

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24584-2012 (O/M)

Date of decision : 22.12.2023

Sohan Lal and others

..... Petitioners

Versus

Food Corporation of India, Ferozepur, District Manager, FCI and another
..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vijay Pal, Advocate
for the petitioners.

Mr. Sumeet Jain and Mr. Tarun Seth, Advocate (s)
for respondent No. 1.

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HARSH BUNGER, J.

1. Petitioners (Sohan Lal and others) have 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 13.10.2010 (Annexure P-5), passed by respondent No. 2-Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by Food Corporation of India Ancillary Labour Union regarding termination of services of workers was rejected.

Further prayer has been made for directing respondent No. 1 (FCI Ferozepur) to reinstate the workers into service with all consequential

benefits.

2. Briefly, FCI Ancillary Labour Union raised an industrial dispute regarding termination of services of the workers (as per list attached) on the plea that the workers mentioned in the lists attached to the statement of claim had worked as ancillary labour in Food Corporation of India in different depots at Ferozepur City. It was claimed that their services were illegally and arbitrarily terminated without notice or without payment of one month wages in lieu of notice and without payment of retrenchment compensation on 26.03.1997. It was pleaded case of the Union on behalf of workers that the workers had worked in the premises of Food Corporation of India and their services were supervised by the officers and management of FCI and they were paid wages directly by the management of FCI. It was stated that for some time, their wages were not paid and accordingly, a case relating to recovery of wages was instituted, which was decided in their favour. It was further claimed that juniors to the said workers were retained in service and therefore, their termination was illegal and against the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). Accordingly, prayer was made for reinstatement of the workers in service alongwith consequential benefits.

3. The aforesaid claim made by the FCI Ancillary Labour Union on behalf of workers was contested by the management of FCI primarily on the ground that there was no relationship of employee and employer between the workers and respondent No. 1 (FCI). It was categoric case of the management that in the year 1996, 124 ancillary labourers were to be

inducted on the receipt of their complete bio data and medical fitness certificate, which were received and considered by a Three Member Committee (hereinafter referred to as 'TMC'). It was maintained by the management that the names of the workers (as per list attached with the claim statement) did not find figure in the list of 124 ancillary labourers as prior to the preparation of the list, none of the workers was working with the FCI, Ferozepur Depot in any capacity. It was further stand of FCI that there was no record regarding payment of wages to any of the workers by the management of FCI and they were not under the administrative control of FCI. Accordingly, prayer for dismissal of the claim of the workers was made.

4. In support of their claim, all the workers submitted their affidavits and the workers were duly cross examined by the counsel for respondent-Management.

5. On the other hand, an affidavit of Shri Sandeep Singhal, Area Manager, Ferozepur was submitted on behalf of management of FCI, who was also cross examined by counsel representing the workers.

6. After considering the material/evidence available on the record, the Tribunal below rejected the claim of workers, vide impugned award dated 13.10.2010 (Annexure P-5) by observing as under :-

“ I have hard the parties at length and perused the entire materials on record.

The first objection raised by the management of FCI is that demand notice was not given and a dispute was not raised by the competent union, hence,

the industrial dispute is not maintainable. It is the settled law of service jurisprudence that even after the dispute is not raised by legally recognized union it is not bad and fettle and it is binding on the Tribunal to adjudicate the reference. On perusal of the evidence, it is evidently clear that all the workmen in question formed the union for the purpose to file this case. Forming union and association is fundamental right of every human being protected under Article 19 of the Constitution and under the provisions of the Directive Principles of the State policy. If the union formed by the workmen was not recognized by the FCI, it makes no difference for raising the industrial dispute. As stated earlier, even if the dispute is raised by any workmen in individual capacity the Tribunal is bound to adjudicate that. The approach of the Tribunal should not be technical because law and judicial conscious can not be presumed to be static. Accordingly, I am of the view that there is no force in the contention of the management that industrial dispute was/is bad as not raised by the competent union.

The next objection raised by the management is regarding the employer and employee relationship. The fate of the reference also depends on this issue. The management has categorically denied any master servant relationship. It is contended by the management that in the year 1996, 124, ancillary labourers were appointed by the department of FCI in Ferozepur depots as per the norms and on the basis of recommendations by TMC. TMC (Three Member Committee) was constituted in compliance of

the directions given by Ishwari Parshad Committee. The list prepared on recommendation by TMC does not figure the name of any of the workmen. On the basis of this document, it is contended by the management that none of the workmen has worked with FCI in Ferozepur depot in preceding three years from the date of preparation of the list.

Moreover, it is not the management to prove the above issue. The workman as per the law is bound to prove this fact and the oral contention cannot be considered to be sufficient. Some cogent evidence has to be filed by the workmen to prove the above issue. The workman has filed the copy of the judgment by prescribed authority decreeing their claim for the payment of their wages for certain period. The decree/judgment passed by the prescribed authority under the Payment of Wages Act, has been set-aside in the appeal. The fate of set-aside the judgment shall be that it will be presumed that no judgment was passed in favour of the workmen. Apart from this, there is no iota of evidence on record to prove that workmen were engaged by the management of Food Corporation of India, they have worked with the management, they were paid wages by the management and they were under the administrative control of the management.

For adjudication of the preliminary objections, which is the main issue between the parties, the law laid down by Hon'ble Apex Court is in GM, ONGC, Shilchar Versus ONGC Contractual Workers Union, 2008 (LLR) 801, Supreme Court Cases. In ONGC Shilchar's case (supra) Hon'ble the Apex

Court has laid down certain criteria to establish the employer and employee relationship between the workmen and the management of any enterprises. If the ratio of the judgment is applied in the instant case the workmen have to prove the following facts :

- (1) That there existed a master and servant relationship between the workman and the management (workman was directly engaged by the management).*
- (2) That the workman was under the administrative control of the management.*
- (3) That there was no contractor in between the management and the workmen.*
- (4) That the payment of wages was made good by the management to the workman directly and not by the contractor.*
- (5) At the cost of repetition the remittance rolls for the payment of wages were made by the management and not by the contractor.*

Apart from the oral contention of each workman, there is no iota of evidence to prove any of the above mentioned conditions. Thus, the workmen have failed to prove that they were engaged by the management of Food Corporation of India in any capacity, they were paid wages by the management of FCI and they were under the administrative control of the management of FCI. Thus, there is no force in the claim of any of the workmen. The industrial dispute is accordingly answered. Let Central Government be approached for publication of award, and thereafter, file be consigned to record room."

7. Being dis-satisfied with the aforesaid award, the petitioners have

filed the instant writ petition before this Court.

8. Learned counsel representing petitioners, while reiterating the facts mentioned in the writ petition, submitted that the Tribunal below erred in law in rejecting the claim of the workers, vide impugned award. It is submitted that there is sufficient material on record to show the relationship of employee and employer between the workers and FCI, however, the same has been wrongly brushed aside by the Tribunal below. Learned counsel for petitioners has alleged that the list of 124 workers submitted before the Tribunal below was a fake list, which has no authenticity. It is further alleged that the members of TMC had malafide intention towards the petitioners and the services of the petitioners were terminated on account of connivance between TMC and management of FCI. Learned counsel for petitioners has further alleged that the employment has been given in the FCI to their own relatives and near and dears and also the names of some of the workers had been changed. Further allegations regarding tampering of record and fraud with FCI has also been made. With the aforesaid pleas, it has been submitted that the services of the workers had been terminated in an illegal and arbitrary manner and against the provisions of 1947 Act. Accordingly, prayer has been made for setting aside the impugned award and further directing respondent No. 1 (FCI) to reinstate the petitioners into service with all consequential benefits.

9. Per contra, learned counsel appearing for respondent No. 1 (FCI) has opposed the prayer made by learned counsel for petitioners by submitting that the petitioners had failed to prove the relationship of employee and

employer between them. Learned counsel for respondent No. 1 (FCI) has referred to para-2 of the written statement filed to the instant writ petition and submitted that the petitioners were not in the employment of respondent No. 1 (FCI) in view of the fact that as per FCI norms, the assessment of the requirement of ancillary labour was made as 4 ancillary labourers per 5000MT covered capacity, on the basis of which a list of 129 ancillary labour working at FSD Ferozepur Complex and rail head, District Ferozepur was identified/prepared by the TMC, introduced under the Memorandum of Undertaking dated 12.07.1993. He submitted that the TMC submitted a list of 124 ancillary labourers as against the requirement of 129 ancillary labourers duly countersigned and authenticated by General Secretary of FCI Workers Union (Regd.), New Delhi to respondent-Management, vide letter dated 23.09.1996. Since the aforesaid list of 124 ancillary labourers was found in order, they were taken on the pay roll of FCI and since then they are working with FCI. As regards the petitioners, it is stated that they were not on the roll during the period from February 1994 to February 1997 onwards and their names did not appear in the EPF Schedule in respect of EPF contribution deposited with the RPFC by the management. It is also submitted that the workers as mentioned in the list of 124 ancillary workers and relied upon by the petitioners, were not in the employment of FCI at that time and there was no privity of contract with them in any manner whatsoever. Therefore, there was no question of termination of services of the petitioners. It is categorically stated that neither appointment letter was issued to the workers nor was there any relationship of master and servant

between FCI and workers. It is stated that FCI had no administrative, economic or disciplinary control over the petitioners. It is contended that the Tribunal below has decided the reference on the basis of material/evidence produced before it by passing a reasoned and justified award, which does not call for any interference by this Court. Accordingly, prayer for dismissal of writ petition was made.

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

11. Here it would be apposite to refer to a few judicial pronouncements. In the case of “*Range Forest Officer v. S.T. Hadimani*”, 2002(3) SCT 382 (SC), Hon'ble Apex Court held as under:-

“2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August, 1998, came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in an year.

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an

"industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratam Singh Narsinh Parmar, 2001(2) SCT 1081 (SC) : JT 2000(3) SC 326. In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that 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 an year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

12. In the case of *"Municipal Corpn. v. Siri Niwas"*, 2004(4) SCT 211, Hon'ble Apex Court held as under:-

"12. The provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. In terms of Section 25-F of the Industrial Disputes Act, 1947, an

order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by employer for effecting a valid retrenchment :

- (i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof:*
- (ii) payment of compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.*

13. For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25-B of the Act. In terms of sub-section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein

including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did not examine any other witness in support of his case.

14. A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration in the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the Appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the Respondent.

15. No reason has been assigned by the High Court as to why the exercise of discretional jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a

Tribunal unless the same is found to be illegal or irrational...”

13. In “*R.M. Yellatti v. The Asstt. Executive Engineer*”, 2005(4) SCT 695, it was held as follows :

".... 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/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."

14. It is manifest from aforesaid judicial pronouncements that the burden of proof that a workman had worked for 240 days in a given year was on the workman. It is 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. Further, it is also the settled position in law 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. Furthermore, drawing of adverse inference is optional and not obligatory and would depend on facts and circumstances of each case and the same would be within the domain of Tribunal/Labour Court.

15. In the instant case, the claim of the petitioners was that they worked as ancillary labourer in FCI in different depots at Ferozepur City and their services were illegally terminated without complying with the provisions of 1947 Act whereas the respondent-FCI had denied relationship of employee-employer between workmen and FCI. Thus, the onus to prove the relationship of employee and employer between the parties was on the workmen/Union; however, the petitioners failed to prove the same. It has also come on record that the petitioners were not in the employment of respondent No. 1 (FCI) at the relevant time and respondent No. 1 (FCI) has no administrative, economic and disciplinary control over the petitioners.

16. I have gone through the findings returned by the Tribunal below and I am of the considered view that neither before the Tribunal below nor before this Court, petitioners have shown any document/evidence to prove relationship of employee and employer between the petitioners and respondent No. 1 (FCI). The petitioners have also not produced any evidence i.e. salary slip, appointment letter, attendance register to prove that they worked with respondent No. 1 (FCI).

17. As regards the allegations of the petitioners that the list of 124 ancillary labourers produced and relied upon by respondent No. 1 (FCI) is fake one and that the petitioners have been terminated on account of

connivance between TMC and respondent No. 1 (FCI) is without any basis, it is observed that except bald allegations made by the petitioners, there is no evidence worth acceptance in support of the said allegations. It has been duly explained by respondent No. 1 (FCI) regarding the criteria adopted by it for preparing the list of ancillary labourers, which according to them, had 124 ancillary labourers against requirement of 129 ancillary labourers, whose details were duly authenticated by the workers' union at the relevant time.

18. In my considered view, once the petitioners have failed to discharge the onus placed upon them to show the relationship of employee and employer between them, no relief could be granted to the workmen.

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 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.

20. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for interference in the findings returned by the Tribunal below in exercise of writ jurisdiction by this Court. Therefore, the instant writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

22.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No