

212-A

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-22685-2013
Date of Decision: 07.10.2023

Bimla

..... Petitioner

Versus

Presiding Officer, Labour Court, Hisar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vikas Sonak, Advocate for
Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. R.K.S. Brar, Addl. A.G., Haryana.

HARSH BUNGER J.

1. Petitioner (Bimla) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking setting aside of impugned award dated 16.03.2009 (Annexure P-2) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as 'the Tribunal'), whereby reference of industrial dispute raised by the petitioner, regarding termination of her services, has been answered against her.

Further prayer has been made to direct respondent
No.2 – Divisional Forest Officer (Territorial), Forest Department, Hisar

(hereinafter to be referred as 'the Department') to reinstate the petitioner in service along with all other consequential benefits.

2. Briefly, petitioner raised an industrial dispute regarding termination of her services, which was referred to the Tribunal below, for adjudication.

3. It was the claim of petitioner that she was engaged as Labourer by respondent No.2-Department on daily wage basis, as per D.C. rates, in the month of January, 1998 and her services were illegally terminated in the month of July, 2004. It was stated that before terminating her services, the Department neither issued any charge-sheet or held any enquiry nor any show cause notice was served upon her. It was alleged that juniors to the petitioner had been retained in service and no seniority list was being maintained nor any retrenchment compensation was granted to the petitioner. It was claimed by the petitioner that she had rendered more than 240 days of continuous service in the calendar year preceding the date of her retirement. and her services had been terminated in violation of the 1947 Act, accordingly, prayer for reinstatement in service along with all the other consequential benefits was made on behalf of the petitioner.

4. The aforesaid claim of petitioner was contested by respondent No.2-Department by submitting that petitioner was engaged from time to time as a Daily Causal Labourer by Local Forest Guard under the Centrally and World Bank sponsored various schemes of Temporary Social Forestry Project. It was stated that daily paid labourers are not entitled to be reinstated in service. A categorical stand was taken by respondent No.2-Department that petitioner did not work for even a single day in the twelve months preceding the alleged termination of her services in July, 2004.

Accordingly, prayer was made for dismissal of the claim of petitioner.

5. From pleadings of the parties, following issues were framed by the Tribunal:-

“(i) Whether the termination of services of workman is legal or not? If not, to what relief he is entitled to? OPA

(ii) Whether workman has no cause of action to file the present claim statement?

(iii) Relief.”

6. Thereafter, both the parties led evidence in support of their case. Petitioner examined herself as PW-1. On the other hand, respondent No.2-Department examined Sh. Raghubir Singh, R.F.O. as MW-1.

7. The Tribunal below rejected the claim of petitioner by holding that she never completed a period of 240 days of continuous service in the preceding twelve months from the alleged termination of her services in July, 2004. It was also observed that provisions of Section 25-F of the 1947 Act were not attracted in this case.

8. Being aggrieved against the aforesaid impugned award, the petitioner has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner submits that the Tribunal has erred in law and fact in rejecting the claim of petitioner. It is submitted that petitioner had worked for more than six years before the illegal termination of her services and she had completed 240 days in each calendar year; and even her juniors had been retained in service, while terminating her services. It is further submitted that respondent No.2-Department has failed to produce the relevant record pertaining to the petitioner; therefore, the Tribunal below should have drawn the adverse inference against it. It is, therefore, submitted that Tribunal below has acted illegally and arbitrarily in rejecting the case of petitioner, accordingly, prayer has been for setting aside impugned award dated 16.03.2009 (Annexure P-2) and issuance of

necessary directions to respondent No.2-Department to reinstate the petitioner in service along with all the other consequential benefits.

10. Per contra, learned State counsel has opposed the prayer made on behalf of the petitioner by submitting that Tribunal has passed a well reasoned and justified Award, after considering and appreciating the material/evidence available on record. It is submitted by learned State counsel that the Tribunal has returned the finding of fact that petitioner failed to prove that she had rendered continuous service of 240 days with respondent No.2-Department and in the absence of same, petitioner has rightly been denied the protection under Section 25-F of the 1947 Act. It is submitted that the instant writ petition is bereft of any merit and, is accordingly, liable to be set aside.

11. I have heard learned counsel for the parties and 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 ***“Workman 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 employeremployee 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 the 1947 Act, i.e. the workman has worked under the 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. When the case in hand is considered in the light of the legal position indicated above, it would be apparent that petitioner had failed to discharge the onus placed upon her by law to prove that she has rendered continuous service in terms of the 1947 Act, so as to attract the provisions of Section 25-F *ibid.*

Learned counsel for the petitioner has raised a plea that

petitioner was engaged in the month of January, 1998 and had rendered almost six years of service before termination of her services; and she had completed 240 days in each year, however, the said argument cannot be accepted for the simple reason that for attracting the provisions of Section 25-F of the 1947 Act, worker has to prove on record that he/she had rendered continuous service with the Management in terms of Section 25-B *ibid*, i.e. he/she must have worked for at least 240 days in twelve calendar months preceding the date of his alleged termination. However, in the instant case, petitioner has failed to lead any evidence either before the Tribunal or before this Court to show that she had worked continuously for 240 days under the respondent No.2-Department in the twelve months preceding the date of alleged termination of her services as no appointment letter or proof of receipt of salary or wages or any record of engagement by respondent No.2-Department or any order in that regard was produced in support of her claim and in the absence of same, no relief could have been granted to her.

14. As regards the plea of petitioner that adverse inference be drawn against respondent No.2-Department for not producing the relevant record, 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 relevant record by the respondent No.2-Department; there is no plea of the petitioner that respondent No.2-Department has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent No.2-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..."

15. 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*".

16. No other point has been urged.

17. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for interference in the impugned award dated 16.03.2009 (Annexure P-2) by this Court, while exercising its writ jurisdiction. Therefore, the instant writ petition is bereft of any merit and the same is accordingly dismissed.

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

07.10.2023

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No