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

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Date of Decision: 28.07.2023

Vinod Kumar

...Petitioner

Versus

Presiding Officer, Labour Court-II, Gurgaon and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vipin Pal Yadav, Advocate
for the petitioner.

None for respondents No.2 and 3.

HARSH BUNGER, J. (ORAL)

1. Petitioner-workman (Vinod Kumar) has filed this petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for setting aside the impugned award dated 01.10.2009 (Annexure P-1) passed by Presiding Officer, Industrial Dispute-cum-Labour Court II, Gurgaon; whereby the reference of industrial dispute raised by the petitioner regarding termination of his services; has been decided against him. A further prayer has been made for directing the respondents to reinstate the petitioner with all consequential benefits.

2. Briefly, petitioner (Vinod Kumar) raised an industrial dispute regarding termination of his services. The said dispute was referred by appropriate Government for adjudication to the learned Industrial Tribunal,

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Gurgaon (*herein after “the Tribunal”*) under section 10(1)(c) of the Industrial Disputes Act, 1947 (*in short “the 1947 Act”*).

3. As per the claim statement, petitioner claimed that he was appointed with respondents No.2 and 3 (hereinafter ‘respondent-Management’) as *Clerk* on 08.09.1995 on the monthly salary of Rs. 1400/- and his services were wrongly terminated on 28.01.1997 without payment of retrenchment compensation and notice pay. Accordingly, petitioner prayed that he may be reinstated with continuity of service and full back wages.

4. The respondent-Management was proceeded against *ex-parte* before the Tribunal vide order dated 19.01.2009.

5. In order to prove his case/claim, the petitioner/workman-Vinod Kumar, examined himself as PW-1 and relied upon Ex. P-1 (affidavit), Ex. P-2 to Ex. P-3 as his documentary evidence. Thereafter, the petitioner-Workman closed his evidence.

6. Upon appreciating the material/evidence available on record, the Tribunal below rejected the claim of the petitioner-workman and answered the reference against the petitioner-workman vide the impugned Award dated 01.10.2009 (Annexure P-1).

7. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this court.

8. Learned counsel for the petitioner while reiterating the stand of the petitioner before the Tribunal below, submitted that the petitioner was appointed as Clerk with respondents No.2 and 3 and he continuously worked till 28.01.1997, when suddenly his services were terminated in an illegal and arbitrary manner without following the mandatory provisions of the 1947

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Act. It is submitted that earlier the petitioner had worked from 09.09.1994 to 31.12.1996 under D.P.A.P. Scheme. It was submitted that the evidence of petitioner had gone unrebutted before the Tribunal therefore, Tribunal below should have granted necessary relief to the petitioner. He submits that the petitioner worked under respondent-Management for more than 240 days in preceding 12 months from the date of his termination in January, 1997. Accordingly, counsel for the petitioner prays that the impugned award dated 01.10.2009 (Annexure P-1) be set aside and relief of reinstatement in service and other consequential benefits be granted to petitioner.

9. The respondents No.2 and 3 were proceeded *ex-parte* before this Court vide order dated 17.11.2022.

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

11. 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 ***Workmen 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

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employer that if he were to produce books of accounts they would have proved employer-employee 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 1947 Act i.e. the workman has worked under 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.***

12. In the instant case, it is the pleaded case of petitioner that he was appointed in the respondent-Management as Clerk on 08.09.1995 and he continuously worked till 28.01.1997, when suddenly his services were

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terminated in an illegal and arbitrary manner without following the mandatory provisions of the Act, 1947. Thus, in order to seek relief in terms of Section 25F of the Act, 1947, the petitioner was required to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly terminated by respondents No.2 and 3. Therefore, the relevant period would be 12 months prior to January, 1997. In order to discharge the onus of proving the aforesaid fact of having worked for 240 days in the 12 months preceding the date of his allegedly termination, the petitioner gave his own testimony only and did not lead any other evidence either in the form of statement of any co-worker or any order/record of appointment or engagement for the relevant period. Apart from the self-serving statement of the petitioner, he did not lead any other evidence to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly terminated (i.e. on 28.01.1997) by respondents No.2 and 3. 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.

13. In the instant case, vide impugned award dated 01.10.2009 (Annexure P-1), learned Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon; has returned the following findings:-

“6. The workman appeared in the witness box as PW1 and tendered his affidavit P-1 and documents Ex. P-2 & P-3. PW-1 deposed that he was appointed as Salesman on 9.9.1994 on the monthly salary of Rs. 1400/-. His services were wrongly and illegally terminated on 20.12.1996. He has tendered the photo state copy of

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resolution Ex. P-2 and photo state copy of the salary book Ex. P-3.

It is pointed out at the very outset that in the demand notice the workman has taken a stand that he was appointed on 8.9.1995 as Clerk and his services were wrongly and illegally terminated on 28.1.1997. But when the workman appeared in the witness box as PW-1, he changed his statement, thereby, taking a stand that he was appointed on 9.9.1994 as Salesman, and also his services were wrongly and illegally terminated on 20.12.1996. Ld. AR for the workman has failed to explain the change in stand. This create dent in the story of the workman.

Furthermore, the document Ex. P-2 and Ex. P-3 are the Photo state copies. These are not duly proved. Furthermore, the workman had not examined any co-worker to substantiate his stand. The whole of the story put forward by the workman is shrouded in suspicion and accordingly cannot be believed.

7. *The workman has failed to discharge the onus that he was pointed out on 8.9.1995 and that he rendered 240 days of service and also that his services were wrongly and illegally terminated on 28.1.1997. Hence, he is not entitled to any relief whatsoever.*

8. *Hence, as per my above discussion, the workman is not found entitled to any relief whatsoever. I hold that the workman is not entitled to any relief and hence this reference is answered against the workman.”*

14. A perusal of the above extracted findings of Tribunal would make it evident that the petitioner-workman failed to discharge the onus placed upon him of proving that he had completed 240 days work under the respondent-Management in terms of section 25B of 1947 Act, so as to attract

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the provisions of section 25F of the 1947 Act. The workman appeared as PW1 and deposed that he was appointed as Salesman on 09.09.1994 and was illegally terminated on 20.12.1996; whereas in the demand notice the petitioner-workman stated that he was appointed on the post of Clerk on 08.09.1995 and his services were illegally terminated on 28.01.1997. Thus, once the petitioner-workman had failed to prove employee-employer relationship and / or that he had completed 240 days work under the respondent- Department from 08.09.1995 to 28.01.1997, no relief could have been granted to him.

15. 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

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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 issuance 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*

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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. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for interference in the findings returned by the Tribunal below in exercise of writ jurisdiction by this Court. Therefore, the instant writ petition fails and the same is accordingly dismissed.

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

28.07.2023
Himani

(HARSH BUNGER)
JUDGE

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