

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22022-2013 (O/M)
Date of Decision: 03.10.2023

Natha Singh

..... Petitioner

Versus

M/S. K.C. Industries and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Tarun Singla, Advocate
for the petitioner.

Mr. R.K. Girdhar and Mr. Chirag Girdhar, Advocate (s)
for respondent No. 1.

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HARSH BUNGER, J. (ORAL)

1. Petitioner-workman (Natha Singh) has filed this petition under Articles 226/227 of the Constitution of India, for issuance of writ in the nature of *certiorari* for setting aside the impugned award dated 02.07.2013 (Annexure P-9) passed by learned Industrial Tribunal, Bathinda (in short 'the Tribunal below'); 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 issuance of a writ in the nature of *mandamus* for directing the respondents to reinstate the petitioner with all other consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by respondent No. 1—M/S. K.C. Industries (in short 'respondent-Management').

3. In the claim statement, petitioner claimed that he was working with respondent-Management as a Lohar from 16.02.1993 and he was drawing salary of Rs. 1,800/- per month. Petitioner claimed that his services were terminated on 11.03.1998 in an illegal and arbitrary manner by adopting unfair labour practice. It was further claimed by the petitioner that juniors to him were retained and even fresh appointments were made after his termination. Petitioner claimed that his termination is illegal, unjustified and against principles of natural justice and contrary to the provisions of the Industrial Disputes Act, 1947 (for short, 'the 1947 Act'). Accordingly, the petitioner prayed that he may be reinstated with full back wages and continuity of service.

4. On the other hand, the respondent-Management contested the claim of petitioner-workman by filing its reply wherein it was stated that it never employed the petitioner-workman. It was further submitted that the respondent-Management do not have any other branch except at Focal Point, Kotkapura. It was also submitted that the claim of the petitioner-workman is belated one and he is not entitled to any relief.

5. From the pleadings of the parties, the Tribunal below framed the following issues:

- “1. Whether there existed relationship of employer and employee between the parties? OPW*
- 2. If issue no.1 is proved in favour of workman, whether services of workman were validly terminated by the respondent and in order? OPR*
- 3. Whether reference is belated one? If so its effect. OPR*
- 4. Relief.”*

In order to prove his case/claim, the petitioner/workman-Natha

Singh, examined himself as WW1 and on the other hand, the respondent-Management was initially proceeded against ex-parte but the ex-parte order was set aside upon an application made by the respondent-Management. Thereafter, the respondent-Management examined Rakesh Bajaj (Partner of M/S. K.C. Industries) as MW1, who tendered his affidavit as Ex. MW1/A. Also, documents Ex. M-1 to Ex.M-5 and Mark-A were placed on record.

7. Vide impugned award dated 02.07.2013 (Annexure P-9) passed by the Tribunal below; the reference of the industrial dispute has been decided against the petitioner-workman.

8. Being aggrieved against the impugned award dated 02.07.2013 (Annexure P-9), the petitioner has filed the instant writ petition.

9. Learned counsel for the petitioner while reiterating the stand of the petitioner before the Tribunal below, submitted that the petitioner was appointed as Lohar/Welder on 16.02.1993 on the salary of Rs. 1,800/- per month by the respondent-Management and has completed 240 days continuous service in the year preceding his termination. It is further submitted that his services were terminated on 11.03.1998 in an illegal and arbitrary manner without following the mandatory provisions of the 1947 Act, and even juniors to the petitioner-workman were retained in service. It is submitted that the petitioner has worked continuously with respondent-Management from the date of his initial appointment, however, the respondent-Management has not produced any record regarding the attendance and payment of wages to the petitioner-workman, therefore, an adverse inference should have been drawn against respondent-Management. Accordingly, learned counsel for the petitioner prays that the impugned award dated 02.07.2013 (Annexure P-9), passed by the Tribunal below may

be set aside and necessary directions may be issued for reinstatement of petitioner with continuity of service and full back wages.

10. Learned counsel for the respondent-Management has opposed the prayer made by learned counsel for the petitioner. It was submitted that the learned Tribunal below has passed a well reasoned and justified award and the same does not call for any interference by this Court. It is submitted by learned counsel for respondent-Management that the case put up by petitioner was false and petitioner had failed to prove its pleaded case. Accordingly, prayer for dismissal of the writ petition was made.

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

12. 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."

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*.

13. In the instant case, the Tribunal below, vide the impugned award dated 02.07.2013 (Annexure P-9), has returned the following findings:-

"11. I have considered the arguments advanced before me and I have also gone through the record, carefully. Onus to prove the relationship of employer and employee is on the workman and thereafter question arises, if the workman was removed from service in a valid and proper

manner. Apart from the sole testimony of workman Natha Singh, there is no other evidence on record to establish the relationship of employer and employee. There is no document on record to show that Natha Singh ever worked with the Management or he received salary at any point of time. There is no oral evidence to support the version of workman. Therefore, sole testimony of workman is not sufficient to establish the relationship of employer and employee.

On the other hand, Management has taken the specific plea denying the relationship of employer and employee, Rakesh Bajaj MW-1 has placed on record, copy of lease deed, vide which, land was taken on lease vide document dated 28.10.1993. There is letter of PSB Department, according to which, connection was released in favour of the Management on 27.06.1995. There is copy of Form 'A' and Form 'G' regarding the registration of concern M/s K.C. Industries C-68-69 Focal Point Kotkapura, which is dated 16.08.1996. Record produced on file by the Management clearly show that respondent concern was not in existence on 16.02.1993 as claimed by the workman. From the record produced on file, version of workman that he is working with the Management since 16.02.1993 is falsified. In view of my above discussion, workman has miserably failed to establish the relationship of employer and employee. In the absence of this relationship, question of illegal termination on 11.03.1998 does not arise. Therefore, issue No. 1 is accordingly decided against the workman, whereas issue

No. 2 is decided in favour of the Management.

Findings on issue No. 3

12. Management took the objection that this reference has been filed at a belated stage. However, during the course of arguments, this issue was not pressed for. Even otherwise, alleged date of termination is dated 11.03.1998 and the demand notice is dated 14.02.2003. It cannot be said that reference preferred by the workman is highly belated. With this observation, this issue is decided against the Management and in favour of the workman.

Relief

13. In view of my findings on issues No. 1 & 2, reference preferred by the workman is without merits and the same is accordingly decided against the workman leaving both the parties to bear their own costs.

File be consigned to the Record Room."

14. A perusal of the above extracted findings of Tribunal below would make it evident that the petitioner-workman failed to discharge the onus placed upon him of proving employee-employer relationship nor it has proved that the petitioner-workman had completed 240 days' work under the Management in terms of Section 25-B of 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; even no co-worker has been examined by petitioner-workman in support of his claim. Rather, it has been proved that the respondent—Management was not in existence on 16.02.1993, which is alleged to be the date of the joining of petitioner-workman. Therefore, once the petitioner has failed to discharge the

onus placed on him to prove his pleaded case, no relief could have been granted to him.

15. As regards the plea of the petitioner that adverse inference be drawn against respondent-department for not producing Muster Rolls, 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 muster roll 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. No other point has been urged.

18. When the facts and circumstances of this case and also the findings returned by the Tribunal below are considered in the light of the legal position indicated above, I do not find any illegality or infirmity with the impugned award dated 02.07.2013 (Annexure P-9), 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.

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

(HARSH BUNGER)
JUDGE

03.10.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No