

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

CWP-20480-2016 (O&M)
Date of Decision: 16.10.2023

RAM NIWAS

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, BATHINDA, BATHINDA, PUNJAB
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Mohinder Kumar, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER, J.

Petitioner (Ram Niwas) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari*, for quashing the impugned Award dated 08.10.2015 (Annexure P-5) passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Bathinda; whereby, the reference has been declined and answered against him.

A further prayer has been made for issuance of direction to respondents No.2 and 3 to reinstate the petitioner-workman in service with all consequential benefits including continuity of service and full back wages.

2. Briefly, the petitioner-workman raised an industrial dispute, which was referred for adjudication to the Industrial Tribunal, Bathinda. In the claim statement, the petitioner-workman had stated that he was working as a *Chowkidar* with the respondent-department on daily wages since

01.02.1989 to 30.11.1994 and on 01.12.1994, his services were illegally terminated without any reason and without issuing any notice, charge-sheet, inquiry or compensation. Petitioner claims that he had worked for 240 days and at the time of his termination, he was getting Rs.1080/- p.m. as wages. Petitioner claimed that his services have been terminated in violation of the provisions of Industrial Disputes Act, 1947; accordingly, he prayed for reinstatement with continuity of service and full back wages.

3. Apart from taking the legal objections regarding *locus standi* and cause of action to file the claim petition and also as to whether the petitioner falls within the definition of workman, on merits, it was stated that the petitioner-workman was engaged on 01.11.1989 to 30.03.1991 on daily wage basis i.e. on temporary basis as a *Chowkidar* with breaks and he was paid for the days for which, he actually worked. It was stated that the petitioner-workman was never engaged after 30.03.1991 and he had not completed 240 days in the last calendar year.

4. From the pleadings of the parties, the issues were framed and the parties led their respective evidence. It requires mention that the petitioner-workman, in his evidence, did not step into the witness box and rather examined one Balwinder Singh son of Balwant Singh as WW-1.

5. After considering the case of the respective parties and also the material/evidence placed on the record, the Tribunal below declined the reference of the petitioner-workman, *inter alia*, observing that the petitioner-workman had failed to prove that he had rendered continuous service (240 days) in the last twelve calendar months from the date of his alleged termination. It was also held that the petitioner-workman did not step into the witness box in support of his claim and the claim was also held to be

suffering from delay and latches as the alleged termination was on 01.12.1994, whereas, the demand notice came to be served only on 16.07.2010.

6. In the afore-mentioned circumstances, the instant writ petition has been filed.

7. Learned counsel for the petitioner contends that the Tribunal below has erred in law and fact in dismissing the claim of the petitioner. It is submitted that the findings returned by the learned Tribunal below are against the pleadings and evidence on record and also the settled propositions of law and thus, the same are liable to be set aside. Learned counsel further submits that the learned Tribunal below had ignored the testimony of Balwinder Singh (WW-1), who had worked in the Office of Executive Engineer, Construction Division No.1, PWD (B&R) Rampura Phul, District Bathinda (Punjab) and retired on 30.09.2009 and also that he had specifically deposed that the petitioner-workman was working as a *Chowkidar* in the Office from 01.02.1989 to 30.11.1994. It is submitted that the respondent-department has deliberately not produced the attendance record/muster roll from the period 01.02.1989 to 30.11.1994 concerning the petitioner-workman and thus, the adverse inference should be drawn against them. It is also submitted that the learned Tribunal below has wrongly held that the claim of the petitioner is belated one by submitting that the Tribunal has ignored the fact that the earlier demand notice dated 09.09.1998 was sent by the petitioner-workman whereon Reference No.129/2004/99 was pending adjudication before the Tribunal; however, the same was withdrawn on 03.06.2010 as there were some defects therein and thereby, reserving the right to file a fresh demand notice and the reference

was answered accordingly and the liberty was also given to the petitioner-workman to file a fresh demand notice in accordance with law. Hence, it is contended that there was no delay in making the demand notice. Accordingly, it is prayed that the impugned Award is unsustainable in the eyes of law and the same be set aside and a direction be issued to the respondent-department to reinstate the petitioner with continuity of service and full back wages.

8. The afore-said claim of the petitioner-workman has been contested by the learned State counsel appearing for the respondent-Department by submitting that the impugned Award has been passed in accordance with the evidence/material available on the record and also in consonance with law and no interference is required in the same. It is submitted that the petitioner had failed to prove on record that he had worked for 240 days in the last preceding twelve calendar months from the date of his alleged termination and in the absence of the same, no relief can be granted to him.

9. As regards the plea of an adverse inference, learned State counsel has submitted that once the petitioner himself was failed to step into the witness box to support his own case and neither any other evidence has been shown in the form of salary statement, termination letter, pay slip etc.; accordingly, there is no question of drawing any adverse inference. Hence, it is submitted that there is no merit in the petition and the same is liable to be dismissed.

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

11. It is well settled law that the onus to prove the relationship of employee-employer as well as regarding continuous service in terms of Section 25-B of the Industrial Disputes Act, 1947 is on the petitioner and in this regard, reference can be made to the judgment rendered by Hon'ble Supreme Court of India in the case of ***Municipal Corpn. v. Siri Niwas, 2004(4) S.C.T. 211***, wherein, the 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 25F 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 25B 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 discretional 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...”

12. Further, in the case of ***Surendranagar District Panchayat v. Dahyabhai Amarsinh***, 2005(8) SCC 750, Hon'ble Apex Court held as under:

“19. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he

was in employment for 240 days during the preceding 12 months of the date of termination of his service. The Courts below have wrongly drawn an adverse inference for non production of the record of the workman for ten years. The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25F of the Industrial Disputes Act. The workman has never contended that he was regularly employed in the Panchayat for one year to claim the uninterrupted period of service as required under Section 25B(1) of the Act. In the fact and situation and in the light of the law on the subject, we find that the workman-respondent is not entitled for the protection or compliance of Section 25F of the Act before his service was terminated by the employer. As regards non-compliance of Sections 25G and 25H suffice is to say that witness Vinod Mishra examined by the appellant has stated that no seniority list was maintained by the department of daily wagers. In the absence of regular employment of the workman, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so called seniority no relief could be given to him for non-compliance of provisions of the Act. The Courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the Court. 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...”

13. The learned Tribunal, while passing the Award dated

08.10.2015 (Annexure P-5), has rendered the following findings :-

“15. But in the instant case, though workman in his statement of claim stated that he worked with the respondent from 01.02.1989 to 30.11.1994 but there is nothing on record to show that applicant/workman has ever served the respondents for a period of 240 days or more. Moreover, in the instant case, workman himself did not dare to step into the witness box to say orally that he worked with the respondents from 01.02.1989 to 30.11.1994 and completed 240 days in the last calendar year and simply, he examined one Balwinder Singh as WW-1, who stated that workman worked with the respondents from 01.02.1989 to 30.11.1994 but no record has been produced by this witness. Otherwise also, as per the version of the respondents, workman was engaged as daily wager and he was not a permanent employee of the respondents and he was paid for the days, he worked with the respondents.

16. Another arguments raised by the authorized representative of the respondents is that the present claim has been filed by the workman at a very belated stage and present case is barred by the principle of limitation but the authorized representative of the workman/claimant has further contended that there is no limitation prescribed in the Industrial Disputes Act or in any other local Act prescribing period of limitation for the appropriate Government to exercise its power u/s 10 of the Industrial Disputes Act. Though there is no limitation prescribed in the Industrial Disputes Act for the appropriate Government to exercise its power u/s 10 of the Industrial Disputes Act but it would be pertinent to mention here that as per the version of the claimant, his services were terminated on 01.12.1994 and reference was received from the office of Assistant Labour Commissioner, Bathinda in connection with the demand

notice dated 16.07.2010 and there is no explanation what talk of plausible or tangible explanation for delay of more than 15 years for raising the dispute. No doubt article 137 of the Limitation Act is not applicable to the reference under section 10 of the I.D. Act but claim is required to be made within a reasonable period or if the claim is belated or state, cogent or plausible explanation should be furnished by the claimant to seek the relief. In case, **Chief Engineer, RanjitSagar Dam &Anr. Vs. Sham Lal 2006(3)(SC) 468**, it was observed that as far as delay in seeking the reference is concerned no formula of universal application can be laid down. It would depend on facts of each individual case. In another case **Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and ors. 2000(1) SCT 1088: (2000(2) SCC 455)** it was observed by Hon'ble Apex Court that though law does not prescribe any time limit for the appropriate Government to exercise its powers under section 10 of the Act, it is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. Belated claim can not be entertained and referred by appropriate Government and after lapse of a period of 4-5 years no Industrial Dispute said to be existing for reference can be made under section 10. Similarly in another case **Management of M/s. Dalmia Cement (Bharat) Ltd., Ballabgarh, Haryana vs. State of Haryana and others 2009(1) SCT 824**, there was delay of more than seven years in the service of demand notice after date of termination and it was observed by Hon'ble High Court that no industrial dispute deemed to be existing after such a long delay and reference made after such a long delay held incompetent. In another case **Priti Pal vs. The Presiding Officer and others 2008(2) RSJ 413**, there was a delay of about five years in service of

notice and making of reference from the date of termination and it was observed by Hon'ble High Court that conduct of workman proved abandonment as he was not ventilated his grievance for about five years and five months as no reasonable explanation for not making the reference for more than five years has been placed on the file.

17. xxx xxx xxx

18. *In the instant case, even though it is presumed that Limitation Act is not applicable to the instant case but in view of the law laid down by Hon'ble Apex Court referred above, delay and latches are important factors, which has to be taken into consideration by the Labour Court and in the present case, services of the workman were terminated on 01.12.1994 and workman has moved the demand notice on 16.07.2010 i.e. after the lapse of more than 15 years. As such, claim of the workman suffers from delay and latches.*

19. *Hence keeping in view the facts and circumstances of the present case, this Tribunal is of the considered opinion that claimant has not served the respondents for a period of 240 days in the last calendar and his claim is bleated one. As such, claimant is not entitled to the relief as claimed for. Hence, findings of these issues are decided against the workman and in favour of the Management.*

Relief.

20. *In view of my findings on the abovesaid issues, reference preferred by the workman is without merits and the same is, accordingly, declined. Both the parties are left to bear their own costs."*

14. A perusal of the afore-said findings would clearly indicate that the petitioner had failed to step into the witness box in support of his claim

and there is no document/evidence on record to show that he had worked for 240 days immediately preceding the date of his alleged termination, in terms of Section 25-B of the Industrial Disputes Act, 1947; accordingly, no relief could be granted to him.

15. As regards the plea of drawing an adverse inference is concerned, it is observed that Hon'ble Apex Court in ***R.M. Yellati v. The Assistant Executive Engineer, 2006(1) SCC 106***, has held as under :-

“Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore stated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workwoman stepping in the witness box. This burden is discharged upon the workwoman adducing cogent evidence, both oral and documentary. In case of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workwoman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. 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/workwoman will not suffice in the matter of discharge of the burden placed by law on the workwoman 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 workwoman 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. In the instant case, since the petitioner himself had not stepped into the witness box in support of his claim and neither he has placed on record any *prima facie* material to show that there was any relationship of employer and employee after 30.03.1991; accordingly, there is no question of drawing any adverse inference.

17. Furthermore, the peripheries of certiorari jurisdiction of High Court stands authoritatively delineated in ***Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 Supreme Court 477***, wherein Hon’ble 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."

18. Keeping in view the above said principles, this Court is of the opinion that there is no scope for interference in the well-reasoned order and in the factual finding, which has been recorded by the learned Tribunal below and the present writ petition is accordingly dismissed.

19. No other point has been urged.

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

October 16th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No