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

*CWP-1922-2017***Date of Decision: 31.10.2023**

Amarjit Kaur

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Gurdaspur
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Vivek Chauhan, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Amarjit Kaur) has filed this petition under Articles 226/227 of the Constitution of India, for issuance of writ in the nature of *certiorari* for quashing the impugned award dated 22.11.2016 (Annexure P-6) passed by the learned Industrial Tribunal, Gurdaspur (in short 'the Tribunal'); whereby the industrial dispute raised by the petitioner regarding her termination has been answered against her.

A further prayer has been made for issuance of a writ in the nature of *mandamus* for directing the respondents No.2 and 3 to reinstate the petitioner into service and to grant other consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of her services. The aforesaid dispute was referred for adjudication to the Tribunal below. Petitioner claimed that she was appointed as Computer Operator w.e.f. 01.11.2005 in the office of Block

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Development and Panchayat Officer, Dhariwal where she continued to work efficiently and to the satisfaction of her superiors up to 31.10.2006, when her services were orally terminated in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter '1947 Act'). It was stated that at the time of her termination, the petitioner was getting Rs.2,500/- per month. It was also stated that respondents No.2 and 3 (Panchayat Samiti, Dhariwal) had not paid her salary for the months of September and October, 2006, accordingly, prayer has been made for reinstating the petitioner with continuity of service and full back wages.

3. The aforesaid claim of the petitioner was contested by respondents No.2 and 3-Panchayat Samiti, Dhariwal (hereinafter 'respondent-Management') by taking preliminary objection that the petitioner had not worked for 240 days in the year preceding her termination, therefore she was not entitled to the benefit of Section 25-F of the 1947 Act. It was submitted that the petitioner was never appointed on the post of Computer Operator w.e.f. 01.11.2005 in the O/o Block Development Panchayat Officer, Dhariwal, rather she was appointed as Computer Operator on adhoc basis on consolidated pay of Rs.2,500/- per month. It was denied that the petitioner had worked with the respondent-Management w.e.f. 01.11.2005 up to 31.10.2006. It was stated that the petitioner had worked only for three days i.e. till 03.11.2005, for which she had been paid wages. It was also stated that the petitioner neither worked nor attended office of respondent-Management from 04.05.2006, accordingly, prayer for dismissal of the claim petition was made.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

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“1. Whether the workwoman has worked for 240 days preceding 12 calendar months? O.P.W.

2. If issue No.1 is decided in favour of workman whether the termination of services of workwoman is unjustified and in order?

3. Relief.”

5. In order to prove her case/claim, the petitioner/workwoman-Amarjit Kaur, examined herself as WW1 and tendered her affidavit as Ex. W1 along with document i.e. CD of worker as Ex. W2 and copy of letter Mark-A. Petitioner-workwoman has also examined Dilbagh Singh as WW2 and Makhwinder Singh as WW3 and thereafter she closed her evidence.

On the other hand, the respondents have examined one Ram Lubhaiya as RW1, who tendered his affidavit as Ex. M1 and thereafter respondents have closed their evidence.

6. Upon considering the material/evidence on record, the Tribunal below vide impugned award dated 22.11.2016 (Annexure P-6) decided the reference against the petitioner.

7. Being aggrieved against the impugned award dated 22.11.2016 (Annexure P-6), the petitioner has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the petitioner was appointed as a Computer Operator w.e.f. 01.11.2005 and the petitioner claimed that she worked till 31.10.2006, however her services were terminated on 01.11.2006 in violation of the provisions of Section 25-F of the 1947 Act as the petitioner had already completed 240 days work with the respondent-Management. It is submitted that the respondent-Management had failed to produce relevant record pertaining to petitioner, therefore

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adverse inference should have been drawn against respondent-Management.

It is further submitted that after terminating the services of the petitioner, some other persons were appointed and therefore, there was violation of Section 25-G of 1947 Act as well. Accordingly, the petitioner was entitled to reinstatement into service and other consequential benefits.

9. On the other hand, learned counsel representing respondents-Management has opposed the prayer made by learned counsel for the petitioner by submitting that the petitioner had failed to produce any material on record to prove that she had rendered continuous service in terms of Section 25-B of the 1947 Act i.e. so as to claim protection of Section 25-F of the 1947 Act. It is submitted that in terms of Section 25-B of the 1947 Act, the workman has to prove that she has worked for 240 or more days under the Management in the 12 months preceding the date of termination. It is submitted that the onus to prove the said factum is on the workman which in the instant case, the petitioner failed to discharge. It is further submitted that in fact, the petitioner was appointed as Computer Operator on 01.05.2006, however, the final sanction to this post was withheld by the Chairman, Panchayat Samiti and her services were terminated immediately on 03.05.2006 as there were no funds to defray her salary. It is submitted that once the petitioner has failed to show that her appointment was legal and in the absence of any material to show that she had actually worked for 240 days in the 12 calendar months preceding the termination, no relief could be granted to the petitioner. Accordingly, prayer for dismissal of the Writ Petition has been made.

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

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11. While considering an issue of existence of relationship of employer and employee between the parties, in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu & 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 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

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not interfere therewith unless the finding is manifestly or obviously erroneous or perverse...”

12. Further, in order to determine as to whether the workman/ work lady has rendered continuous service under the management in terms of section 25B of 1947 Act, so as to attract provisions of section 25F of the Industrial Disputes Act, 1947, the workman/ work lady is required to prove that he/she worked under the Management for 240 days in the 12 months preceding the date of termination. It is well settled law that mere affidavits or self-serving statements made by the worker will not suffice in the matter of discharge of the burden placed by law on the worker to prove that he/she 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.***

13. The Tribunal vide impugned award dated 22.11.2016 (Annexure P-6) held as under:-

“11. I have given thoughtful consideration to these arguments and in order to appreciate the same, have gone through record of this case very carefully.

12. It is specific and categorical case of workwoman that she was appointed as Computer Operator with effect from 1-11-2005 and she has been working on this post till 31-10-2006 but according to respondents, she was appointed vide office order No.672 dated 1-5-2006 on adhoc basis and her services were dispensed with w.e.f. 3-5-2006 afternoon due to non-sanction of post and funds. To support her claim that she had been working with respondents from 1-11-2005 to 31-10-2006, she has not brought on record any documentary evidence and she has not summoned any attendance register where

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obviously she had been marking her presence during this period. She has not produced appointment letter issued to her rather admits in her cross-examination that she was appointed as Computer Operator vide office order No.672 dated 1-5-2006 on adhoc basis against consolidated salary of Rs.2500/- per month but she was not able to admit or deny the fact that the said post was not sanctioned by the Chairman. Per contra, respondents have brought on record copy of resolution to fortify the fact that sanction to this post was not accorded by the Chairman. She has admitted in clear and candid words that she was not issued any appointment letter dated 1-11-2005 which belies her story that she was appointed as on 1-11-2005 and not on 1-5-2006. Such a person cannot be believed at all. It is evident from her evidence that she is telling lie and had never been lawfully appointed as a computer operator.

13. Coming to C.D. (Compact Disc) Ex W2 it is worth to mention here that I have opened C.D. in court computer and it was found containing 27 files with title as below:

1. "8.2.06.DOC",	15. "BLOCK_KH.XLS",
2. "BANK_COU.XLS",	16. "GURJEET_.DOC",
3. "BLOCK_IN.DOC",	17. "GURJEET3.DOC",
4. "BLOCK_KH.XLS",	18. "GURJIT4.DOC",
5. "BLOCK_N2.XLS",	19. "BLOCK_IN.DOC",
6. "BLOCK_NA.XLS",	20. "BLOCK_N2.XLS",
7. "BLOCK3.XLS",	21. "TC.DOC",
8. "GURDASP2.DOC",	22. "GURJIT_1 DOC",
9. "GURJEET3.DOC",	23. "TC2.DOC",
10. "GURJEET_.DOC",	24. "GURJIT_S.DOC",
11. "GURJIT4.DOC",	25. "TC5.DOC",
12. "BANK_COU.XLS",	26. "GURMAIL_.DOC",
13. "GURDASP2.DOC",	27. "SER_NO_B.DOC"

14. "BLOCK_NA.XLS.	
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14. Workwoman in her affidavit Ex-W1, has deposed in Para No.3 that she has worked continuously and regularly without any break. To prove this fact, she has tendered compact Disc (C.D), but I am not able to hold that this document can be used for deducing that Smt. Amarjit Kaur has worked with respondents between 01-11-2005 to 31-10-2006 because such a data can be drawn from computer within friction of second, which was admittedly operated by applicant-workwoman for two days. Actually evidence lying on record shows that Smt. Amarjit Kaur was appointed as Computer Operator on 1-5-2006 and final sanction to this post was with-held by the Chairman, Panchayat Samiti and her services were dispensed with immediately on 3-5-2006 because there were no funds to defray her salary.

15. As a sequence of my above discussions, I am of the view that appointment of Smt. Amarjit Kaur was unlawful as there was no sanction or funds to the post by competent authority and in such eventuality it can not be held that her services have been terminated illegally and unlawfully or in violation of provisions of Industrial Disputes Act, 1947. Hence both these issues are decided against workwoman and in favour of respondents.

Issue No.3 (Relief)

16. In view of my findings on above issues, this reference is answered against workwoman holding that she is not entitled to any relief. There is no order as to costs.”

14. A perusal of the above extracted findings of Tribunal would make it evident that the petitioner-work lady failed to discharge the onus placed upon her. Petitioner has failed to refer to any material/evidence either

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before the Tribunal or before this Court which may show that the petitioner has rendered continuous service in terms of Section 25-B of the 1947 Act. Petitioner did not lead evidence either in the form of statement of any co-worker or any other evidence in the form of proof of receipt of salary or wages for 240 days or any order/record of appointment or engagement for the relevant period. In the absence of any material/evidence available on the record to show that the petitioner had worked for 240 days in the 12 months preceding his termination, no relief can be granted to the petitioner.

15. As regards the plea of the petitioner that adverse inference be drawn against respondent-Management for not producing 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 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 respondent-Management; there is no plea of the petitioner that respondent- Management has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent-Management. 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

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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. 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

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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 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.*

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Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69.

17. 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 22.11.2016 (Annexure P-6), which may call for any interference by this Court, while exercising its writ jurisdiction. Therefore, the instant writ petition is bereft of any merit and the same is accordingly dismissed in *limine*.

18. No other point has been urged.

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

(HARSH BUNGER)
JUDGE

31.10.2023
Himani

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