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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 09.10.2023

Raj Kumar Chaurasia

....Petitioner

Versus

The Presiding Officer, Labour Court-II, Gurgaon
and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. D.S. Patwalia, Senior Advocate assisted by
Mr. A.S. Chadha, Advocate
for respondent No.2.

HARSH BUNGER, J.

1. Petitioner (Raj Kumar Chaurasia) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in nature of Certiorari for quashing impugned award dated 09.01.2015 (Annexure P-6) passed by the learned Industrial Tribunal-cum-Labour Court-II, Gurgaon (hereinafter 'the Tribunal'), 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 by the petitioner for directing respondent No.2 to reinstate the petitioner in service and to grant other consequential benefits.

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2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by serving a demand notice (Annexure P-4) and the said dispute was referred for adjudication to the Tribunal below. Petitioner claimed that he was appointed as a technician trainee on 17.09.2007 and was getting a salary of Rs.12,000/- in hand after all legal deductions. Petitioner claimed that the Management (Suzuki Powertrain India Ltd.) forcibly and fraudulently took his resignation on 20.12.2010 and stopped his entry at the gate. Petitioner claimed that during the course of his services since 17.09.2009 up to 20.12.2010, his work and conduct was found satisfactory and there was no complaint against him by any person. It is stated that the action of the Management i.e. taking his resignation forcibly and fraudulently was illegal and unjustified and contrary to the provisions of Industrial Disputes Act, 1947 (hereinafter '1947 Act'), accordingly, the petitioner prayed that he be reinstated in service with full back wages and continuity of service.

3. The aforesaid claim of the petitioner was contested by respondent No.2-Management on the plea that the petitioner was engaged only as a trainee and he was not a workman nor was he ever employed as such. It was stated that in terms of the provisions of Section 2 (A) of the 1947 Act, reference could be made only in respect of termination, dismissal, discharge or retrenchment by the employer and not regarding the resignation and therefore the reference was not tenable. On merits, the respondent No.2-Management admitted that the petitioner was engaged as a trainee on 17.09.2007 and it was clarified that the petitioner was drawing a stipend of Rs.7,610/- per month. It was categorically stated by the respondent No.2-Management that during the period of training, the petitioner had

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submitted a letter of resignation on 16.12.2010, which is stated to have been submitted voluntarily. Respondent No.2-Management claims that the aforesaid resignation submitted by the petitioner was processed by the Management and the same was accepted, which was conveyed to the petitioner on 20.12.2010 and thereafter he received his full and final dues on 20.12.2010 itself by accepting a cheque to that effect on the said date. The allegation of the petitioner that the Management had taken forcible resignation from the petitioner was denied. The other averments made by the petitioner were also denied by respondent No.2-Management, accordingly, prayer for dismissal of the claim of the petitioner was made.

4. On the basis of the pleadings of the parties, the Tribunal below framed the following issues:-

*“(1) Whether the termination of the services of workman is illegal and unjustified, if so to what effect?
OPW*

(2) Relief.”

5. In order to prove his case/claim, the petitioner/workman-Raj Kumar Chaurasia, examined himself as PW-1 and also examined one Bhim Sain as PW-2. Petitioner-workman relied upon the documents Ex. W-1 to Ex. W-6 in his documentary evidence.

On the other hand, the respondent-management examined one Sanjay Narang as MW-1 who tendered affidavit as Ex. MW1/A and further proved on record the copies of the documents Ex.M-1 to Ex.M-9.

6. Upon considering the material/evidence available on the record, the Tribunal below rejected the claim of the petitioner by holding as under:-

“11. After hearing learned Authorized Representatives from both sides, I am of the view that the reference is liable to be answered against the workman. No doubt the workman was

appointed as Technician Trainee by the respondent company and as per Ex. W-2, his name was liable to be considered for appointment in regular service at the entry level on successful completion of training & suitability. The period of training of workman could have been further extended at the discretion of management. There is nothing on the file to show that the petitioner was given a status of 'workman' by the respondent because as per section 2 (00) (b) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein would not amount to terminate from services. Thus, the undergoing of training by the petitioner ipso facto could not confer upon him status of employee viz a viz management. The petitioner has also admitted in his deposition that after his training period ending by 16.12.2010, he has not moved any application to the management to give him employment. The petitioner had not made any complaint to any authority that management has obtained forceful resignation from him. He admits that his writing is there on the resignation letter Ex.M-2. If the resignation letter Ex.M-2 was already prepared by the management prior to his coming in the company, as was his version, then his writing would not have been found thereon on Ex.M-2 resignation letter. Moreover, he has also admitted that on Ex.M-3 at portion A and B, the date are filled by him. Thus, 16.12.2010 the date of resignation has been filled in by the petitioner and nobody else. If the resignation of the petitioner was obtained forcible by the management on 20.12.2010 then he could have filled in 20.12.2010 as date instead of 16.12.2010 at point B. All this shows that the resignation was voluntary submitted by the petitioner on 16.12.2010 and that is why he has given/mentioned this date on Ex. M-3 at Mark-B. Not only this, but after submitting the resignation he got encashed the cheque Exd..M-5 which was given to him by the company for

full and final settlement of his dues. Had there been any forcible extraction of resignation of the petitioner, he would not have encashed this cheque. Thus, it appears to me that after tendering of resignation during training period, the petitioner came up with a version that the management has obtained forcible resignation from him. He had not tried to request the management to put him in the employment of the company till for the first time he served legal notice upon the company was on 28.5.2011 after about five months of submission of resignation. Thus shows that the petitioner is trying to use the circumstances of voluntary resignation to his own advantage.

12. Moreover, Ex. M-9 Standing Order clearly shows that the trainee will not have any right in the employment of the company. There is nothing on the file to show that status of full fledged employee was ever conferred upon the petitioner.

13. So far as the story of coming to the company on 20.12.2010 is concerned, I am of the view that this version of the petitioner can also not be believed. Mark-B document is nothing more than reservation of a ticket on 17.12.2010, but actually whether the petitioner performed the journey on 17.12.2010 could have been verified from the destination record as is mentioned in Mark-B. But that destination record has not been summoned by the petitioner in order to prove that on 17.12.2010 he was performing the journey by Padmawat Express from Delhi to Pratapgarh (UP). Same thing has been stated on oath by PW-2 Bhim Sain, Commercial Inspector. PW-2, in his cross-examination, has stated that from Mark-A and Mark-B it can not be ascertained that the person, who has got issued ticket actually performed the journey the date mentioned on ticket. Thus, the present case can not be said to be termination of services by the management, rather it is a case of self-resignation. Even if this aspect is kept aside then also as per Ex. W-2 offer of appointment the petitioner was appointed as Technician Trainee in the company. He was to undergo training for three years and only after successful completion of

training, his name was liable to be considered for regular employment at the entry level. Prior to that point it is not possible to say that petitioner had acquired the status of regular employee. The termination of his services prior to according status of regular employee was possible on account of non-renewal of contract of employment or expiry or termination of contract. Thus, the management was not bound to accord the status of employment upon workman and they could have easily terminated his services. In the present case also the services of the petitioner were terminated in that manner & the petitioner kept mum for five months after completion of training period till he served legal notice Ex.M-5 upon the management through his Authorized Representative. Prior to service of legal notice, he made no request to the company to give him employment. Thus, the present case is in which termination of the services of the petitioner was possible on account of terms and conditions of his appointment which would not fall under the definition of retrenchment even as per section 2 (oo) (b) of the Act. So, issue No. 1 is decided against the petitioner and in favour of the respondent.

RELIEF (ISSUE No.2)

14. In view of the findings recorded on issue No. 1, I hold that the petitioner to be not entitled to any relief and, hence, this reference is answered against the petitioner.”

7. Being aggrieved against the aforesaid award, the petitioner has filed the instant Writ Petition before this Court.

8. Learned counsel for the petitioner submits that the Tribunal has erred in law and fact for dismissing the claim of the petitioner. It is submitted that the petitioner was made to submit his resignation against his will by forcing him to write a resignation letter by extending threats to him. It is further submitted that the petitioner had completed his three years of training and in case he was allowed to continue his training, then he was to

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be considered for regular employment as per the terms of his engagement. Petitioner claims that he was interviewed on 06.12.2010 by the respondent No.2-Management for considering his case for regularization however, the Management opted the method of obtaining forceful resignation from the petitioner. Petitioner states that in fact his leave was sanctioned from 08.12.2010 up to 16.12.2010 and therefore, there was no occasion for him to come on duty on 16.12.2010 to give his resignation. It is also submitted that in terms of Clause 4 of the Appointment letter, in case the trainee wishes to resign, then he shall have to serve a notice to the Management and in lieu of the notice period, the trainee shall have to serve for one month or pay one month stipend including allowances. It is therefore submitted that the resignation of the petitioner was not voluntary but was obtained fraudulently. Learned counsel submits that the Tribunal below has erred in holding that the resignation submitted by the petitioner was voluntary. With the aforesaid submissions, learned counsel for the petitioner prayed that the impugned award be set aside and the necessary instructions be issued for reinstating the petitioner and for granting other consequential benefits.

9. Per contra, learned Senior counsel appearing for respondent No.2-Management has opposed the prayer made by learned counsel for the petitioner by submitting that the Tribunal below has appreciated the evidence/material available on the record and has rightly dismissed the claim of the petitioner. It is submitted that the petitioner had voluntarily submitted his resignation and also settled his full and final accounts, however, he has wrongly raised an industrial dispute only to harass respondent No.2-Management. It is further submitted that the petitioner was only a trainee and was not a workman in terms of the provisions of 1947 Act. It is

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submitted that the petitioner has joined as a trainee for a specified period with express terms and conditions and the respondent No.2-Management could have terminated the training of the petitioner at any time on or before the completion of the training period without assigning any reason. Learned counsel submits that the petitioner was receiving stipend as a trainee when he tendered his resignation on 16.12.2010, therefore, being a trainee, the provisions of Section 2(A) of the 1947 Act were not available to the petitioner as he was neither discharged nor dismissed or retrenched from services. On the basis of the aforesaid submissions, it is submitted that the writ petition is bereft of any merit and prayer has been made for dismissal of the same.

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

11. Admittedly, the petitioner was engaged as a trainee by respondent No.2/Management on specific terms and conditions. The relevant extract of the offer of appointment letter dated 17.09.2007 (Annexure P-1) as a “Technician Trainee”, given to petitioner, reads as under:-

“You are hereby appointed as a Technician Trainee in Suzuki Powertrain India Limited, w.e.f. 17-Sep-07. Your appointment is subject to your antecedent verification based on information provided by you & successful passing of trade test and submitting of Final Apprenticeship Certificate within one year. Your initial appointment shall be that of a Technician Trainee for a period of 3 years on successful completion of your training and subject to your being found suitable for employment in the company, you may be considered for appointment in regular service at the entry level.

Other terms & conditions applicable to you during the period of training are attached as Annexure-1.”

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The relevant terms and conditions of appointment as Technician Trainee, as contained in Annexure I attached to the offer of appointment letter dated 17.09.2007 reads as under:-

“1. Initially, you will undergo training for a period of three years from the date of your joining. The training is liable to be extended or terminated, if necessary, depending upon your performance during the training period.

2. During the first year of training you will be entitled to

i. Stipend of Rs.4,050/- per month.

ii. Allowances:

a. House Rent Allowance at the rate of Rs.1000/- per month

b. Special allowance at the rate of Rs.1060/- per month

During the period of training you will be entitled to Contributory Provident Fund on Stipend. You will also be entitled to other benefits as applicable or in force in the company from time to time.

3. At the end of the first year, if your performance is found satisfactory, you would be moved to second year of training with a suitable increase in stipend which will be based on your performance. Similarly on the successful completion of the second year of training, you would be moved to the third year of training with an increase which would be based on your performance.

During the three-year period of training, your performance as a Trainee will be evaluated at the end of each 6 months period from the date of your joining. If during the training period or at the end of such 6 monthly evaluation period, in case your progress is rated unsatisfactory, the Company at its discretion may either terminate your training or extend the same for a maximum period of 9 months, not exceeding 3 months at a time. Thus, please note that your training is liable to be terminated forthwith on account of unsatisfactory progress either during

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the initial period of training, or at any time during or at the end of such extended period.

11. During the period of your training you will be governed by all rules and regulations of service and Certified Standing Orders which are now in force or which may be framed in future and your acceptance of this appointment carries with it your agreement to abide by all rules and regulations.”

The Certificate of Training (Annexure P-8) issued to the petitioner on 16.12.2010, reads as under:-

“ Certificate of Training

This is to certify that Mr. Raj Kumar Chaurasia S/o Sh. Rambaran Chaurasia has undergone on training with us as TT-3 in Sleeve & Final Gear Machining department from 17th September '2007 to 16th December '2010.

He has cleared all his dues with the company.

We wish him all success in his future endeavours.

For SUZUKI POWERTRAIN INDIA LIMITED

Sanjay Narang

Sr. Manager-HR”

A perusal of the aforesaid Annexures P-1 and P-8 leave no manner of doubt that the petitioner was appointed as a “Technician Trainee” for a period of 3 years and was not given any regular appointment. It is clearly stipulated in the terms of appointment of petitioner that he would be considered for appointment in regular service on successful completion of training. If the aforesaid clauses are read together, it is clear that the petitioner was under probation during the relevant time and if his services were not satisfactory then the same could be put an end to. In somewhat similar circumstances, while considering a case of Trainee Service

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Technician, in the case of *M/S Kalyani Sharp India Ltd. V. Labour Court No.1, Gwalior, 2002 (2) S.C.T. 609*; Hon'ble Supreme Court has not extended the benefit of Industrial Disputes Act to such Trainee Service Technician. Hon'ble Supreme Court held as follows:-

"The respondent No. 2 (hereinafter referred to as the respondent) was employed as Trainee Technician on the Establishment of the Appellant by an order sent to him on February 29, 1989 which contained inter alia the following stipulations:

"You will be on training for a period of one year from the date of joining. You are requested to join on or before 1-3-1989. During this period the Management may at its discretion withdraw the above facility of providing training to you at any time without assigning any reason whatsoever.

You will be considered for regular employment on satisfactory completion of your training."

2. *The respondent was working as a Trainee Service Technician at Gwalior. He was transferred to work at Pune. On 28-1-1990, a letter was sent to him to the effect that he had absented himself from work from August 10, 1989 when he left Pune and had not returned to work at all. Therefore, in terms of appointment order withdrew the facility of training w.e.f. January 31, 1990. The respondent raised an industrial dispute. The Labour Court which adjudicated the matter in favour of the respondent holding that he had worked for 240 days and termination of his services being contrary to provisions of Section 25F of the Industrial Disputes Act (in short 'the Act'), is bad and directed his reinstatement with back wages. That award was challenged before the High Court. The High Court dismissed the writ petition, observing that the respondent though a probationer was entitled to the protection of Section 25F of the Act. Hence this appeal.*

3. *Shri V.A. Mohta, learned senior Advocate appearing for the appellant relied on the provisions of Section 2 (oo) proviso (bb) of the Act to contend that the services of a workman could be put to an end to in terms of the employment; that in giving effect to those terms if the same had ended in termination of his services it would not amount to retrenchment and, therefore, would not attract Section 25F of the Act. He derived support to his contention from the principles set out in the decisions of this Court in **Escorts Ltd. v. Presiding Officer, 1997(11) SCC 521** and **M. Venogopal v. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P., 1994(1) SCT 858 (SC) : 1994(2) SCC 323.***

4. *Ms. Malini Poduval, learned counsel appearing for the respondent submitted that the contention now raised that the termination of services of the respondent is not affected by Section 25F of the Act had not been urged either before the Labour Court or before the High Court much less is it raised in the memorandum of grounds in approaching this Court and this contention has been put forth now in the course of the arguments. Therefore, the appellant should not be permitted to raise this ground at this belated stage of the proceedings. On merits also she submitted that when the respondent had undergone the necessary training and if the ground on which his services were sought to be terminated is that, he had absented himself for a particular period, the proper course for the appellant would be to issue a notice and hold an inquiry and thereafter take appropriate action in the matter.*

5. *So far as the first contention raised on behalf of the respondent is concerned, we may state that the argument emerges from the documents upon which the respondent has relied upon before the Labour Court to show about his employment and the termination of his service. No fresh investigation of facts is required. It is a case of simple application of law in the matter. Hence the preliminary objection is rejected.*

6. *The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end to at any time without assigning any reason whatsoever, and his services could be regularised only on satisfactory completion of his training. If these clauses are read together it is clear he was under probation during the relevant time and if his services are not satisfactory the same could be put an end to. It is clear that the respondent had been appointed a Trainee Service Technician and for a period he had to undergo the training to the satisfactory during that period the facility could be withdrawn at any time and he would be regularised only on completion of his training. Thus the respondent's services were terminated before expiry of the probationary period. In such a case question of issue of notice before terminating the service as claimed by the respondent does not arise. Escorts' case (supra) is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the High Court affirming the award made by the Labour Court is set aside and the claim made by the respondent is dismissed...*

12. In view of the aforesaid authoritative judicial pronouncements, there is no manner of doubt that the petitioner being a trainee was not entitled to invoke the provisions of the 1947 Act. Furthermore, it is the petitioner's own case that the respondent No.2/Management has forcibly taken his resignation. However, it would be manifest from the perusal of the findings returned by the Tribunal below that the petitioner had failed to prove on record that the resignation submitted by him was in fact under some threat or coercion or undue inference or pressure. I am in full agreement with the findings returned by the Tribunal below which is based upon appreciation of evidence available on record.

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13. Furthermore, 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

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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.*

14. In view of the above discussion, there is no scope for any interference in the impugned award by the Tribunal below in exercise of its writ jurisdiction, accordingly, the instant Writ Petition fails and the same is dismissed.

15. All pending applications (if any) shall stand closed.

09.10.2023
Himani

(HARSH BUNGER)
JUDGE

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| 1. Whether speaking/reasoned | : | Yes/No |
| 2. Whether reportable | : | Yes/No |