

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CM-20289-CWP-2023 in/and
CWP-25816-2014
Date of Decision: 01.12.2023

Ram Parsad

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad and
another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Manish Jain, Advocate
for the petitioner.

Mr. Manu K.Bhandari, Advocate
for respondent No.2.

HARSH BUNGER J.

CM-20289-CWP-2023:

Prayer in the present application is for placing on record the
Certificates of Registration as Annexures A-1 and A-2.

For the reasons mentioned in the application, the Certificates of
Registration (Annexures A-1 and A-2) are taken on record, subject to all just
exceptions.

Application is accordingly disposed of.

CWP-25816-2014:

1. Petitioner (Ram Parsad) has filed the instant writ petition under Articles 226/227 of the Constitution of India in the nature of *Certiorari* seeking setting aside of impugned award dated 18.10.2012 (Annexure P-7) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad (hereinafter to be referred as 'the Tribunal'), whereby the reference of industrial dispute raised by petitioner, regarding termination of his services, has been answered against him.

2. Briefly, petitioner raised an industrial dispute, regarding termination of his services, which was subsequently referred to the Tribunal below, for adjudication.

3. Petitioner claimed that he was appointed by respondent No.2-M/s Escorts Limited (hereinafter to be referred as 'respondent No.2-Management') as a Dispenser on 26.02.2000, for doing the job in dispensary situated at Railway Equipment Division, where he worked up to 31.08.2000; and thereafter he was transferred to Escorts Farmtrack Agriculture Machinery Group No.2, Sector-13, Faridabad, where his designation was changed as Pharmacist, and he worked there continuously up to October, 2001. It was further claimed that when petitioner asked for regularisation of his services then respondent No.2-Management got annoyed and started reflecting his presence in the Register of M/s S.P. Enterprises, Sector-15, Faridabad, who, according to the petitioner, had no concern with him. It was stated by petitioner that his services were again transferred in Railway Equipment Division, w.e.f. 01.11.2002; and his new designation was assigned as 'Trainee'. Petitioner claimed that he worked there up to 31.07.2003; and no transfer letter or fresh appointment

letter was ever given to him. It was claimed by petitioner that on 01.08.2003, since he was not feeling well, so he sent his leave application through Fax, however, when he reported for duty on 02.08.2003, he was not taken in service and his services were terminated in an illegal and arbitrary manner and in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act'). Accordingly, petitioner prayed for reinstatement in service with continuity thereof and full back wages.

4. The aforesaid claim of petitioner was contested by respondent No.2-Management on the plea that petitioner had not come to the Court with clean hands and had suppressed the material facts that he was engaged as a Trainee on a monthly stipend and upon expiration of his training period, his engagement automatically came to an end. Respondent No.2-Management raised a categorical plea that petitioner was guilty of making false statement regarding date of alleged employment, and therefore, his claim was not maintainable. Accordingly, prayer was made for dismissal of the claim statement of petitioner.

5. From pleadings of the parties, following issues were framed by the Tribunal:-

“(i) Whether the termination of services of Sh. Ram Parsad was justified or not? If not whether he is entitled to any relief.

(ii) Relief.”

6. Thereafter upon considering the material available on record, the Tribunal below answered the reference against the petitioner vide impugned award dated 18.10.2012 (Annexure P-7) by holding that petitioner was not entitled to any relief against respondent No.2-Management.

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 below has erred in law and fact in rejecting the claim of petitioner despite the fact that the petitioner had worked for more than 240 days in the year preceding the date of termination of his services, and therefore, he was entitled to protection under Section 25-F of the 1947 Act. It is further submitted that Tribunal has failed to consider and appreciate the evidence available on record. Learned counsel submits that respondent No.2-Management had clearly admitted the working of petitioner with them from 28.02.2000 to 26.08.2000 then from 01.07.2001 to 31.01.2002 and from 01.03.2002 to 31.10.2002. It is submitted that Tribunal below has wrongly held that there was no termination of services of the petitioner as his training period had come to an end with efflux of time.

With the aforesaid submissions, learned counsel for the petitioner has prayed for setting aside the impugned award dated 18.10.2012 (Annexure P-7) and issuance of necessary directions to respondent No.2-Management for reinstatement of petitioner in service along with other consequential benefits.

9. Per contra, learned counsel for respondent No.2-Management submits that the Tribunal below has passed a well reasoned and justified order, which does not call for any interference by this Court. It is submitted that petitioner did not come to the Court with clean hands and had concealed the material facts that he was engaged as a Trainee and his training period had lapsed on account of efflux of time. While referring to written statement filed on behalf of respondent No.2-Management to the instant writ petition, learned counsel for respondent No.2-Management submits that the petitioner was engaged on purely temporary basis as Dispenser on 28.02.2000, at daily

wage @ Rs.77/- per working day at the industrial undertaking of Escorts Limited, namely Railway Equipment Division situated at Plot No.115, Sector-24, Faridabad; and he worked intermittently till 26.08.2000; and thereafter, his period of employment automatically came to an end on 26.08.2000, on account of efflux of time, as borne out from Ex. M-7 to M-13. Learned counsel for respondent No.2-Management further submitted that petitioner was thereafter engaged as Pharmacist on 01.07.2001, in the Farmtrack Division situated at Plot No.2, Sector-13, Faridabad, again on purely temporary basis, at the rate of Rs.100/- per working day, where he worked intermittently till 31.03.2002; and his period of employment came to an end on 31.01.2002 by efflux of time, as established from Ex.M-14 to M-19. Learned counsel for respondent No.2-Management contends that petitioner was an employee of M/s Super Service, a registered manpower contractor; he was being paid wages at the rate of Rs.120/- per day; and his attendance and payment of wage records were maintained by M/s Super Service. It is further contended that period of petitioner's service with the said contractor was from 01.03.2002 up to 31.10.2002, as established from documents, being Ex. M-20 to M-25, produced before the Tribunal below. Learned counsel for respondent No.2-Management submits that as per Ex. M-1 to M-3, the petitioner had approached respondent No.2-Management for the position of Trainee, which was accepted by the Management and he was engaged as Trainee from 01.11.2002 on a monthly stipend of Rs.3,500/- for a period of six months; and petitioner was issued letter of joining dated 01.11.2002 (Ex. M-4) and letter of training dated 15.11.2002 (Ex. M-27). Subsequently, training period of the petitioner came to an end on 30.04.2003, however, on his request made vide letter dated

01.05.2003 (Ex. M-5), his training period was extended for a further period of three months in terms of letter dated 08.05.2003 (Ex. M-28). It is submitted that the training period of petitioner expired automatically by efflux of time on 31.07.2003, and in this regard, a letter of intimation along with covering letter dated 02.08.2003 (Ex. M-30) was sent by registered post to the last known address of petitioner.

It is, therefore, contended by learned counsel for respondent No.2-Management that there was no termination of services of the petitioner, given the fact that his training period automatically came to an end by efflux of time, and consequently, there was no question of any notice pay or retrenchment compensation or compliance of the provisions of the 1947 Act.

Learned counsel for respondent No.2-Management submits that disengagement/non-extension of training period, in the aforementioned circumstances, does not amount to termination of services, and accordingly, prayer for dismissal of the instant writ petition has been made.

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

11. In the instant case, the Tribunal below, while considering the claim of petitioner has returned the following findings:-

“..... The claimant was an employee of M/s Super Service a registered manpower contractor and was being paid wages at the rate of Rs.120/- per day. The attendance and payment of wage records of the claimant were maintained by M/s Super Service. The period of his employment with the said contractor was from 01.03.2002 to 31.10.2002. As per Ex. M5, the claimant was engaged as Trainee from 1.11.2002 by the respondent on a monthly stipend of Rs.3500/- P.M. for a period of 6 months and as such his period of training was to come to an end on 30.4.2003. Thereafter the claimant made a request

that his training be extended for a further period of 3 months and the same expired by efflux of time on 31.7.2003. Mark-A is the document written by claimant himself in which he has requested for extension of his training period for another six months.

9. Hence keeping in view the above I am of the opinion that there is no termination of services of claimant as his training period automatically came to an end with efflux of time. Hence there arises no eventuality for payment of retrenchment compensation or wages for one month notice. Non-extension of training period does not amount to termination of services and it is clear that there has been no termination of service of the claimant given the fact that his training period automatically came to an end with the efflux of time. A sum of Rs. 3500/- was being paid last to the claimant as a stipend and the same was not in the nature of salary. In view of the aforesaid circumstances there is no merit in the claim petition and hence issue no. 1 is decided against the workman and in favour of respondent.

Relief

9. In view of my findings while deciding issue no. 1 the claim fails and the reference is answered against the workman and in favour of respondent holding that the workman is not entitled to any relief against the respondent. No costs. Copies of award be sent to the authorities concerned and the file be consigned to records.”

A perusal of the above extracted findings would show that the petitioner was engaged by respondent No.2-Management as Trainee from 01.11.2002 on a monthly stipend of Rs.3,500/- per month for a period of six months and his training period came to an end on 30.04.2003. It has come on record that thereafter petitioner had requested for extension of his training period, which was accepted and the same was extended for a further period of three months, and subsequently, the same expired by efflux of time on

31.07.2003.

12. The finding returned by the Tribunal below to the effect that petitioner was engaged as a Trainee, is borne out from Ex. M-3, which is a copy of the Application Form submitted by the petitioner, and the following note has been made therein on behalf of the Company:-

“

FOR COMPANY’S USE ONLY

May be taken as Trainee w.e.f. 01-11-2002 at a stipend of Rs.3500/- (Rupees Three Thousand Five Hundred only) per month for one year.

Sd/-Sd/-Sd/-”

13. The aforesaid fact that petitioner was engaged as a Trainee is further fortified from document Ex. M-4, which is a Joining Report submitted by the petitioner himself. The same reads as under:-

“

ESCORTS LIMITED

Railway Equipment Division

Plot No.115 Sector-24 Faridabad-121005

JOINING REPORT-CUM-CHECK LIST

Certified that Mr. Ram Parsad S/o Mr. Chhidda Ram whose particulars are given below, has joined the Company. You are requested to take necessary action.

TOKEN NO.	:	94336
CC No.	:	3E21
DESIGNATION	:	Trainee
PERIOD OF TRAINING	:	6 Months
DEPARTMENT	:	Dispensary
ADDRESS	:	H.No. 1017, F-Block Sanjay Colony Sector-23 Faridabad
GRADE	:	Nil
G. Code	:	Nil
STIPEND	:	Rs. 3500/-
DATE OF JOINING	:	01-11-2002

APURVA
2024.02.16 16:16
I attest to the accuracy and
authenticity of this document/judgment
High Court, Chandigarh

Commencement of Training

REPORT FOR DUTY TO : Dr. Y.P. Malhotra

I, Ram Parsad S/o Chhidda Ram have reported for duty on 01-11-2002.

Sd/-

Ram Parsad

Signature/Thumb Impression of Candidate

The above signature of the candidate has been verified with that on the PP form and found correct.

Sd/-

Personnel Deptt.

RECORDS

SECURTY Sd/-

TIME OF OFFICE/ESI, PF

P.C Sd/-

This copy is to be retained in P. File"

14. Further, letter dated 01.05.2003 written by the petitioner himself is on record as Ex. M-5, whereby he had sought for extension in his training period beyond 30.04.2003.

15. A perusal of the above referred documents, i.e. Ex. M-3 to M-5, would show that petitioner was appointed as a Trainee and not given any regular employment. In somewhat similar circumstances, while considering the case of Trainee Service Technician in "***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...”

16. In view of the aforesaid authoritative judicial pronouncement, there is no manner of doubt that the petitioner being a trainee was not entitled to invoke the provisions of the 1947 Act and I am in full agreement with the findings returned by the Tribunal below, which are based upon appreciation of evidence available on record.

17. 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 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.

18. In view of the above discussion, there is no scope for any interference in the impugned award passed by the Tribunal below. Accordingly, the instant writ petition fails and the same is dismissed.

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

01.12.2023
Apurva

(HARSH BUNGER)
JUDGE

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