labour Court and the present writ petition is accordingly dismissed.

21. No other point has been urged.

22. All pending application/s, if any, shall stand closed.

July 31st, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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