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

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Date of Decision: 26.07.2023

Madan Lal

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Jalandhar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Mohit Jaggi, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Madan Lal) has filed this petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for setting aside the impugned award dated 06.09.2012 (Annexure P-5) passed by Industrial Tribunal, Jalandhar (herein after "*the Tribunal*"); whereby the reference of the industrial dispute raised by petitioner regarding termination of his services has been decided against him. A further prayer has been made for directing the respondents to reinstate the petitioner with all consequential benefits.

2. Briefly, petitioner (Madan Lal) raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication by the appropriate Government to the Tribunal under section 10(1)(c) of the Industrial Disputes Act, 1947 (*in short "the 1947 Act"*).

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3. As per the claim statement, petitioner claimed that he was appointed as Beldar with respondent no. 3 (Executive Engineer, Public Works Department (B&R) Division, Hoshiarpur) in the year 1982 and thereafter he worked under respondent no.4 (Executive Engineer, PWD National Highway Construction Division, Hoshiarpur) upto 1991. As per the petitioner, in the said year he met with an accident while he was on duty on Hoshiarpur-Una Road and as a result thereof, he suffered burns with the hot bitumen on his right arm, face and right foot. Petitioner claimed that under Section 47 of Persons with Disability Act, 1995, it was obligatory on the part of the department not to dispense with the services of the workman or reduce him in rank, even then the workman was not allowed to work regularly up to July, 2002. Ultimately, petitioner claims that his services were terminated on 01.08.2002 in an illegal and arbitrary manner by adopting unfair labour practice and without complying with mandatory provision of 1947 Act. Accordingly, the petitioner prayed for reinstatement along with continuity of service and full back wages.

4. The aforestated claim of the petitioner-workman was opposed by respondents No. 3, 4 and 5 by stating that the petitioner does not fall within the definition of workman and he was never appointed as Beldar, however, he worked as a daily wager on muster rolls and worked from time to time as per the requirements of work. It was further stated that the petitioner did not meet with an accident while working with the respondents and the submissions made on behalf of the petitioner are merely to get unlawful advantage from the Management. Learned counsel submits that the petitioner never completed 240 days in the calendar year preceeding his termination and it was the categoric stand of respondent(s)-Management that

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the petitioner worked with the respondents No.3 and 4 upto 1991 and December, 1993 respectively. It was further stated that the claim of the petitioner is time barred as he raised the demand notice dated 11.05.2004 after a period of 10 years.

5. From the pleadings of the parties, the learned Labour Court framed the following issues:

- “i. Whether the claimant falls within the definition of Workman? OPW*
- ii. What is the effect of delay in raising demand? OP Parties.*
- iii. Whether the termination of services of the workman is justified and in order? OPW*
- iv. Relief.”*

6. In order to prove his case/claim, the petitioner-Madan Lal, examined himself as WW-3 and relied upon the statements of WW-1 (Sucha Singh) and WW-2 (Bishan Dass), who stated that the workman worked with the PWD- Department from 1981 to 1992. The workman also examined Rakesh Kumar as WW-4.

7. On the other hand, the respondents examined Rajinder Kumar as MW-1, who produced the record from 1989 to 2002 and also proved the details of work done by petitioner (Ex. M2) to show that petitioner worked casually.

8. Upon appreciating the material / evidence available on record, the Tribunal below rejected the claim of the petitioner and answered the reference against him vide the impugned award dated 06.09.2012 (Annexure P-5).

9. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this court.

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10. Learned counsel for the petitioner while reiterating the stand of the petitioner before the Tribunal below, submitted that the petitioner was appointed as Beldar with respondents and he continuously worked till 01.08.2002, when suddenly his services were terminated in an illegal and arbitrary manner without following the mandatory provisions of the Act, 1947. He submits that the petitioner worked with the respondents for more than 240 days in preceding 12 months from the date of his termination in August, 2002, however, his services were wrongly terminated without complying with mandatory provisions of 1947 Act. Accordingly, counsel for the petitioner prays that the impugned award dated 06.09.2012 passed by the Tribunal below be set aside and necessary directions be issued for reinstatement of petitioner with continuity of service and full back wages.

11. Per contra, the prayer made on behalf of petitioner was opposed by counsel representing respondents No.3 to 5 by submitting that the petitioner's claim was time barred and the petitioner had failed to prove its pleaded case. It was submitted that the petitioner had not rendered continuous service under the respondents No.3 to 5 in terms of Section 25 B of the 1947 Act, therefore, petitioner was not entitled to protection of Section 25 F of the 1947 Act. It is further submitted that the Tribunal below has passed a well reasoned and justified award, which does not call for any interference by this Court. Accordingly, prayer for dismissal of Writ Petition was made.

12. I have heard learned respective counsels for the parties and perused the paper-book with his able assistance.

13. In the instant case, it is the pleaded case of petitioner that he has worked with respondents No.3 to 5 as *Beldar* since year 1982 till

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01.08.2002, when his services were terminated without following the mandatory provisions of the 1947 Act. On the other hand, claim of petitioner is contested on the ground that petitioner's claim is time barred and also on the ground that petitioner never rendered continuous service in terms of Section 25 B of 1947 Act so as to attract Section 25 F of 1947 Act.

14. It is well settled law that the onus to prove existence of relationship of employer and employee between the parties is upon the workman. In *Workmen 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."

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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 1947 Act i.e. the workman has worked under Management for 240 days in 12 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.***

15. Coming to the case in hand, vide impugned award dated 06.09.2012 (Annexure P-5), learned Tribunal below has returned the following findings:-

“Issue Nos. 2 and 3

9. *These issues need common discussion and have been taken up together for discussion. The workman claims that from the year 1982, he worked with the respondent no. 2 and thereafter, he worked with the respondent No. 3 till 1991 when he met with an accident and thereafter he was allowed to work for certain days in a month and ultimately his services were terminated on 1.8.02. On the other hand, the respondents claim that the workman worked on muster rolls with the respondent No. 2*

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and thereafter he started working with the Central Works Division i.e. respondent No. 3. He was never retrenched by the respondent No. 2. The respondents No. 3 and 4 claim that the workman worked with them till Dec. 1993 and the story of accident and getting reduced work was denied. The workman has produced a handwritten writing Ex. W1 of one Sh. Ramesh Chand Puri dated 26.11. 91 which is on a plain paper and attested by Oath Commissioner though not verified as affidavit wherein Sh. Ramesh Chand Puri has certified that Sh. Madan Lal was badly burnt due to falling of hot bitumen and remained under his treatment from 16.9.91 to 26.11.91. Hot bitumen had fallen on his face, right arm and right foot and the workman can not work properly with his right arm. It has been submitted in the written arguments that Sh. Ramesh Chand is a “god-gifted” man for such treatment. This argument is very strange and un-acceptable to reasoning. If the face, right arm and right foot was badly burnt due to falling of hot bitumen, the workman must have approached some hospital for treatment of burn injuries. The workman does not allege that he ever approached any hospital or got treatment from any doctor. The alleged god-gifted man can not do anything in this case. Therefore, the story of accident and injuries on the right arm, right foot and face can not be accepted. Said Sh. Ramesh Chand Puri, the alleged “god-gifted” man was never produced in the court to prove his certificate. Therefore, the certificate Ex. W1 is discarded as un-dependable. The workman while appearing as WW3 reiterated his case. He has also examined Sucha Singh and Bishan Dass as WW1 and WW2 who stated that the workman worked with the PWD department from 1981 to 1992. Similarly, Sh. Rakesh Kumar WW4 has also been produced. However, presence of the workman is not to be proved by oral evidence. Men

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*may lie but the documents can not. The management examined Rajinder Kumar MW1 who produced the record from 1989 to 2002 and also proved the details of the work done by the workman Ex.M2 which shows that the workman worked casually. In the year 1989, he worked for 77 days, in the year 1990, he worked for 7 days and in the year 1991, he worked for 115 days and in the year 1993, he worked for 65 days. The copies of the muster rolls to support the said details are Ex.M2 to M12. It has been argued on behalf of the workman that despite order, further record was not produced. The workman himself claims that after 1991, he was given work for few days in a month which means that he was a casual daily wager after 1991. After 1991, the workman did not raise hue and cry and kept silent allegedly till 2004 when he raised demand notice on 11.5.04 i.e 11 years after he proved to have lastly worked with the respondents. The workman was working on muster rolls and the Govt. departments are not supposed to keep muster rolls for indefinite period. The Management has produced muster rolls from 1989 to 1993 and no fault can be found if some of the muster rolls are not available with the department. The workman can not delay raising of demand notice for considerably a long period and then claim that the entire record has not been produced. The workman is himself to blame for the delay. The workman has not produced any record of his work. As per the details Ex. M2, the workman did not complete 240 days in any year between 1989 to 1993. Therefore, no retrenchment compensation was payable to him. The authorities titled as “**Parvesh Devi Vs. State of Haryana and others 2007 (2) RSJ 16**” is of no help to the workman since he has failed to prove the alleged accident and disability. The other authorities titled as ‘**State of Punjab Vs. Puran Singh 2001 (3) RSJ 56; Pepsu Road Transport***

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Corp., Patiala Vs. The Presiding Officer, Labour Court, Patiala 2004 (4) 384; Hari Palace, Ambala City Vs. The Presiding Officer, Labour Court, Rohtak 1979 (3) SLR 223” are of no help to the workman for the reasons discussed above. Accordingly, both the issues are decided against the workman and in favour of the management.

Relief.

10. In view of the foregoing discussion, I pass the award that the workman is not entitled to any relief. File be consigned.”

16. A perusal of the above extracted findings of Tribunal would make it evident that the petitioner failed to discharge the onus placed upon him of proving employee-employer relationship nor it was proved that the petitioner had completed 240 days work under the Management in terms of Section 25B of 1947 Act, so as to attract the provisions of Section 25F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by the respondent- Management in the year 2002 or any order in that regard was produced. It has been held that petitioner was a casual daily wager.

Further the workman has also been unable to prove the factum of the accident which he alleged to have taken place while he was on duty.

17. Once the petitioner had failed to prove employee-employer relationship and / or that he had completed 240 days work under the Management, no relief could have been granted to him.

18. As regards the plea of petitioner that adverse inference be drawn against respondent(s)-Management for not producing the relevant record, it is observed that drawing of adverse inference is optional and not

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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 Amarsinh**” **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(s)-Management; there is no plea of the petitioner that respondent(s)-Management has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent(s)-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

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they are perverse. This exercise will depend upon facts of each case...”

19. 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

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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 issuance 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.*

20. No other argument has been raised.

21. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for any interference in the findings/award rendered by the Tribunal below, in exercise of writ

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jurisdiction by this Court. Therefore, the instant writ petition fails and the same is accordingly dismissed.

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

26.07.2023

Himani

(HARSH BUNGER)
JUDGE

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