

CWP-16999-2022 (O&M)

-1-

107

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

**CWP-16999-2022 (O&M)
Date of Decision: 24.11.2023**

Jai Pal

....Petitioner

Versus

Chairman, Market Committee, Ambala
and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Krishan Singh, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Jai Pal) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in nature of Certiorari for quashing the award dated 26.08.2021 (Annexure P-4) passed by the learned Industrial Tribunal-cum-Labour Court, Ambala (hereinafter 'the Tribunal'), whereby the reference of industrial dispute raised by the petitioner by filing his claim before the Tribunal below has been answered against him.

A further prayer has been made by the petitioner for directing respondents No.1 to 3 to reinstate the petitioner with continuity of service and full back wages.

2. Briefly, the petitioner claimed that he was engaged as a night workman/chowkidar in the month of March, 2008 on contract basis in the Market Committee, Barara, District Ambala and he was appointed at the salary of Rs.2,717/- per month. Petitioner claimed that he worked for 240

CWP-16999-2022 (O&M)

-2-

days in every calendar year till 30.05.2018 and thereafter another person has been engaged in place of the petitioner. The petitioner also claimed that his services have been terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter '1947 Act'), accordingly, the petitioner prayed for reinstatement and other consequential benefits.

3. The aforesaid claim of the petitioner was contested by respondents No.1 to 3 (hereinafter 'respondent-Management') by raising an objection regarding maintainability of the petition and also the *locus standi* of the petitioner to file the same. Objection regarding limitation as well as non-joinder of necessary parties were also raised. It was stated by the respondent-Management that the petitioner was appointed as a night workman/chowkidar on part-time contractual basis on 07.03.2008 up to 31.03.2008 i.e. for a period of 24 days and then on 08.04.2008 up to 30.04.2008 for 23 days and thereafter for 31 days only from 01.05.2008 up to 31.05.2008. It was stated that thereafter neither the petitioner was appointed by the respondent-Management nor he remained under the employment of respondent No.1 herein i.e. Market Committee. It was next submitted that on 30.05.2008, the work of chowkidar was assigned to a private agency namely M/s Nav Bharat Security Services vide memo dated 30.05.2008. It was stated that after 01.06.2008, the petitioner preferred to work with the said agency and the Market Committee was making payments for providing Security Guards to M/s Nav Bharat Security Services Agency, Karnal from 01.06.2008 up to 28.02.2009 and 06.04.2009 up to 30.04.2009, therefore, it was claimed that the petitioner was not their employee. It was also clarified that earlier, the petitioner had filed the writ petition which was decided in his favour vide order dated 12.07.2010, however, subsequently a

CWP-16999-2022 (O&M)

-3-

Review Petition was filed, which was allowed vide order dated 04.05.2012 and thereafter, the petitioner had withdrawn the writ petition on 23.02.2018, realizing that the writ petition would fail on merits, accordingly, prayer for dismissal of the claim of the petitioner was made.

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

- “1. Whether the termination of the services of workman is liable to be set-aside being wrong, illegal, null and void etc. and the workman is entitled to reinstatement in service with full back wages and all the benefits including the continuity of service? OPW*
- 2. Whether the present petition is time barred? OPM*
- 3. Whether the workman has no locus standi to file the present claim statement? OPM*
- 4. Whether the claim statement is bad for mis-joinder and non-joinder of necessary parties? OPM*
- 5. Whether the applicant has not come clean hands and concealed the material facts from the court? OPM*
- 6. Whether the claim statement is not maintainable in the present form? OPM*
- 7. Relief.”*

5. The parties led their respective evidence in support of their claims.

6. Vide impugned award dated 26.08.2021 (Annexure P-4) passed by the Tribunal; the reference of the industrial dispute has been decided against the petitioner-workman.

7. Being aggrieved against the aforesaid award, the petitioner has filed the instant Writ Petition before this Court.

8. It is well established by now that the onus to prove the existence of relationship of employee and employer between the workman and the

CWP-16999-2022 (O&M)

-4-

Management and also the onus to prove the factum that the workman had rendered continuous service under the Management in terms of Section 25-B of the 1947 Act so as to attract the provisions of Section 25-F of the 1947 Act is on the workman.

9. In *Municipal Corporation, Faridabad v. Siri Niwas, 2004(4) SCT 211*, it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment.

In *M.P. Electricity Board v. Hariram, 2004(4) SCT 482*, the position was again reiterated in paragraph 11 as follows :

"The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas, JT 2004(7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard :

"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 is the background of facts involved in the lis. The presumption, thus, is not obligatory because

CWP-16999-2022 (O&M)

-5-

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."

In ***Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors., 2005(2) SCT 404***, a three-Judge Bench of Hon'ble Supreme Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous.

In ***Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh, 2006(1) SCT 539***, it was held as follows:

*"So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in **Range Forest Officer v. S.T. Hadimani, (2002(3) SCC 25)** the onus is on the workman."*

The position was examined in detail in ***Surendranagar District Panchayat v. Dehyabhai Amarsingh, (2005(7) Supreme 307)*** and the view expressed in the cases of *Siri Niwas, M.P. Electricity Board(supra)* was reiterated.

10. Coming to the case in hand; the Tribunal vide impugned award dated 26.08.2021 (Annexure P-4), the Tribunal below has returned the following findings:-

"31. Thus, from the entire evidence on record as discussed above it become abundantly clear that the claimant-workman was kept temporarily on contract basis at DC rates of Rs.3510/- and he worked directly

*under the respondents from 07.03.2008 to 31.05.2008 during which he worked for 79 days only for which he was paid accordingly and thereafter his services as Chowkidar were availed of through agency only. There is no evidence on record that in the Calendar year of 2008-2009 he ever worked for more than 240 days with the respondent-department, thus, attracting the mandatory provisions for any violation under Industrial Disputes Act. Moreover, recently in the case titled **Sarvjeet Vs State of Punjab, CWP 22534/2020 decided on 25.01.2021 the Hon'ble Punjab & Haryana High Court while relying upon the case titled Gian Singh & others Vs Senior Regional Manager, Food Corporation of India, Punjab Reason, Chandigarh, 1991 (1) PLR1** has specifically held that The Contract Labour (Regulation and Abolition) Act, 1970 nowhere provides that the employees employed through contractor would become the employees of principal employer.*

32. *As discussed above the claimant-workman had only worked for 79 days w.e.f. 07.03.2008 to 31.05.2008 directly under the respondents, therefore, the mandatory provisions under 25-F of the Industrial Disputes Act, 1947 are not attracted. So, this issue is decided accordingly against the claimant.*

ISSUE NO. 2

33. *Since the Civil Writ Petition Civil Writ Petition No.10474/2010 finally stood disposed of on 23.02.2018, so present dispute based on demand notice raising industrial dispute which stood not settled, resultantly filing of petition U/S 2A (2) of the Industrial Disputes Act, 1947 is not barred by law of limitation. So, this issue is decided in favour of the workman.*

ISSUES NO. 3, 5 and 6

34. *In view of the decision of Issue no.1, these issues are decided against the petitioner.*

ISSUE NO. 4

35. *As per the plea of the claimant, the respondent-department engaged two persons namely Sunil Kumar and Narender Kumar in his place but did not implead them as parties. Further as disclosed by the respondents that after May 2008 the services of the petitioner were availed through outsourced agency namely M/s Nav Bharat Security Services which has not been impleaded as a party, therefore, no relief can be granted to the petitioner in the absence of necessary parties (case titled Sarvajeet Kaur Vs State of Punjab Supra relied upon), so, the claim petition is bad for non-joinder of proper and necessary parties, so, this issue is decided against the claimant-petitioner.*

RELIEF.

36. *In the final analysis, in view of the findings of Issue No.1, the claim petition of the claimant-workman merits dismissal and it is dismissed accordingly. File be consigned to the record room. Copies of Award be sent to the authorities concerned.”*

11. A perusal of the above extracted findings of Tribunal would make it evident that the petitioner-workman failed to discharge the onus placed upon him of proving that the petitioner-workman had completed 240 days’ work under the Management in terms of Section 25-B of the 1947 Act, so as to attract the provisions of Section 25-F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by the respondent –Management or any order in that regard was produced by petitioner in support of his claim, therefore, no relief could have been granted to him.

12. Furthermore, the parameters for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in cases involving

CWP-16999-2022 (O&M)

-8-

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

CWP-16999-2022 (O&M) -9-

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.*

13. Considering the totality of circumstances in the light of the legal principle indicated above, there is no scope for any interference in the impugned award by this Court in exercise of its writ jurisdiction, accordingly, the instant Writ Petition fails and the same is dismissed.

14. All pending applications (if any) shall stand closed.

24.11.2023 (HARSH BUNGER)
Himani JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No