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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17089-2016 (O/M)

Date of decision : 06.11.2023

Jagsir Singh

..... Petitioner (s)

Versus

Presiding Officer, Industrial Tribunal, Bathinda and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Ms. Bhagyashri, Advocate for
Mr. Ajay Pal Singh, Advocate
for the petitioner.

Mr. Arvind Thakur, Advocate
for respondents No. 2 and 3.

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HARSH BUNGER, J.

1. Petitioner (Jagsir Singh) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the Award dated 30.10.2014 (Annexure P-8), passed by Learned Industrial Tribunal, Bathinda (hereinafter referred to as 'the Tribunal') whereby the reference of industrial dispute raised by the petitioner regarding termination of his services, has been answered against him.

A further prayer has been made by petitioner for directing respondents No. 2 and 3 (hereinafter referred to 'respondent-Management') to

reinstate the petitioner in service as Computer Operator/Assistant with continuity of service and other consequential benefits.

2. Briefly, petitioner raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication to the Tribunal below. In the claim statement, petitioner pleaded that he was serving as a Computer Operator/Assistant at Sub Tehsil Mansa, District Mansa since 01.09.2009. His services were terminated on 27.02.2013, without any notice, chargesheet, enquiry or compensation, and at the time of his termination, he was being paid Rs. 3,000/- per month. The petitioner further claimed that new hands have been recruited by engaging contractor to deprive the workman of its rights and the petitioner is unemployed. The petitioner next claimed that his services have been terminated in violation of provisions of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). Accordingly, petitioner prayed for reinstatement with continuity of service and other consequential benefits.

3. The aforesaid claim of petitioner was contested by respondent-Management by raising a preliminary objection that the petitioner was not covered under the definition of workman under Section 2(s) of 1947 Act and neither respondent-Management was covered under the definition of 'industry'. A categorical objection was taken by respondent-Management that the petitioner had not completed 240 days in the year preceding the date of his termination. It was clarified that the petitioner was not employed by respondent-Management, rather he was called from time to time for technical assistance whenever his service was required and he was paid retainership

fee. It was submitted that the services of petitioner were hired on call basis as Technical Assistant and since respondent-Management had received instructions from higher authorities to hire the services of Data Entry Operator/Computer Operator/Technical Assistant on outsource basis, accordingly, the services of petitioner were no more required. The other averments/allegations made by the petitioner were denied by respondent-Management and prayer for rejection of claim of petitioner was made.

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

- “1. Whether the termination of services of workman is legal, valid and justified ? If so, its effect ? (OPM)*
- 2. Whether workman is not covered under the definition of workman of the I.D. Act ? (OPM)*
- 3. Relief. “*

5. In support of his claim, petitioner stepped into witness box as WW-1 and tendered his affidavit Ex.WW1/A and filed documents Ex.W-1 to Ex.W-6.

On the other hand, respondent-Management examined one Parshant Garg, District System Manager as MW-1 who thendered his affidavit Ex.MW1/A alongwith documents Ex.M-1 to Ex.M-5.

6. Upon considering the material/evidence available on record, the Tribunal below, vide impugned Award dated 30.10.2014 (Annexure P-8), rejected the claim of the petitioner.

7. In the aforementioned circumstances, petitioner has filed the

instant writ petition before this Court.

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

9. In the instant case, the pleaded case of petitioner was that he was engaged by respondent-Management as a Computer Operator/Assistant since 01.09.2009 and his services were terminated on 27.02.2013, whereas on the other hand, it was categorical case of respondent-Management that the petitioner was never employed by it, rather, he was called from time to time for technical assistance whenever his services were required and he was being paid retainership fee. Respondent-Management had taken a categorical stand that the petitioner had not completed 240 days in the year preceding the date of his alleged termination.

10. It is well settled proposition that the onus to prove the issue regarding relationship of employee-employer and/or the issue of proving continuous service by workman under the Management in terms of Section 25-B of 1947 Act so as to attract the provisions of Section 25-F of 1947 Act, rests upon the workman.

11. While considering an issue of existence of relationship of employer and employee between the parties, in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors., (2004) 3 SCC 514***, Hon'ble the 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..."

12. Further, while considering an issue as to whether the workman had completed 240 days of work under the management in terms of Section 25-B, so as to attract provisions of section 25-F of Industrial Disputes Act, 1947, the petitioner-workman was required to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly illegally terminated by respondent-Management. In order to discharge the onus of proving the aforestated fact of having worked for 240 days in the 12 months preceding the date of his allegedly termination, did not lead evidence either in the form of statement of any co-worker or any other evidence in the

form of proof of receipt of salary or wages for 240 days or any order/record of appointment or engagement for the relevant period. The petitioner workman did not lead any evidence to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly terminated by respondent-Management. It is well settled law 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.***

13. Coming to the case in hand, the Tribunal below, has returned the following findings :-

“16. But in the instant case, to prove the fact that workman has served the respondents for a period of 240 days or more, there is a bald statement of the workman and in his cross examination, workman admitted that neither any appointment letter was issued to him nor any termination order was given to him. Otherwise also, there is no attendance record or any other record showing the fact that workman has ever served the respondents for a period of 240 days or more or he ever remained employee of the respondents. Moreover, workman in his cross examination has stated that he was computer operator and used to take photographs at the time of registration. No appointment letter was given to him nor his presence was marked there. There is nothing on record to show that workman was ever

employed by the respondents even on adhoc basis. Moreover, as per the version of the respondents, services of the workman were called as technical assistance on outsource basis. Even documents Ex. W-1 to Ex. W-6 are of no help to the workman as Ex. W-2 to Ex. W-6 are photocopies of cheques, which shows that the payment has been made to different persons and Ex.W-1 is detail of cheques issued by various Sub-registrar in the District regarding payment of Technical Assistance and at the time of payment, there is no word of wages has been mentioned in it nor there is any entry in the cash book showing the fact that workman was ever employed by the respondents or he ever worked with the respondents.

17. The authorized representative of the workman has further argued that respondents started assistance through contractor and that contract is illegal as contract is given to a society, which has got no right to get it as it is an educational society but scope of this Tribunal is not to see whether contract between the parties is illegal or not and if the contract is illegal, then it can be challenged before appropriate authority. Moreover, scope of this Tribunal is only to see whether there exists relationship of employee and employer between the parties and if there exists relationship between the parties, then, scope of this Tribunal is to see whether services of the workman were terminated legally or not. But in the instant case, there is no cogent evidence on record to show that workman ever remained employee of the respondent or he has served the respondents for a period of 240 days or more.

18. 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 in the last calendar year. Hence, findings of these issues are decided against the workman and in favour of the Management.

Relief

19. In view of my findings on the abovesaid issues, reference preferred by the workman is without merit and the same is, accordingly, declined. Both the parties are left to bear their own costs.

File be consigned to the Record Room.”

A perusal of above extracted findings returned by the Tribunal below would manifest that the petitioner had failed to discharge the onus placed upon him by law to show that he had worked for 240 days in preceding 12 calendar months from the date of his termination.

14. It has come on record by way of cross examination of the petitioner that he was neither issued any appointment letter nor any termination order was given to him. The petitioner further admitted that there was no attendance record or any other record showing the fact that he had served respondent-Management for 240 days or more or he had remained employed with respondent-Management. It has further been observed by the Tribunal below that there is no entry in the cash book showing the fact that the petitioner was ever employed by respondent-Management or he ever worked with it. Accordingly, the Tribunal below has concluded that the petitioner never remained employee of respondent-Management and neither he worked with it for a period of 240 days or more in the last calendar year.

The petitioner neither before Tribunal below nor before this Court has been able to show that he had rendered continuous service under respondent-Management in terms of Section 25-B of 1947 Act, so as to claim benefit of Section 25-F of 1947 Act. In the absence of any such material/evidence by the petitioner, no relief can be granted to the petitioner.

15. As regards the plea of the petitioner that adverse inference be drawn against respondent-department for not producing 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 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 respondent-Management; there is no plea of the petitioner that respondent-Management has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent-department. 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...”

16. 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.***

17. When the facts and circumstances of this case and also the findings returned by the Labour Court are considered in the light of the legal position indicated above, I do not find any illegality or infirmity with the impugned award dated 30.10.2014 (Annexure P-8), which may call for any interference by this Court, while exercising its writ jurisdiction. Therefore, the instant writ petition is bereft of any merit and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

06.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No