

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

CWP-16874-2016 (O/M)

Date of decision : 20.10.2023

Bachu Singh

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal and Labour Court
and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Rakesh Bhatia, Advocate
for the petitioner.

Mr. Akhil Kashyap, Advocate for
Mr. P.K. Kataria, Advocate
for respondent No. 2.

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HARSH BUNGER, J.

1. Petitioner (Bachu Singh) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking quashing of impugned Award dated 18.01.2016 (Annexure P-16), passed by the Industrial Tribunal and Labour Court, Union Territory, Chandigarh (hereinafter referred to as 'the Tribunal below') whereby the reference was answered against the petitioner-workman.

2. Briefly, the petitioner-workman raised an industrial dispute by serving a demand notice dated 26.07.2010 (Annexure P-6). Subsequently, the dispute was referred to the Tribunal below for

adjudication. As per the claim petition, petitioner joined the services of respondent No. 2-M/s Track Innovations India (P) Ltd. (hereinafter referred to as 'respondent-Management') with effect from 17.07.1993 and he claimed to have worked continuously upto 22.07.2010 when his services were allegedly terminated verbally by respondent-Management.

3. It is the pleaded case of petitioner-workman that he had to go to his native place for marriage of his real daughter which was fixed for 29.05.2010. As per petitioner, he had applied for leave from 13.05.2010 to 13.06.2010 and also demanded some advance money from respondent-Management. The petitioner-workman claimed that respondent-Management verbally sanctioned the leave and told him that some advance will also be given. The petitioner-workman specifically stated that he was called to the office of company many times for payment of advance, however, no advance money was given to him by respondent-Management till last date of his work. Accordingly, the petitioner is stated to have left Chandigarh on 13.05.2010 and after marriage of his daughter, the petitioner-workman claimed to have returned to Chandigarh to join his duties on 14.06.2010, however, he reached Chandigarh on 15.06.2010 and thereafter, he went to join his duties, however, he was stopped at factory gate. The petitioner-workman claimed that in these circumstances, he gave his joining report on 16.06.2010, however, respondent-Management refused to accept the same. The petitioner-workman sent the said joining letter through registered post AD on 18.06.2010. As per the petitioner-workman, respondent-Management

instead of allowing him to join duty, served a show cause notice dated 02.06.2010 (posted on 24.06.2010), which was replied by petitioner-workman and on 22.07.2010, respondent-Management conveyed to the petitioner-workman that his services are no more required. Accordingly, the petitioner-workman claimed that the verbal order passed by respondent-Management for terminating his services is illegal, arbitrary, unjustified and against the principles of natural justice and also in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). The petitioner-workman claimed that there is violation of Sections 25-F, 25-G and 25-H of 1947 Act, accordingly, prayer was made for directing respondent-Management to reinstate the petitioner-workman with continuity of service, full back wages and other consequential benefits.

4. The aforesaid claim of the petitioner-workman was contested by respondent-Management wherein it was stated that the petitioner-workman joined respondent-Management with effect from 10.08.1993 instead of 17.07.1993 and his services were never terminated and rather he himself abandoned the job by absenting unauthorized continuously from 13.05.2010 onwards. It was also stated that the petitioner-workman used to remain absent unauthorized during his service period and never recognized respondent-Management instructions to work in a disciplined manner. It was the stand of respondent-Management that the petitioner-workman never reported to respondent-Management and even not made a phone call. The petitioner-workman was issued a show cause notice

dated 02.06.2010 as even the office bearer of the worker union were not able to give the whereabouts of the petitioner-workman and instead of reporting for duty and justifying his conduct, the petitioner-workman intentionally started the litigation as he never wanted to continue with respondent-Management and wanted to gain the benefits by misusing the existing labour laws for ulterior motives. Accordingly, prayer was made for rejecting the claim petition.

5. On the basis of the pleading of the parties, the issues were framed and the parties led their respective evidence.

6. In support of its case, the petitioner-workman himself stepped into witness box as AW1 and also examined his co-worker Pappu Singh as AW2 and one Shambu Singh as AW3. On the other hand, respondent-Management examined Gurbir Pal Singh, General Manager as MW1.

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

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

9. Learned counsel for the petitioner, while reiterating the facts as mentioned in the writ petition, argued that the impugned award dated 18.01.2016 (Annexure P-16) is illegal, unjust and arbitrary and accordingly, the same is liable to be set aside. It is submitted that the leave of the petitioner-workman was sanctioned orally by respondent-Management and he was permitted to attend marriage ceremony of his

daughter with the assurance by respondent-Management that his leave would be sanctioned. The petitioner-workman had submitted an application for leave, however, subsequently respondent-Management denied that any application for leave was given by the petitioner-workman. Learned counsel for the petitioner-workman contends that it is not a case of abandonment of services. Had it been a case of abandonment of service then the petitioner-workman would not have come back to join duty. It is submitted that in case the petitioner-workman had not reported for duty then respondent-Management could have issued notice to the petitioner-workman to join duty and in case, the petitioner-workman had not joined the duty then at best it could have been the case of misconduct, for which an inquiry was required to be conducted. Accordingly, it is contended that there is no abandonment of service on the part of the petitioner-workman and oral termination of services of the petitioner amounts to retrenchment. Learned counsel for the petitioner contends that the petitioner-workman had worked with respondent-Management for the last 17 years and his services have been terminated without complying with the provisions of Section 25-F of 1947 Act. It is further contended that the Tribunal below has failed to consider and appreciate the evidence regarding marriage of daughter of petitioner-workman and wrongly presumed it to be a case of abandonment of service and the reference has been wrongly answered against the petitioner-workman only on the basis that the petitioner-workman could not produce the rail tickets of his journey from Chandgiarh to his native place. Accordingly, it is submitted

that direction be issued to respondent-Management to reinstate the petitioner-workman, continuity of service, full back wages and other consequential benefits.

10. On the other hand, learned counsel for respondent-Management has opposed the prayer of the petitioner-workman by submitting that there is no illegality or perversity in the impugned award and the same has been rendered by the Tribunal below after considering the case of respective parties and also on the basis of material/evidence available on record. Learned counsel for respondent-Management submits that even before the Tribunal below, respondent-Management had offered the petitioner-workman to join back duty without the back wages, however, the petitioner-workman had clearly refused to join back the duty without back wages. It is contended that the petitioner-workman had never any intent to work with respondent-Management. It is submitted that the present case is not a case of retrenchment from services. It is further submitted that in these circumstances, it has been held that when the workman is not coming forward to accept the job and is imposing conditions then he is not entitled to reinstatement with back wages and it amounts to abandonment. In this regard, learned counsel for respondent-Management has referred to judgment rendered by Bombay High Court in Sonal Garments Versus Trimbak Shankar. It is further submitted by learned counsel for respondent-Management that the petitioner-workman had failed to prove on record the railway tickets although a specific stand was taken by him that he had booked the tickets after his leave was orally

sanctioned, however, he made a self contradictory statement in his evidence when he stated that he did not book ticket, rather he purchased the ticket on the counter.

It is next submitted that the petitioner-workman has also failed to prove that there was any procedure/practice with respondent-Management to orally sanction the leave. It is submitted that the Tribunal below has returned pure findings of fact which are not liable to be interfered with by this Court in exercise of its certiorari jurisdiction. Accordingly, prayer for dismissal of the writ petition has been made.

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

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

"9. I have very carefully considered the rival contentions of both the sides. The workman is aggrieved that the management has wrongly terminated the services of the workman though he had proceeded on sanctioned leave whereas the stand of the management is that the workman had not applied for any leave nor it was sanctioned and the workman has absented from duty. Now this Court is to see as to whether there is any force in arguments of learned representative for the workman that the management has terminated the services of the workman or the workman has abandoned the services of the management as alleged by the management. Now it is the case of the workman that he had applied for leave for the purpose of

marriage of his daughter from 13th May, 2010 to 13th June, 2010. Now admittedly the workman has not performed duties with the management from 13th May, 2010 to 13th June, 2010 and stand taken by the management is that he had not applied for leave for alleged purpose of marriage of his daughter with effect from 13th May, 2010 to 13th June 2010. On the other hand, the workman is alleging that his leave was verbally sanctioned by the management. Since the workman is alleging this fact then it has to be seen whether he has been able to prove the same. The workman during cross-examination has admitted that he used to give leave application as and when he proceeded on leave. He stated that he had given a leave application before proceeding on leave with effect from 13th May, 2010 to 13th June, 2010 but he cannot produce the copy of the same and the same may be available with the management. Admittedly no leave was ever sanctioned by the management verbally. Throughout the specific stand of the management is that leaves are always sanctioned in writing. Clouds have further been cleared by AW2 and AW3 witnesses examined by the workman. AW2 witness has stated in cross-examination that it is correct that as per law earned leave is to be got sanctioned in writing at least 15 days before proceeding on leave. He further admitted that it is also correct that earned leave application is sanctioned by

the management in writing only and he also stated that there is no procedure of sanctioning of leave orally and he cannot produce any evidence that leave application of Shri Bachu Singh was sanctioned by the management in writing. AW3 also admitted in the cross-examination that it is correct that as per law earned leave is to be got sanctioned in writing at least fifteen days before proceeding on leave and earned leave application is sanctioned by the management in writing only. He also stated that the management can also refuse the leave and there is no procedure of sanctioning of leave orally and he cannot produce any evidence that leave application of Shri Bachu Singh was sanctioned by the management in writing. So the workman has not been able to prove that he had applied for any leave or the same was sanctioned by the management. The workman has miserably failed to prove that there was any practice of verbal sanctioning of leave and it is evident from the evidence discussed above that there was no practice of sanctioning the leave orally. So the workman has failed to prove the most vital stand taken by him i.e. that his leave was sanctioned verbally or there was a practice of sanctioning leave verbally. The workman had further opportunity to summon the leave record of the management to show that he had applied for leave but no effort was made by the workman to summon leave record maintained by the management.

The management on the other hand to prove its stand that there was no practice of verbal sanctioning of leave has placed on record Exhibit 'R1', 'R3' to 'R7' which are sanctioned leaves of the workman. The documents produced by the management has strengthen the stand of the management that there was no practice of sanctioning leave verbally and also the clouds have been cleared by the witnesses examined by the workman himself.

10. Learned representative for the management has vehemently contended that the workman has not reported for duty and has concocted a false story of giving his joining report. As far as this argument of learned representative for the management is concerned then the workman has stated in paragraph No. 7 of his affidavit that the workman tried to submit the written joining report dated 16th June, 2010 by hand but the management refused to accept the joining report on 16th June, 2010 the workman sent the said duty joining report through registered post on 18th June, 2010. Now as pointed out by learned representative for the management that it is recorded in affidavit of the workman Exhibit 'AW1/A' that initially Exhibit 'W2' was handed over by hand but when the management refused to accept the same it was sent through registered post and it has been stated in paragraph No. 3 of Exhibit 'W2' that it is very unfortunate that the management did not allow duty to the

applicant-workman. I find strength in argument of learned representative for the management as if the version of the workman is to be believed the same joining letter which the management has refused to accept was sent by post and the workman has failed to convince this Court as to how it was recorded in joining letter that the management did not allow the duty to the workman and how he presupposed that the management would not allow him duty and also the workman has stated in paragraph No. 5 of his affidavit that with the verbal sanction of long leave from 13th May, 2010 to 13th June, 2010 the workman got the railway travelling ticket booked from Chandigarh to East Champaran (Bihar) with the departure of the train on 13th May, 2010 but on being cross examined by learned representative for the management he has stated that “I cannot produce any rail ticket allegedly booked by me mentioned in para number 5 and 6 of my affidavit Exhibit AW-1/A. Voluntarily stated that I did not book any ticket and boarded the train by buying ticket across the counter”. This goes to show that the workman has not come to the Court with clean hands and his affidavit and cross-examination are self-contradictory and do not inspire the confidence of the Court.

11. It has been argued by learned representative for the management that the management has not terminated the services of the workman and is still ready to keep the

workman and I have also considered argument of learned representative for the management that the workman is not interested to work with the management as he has stated in the cross examination that he is not willing to join the management without back wages. Though the workman has stated in paragraph No. 12 of his affidavit Exhibit 'AWI/A' that he had tried his best to get some job in Chandigarh but could not get as he is contesting the case against the management and no management is ready to give employment to a person who is contesting his case against management but in cross examination he has categorically stated that "I am not ready to join duty with the management without back wages." Also MWI has stated in affidavit Exhibit 'MWI/A' that if the workman is interested to join his duty without back wages the management is ready to take him back in employment and this offer was also given to the workman during conciliation proceedings before the Assistant Labour Commissioner, Chandigarh but he declined the same and also stand taken by the management is that the workman is gainfully employed in Panchkula and is earning around Rs. 15,000 per month. On the one hand the workman is alleging that he is unemployed from the date of termination and he is alleging no one is willing to give him employment but learned representative for the workman has failed to convince this Court as to why the workman denied the offer of the

management to join without back wages. In the opinion of this Court if the workman was interested in working with the management he could have easily made a statement before this Court that he will go and join the management but the issue of his back wages be kept open but nothing of this sort was done by the workman which goes to show that he is not interested to work in the management and possibility of extracting money from the management cannot be rule out in the present case. Further the management witness as discussed in earlier part of this award has stated that the workman is gainfully employed in Panchkula and is doing job of a Mason and he is staying at Village Darua, Chandigarh and is often meeting the workers of their factory. MW1 has further stated that the workman is presently earning around Rs. 15,000/- per month out of his employment and he has personally seen the workman meeting workers of their factory and roaming in Chandigarh an Panchkula. Learned representative for the workman has not cross examined MW1 on this point nor any suggestion was given to him that whatever he has alleged is not correct rather the same has gone un rebutted.

12. I have also considered the argument of learned representative for the management that evidence led qua by the workman in the form of photographs and video CD cannot be looked into as objection was raised by the management

as the same were not exhibited as per law and also AW2 Pappu Singh who has produced has stated in his cross-examination that “I did not go to attend the marriage of Shri Bachu Singh's daughter as I was not formally invited for the same. The photographs and video CD tendered by me today in court were not taken in my presence. I cannot tell who clicked these photographs and CD. I have not produced any bill of the photographer. Shri Jai Mangal is still working with the company. The photographs and CD were in possession of Shri Bachu Singh when he deposed before this court in July, 2015.” Admittedly AW2 Pappu Singh who has produced Video CD and photographs has stated that the same were not taken in his presence and he has stated that these were in possession of the workman Bachu Singh. No explanation has come forth from the side of the workman as to why the workman did not produce the video CD and photographs when he stepped into the witness box to enable the management to cross-examine him. Evidence produced qua marriage of daughter of the workman even if is established but the same does not go to prove that the workman has not abandoned the job and is not gainfully employed. From evidence led by the parties and discussion made above, the workman has miserably failed to prove that his services were terminated illegally by the management. Accordingly this issue is decided against the

workman and in favour of the management.

13. In the light of findings on the issue 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 findings returned by the Tribunal below would manifest that the said findings are based on material/evidence available on record. Apparently, the petitioner-workman has failed to prove that he had applied for leave or that his leave was orally sanctioned or that there was any procedure/practice in respondent-Management to sanction the leave orally. The petitioner-workman has further failed to prove any railway ticket evidencing his journey from Chandigarh to his native place. It has also come on record that the petitioner-workman was given an offer by respondent-Management to join back duty without back wages, which was refused by the petitioner-workman.

14. 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."

15. Considering the totality of circumstances in the light of legal position indicated above, I do not find any merit in the instant writ petition and same is accordingly dismissed.

16. Application(s) pending, if any, shall stand closed.

(HARSH BUNGER)
JUDGE

20.10.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No