

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

CWP-6950-2023 (O&M)
Date of Decision: 05.09.2023

SHREE GANESH

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-II, FARIDABAD AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Abhinav Kalia, Advocate
for the petitioner.

HARSH BUNGER, J.

1. Petitioner (Shree Ganesh) 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 of the impugned Award dated 26.03.2021 (Annexure P-4) passed by the learned Industrial Tribunal-cum-Labour Court-II, Faridabad (here-in-after referred to as 'the Tribunal'); whereby, the reference of industrial dispute raised by the petitioner regarding termination of his services by respondent No.2-M/s Hindustan Silk Mill (here-in-after called as 'respondent-Management') has been answered against him.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Tribunal below. The petitioner claimed that he was appointed by the respondent-Management at the post of Helper on monthly salary of Rs.320/-

in the year 1984; however, his posting was shown since the year 1987. Petitioner claimed that his last drawn salary was Rs.9,697/- p.m. and he was made to do duty for 12 hours. Petitioner stated that his juniors were promoted and they were given salary of Rs.10,200/- per month. Petitioner claimed that he raised an objection with Labour Union and thereafter, he went to the Labour Court, where a compromise was effected with the assurance of promotion. Petitioner claimed that in the years 2007, 2009, 2012 and 2015, the respondent-Management had called him for work on gazetted leaves regarding which, an application was moved by the employees before the Labour Commissioner and an inspection was done by the Labour Department and a challan was issued to the Management. Petitioner alleges that the respondent-Management deducted ESI and PF contributions from his salary and on 27.01.2015, the petitioner moved an application regarding his salary and overtime to the Labour Officer and then also, a compromise was effected. Petitioner states that the respondent-Management had shown the company to be going in losses and they started retirement of its employees since 18.11.2015 and issued notice for closure of the company on 06.01.2016. Thereafter, a compromise is stated to have taken place before the Deputy Labour Commissioner, Faridabad, according to which, the Management had to give salary of 26 days but the Management gave salary of only 15 days and the dues of 17 days were given instead of 30 days. It is stated that the said compromise was not accepted by the petitioner; whereupon, he was threatened by the Management that if he does not accept the cheque then he would not get even a single penny. Petitioner maintains that he received Cheque No.821528 dated 22.02.2016 of Rs.3,80,883/- under the pressure of the Management and even his

signatures were taken on some blank papers and vouchers by the Management. It is the case of the petitioner that the respondent-Management is running its unit by changing its name to “Poonam Textile” and has shown Sh. Anil Bhatia, as its Director; whereas, previously the said company was running in the name of M/s Hindustan Silk Mill and the said company has not been closed or declared as sick unit. Petitioner alleges that the said company was closed only in documents and he had also moved a complaint dated 08.03.2016 to the Labour Department as well as police authorities; however, no action has been taken thereupon. Petitioner claims that his services have been terminated against the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short ‘the 1947 Act’). Accordingly, the petitioner prayed for his reinstatement with continuity of service and full back wages along with other benefits.

3. The afore-said claim of the petitioner was contested by the respondent-Management on the plea that the services of the petitioner were never terminated by the Management, rather the petitioner had collected his full and final dues including retrenchment compensation and gratuity etc. from the Management as the respondent-company had closed down its unit w.e.f. 05.03.2016 as per the provisions of the 1947 Act and the Management had also put up a notice dated 06.01.2016, informing all the employees including the petitioner that the factory would be closed down w.e.f. 05.03.2016 after working hours. It was stated by the Management that notices had also been sent to the Deputy Labour Commissioner, Faridabad as well as the Assistant Labour Commissioner, Circle-II, Faridabad and all legal dues were paid to the petitioner by the Management vide Cheque in the presence of the Labour leader and the petitioner had accepted the full and

final payment by appending his signatures. It is stated that the cheque given to the petitioner already stands encashed by him. On the merits of the claim, it was submitted by the Management that the petitioner was appointed on 12.05.1982 as Helper and his last drawn salary was Rs.8,879/- p.m. It was stated that the Management never asked the petitioner to do work for 12 hours in a day and if any extra work was to be done then he was paid overtime as per the provisions of the Factories Act, 1948. The various allegations made by the petitioner in the claim petition were denied by the Management in its reply. It was stated that the Management had closed down the Weaving Department w.e.f. 28.01.2016 by putting a notice dated 28.11.2015 and the copies of said notices were also sent to the Assistant Labour Commissioner, Circle-II, Faridabad and thereafter, another notice was put on 06.01.2016 to close down the complete unit w.e.f. 05.03.2016 and the copies of the notices were sent to the Deputy Labour Commissioner, Faridabad/Labour Office, Circle-II, Faridabad. It is the stand of the Management that all legal dues have been paid to all the employees of the Company including the petitioner, who had taken their full and final, leaving no dispute whatsoever. As regards the allegation that the company was running its unit under a different name i.e. M/s Poonam Textile Private Limited, it was stated that the said unit was a sister concern of M/s Hindustan Silk Mill, who had entered into an agreement dated 25.02.2016 with M/s Satyug Traders and they had no control or interference in the working of M/s Satyug Traders w.e.f. 01.04.2016 and the entire operations of the plant had been handed over to the proprietor of M/s Satyug Traders.

The Management maintained that they have not violated any provisions of the 1947 Act and since the petitioner has already collected his

full and final dues after the closing down of the unit, therefore the petitioner was not entitled to any relief.

4. The petitioner filed a rejoinder to the aforesaid written statement filed on behalf of the respondent-Management.

5. On the basis of the pleadings of the parties, the following issues were framed :-

“1. Whether the termination of the services of workman Sh. Shree Ganesh is illegal. If so, to what relief he is entitled? OPW

2. Whether the respondent had closed down its Unit w.e.f. 05.03.2016 as per provisions of the Industrial Disputes Act, 1947? OPM

3. Whether the workman had collected his full and final dues, as alleged? OPM

4. Whether this reference is not maintainable in the present form, as alleged? OPM

5. Relief.”

6. The parties led their respective evidence in support of their claims.

7. After considering the material/evidence available on the record, the learned Tribunal below, vide impugned Award dated 26.03.2021 (Annexure P-4), answered the reference against the petitioner.

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

9. Learned counsel for the petitioner submits that the Tribunal below has erred in law and facts in rejecting the claim of the petitioner without appreciating the pleadings as well as the material/evidence available on the record. Learned counsel further submits that the petitioner was forced to accept the amount on account of full and final settlement of his dues by

representing that the unit is being closed down, whereas, the unit is still working, although under a different name i.e. “M/s Poonam Textiles”. Accordingly, it is prayed that the impugned Award dated 26.03.2021 (Annexure P-4) be quashed and necessary relief be granted to the petitioner.

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

11. The learned Tribunal below has considered the arguments raised on behalf of the petitioner and upon considering the relevant material/evidence available on the record, the findings have been returned. As regards the plea of the petitioner that he was forced to accept the cheque for full and final settlement of his dues, the Tribunal below has observed that the petitioner, in his cross-examination, had admitted his signatures on Exhibit C-6, which is a copy of Cheque No.821528 dated 22.02.2016 and further admitted that he had received the cheque of Rs.3,80,883/-. Petitioner further admitted in his cross-examination that he had deposited the said cheque in his bank account by himself and the entire amount had been withdrawn by him for his expenditures; therefore, it is not liable to be believed that the petitioner had received a cheque of Rs.3,80,883/- from the respondent-Management under some pressure or force.

12. The learned Tribunal below has further held that the petitioner has not proved on record that he had received the cheque under any pressure of the Management or that the Management had obtained the signatures of the petitioner on any blank paper or voucher forcibly.

13. As regards the contention of the petitioner that he was given the representation that the unit was being closed down; however, the unit was

still running with the changed name as Poonam Textile, the Tribunal below has returned the following findings :-

“16. MW1 Sh. Ram Bahadur Yadav has testified in his affidavit Exhibit MW1/A tendered by him in his examination-in-chief that less than 50 workers were employed by the management during preceding twelve months prior to the date of closure of the factory. Copies of attendance sheets from April, 2014 to March, 2015 are Exhibit MW1/1. The management had closed down the weaving department of factory w.e.f. 28.01.2016 by putting a notice dated 28.11.2015 on notice board and second notice dated 06.01.2016 was put on the notice board vide which the establishment was closed w.e.f. 06.03.2016 as per Section 25-FFA of the Act and it was also mentioned in the notice that every employee would get his closure benefit as per Section 25-FFF of the Act. Copies of notices dated 28.11.2015 and 06.01.2016 are Exhibits C-4 & C-5, respectively. Name of the workman is at serial No.2 on Exhibit C-5. Copies of notices were sent to Assistant Labour Commissioner, Circle-II, Faridabad.

No suggestion has been put to MW1 by learned Authorized Representative for the workman that Exhibit MW1/1 or Exhibit C4 or Exhibit C5 is false or fabricated.

*In case titled **Poonvasi and others (supra)**, it was held by the Hon'ble Bombay High Court that 'non-compliance of Section 25FFA of the Industrial Disputes Act, 1947 by giving 60 days notice for closing down an establishment will not render it illegal'.*

*In case titled **Maharashtra General Kamgar Union (supra)**, it was held by the Hon'ble Bombay High Court that 'if the number of workmen is less than 100 in an industrial establishment no permission will be required for its closure.'*

In view of the aforesaid law laid down by the Hon'ble Bombay High Court in the cases mentioned above and keeping in view of the statement made by MW1, attendance sheet Exhibit MW1/1 and notices dated 28.11.2015 & 06.01.2016 Exhibits C4 & C5, respectively, it is liable to be held that the management had closed down its Unit w.e.f. 06.03.2016 as per provisions of the Industrial Disputes Act, 1947.

17. *The workman in para No.7 of his demand notice and claim statement has pleaded that the respondent is still running its unit by changing its name as POONAM TEXTILE and shown Sh. Anil Bhatia as its Director. The said company was running in the previous name of M/s Hindustan Silk Mill till it was not closed or declared as sick unit. The said company was closed in documents only.*

But no documentary or any other cogent evidence has been placed on record by the workman to prove his aforesaid plea. Hence, the aforesaid plea raised by the workman in his demand notice and claim statement is not proved on record.”

14. Learned counsel appearing on behalf of the petitioner has failed to point out any material/evidence, which has not been considered by the learned Tribunal below and neither he has been able to controvert the aforesaid findings returned by the Tribunal on the contentions raised by him.

15. Upon perusal of the above extracted findings of the learned Tribunal below, I do not find any illegality or perversity in the same as the petitioner had failed to prove that his services were illegally terminated by the respondent-Management. Rather the Management has successfully proved on record that it had closed down its unit w.e.f. 06.03.2016 in accordance with the provisions of the 1947 Act and the petitioner had not

only collected his full and final dues but had also withdrawn the same on his own.

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 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.***

17. No other point has been urged.

18. Considering the totality of circumstances in the light of the legal principles indicated above, there is no scope for any interference in the Award dated 26.03.2021 (Annexure P-4) passed by the learned Tribunal

below in exercising of its writ jurisdiction by this Court; resultantly, the instant petition fails and the same is accordingly dismissed.

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

September 05, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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