

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

CWP-22645-2016 (O&M)
Date of Decision: 12.10.2023

LEELA RAM

...Petitioner

Versus

THE DEPUTY CONSERVATOR OF FOREST (T.R.),
NEAR GIRLS SCHOOL, MAHENDERGARH,
DISTRICT MAHENDERGARH (HARYANA) AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashwani Bakshi, Advocate
for the petitioner.

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

HARSH BUNGER, J.

Petitioner-workman (Leela Ram) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of Award dated 23.03.2010 (Annexure P-8) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon (here-in-after referred to as 'the Tribunal'); whereby the reference was answered against him.

2. Briefly, the petitioner-workman raised an industrial dispute, which was referred to the Tribunal for adjudication. In the claim petition, the petitioner-workman stated that he was appointed on 01.01.1980 as Mali-cum-Chowkidar on daily wage basis but at that time, no appointment letter etc. was issued to him. Petitioner claims that he had rendered more than 240 days of continuous service and his services have been illegally and wrongly terminated on 01.01.2001, without payment of retrenchment

compensation and notice pay. Accordingly, the petitioner prayed for re-instatement with continuity of service with full back wages.

3. The afore-said claim of the petitioner-workman was contested by the respondent-Department, *inter alia*, on the ground that the Department was not covered under the definition of Industry and that the reference was not maintainable. On merits, it was denied that the petitioner-workman was engaged on 01.01.1980 as Mali-cum-Chowkidar on monthly salary of Rs.2100/-. It was also denied that his services were wrongly and illegally terminated on 01.01.2001. It is the pleaded case of the respondent-department that the services of the petitioner-workman were engaged on daily wage basis in the Social Forestry Project, which was closed after the financial aid was stopped in the month of June, 2004. As per the respondent-department, the petitioner-workman had worked for 177 days in the year 1992; 30 days in the year 1998; 60 days in the year 1999 and 24 days in the year 2000. Accordingly, it was stated that the petitioner-workman was not entitled for any relief whatsoever.

4. On the basis of the pleadings of the parties, the issues were framed and the learned Tribunal below passed an Award dated 08.04.2009 (Annexure P-6); whereby, the reference was answered against the workman.

5. Being dissatisfied with the afore-stated Award dated 08.04.2009, the petitioner herein filed **CWP-15488-2009** before this Court, which came to be allowed vide order dated 10.02.2010 by setting aside the Award dated 08.04.2009 and the matter was remanded to the learned Tribunal for fresh decision in accordance with law.

6. On remand, the matter was again considered by the learned Tribunal below and vide impugned Award dated 23.03.2010

(Annexure P-8), the reference was again answered against the petitioner-workman.

7. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner, while reiterating the averments made in the claim petition, submits that the petitioner was engaged by the respondent-Department as Daily Wage Worker w.e.f. 01.01.1980 and he continuously worked upto 31.12.2000 in Range Mahendergarh Beet (Area) Khurana, District Mahendergarh; however, his services were illegally terminated w.e.f. 01.01.2001, without issuing any notice or pay in lieu thereof or any retrenchment compensation. Learned counsel for the petitioner contends that the learned Tribunal below has erred in holding that the petitioner had failed to prove that he had worked for 240 days in the preceding 12 calendar months from the date of termination of his services. It is submitted that the learned Tribunal has failed to appreciate that the respondent-Management had not produced the relevant record, despite availing several opportunities and had rather produced incomplete record pertaining to very short and intermittent period. Accordingly, an adverse inference was required to be drawn against the respondent-department. Learned counsel for the petitioner further submits that the learned Tribunal below has wrongly gone by the vague assertion made on behalf of the respondent-Management that the petitioner was appointed against the project for a specified duration and his services were terminated with the expiry of that duration whereas, it is contended that no evidence was led by the department to prove the said assertion. Learned counsel for the petitioner contends that the petitioner had led sufficient

evidence on record to prove that he had continuously worked for 240 days by making a statement to that effect in his claim statement as well as in his deposition on oath and further by getting the relevant record summoned from the respondent-Management.

9. On the basis of the afore-said submissions, it is submitted that the impugned award is unsustainable in the eyes of law and the same be set aside and a further direction may be issued to reinstate the petitioner with continuity of service and full back wages.

10. On the other hand, learned State counsel has opposed the prayer of the petitioner by raising a preliminary objection that the instant writ petition is liable to be rejected on the ground of delay and laches as the impugned Award was passed way back in the year 2010 and instant writ petition has been instituted only in the year 2016. Learned State counsel further submits that the petitioner had failed to prove that he had worked for 240 days in the preceding last 12 calendar months from the date of his termination, for which, the onus lay upon him. It is submitted that since the petitioner had failed to discharge the onus of proving that he had worked for 240 days; accordingly, his self-serving statement in that regard, is not sufficient. It is submitted that there is no illegality or perversity in the impugned Award and as such, no interference is required at this stage. Accordingly, it is prayed that the instant writ petition, being bereft of any merit, is liable to be dismissed.

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

12. In the instant case, the petitioner has specifically pleaded that his services were engaged by the respondent-Department as Mali-cum-

Chowkidar on monthly wage basis in the Social Forestry Project, Territorial in Khudana Beat in Mahendergarh Range w.e.f. 01.01.1980. It is pleaded case of the petitioner that no appointment letter was issued to him by the respondent-department at the time of his appointment. Petitioner has claimed that his services have been wrongly terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947, despite the fact that he had worked for more than 240 days in the preceding 12 calendar months from the date of his termination.

13. On the other hand, the respondent-Department has denied that the petitioner had completed 240 days' service in the preceding last 12 calendar months from the date of his alleged termination and there was no violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947.

14. It is well settled law that the onus to prove the relationship of employee and 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. SiriNiwas, 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 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...”

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...”

15. In the instant case, the learned Tribunal below had returned the following findings :-

“20. As per the material placed on file, the workman has failed to prove that his services were engaged on 1.1.1980 and also that his services were wrongly and illegally terminated on 1.1.2001. There is nothing to prove that the workman had rendered more than 240 days of continuous service in the 12 months just preceding the alleged date of termination on 1.1.2001. It is pointed out that apart from the oral evidence, the workman has not produced any evidence to prove the fact that she has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard has been produced; no co-worker has been examined. The evidence produced by the employer has not been contradicted. It is improbable that the workman, who claims to have worked for such a long period would not possess any documentary evidence to prove nature of her engagement and the period he had undertaken with his

employer. However, the material placed on file support the stand of the respondent that the services of the workman were engaged in the Social Forestry Project on daily wages basis as per availability of the work and also as and when the workman made herself available for the job. Furthermore, the Social Forestry Project has long been closed in June 2004, when the foreign aid was stopped. Therefore, because of non availability of the work, the services of the daily wagers can not be engaged. Hence, the workman has failed to discharge the burden that she was in employment for 240 days during the preceding 12 months f the date of termination of her service. Moreover, the arguments advanced by ld. AR for the workman is devoid of any force when he prayed for drawing adverse inference against the respondent department for having not produced any muster roll etc. On this point it is pointed out that the scope of enquiry before the Labour Court is confined to only 12 months preceding the alleged termination. The workman has failed to prove that he had worked continuously from 1.1.80 to 31.12.2000. However, the material placed on file support the stand of the respondent that the services of the workman were engaged in the Social Forestry Project on daily wages basis as per availability of the work and also as and when the workman made herself available for the job and also that the workman had rendered more than 240 days of continuous services in the 12 months just preceding the alleged date of termination on 1.1.2001. Hence, it cannot be said to have withheld any document when actually no such documents exist. The Court can draw adverse inference against the respondent only when any documents are proved to be in existence but not produced before the Court. In order to entitle the court of draw inference unfavourable to the party, the Court must be satisfied that evidence is

available and could have been proved. On this aspect, reliance can be placed on Surindernagar District Panchayat and Dahyabhai Amarsingh 2005 LLR 1222 (SC).”

16. A perusal of the impugned Award would reveal that apart from his self-serving statement in support of his claim, the petitioner has not produced any other documentary evidence, which could prove that he had worked for 240 days, either by adducing evidence in the form of appointment letter or record of the engagement of workman by Management for 240 days or more in a Calendar year preceding the date of termination or such evidence in the form of receipt of salary for 240 days. Thus, the petitioner failed to discharge the onus placed upon him.

17. The petitioner further contends that he had summoned the relevant record from the department, which was not produced and only the record for intermittent period was shown; thus, adverse inference was required to be drawn. However, I do not find any substance in the said submission as the petitioner-workman had failed to prove the existence of record regarding which it is sought to be contended that the respondent-Department has not produced the same and therefore, adverse inference be drawn. Further, 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.”

18. 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."

19. 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.

20. No other point has been urged.

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

October 12th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No