

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23264-2013 (O/M)
Date of decision : 19.09.2023

Dalbir

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar
and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Manoj Chahal, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Additional A.G. Haryana.

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HARSH BUNGER, J.

1. Petitioner (Dalbir) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking quashing of impugned Award dated 08.06.2012 (Annexure P-3), passed by the Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as 'the Tribunal') whereby the reference regarding termination of services of petitioner-workman has been answered against him and his claim has been rejected.

2. Briefly, the petitioner-workman raised an industrial dispute regarding termination of his services. In the claim statement, the petitioner-workman claimed that he was engaged in Forest Department, Government of Haryana (hereinafter referred to as 'respondent-Management') in year 1991 in Bhiwani Range of Territorial Division as Beldar-cum-Mali on daily wage basis up to 31.07.2001. Thereafter, the petitioner workman worked in

Community Forestry project, Bhiwani from 01.08.2001 to 30.06.2005 and he worked under the supervision of Forest Guards namely Satbir, Nirmal, Hoshiar Singh, Hari Singh, Ved, Vijender and others. The petitioner-workman stated that on 01.07.2005 when he reported on duty, he was not allowed to work and was told verbally that his services were no more required. It was claimed that services of the petitioner-workman were terminated by respondent-Management without observing the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act').

3. The petitioner-workman alleged that respondent-Management neither served any notice nor paid any retrenchment compensation despite the fact that he continuously worked from 1991 to 30.06.2005 without any break. It was claimed that juniors to petitioner-workman had been retained and even fresh persons were employed. It was therefore claimed that the services of petitioner-workman have been terminated in violation of provisions of Section 25-F, Section 25-G and Section 25-H of 1947 Act. Accordingly, it was prayed that he (petitioner-workman) be reinstated in service with full back wages and other consequential benefits.

4. The aforesaid claim of petitioner-workman was contested by respondent-Management by filing its reply wherein various preliminary objections were raised and the claim of the petitioner-workman's employment in Community Forestry Project of the department for the period from 01.08.2001 to 30.06.2005 was denied. It was categoric case of respondent-Management that petitioner-workman never completed 240 days

in a calendar year and he never worked in 12 months preceding the alleged termination. Reliance was placed upon judgment of Hon'ble the Supreme Court in *Secretary, State of Karnataka and others Versus Uma Devi* (2006) 4 SCC 1. On the basis of aforesaid plea, prayer was made for dismissal of the claim statement.

5. From the pleadings of the parties, the Tribunal-cum-Labour Court, Hisar framed the following issues:

- i. Whether the termination of services of Sh. Dalbir is legal or not? If not, to what relief he is entitled to? OPA
- ii. Whether the respondent department does not fall within the definition of any 'industry'?
- iii. Relief.

6. In order to prove his case, petitioner examined himself as WW-2 and submitted his affidavit Ex. WW2/A wherein he reiterated his stand as mentioned in the claim petition. The petitioner further examined Ishwar Singh, Deputy Ranger as WW-1. On the other hand, respondents examined Abhey Singh, Range Forest Officer (Community) as MW-1 who tendered his affidavit Ex. MW1/A and Rajpal Singh, Range Forest Officer (Territorial) as MW-2 who tendered his affidavit as MW2/A.

7. The Tribunal below, on the basis of material/evidence on record, answered the reference against the workman, vide award dated 08.06.2012 (Annexure P-3).

8. In the aforementioned circumstances, the petitioner-workman has approached this Court by way of filing the instant writ petition.

9. Learned counsel for petitioner-workman has reiterated the stand taken by petitioner-workman before the Tribunal below and submitted that the petitioner-workman had worked for 240 days in the last preceding 12 months. Learned counsel for petitioner-workman has also contended that the burden of proving that workman had not worked for 240 days in 12 months preceding termination of his service is on employer and no evidence in the form of muster roll was led by the management, hence it was pleaded that adverse inference should be drawn against the respondent-management. Accordingly, it is submitted that the impugned Award be quashed and respondent-Management be directed to reinstate the petitioner-workman with continuity of service and other consequential benefits.

10. Per contra, learned State counsel appearing for respondent-Management has opposed the prayer of the petitioner-workman by submitting that the Tribunal below has rendered a well-reasoned and justified award after considering the material/evidence placed on record. It is submitted that onus to prove employer-employee relationship and continuous service of 240 days in terms of Section 25-B of 1947 Act is on the workman which the petitioner-workman failed to discharge. It is next submitted that once the petitioner-workman has failed to prove its pleaded case then no relief could have been granted to him. It is contended that the impugned Award does not call for any interference by this Court in exercise of its certiorari jurisdiction. Accordingly, prayer for dismissal of writ petition is made.

11. I have heard learned counsel for respective parties and have also

perused the paper book with their able assistance.

12. Here it would be apposite to refer to a few judicial pronouncements.

13. In the case of “Range Forest Officer v. S.T. Hadimani”, 2002(3) SCT 382 (SC), Hon'ble Apex Court held as under:-

“2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August, 1998, came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in an year.

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratam Singh Narsinh Parmar, 2001(2) SCT 1081 (SC) : JT 2000(3) SC 326. In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the

claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in an year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

14. In the case of “*Municipal Corpn. v. Siri Niwas*”, 2004(4) SCT 211, Hon'ble Apex Court held as under:-

“12. The provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. In terms of Section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by employer for effecting a valid retrenchment :

- (i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;*
- (ii) payment of compensation equivalent to fifteen days average pay*

for every completed year of continuous service or any part thereof in excess of six months.

13. For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25-B of the Act. In terms of sub-section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did

not examine any other witness in support of his case.

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

15. No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational..."

15. In "R.M. Yellatti v. The Asstt. Executive Engineer", 2005(4)

SCT 695, it was held as follows :

".... Drawing of adverse inference ultimately would depend thereafter on facts of each case. 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. It is manifest from aforesaid judicial pronouncements that the burden of proof that a workman had worked for 240 days in a given year was on the workman. It is 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. Further, it is also the settled position in law 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. Furthermore, drawing of adverse inference is optional and not obligatory and would depend on facts and circumstances of each case and the same would be within the domain of Tribunal/Labour Court.

17. In the instant case, the Labour Court below, while answering the reference against petitioner-workman, has held as under :-

“17. Having heard the Ld. AR of the petitioner, Ld. Govt. Pleader for the respondents and going through the evidence on the file, I am the view that the petitioner has failed to prove his employment with the respondents continuously for the period from 1991 to 30.06.2005. It is such a fact which could be proved from the documentary evidence and from the documents got produced by the petitioner, his claim regarding employment in Community Forestry Project of the department for the period from 01.08.2001 to 30.06.2005 is falsified. When he could got to the extent of telling lie on the point of his employment in Community Forestry Project of the department for the period from 01.08.2001 to 30.06.2005 his claim regarding his employment in Territorial Division of the department for the period from 1991 to 31.07.2001 cannot be accepted for the reason that the respondent No. 1 did not produce the record of said division inspite of direction by this court. Had the petitioner been able to prove his employment in Community Forestry Project of the department for the period from 01.08.2001 to 30.06.2005, then, of course, his claim regarding his employment in Territorial Division of the department for the period from 1991 to 31.07.2001 could be accepted on the ground that the record of said division had been withheld by the respondent No. 1 intentionally and had respondent No. 1 produced the record, it would have proved the claim of the petitioner regarding his employment in the said division for the period

from 1991 to 31.07.2001? It appears from the documents placed on the file by the petitioner himself that he was employed by the respondent No. 1 as casual Labourer in the years 1988, 1990 and 1991 and he had worked for a total period of 133 days during said period and his claim regarding employment after 1991 is false.

18. *Since, the petitioner has failed to prove that he had worked for more than 240 days during the period of any 12 calendar months, he was not entitled to benefit of provisions contained under Section 25-F of the Act and thus violation of provisions contained under said Section is not proved.*

19. *The petitioner has also alleged violation of provisions contained under Section 25-F and 25-H of the Act submitting that at the time of terminating his services employees junior to him were retained in violation of provisions contained under Section 25-F and thereafter new recruitment to the post was made without affording him an opportunity of re-employment as provided under Section 25-H, but he did not disclose the name of any person who according to him was junior to him and was retained at the time his services were allegedly terminated or was recruited thereafter. Therefore, violation of provisions contained under Sections 25-G and 25-H of the Act is also not proved. This issue is, therefore, decided against the petitioner.*

Issue No. 2

20. *This issue was not pressed by the Ld. Govt. Pleader for the respondents at the time of arguments rather Ld. Govt. Pleader admitted that now it has been settled that Forest Department is an 'industry' within the meaning of Section 2 (j) of the Act.*

RELIEF

21. *For the reasons discussed hereinbefore, the petitioner has not been found entitled to any relief and, therefore, reference made to this court stands decided accordingly against the workman-petitioner and in favour of the respondents.*

File be consigned to records after due compliance.”

18. A perusal of above extracted findings returned by Tribunal below would manifest that the petitioner-workman failed to prove that he had completed 240 days work with respondent-Management in terms of Section 25-B of 1947 Act so as to be entitled to any relief under Section 25-F of 1947 Act. As regards the plea of violation of Section 25-G and Section 25-H of 1947 Act, the petitioner-workman had failed to disclose the name of any person who was junior to him and was retained when his services were terminated or was recruited thereafter. Neither before the Tribunal below nor before this Court, the petitioner has shown any material to prove the aforesaid fact and in the absence of the same, no relief can be granted to the petitioner.

19. As regards the plea of the petitioner-workman that the Tribunal below has failed to draw adverse inference against respondent-Management for not producing the relevant record; suffice it to say that drawing of adverse inference is always optional and within the jurisdiction of the Tribunal below, considering the peculiar facts and circumstances of a case. In the instant case, no adverse inference was drawn.

20. 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.*

21. When the facts and circumstances of this case and also the findings returned by the Labour Court are considered in the light of the legal position indicated above, I do not find any illegality or infirmity with the impugned award dated 08.06.2012 (Annexure P-3), which may call for any interference by this Court, while exercising its writ jurisdiction. Therefore, the instant writ petition is dismissed in *limine*.

22. No other point has been urged.
23. All pending application/s, if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

19.09.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No