

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

CWP-17463-2015 (O&M)
Date of Decision: 07.11.2023

GUDDO DEVI

...Petitioner

Versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, UNION TERRITORY, CHANDIGARH
AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vinay Kumar Begra, Advocate
for Mr. Deepak Agnihotri, Advocate
for the petitioner.

Mr. Davinder Kumar, Advocate
for respondent No.2.

HARSH BUNGER, J. (ORAL)

Petitioner (Guddo Devi) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of the impugned Award dated 03.07.2014 (Annexure P-4) passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Chandigarh (here-in-after referred to as 'the Tribunal'), published on 30.10.2014; whereby, the reference of industrial dispute was declined and answered against her.

2. Briefly, the petitioner-workman raised an industrial dispute by serving a demand notice upon respondent No.2-M/s Saupin's School, Sector-32, Chandigarh; wherein it was pleaded that she had joined the school during April, 1993 as 'Aya' and was drawing Rs.3741/- p.m. by way of monthly wages. Said dispute was referred for adjudication to the Tribunal. In the claim statement, the petitioner-workman had stated that she remained in uninterrupted and continuous employment from April, 1993 to 19.01.2009; however, on 19.01.2019, she was not allowed to join her duties

by the School, by saying that her services have been terminated. It was claimed by the petitioner that she had worked for 240 days in the last twelve calendar months from the date of her alleged termination. It was further claimed that the post on which, the petitioner was appointed, is perennial in nature and the job is still in existence. Petitioner claimed that her services have been terminated in violation of the provisions of Industrial Disputes Act, 1947; accordingly, she prayed for reinstatement with continuity of service and full back wages.

3. The aforesaid claim of the petitioner was contested by respondent No.2-School (Management); wherein a categorical stand was taken that in fact, petitioner-workman was an employee of contractor 'Gee Kay Associates' and had been deployed by the contractor as *Safai Karamchari*. It was stated that the claim of the petitioner-workman was bad for non-joinder of necessary party. A specific stand was taken that there was no relationship of employee and employer between the petitioner-workman and respondent No.2-School/Management. Accordingly, prayer was made for dismissal of the claim statement.

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

"1. Whether there is relationship of workman and employer between the parties? OPW.

2. Whether this reference is bad for non-joinder of M/s Gee Kay Associates? OPM.

3. Whether the workman was employee of M/s Gee Kay Associate? OPM.

4. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any? OPW.

5. Relief."

5. In support of her claim, the petitioner-workman had examined Sh. Ramesh Chand, Labour Inspector as AW1 and Sh. A.A. Roberts, Manager of the management as AW2. The petitioner-workman also stepped into the witness box as AW3.

On the other hand, the respondent-School/Management had examined Sh. A.a. Roberts, Manager as MW1.

Thereafter, the evidence was closed by both the parties.

6. After considering the case of the respective parties and also the material/evidence placed on the record, the Tribunal below declined the reference and answered against the petitioner-workman.

7. In the afore-mentioned circumstances, the instant writ petition has been filed.

8. Learned counsel for the petitioner has argued that the learned Tribunal below has failed to appreciate the fact that the petitioner had worked for 240 days in the last twelve calendar months from the date of her alleged termination and her services have been terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. It is further argued that the Tribunal below has ignored that the juniors of the petitioner were retained in service, whereas, the services of the petitioner have been terminated illegally and arbitrarily. Learned counsel for the petitioner contended that the learned Tribunal below has not appreciated the fact that the petitioner was not an employee of the contractor. It was contended that the termination of services of the petitioner by the respondent-School was illegal, arbitrary and contrary to the provisions of the Industrial Disputes Act, 1947 and hence, the termination of the services of the petitioner as well as the impugned Award, are liable to be set aside with

a further direction to the respondent-School to reinstate the petitioner with all consequential benefits.

9. Per contra, learned counsel appearing for respondent No.2-School, has opposed the prayer of the petitioner and while referring to the findings returned by the Tribunal below, it is submitted that the Tribunal below has correctly appreciated the material/evidence available on the record. It is submitted that the petitioner had failed to prove that there was any relationship of employee and employer between the parties. It is accordingly contended that once the petitioner had failed to discharge the onus to prove the relationship between the parties, the petitioner was not entitled to any relief. It is submitted that the Award passed by the Tribunal below is legal, valid and justified and no interference is required to be made by this Court in the finding of fact recorded by the Tribunal below, in exercise of its writ jurisdiction. Accordingly, prayer for dismissal of the writ petition has been made.

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

11. From the pleadings of the parties, it is manifest that the petitioner claimed that she was appointed by respondent No.2-School; whereas, on the other hand, it is the categorical case of the respondent-School that there is no relationship of employee and employer between the petitioner-workman and respondent No.2-School, rather it is contended that the petitioner-workman was an employee of 'Gee Kay Associates'. It is well settled law that the onus to prove the relationship of employee-employer as well as regarding continuous service in terms of Section 25-B of the Industrial Disputes Act, 1947 is on the petitioner and in this regard,

reference can be made to the judgment rendered by Hon'ble Supreme Court of India in the case of ***Municipal Corpn. v. Siri Niwas, 2004(4) S.C.T. 211.***

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

“9. I have very thoughtfully considered the rival contentions of both sides. In the present case the workman is aggrieved that her services have been terminated by the management without complying with the provisions of Section 25-F and Section 33-A of the I.D. Act as services of the workman were terminated without any notice, charge sheet, inquiry and compensation and during pendency of industrial dispute raised on behalf of the workers of the management. On the other hand, it is the stand of the management that services of the workman were not terminated by the management as there was no relationship of employer and employee between the management and the workman. Now this Court is to see whether the workman has been able to establish that she was employee of the management. Though the stand of the management throughout is that the workman is not employee of the management and is also evident from the written statement as the management has taken specific stand in the preliminary objection that the workman was employee of the contractor Gee Kay Associates and have been deployed by the contractor as Safai Karamchhari with the management and she was not employee of the management but still the workman has not impleaded Gee Kay Associates as party especially when in the demand notice ordered to be treated as statement of claim the workman has mentioned that she was employee of the management and not of any contractor, which goes to prove that she was in knowledge of factum regarding her employment and termination by the contractor. Moreover, the workman is relying upon Exhibits “W3” which is

dismissal order of Mrs. Kamla and Exhibit “W4” which is dismissal order of the workman, perusal of these documents shows that dismissal/termination order was passed by contractor Gee Kay Associates and information regarding this was sent to the management. Once when specific objection was raised by the management and also when the workman herself is placing on record Exhibit “W3” and “W4” in the opinion of this Court the contractor Gee Kay Associates was a necessary party and this reference is bad for non-joinder of necessary party.

10. Even otherwise considering the case on merits first witness examined by the workman is AW1 Ramesh Chander Labour Inspector. This witness has admitted in his cross-examination that it is correct that a letter by the school-management was filed before him which is dated 12th September, 2009, copy of which is Exhibit “W2”, in which it was explained that the services of Kamla and Guddo Devi were terminated after inquiry, vide orders dated 17th January, 2009 which is Exhibit “W3” and “W4”. Perusal of Exhibit “W3” and “W4” reveals that orders were passed by the contractor Gee Kay Associates. Second witness examined by workman is AW2 A.A. Robert, who has stated in his examination-in-chief that there was no relationship of employer and employee between the management and workman. The workman was employee of contractor Gee Kay Associates and has been deployed by the contractor in the school. This witness has admitted in his cross-examination that it is correct that name of Guddo Devi did not appear in the attendance register Exhibit “W10”. The workman has herself stepped into the witness box as AW3 and has stated in her cross-examination that no appointment letter was given to her by the management and she has no proof of termination of her services during the pendency of dispute. She has further admitted that she has withdrawn Rs.47,000/- from her

provident fund account and she has seen copy of the application form through which she had withdrawn the provident, the same is Mark "B" consisting of six leaves and she identified her signatures at encircled portion Mark "C". She also identified the signatures of Shri Gurdeep Singh Sodhi at encircled portion Mark "D" and perusal of the same reveals that under signature of employer/authorized official, there is signature of Shri Gurdeep Singh Sodhi with stamp of M/s Gee Kay Associates. She also admitted her signatures in Hindi on wage slips Exhibit "M1 to M4". Admitted Exhibits "M1 to M4" reveals that these are wage slips of the workman and in column of name and address of the establishment name of M/s Gee Kay Associates is recorded and also in column 'pay in charge' there is seal of M/s Gee Kay Associates. She stated in her cross-examination that she was not member of any workers' union, which bellies her own statement that her services have been terminated due to her trade union activities. Onus to prove whether there was employer and employee relationship between the parties was on the workman but while leading evidence the workman has failed to discharge the onus rather the documents produced by her and admission of documents produced by the management goes to show that the workman was employee of the contractor Gee Kay Associates and not of management goes to show that the workman was employee of the contractor Gee Kay Associates and not of management. Since the workman has failed to establish that there was relationship of employer and employee between the contesting management and workman rather from the evidence led it stands proved that the workman was employee of the contractor Gee Kay Associates and the contesting management that is the Principal, Saupin's school and another has not terminated the services of the workman. The reference is bad for

mis-joinder of M/s Gee Kay Associates. Accordingly all these issues are decided against the workman and in favour of the management.

Relief

11. In the light of findings on the issues above, this reference is declined and answered against the workman. Appropriate Government be informed. File be consigned to the record room.”

13. A perusal of the afore-said findings would clearly indicate that the petitioner had failed to prove the relationship of employee and employer between the parties. Admittedly, the petitioner has not placed on record any document by way of appointment letter, salary statement, termination letter, pay slip etc. Further, except the self-serving statement of the petitioner, no other co-worker has been examined in this case.

14. Once the petitioner had not proved on the record that she was employed by respondent No.2-School/Management or she was paid wages by the School or any other document to show her employment with the School/management, it cannot be held that there was a relationship of employee and employer between the petitioner and the School/management. It is well settled that mere affidavit or self-serving statement 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 she had worked for 240 days in a given year or there is a relationship of employee and employer between the workman and the Management.

15. 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."

16. 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 findings, which have been recorded by the learned Tribunal below and the present writ petition is accordingly dismissed.
17. No other point has been urged.
18. All pending application/s, if any, shall stand closed.

November 07, 2023

gurpreet

Whether speaking/reasoned:

Whether reportable:

(HARSH BUNGER)

JUDGE

Yes/No

Yes/No