

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19236-2022 (O/M)

Date of decision : 07.12.2023

Dalbir

..... Petitioner

Versus

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

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Lalit Mohan Barara, Advocate
for applicant-petitioner.

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HARSH BUNGER, J.

CM-18210-CWP-2023

Application is allowed, as prayed for and Experience
Certificate (Annexure P-2) is taken on record, subject to all just exceptions.

CWP-19236-2022

1. Petitioner (Dalbir) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the impugned Award dated 27.09.2019 (Annexure P-1), passed by the Industrial Tribunal-cum-Labour Court-I, Faridabad (hereinafter referred to as 'the Tribunal'); whereby the industrial dispute raised by the petitioner regarding termination of his services by respondent No. 2 (hereinafter referred to as 'respondent-Management'), has been answered against him.

A further prayer has been made by the petitioner for directing respondent-Management to reinstate him in service with continuity and full back wages.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication to the Tribunal below. As per claim statement, petitioner stated that he was appointed as an Application Engineer on 04.01.2013 and since then, he has been doing his job with entire satisfaction. The petitioner alleged that his wages were not paid by respondent-Management on the pretext that he will be paid the entire due wages as and when required by the petitioner at the time of his marriage. The petitioner stated that his marriage was solemnized on 25.05.2014 and prior thereto, he made request to respondent-Management to pay his due wages, however, the matter was put off on one pretext or the other on the ground that its financial position was not good and assured that the petitioner would be paid his due wages in the month of September, 2014. The petitioner claimed that in September, 2014, he again requested respondent-Management to release payment, however, the same was not done and subsequently, his services were terminated on 07.09.2014 in an illegal and arbitrary manner. The petitioner stated that he was getting Rs. 25,000/- per month plus perks at the time of his termination. Accordingly, the petitioner prayed for reinstatement in service and other consequential benefits.

3. The aforesaid claim of the petitioner was contested by respondent-Management wherein a categorical stand was taken that there was

no relationship of employee and employer between the petitioner and respondent-Management. The claim of the petitioner was denied by respondent-Management and prayer was made for dismissal of his claim.

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

- “1. Whether the termination of the services of workman is illegal ? If so, to what relief he is entitled ? OPW*
- 2. Whether the reference is not maintainable ? OPW*
- 3. Relief.”*

In support of his claim, petitioner himself appeared as WW-1 and tendered documents Ex.W-1 and Ex.W-2 and Mark-WX.

On the other hand, respondent-Management examined Gagan Sharma as MW-1 and tendered documents Ex. R-1 to Ex. R-10. Respondent-Management also examined Rahul Sharma as WW-2 and tendered documents Ex. R-2/1.

5. Upon considering the material/evidence available on record, the Tribunal below rejected the claim of the petitioner, vide impugned award dated 27.09.2019 (Annexure P-1).

6. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court.

7. I have heard learned counsel for respective parties and have also perused the paperbook with their able assistance.

8. In the instant case, respondent-Management had disputed the relationship of employee and employer between petitioner and respondent-Management. It is well settled law that the onus to prove existence of

relationship of employer and employee between the parties is upon the workman. In *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors.*, (2004) 3 SCC 514, Hon'ble Supreme Court held as under:-

“47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Others, 1973 LIC 398, the Kerala High Court held :

"The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship."

49. In Swapan Das Gupta and Others. v. The First Labour Court of West Bengal and Others, 1975 LIC 202, it has been held :

"Where a person asserts that he was a workmen of the Company, and it is denied by the company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse...”

It is also well settled law that the onus to prove that the workman has rendered continuous service in terms of Section 25-B of 1947 Act i.e. the workman has worked under Management for 240 days in 12

months preceding the date of termination is also on the workman. It is further well settled that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. In this regard, reference can be made to the case of ***Municipal Corpn. v. Siri Niwas, 2004(4) S.C.T. 211 and Surendranagar District Panchayat v. Dahyabhai Amarsinh, 2005(8) SCC 750.***

9. The Tribunal below, has returned the following findings :-

“14. Thus onus is upon the claimant to prove that there exists relationship of employer and employee between the parties. To prove that claimant was appointed as Application Engineer by the respondent on 04.01.2013 claimant has mainly relied upon his own oral evidence and certificate Ex.W-2. Claimant himself appeared in the witness box as WW-1 and tendered affidavit Ex.WW-1/A in which he reiterated the averments made in the claim statement on oath. He has also placed on file certificate Ex.W-2 in which it is certified that the claimant was employed with respondent company as Application Engineer from 04.01.2013 till 07.09.2014. It is pleaded by the claimant that certificate Ex.W-2 was issued by respondent. Respondent although admitted that certificate Ex.W-2 was issued by respondent but submitted that claimant was friend of Sh. Rahul who was partner of Gagan Sharma proprietor of respondent company and due to friendly circle and in good faith certificate Ex. W-2 was issued to the claimant so that he could get a good job on the basis of

experience certificate. Gagan Sharma proprietor of respondent company appeared as MW-1 and he also so stated in his evidence. Respondent has also examined Rahul Kumar as MW-2 and he also stated that Dalbir claimant was his friend and used to come to them and worked with him on commission basis as he was also working in the other other company. He also stated that Gagan Sharma proprietor of respondent company gave experience certificate dated 07.09.2014 to the claimant on his asking and claimant never worked with respondent company as employee. Respondent further placed on file documents Ex. R-6 which was taken by respondent company through RTI. Ex. R-6 is the information taken through RTI regarding the enquiry conducted by the police on the complaint given by the present claimant. Claimant Dalbir file the complaint with the police alleging that respondent did not pay his salary for 20 months amounting to Rs. 5,00,000/-. On 26.04.2017 when he asked for his salary Rahul abused him. Again on 27.04.2017 when he went to the company and asked for his salary Gagan Sharma abused him and also gave castiest abuses to him. On the said complaint enquiry was conducted by ACP Central, Faridabad and it was found that there was some dispute regarding money transactions. In the enquiry report it was also mentioned that previously Dalbir Singh claimant, Gagan Sharma and Rahul Kumar were friends and used to work in the same company. Thereafter, Gagan Sharma left the job and started his own company and Rahul also started working with him on commission. Dalbir also started working with Gagan Sharma on part time basis in the

year 2013 and at that time he was working in a company at Noida (UP). When Dalbir received sufficient profit he left the job from Noida company and started working with Gagan Sharma on commission basis. During said period Dalbir claimant had a deal with some big company and thereafter claimant Dalbir stopped working with Gagan Sharma from June, 2014. Respondent further placed on file employee code of Dalbir claimant as Mark-WX to prove that till 30.06.2013 claimant Dalbir worked with another company i.e. M/s Uflex Company. Claimant appearing as WW-1 admitted his name, code number, date of birth and date of joining as correct but denied that date of his leaving is wrongly mentioned in document Mark-WX but he did not state the date on which he left the job from M/s Uflex Company and therefore reasonable inference can be drawn that he had left the service of M/s Uflex Company on 30.06.2016 and this also supported by police report.

15. Further it is also pertinent to mention that claimant alleged that his services were illegally terminated on 07.09.2017 but he himself relied upon experience certificate Ex. W-2 which is dated 07.10.2014. If services of claimant had been illegally terminated then there was no reason for respondent to issue experience certificate to him on 07.10.2014 particularly considering the fact as alleged by the claimant that his salary for 20 months were not paid to him.

16. It is also worthwhile to mention that previously claimant also moved an application dated 17.04.2015 before Assistant Labour Commissioner, Karnal and

also sent legal notice dated 20.04.2015 but in none these claimant prayed for taking him back on duty in notice dated 20.04.2015 it was mentioned that he left the service when salary for 20 months were not paid to him although later on claimant sent another notice stating that he wrongly mentioned in notice dated 20.04.2015 that he himself left the job and in fact his services were illegally terminated. Further it is also highly in probable that claimant would not raise any dispute if he was employee of respondent company and not paid salary for 20 months particularly considering the fact that even at the time of his marriage his alleged due salary was not paid to him and also that he waited for about six months for moving an application before Assistant Labour, Karnal and sending legal notice to the respondent. Therefore, considering the entire facts and circumstances as discussed above the explanation given by the respondent for issuing of experience certificate Ex. W-2 appears to be more probable and not sufficient to prove that claimant was employee of respondent. It appears that being known to each other Dalbir claimant worked with Gagan Sharma and Rahul Sharma on commission basis and there appears to be some dispute with regard to money transaction.

17. Regarding argument raised by learned AR for claimant/workman that respondent failed to place on file relevant record regarding attendance, wages etc. and therefore adverse inference shall be drawn against the respondent is not tenable as initially onus to prove employer and employee relationship if upon the workman and claimant/workman while leading his

evidence made no effort to call the record from the respondent company. Therefore, under facts of present case no adverse inference can be drawn against the respondent for not producing the record particularly considering the fact that MW-1 Gagan Sharma stated in his evidence that he is working alone in the respondent company and has not engaged any worker and claimant/workman also failed to name even a single worker who is/was working in the respondent company.

18. Therefore, in view of above discussion claimant fails to prove that he was employee of respondent company. Hence, issue no. 1 is decided against the claimant.”

A perusal of the aforesaid findings returned by the Tribunal below would manifest that petitioner had failed to prove on record that he was an employee of respondent-Management. Rather, it has been held that petitioner had worked with Gagan Sharma and Rahul Sharma (partners of respondent-Management) on commission basis and there appears to be some dispute regarding money transactions. Thus, once, the petitioner has failed to prove the relationship of employee and employer between the parties, accordingly, he was not entitled to any relief. Further, the Tribunal below has not drawn any adverse inference against respondent-Management for not producing the relevant record regarding attendance, wages etc.

10. In this regard, it is apposite to state 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 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 (***See: "Surendranagar District Panchayat Vs. Dityabhai Amarsingh" 2005(8) SCC 750***).

11. 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 the 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 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..."

12. 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.*

13. No other point has been urged.

14. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for any interference in the impugned Award dated 27.09.2019 (Annexure P-1) by this Court, while

exercising its writ jurisdiction. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

07.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No