

116

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15201-2023 (O/M)

Date of decision : 19.07.2023

M/s Gold Laminates (India) Limited

..... Petitioner

Versus

Ramesh Kumar and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sachin Mittal, Advocate
for the petitioner.

-- --

HARSH BUNGER, J.

1. Petitioner (M/s Gold Laminates India Limited) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the Award dated 28.03.2023 (Annexure P-4), passed by the Industrial Tribunal-cum-Labour Court, Ambala (respondent No. 2 herein) whereby the reference was answered in favour of respondent No. 1-workman herein, holding him entitled to reinstatement in service with continuity of service alongwith 50% back wages from May, 2019 till his reinstatement.

2. Briefly, respondent No. 1-workman herein raised an industrial dispute by serving a demand notice to the petitioner-Management herein. However, since no settlement took place, accordingly, respondent No. 1-workman herein was issued a certificate by the concerned authority enabling

respondent No. 1-workman herein to approach the Labour Court for adjudication of his dispute. Thereafter, respondent No. 1-workman herein filed this claim statement under the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') wherein it was claimed that respondent No. 1-workman herein was appointed as a Fitter by the petitioner-Management herein on 01.10.1994 in Village Sabapur, District Yamuna Nagar where he claimed to have worked continuously till June 2019 and the last drawn monthly salary was claimed to be Rs. 9,600/-.

It was pleaded case of respondent No. 1-workman herein that during the course of his employment he became the patient of Abscess and thus, on 14.07.2018, he took medical leave from 14.07.2018 to 11.10.2018 and thereafter, he again took medical leave from 06.12.2018 till February 2019. As per respondent No. 1-workman herein, in the month of June 2019, the petitioner-Management herein did not allow him to attend his duties and without giving any show cause notice, terminated his service despite the fact that respondent No. 1-workman herein had completed 240 days in every calendar year of his work period and his work and conduct had remained satisfactory from all corners. Accordingly, it was claimed that termination of services of respondent No. 1-workman was in violation of provisions of Section 25-F of 1947 Act and, therefore, prayer was made for reinstatement in service with full back wages and other consequential benefits.

3. The aforesaid claim statement filed by respondent No. 1-workman herein was contested by the petitioner-Management herein wherein

the averments made in claim statement were denied and it was stated that respondent No. 1-workman herein never completed 240 days prior to his last working day and further disputed that respondent No. 1-workman herein had worked till June 2019. Rather, it was stated that respondent No. 1-workman herein worked till April 2019 and thereafter, it is respondent No. 1-workman herein himself, who left the job without any intimation. It was further the stand of petitioner-Management that in the year 2007, respondent No. 1-workman herein had tendered his resignation while asking for experience certificate, which is stated to have been given to him for the period of his work upto 15.05.2007. The factum of said resignation was not mentioned in the claim statement. Accordingly, it was pleaded that respondent No. 1-workman herein was guilty of concealment of fact. It was categorically stated that it is respondent No. 1-workman herein, who had abandoned the job and, therefore, he is not entitled to any relief. Accordingly, prayer has been made for dismissal of the claim statement.

4. On the basis of pleadings of the parties, issues were framed by the Industrial Tribunal-cum-Labour Court, Ambala (hereinafter referred to as 'the Tribunal') and both the parties led their respective evidence.

5. After considering the respective stand of the parties and also the evidence/material placed on record, the learned Tribunal below, vide award dated 28.03.2023 (Annexure P-4), accepted the claim statement filed by respondent No. 1-workman herein by holding that he was entitled to relief of reinstatement in service with continuity of service alongwith 50% back wages from May 2019 till his reinstatement.

6. In view of the aforementioned circumstances, the petitioner-Management has filed the instant writ petition, challenging the aforesaid award dated 28.03.2023 (Annexure P-4), before this Court.

7. Learned counsel for the petitioner-Management submits that respondent No. 1-workman herein was not entitled to any relief as he had concealed the fact that in the year 2007, he tendered his resignation and also demanded experience certificate, which was given to him on 15.05.2007 for his work upto the said date. Learned counsel further contends that respondent No. 1-workman herein has further tried to mislead the learned Tribunal below by claiming that he had been working continuously since 01.10.1994 till June 2019. It is stated that respondent No. 1-workman had rejoined the petitioner-Management in the year 2009 and again left the service and thereafter again rejoined the petitioner-Management in the year 2011. Learned counsel further contends that the services of respondent No. 1-workman herein were never terminated and rather, it is respondent No. 1-workman herein, who was in the habit of absenting himself. He voluntarily absented from 14.07.2018 to 11.10.2018 and then again from 06.12.2018 to 19.02.2019 and the alleged stand taken by respondent No. 1-workman herein that he had taken medical leave is totally false as respondent No. 1-workman herein had never applied for any medical leave. It is also contended that respondent No. 1-workman herein had not completed the requisite period of 240 days in any calendar year.

Learned counsel for the petitioner-Management herein has further submitted that respondent No. 1-workman herein had received a sum

of Rs. 3025/- as full and final settlement of his dues from the petitioner-Management herein by signing a receipt, which is stated to be Ex.M2 on the record. With the aforesaid submissions, learned counsel for the petitioner-Management herein submits that the learned Tribunal below has wrongly allowed the claim statement filed by respondent No. 1-workman herein and the same deserves to be rejected and the impugned award passed by the learned Tribunal below is liable to be set aside.

8. I have heard learned counsel for the petitioner-Management and have also perused the paper book with his able assistance.

9. As regards the contention of learned counsel for the petitioner-Management herein that respondent No. 1-workman herein had concealed the factum of his earlier resignation in the year 2007 is concerned, it is observed that it is the own pleaded case of the petitioner-Management herein that respondent No. 1-workman herein had rejoined in the year 2009 and thereafter it is stated that respondent No. 1-workman herein again left the job and thereafter he again rejoined the petitioner-Management herein in the year 2011,

In view of the aforestated categoric assertion of the petitioner-Management herein, even if the factum of earlier resignation is not mentioned in the claim statement, the same would not amount to material concealment of fact, having any bearing so far as the decision of claim statement filed by respondent No. 1-workman herein is concerned. It is the categoric case of respondent No. 1-workman herein that he had been working with the petitioner-Management herein and that he was appointed as a Fitter by the

petitioner-Management herein on 01.10.1994 and that respondent No. 1-workman herein had worked with petitioner-Management herein upto June 2019 on a monthly salary of Rs. 9,600/-. As per the claim statement filed by respondent No. 1-workman herein, on 14.07.2018 he had taken medical leave from 14.07.2018 to 11.10.2018 and thereafter he had again taken medical leave from 06.11.2018 to February 2019, as respondent No. 1-workman herein had become the patient of Abscess during the course of employment. It was claimed that in June 2019, the services of respondent No. 1-workman herein were terminated without giving any show cause notice, without conducting any inquiry or giving salary or wages in lieu of one month notice and neither reason of termination was informed to him nor any termination order was issued to respondent No. 1-workman herein and even the retrenchment compensation was not paid to respondent No. 1-workman herein, which was in violation of Section 25-F of 1947 Act.

10. The learned Tribunal below, while considering the aforestated stand of respondent No. 1-workman herein and also the stand of petitioner-Management, has returned the following findings :-

“15. Admittedly, the claimant was working with the respondent management and hence, there is no dispute that there existed employee and employer relationship between the claimant and the respondent management. The only question which arises here is as to whether it is the respondent management who had terminated the services of the claimant or it was the claimant who himself had abandoned the job and also as to whether on

the date of the alleged termination the claimant had completed 240 days of his service prior to the date of his alleged termination.

16. The claimant has contended that he has never remained absent from duty and it was on account of his ill health that he could not attend his duties from 14.07.2018 to 11.10.2018 and thereafter again from 06.12.2018 to February 2019 that he had taken the Medical Leave during each period as he had become the patient of Abscess for which he was undergoing for a treatment from Government Hospital, Sector 32 Chandigarh. In support of his contention, he has placed on record his medical record as Ex. W-1 including his Discharge and Follow Up Card Ex. W-2 for that period.

17. Though Sh. Vinod Rana, the witness examined by the respondent management in his cross examination maintained the stand taken by the management regarding the absence of the claimant during that period but at the same time he expressed his inability to tell if the claimant had remained on Medical Leave for that period. The only document brought on record by the respondents in support of the contention is a computerized copy of details of the working days of Ramesh Kumar since 2011 till April 2020 as Mark B. This copy has neither been proved nor bears any signature/stamp of the respondent management to prove its veracity. Moreover, nothing has been brought on record by the respondent management if any notice had been

issued to the claimant seeking his explanation for his absence of that period.

18. It is settled law that any leave taken on medical ground cannot be considered as absence from duty and is to be included for the purpose of calculation of 240 days of service. Therefore, the period for which the claimant could not attend his duties on account of medical ground which was well in the knowledge of the respondent department is duly covered in the “continuous working period” of the claimant for the purpose of calculation of 240 days of his service.

19. Now adverting the period of his service, though the claimant has alleged that he has joined the respondent company in the year 1994 but this fact has also not been disputed by him that he has tendered his resignation in the year 2007. During the course of arguments, the respondent management has contended that after 2007 the claimant had again joined the respondent management later in that year but again in the year 2009 he had tendered his resignation by giving one month notice on 01.01.2009. The copy of the resignation has been tendered as Ex.M-1. This fact has also not been disputed by the claimant. From the details of the working days Mark-B it becomes evident that as per the respondent company the claimant rejoined the company in the year 2011. No rebuttal to this fact has been brought by the claimant. However, the claimant has alleged that he had worked till June 2019 whereas as per the averment made by

the respondent management, the claimant had worked till April 2019. In support of his contention, the respondent management has tendered document Ex.M-2 which is an original receipt signed by Ramesh Kumar dated 07.05.2019 vide which he had received Rs. 3025/- as full and final settlement of his dues from M/s Gold Laminates India Limited, Sabapur. As per the contentions made in the affidavit Ex. MW-1/A tendered by Vinod Rana, the witness examined by the respondent management, the said amount was paid as settlement of dues for working about 10 days by claimant in the month of April 2019. Though the claimant in his cross examination has disputed that he had worked only 10 days in the month of April, however, no valid explanation has been tendered to refute or rebut the document Ex.M-2 or to defy his signature on the said document or to prove that he had worked for the entire month of April, May and June 2019 as alleged by him or had received any payment/salary for that period from the respondent. Therefore, from the discussion made above it becomes evident that the claimant had remained in service till April 2019.”

11. As regards the issue as to whether the services of respondent No. 1-workman herein were retrenched or it is respondent No. 1-workman herein, who had abandoned his services, the learned Tribunal below has returned following findings :-

“21. The claimant has alleged that it was the respondents who illegally had restrained him to

perform his duties as there was no reason that he would himself leave the services when only five years had been left for his retirement by further stressing that respondent company had dispensed with his services illegally in an illegal manner without giving him any notice or retrenchment compensation as per the mandates of law.

22. xxxxxx xxxxxx xxxxxx

23. *As already mentioned earlier the plea which has been raised by the respondent management is that the claimant himself stopped coming so it was rather abandonment of the services on the part of the claimant but at the same time, there is nothing on record that respondent had sent any letter to the claimant in the form of Show Cause Notice or had tried to make any communication calling upon the claimant to explain his absence. Hence, no credibility/truth can be attached to this plea raised by the respondents.*

24. *Thus, the plea raised by the respondents that the claimant himself abandoned the job does not substantiate from the evidence so brought on record by the respondents. Since no on-month notice or wages in lieu of notice has been paid by the management to the workman, so there is violation of mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947.*

25. *Moreover, the material brought on record by the parties eloquently speaks of the fact that admittedly the claimant had initially joined in the year 1994 and during this long tenure/period of about 25 years till 2019, he had been rendering his*

services in this company only. Though during this period he had tendered his resignation once in the year 2007 but as evident from discussion as above he rejoined the respondent company in the same year and then in the year 2009 he again had left the services and rejoined the company in the year 2011. This rejoining of the company speak of the fact that as such there was no complaint in his work on account of which the respondent company also allowed him to resume his job. The Medical Report brought on record by the claimant as Ex. W-1 and Ex. W-2 makes it evident that it was due to his ill health and on account of medical ground that he could not attend to his duties from July 2018 to October 2018 and then from December 2018 to February 2019. The claimant as evident from the discussion made above, has already spent considerable period of his life serving in the respondent company though lastly from the year 2011 and now when he has reached the prime year of his life. Further, as evident from the pleadings of the claimant he was already near the age of retirement when his services were terminated without following the mandatory provisions of law as required under Section 25-F of the Industrial Disputes Act, 1947 cannot be termed as legal. Thus, in view of the discussion made above the claimant is entitled to reinstatement. Further, as no conclusive proof has been brought by the claimant that he had worked in the month of May and June, hence, by taking the month of his termination as in April 2019, the

claimant is entitled to back wages from May 2019 till his reinstatement with all consequential benefits.”

12. I have gone through the findings returned by the learned Tribunal below and I am of the considered view that the findings returned by the learned Tribunal below are as per the evidence on record and in accordance with law. Accordingly, there is no illegality or perversity in the impugned award.

13. The peripheries of certiorari jurisdiction of High Court stands authoritatively delineated in ***Syed Yakoob v. K. S. Radhakrishnan and others, AIR 1964 (Supreme Court) 477***, wherein Hon’ble the Supreme Court held as under :-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural

justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the

jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. *It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been*

adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

14. In view of the foregoing discussion, I do not find any merit in the instant writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

19.07.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No