

212-B

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

CWP-22686-2013

Date of Decision: 07.10.2023

Karan Singh

..... 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 (Karan Singh) 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 setting aside of impugned award dated 03.09.2012 (Annexure P-2) passed by the Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as 'the Tribunal'), whereby reference of industrial dispute raised by the petitioner, regarding termination of his services, has been answered against him.

Further prayer has been made by petitioner to direct respondent

No.2 – Principal Chief Conservator of Forest, Haryana Van Bhawan,

Sector-6, Panchkula (hereinafter referred as 'the respondent No.2-Department') to reinstate the petitioner in service and to grant all the other consequential benefits.

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

3. Petitioner claimed that he was engaged as Beldar-cum-Mali by respondent No.2-Department on 01.03.1994 on payment of monthly wages. It is further claimed that he remained posted in Bhadra Range of Territorial Division up to 01.10.2003 under the supervision of various Forest Guards and thereafter he was posted in the Community Forestry Project w.e.f. 01.10.2003 to 28.02.2005. As per the petitioner, there existed employee-employer relationship, however, when he reported for duty on 01.03.2005, he was not allowed to do so and was verbally informed that his services were no more required. Petitioner claimed that respondent No.2-Department had managed the records to show that petitioner had not worked for 240 days and that his juniors were retained and new persons were employed. Accordingly, the petitioner claimed that he worked continuously from 01.03.1994 to 28.02.2005, however, his services had been terminated in violation of Sections 25-N, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred as 'the 1947 Act'); and petitioner prayed for reinstatement in service along with consequential benefits.

4. The aforesaid claim of petitioner was contested by respondent No.2-Department, wherein it was denied that petitioner was engaged as Beldar-cum-Mali on 01.03.1994. It was also denied that petitioner continuously worked up to 28.02.2005. Respondent No.2-Department further denied the fact that petitioner's services were terminated on

01.03.2005. It was pleaded by respondent No.2-Department that petitioner had not worked even for a single day in the 12 months preceding the alleged date of termination of his services, i.e. 01.03.2005. 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 Sh. Karan Singh is legal or not? If not, to what relief he is entitled to?*
- (ii) Whether the claim statement is time barred?*
- (iii) Whether the claim statement is not maintainable in the present form?*
- (iv) Relief. ”*

6. Thereafter, both the parties led evidence in support of their case. Petitioner examined himself as WW-1 and further examined Sh. Uday Kumar as WW-2. On the other hand, respondent No.2-Department examined one Shree Pal, Range Forest Officer, Badhra as MW-1.

7. It appears that during the course of arguments, it was conceded by learned counsel for the petitioner before the Tribunal that provisions of Section 25-N of the 1947 Act were not attracted in this case.

8. Upon considering the material/evidence available on record, the Tribunal below rejected the claim of petitioner vide impugned award dated 03.09.2012 (Annexure P-2).

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

10. 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 as per practice of respondent No.2-Department, it did not give any appointment letter to the workman at the time of his appointment and the

other relevant records were kept in the custody of Department; and the worker could only summon the said records to prove his working days. It is further submitted that the petitioner had submitted an application for summoning the record, whereupon the same was produced, however, name of petitioner was not found in the said record. It is next submitted by learned counsel for the petitioner that the Tribunal has failed to appreciate the statement of Shree Pal, Range Forest Officer, Badhra, District Bhiwani (MW-1), who stated that after the year 2002, no muster rolls were issued to the daily wagers; therefore, it was obvious that name of the petitioner would not have been found in the records of the Department. It is further submitted that petitioner had worked for more than 12 years prior to his illegal termination and he had completed 240 days in each calendar year. Therefore, it is contended that services of petitioner have been terminated in violation of mandatory provisions of the 1947 Act. Accordingly, prayer has been made for setting aside impugned award dated 03.09.2012 (Annexure P-2) and for issuance of necessary directions to respondent No.2-Department to reinstate the petitioner in service along with all the other consequential benefits.

11. 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 order, 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 his employment with respondent No.2-Department at any point of time. It is submitted that petitioner had failed to prove its pleaded case, and therefore, the instant writ petition was bereft of any merit and accordingly prayer has been made for dismissal of writ petition.

12. I have heard learned counsels for the parties and perused the

paper book with their able assistance.

13. It is well settled law that the onus to prove existence of relationship of employee and employer 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 employeremployee 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.

14. In the instant case, the Tribunal below returned the following findings:-

“..... Meaning thereby to claim the benefit of provisions contained in Section 25F, the workman is required to prove that he worked with the employer for more than 240 days during the period of 12 calendar months with reference to which calculation is to be made.

- x - x -

10. In order to discharge said onus the petitioner appeared as WW1 and tendered in evidence his affidavit Ex.WW1/A deposing all the facts on oath as pleaded in the claim statement. He reiterated that he was engaged by respondent as Beldar-cum-Mali on 01.03.1994 and he worked on said post continuously upto 01.10.2003 in Bhadra Range of Territorial Division under the supervision of various Forest Guards namely S/Sh. Lekhraj, Kuldeep, Maan Singh, Mahabir and others and thereafter he worked in Community Forestry Project of the department for the period from 01.10.2003 to 28.02.2005 under the supervision of various Forest Guards namely S/Sh. Ramautar, Shri Bhagwan, Sunderpal and others. On 01.03.2005 when he reported for duty as usual, he was not allowed to join his duty and was told verbally that his services were no more required. In this way, his services were terminated by the respondent in an illegal and arbitrary manner. In cross-examination, it was suggested to him that he was not employed by the respondent on any post at any point

of time and that his claim regarding employment with the respondent for the period from 01.03.1994 to 28.02.2005 was false which fact he denied.

11. To support his claim regarding employment with the respondent for the period from 01.03.1994 to 28.02.2005, the petitioner examined Udy Kumar an employee of the department as WW2. He has stated that the petitioner remained in the employment of the Forest Department for the period from 1998 to 2005. In cross-examination, it was suggested to him that he had made a false statement with a view to help the petitioner which fact he denied.

12. To further support his claim, the petitioner moved an application for issuance of direction to the respondent to produce muster rolls issuance register, muster rolls and bills for the period from 01.03.1994 to 01.10.2003 pertaining to Badhra Range of Territorial Division and the same record for the period from 01.10.2003 to 28.02.2005 pertaining to Community Forestry Project of Badhra Range. On the application a direction was issued to the respondent to produce said record. The record pertaining to Badhra Range of Territorial Division for the period from 2001 to 31.08.2003 was produced by the respondent through Mahender Singh, Forester. The record pertaining to Territorial Division for the period from 01.03.1994 to 01.10.2003 was inspected by the petitioner in the office of the respondent. In said record his name was not found mentioned. His statement to that effect was recorded on 10.10.2011. The record pertaining to Community Forestry Project for the period from 01.10.2003 to 28.02.2005 was produced by the respondent through Mahender Singh, Forester. In said record too the name of the petitioner was not found mentioned.

13. On the other hand, in order to rebut the claim of the petitioner and to prove its claim the respondent examined Shree Pal, Range Forest Officer. Badhra as MW1. He tendered in evidence his affidavit as Ex. MW1/A deposing on the lines of the case of the respondent. He denied that the petitioner

was engaged by the respondent as Beldar-cum-Mali on 01.03.1994 and he worked on said post continuously upto 28.02.2005 and stated that the petitioner was not employed on any post at any point of time and his claim regarding employment with the respondent for the period from 01.03.1994 to 28.02.2005 was false. In cross-examination, it was suggested to him that the petitioner remained in continuous employment of the respondent for the period from 01.03.1994 to 28.02.2005 which fact he denied.

14. The factum regarding employment is such a fact which can be proved by documentary evidence especially when the claim of the petitioner is regarding continuous employment for a long period of 12 years for the period from 01.03.1994 to 28.02.2005. In this case, from the record got produced by the petitioner from the respondent, his claim regarding employment with the respondent at any point of time is not proved. In such a situation the oral testimony of the petitioner that he remained in the employment of the respondent continuously for the period from 01.03.1994 to 28.02.2005 cannot be accepted.

15. Since, the petitioner has failed to prove his employment with the respondent at any point of time he is not entitled to any relief. This issue is, therefore decided against the petitioner.”

15. A perusal of above extracted findings would show that the petitioner failed to prove on record that he remained in the employment of respondent No.2-Department continuously from 01.03.1994 up to 28.02.2005. Apart from the bald statement of petitioner in support of his claim, there is no other evidence/material on record to show that there existed relationship of employee-employer between the parties or that the petitioner rendered continuous service in terms of Section 25-B of the 1947 Act, so as to attract protection under Section 25-F of the 1947 Act. 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.

16. 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 order to entitle the Court to draw inference unfavourable to the party, the Court must be satisfied that evidence is in existence and could have been proved (See: ***“Surendranagar District Panchayat Vs. Dityabhai Amarsinh”*** **2005(8) SCC 750**).

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...”

17. 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*”.

18. No other point has been urged.

19. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for any interference in the impugned award dated 03.09.2012 (Annexure P-2) by this Court, while

exercising its writ jurisdiction. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

20. 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