

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3714-2013 (O/M)

Date of decision : 23.11.2023

Gurpreet Singh

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Amritsar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sandeep Jasuja, Advocate
for the petitioner.

Mr. Alok Jain, Advocate
for respondents No. 2 and 3.

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HARSH BUNGER, J.

1. Petitioner (Gurpreet Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing the Award dated 19.03.2012 (Annexure P-11), passed by learned Industrial Tribunal, Amritsar and also the order dated 01.10.2004 (Annexure P-3), whereby the services of petitioner were terminated.

A further prayer has been made for issuance of directions to respondents No 2 and 3 (Punjab State Forest Development Corporation) to reinstate the petitioner with continuity of service and other consequential

benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. In the statement of claim, petitioner stated that he was working as a Clerk against permanent post and he had continuous service of eight year when his services were verbally terminated on 01.10.2004 without any notice, charge-sheet, enquiry and without any retrenchment compensation. Petitioner claimed that after his termination, the Management had retained junior workman and other workmen were also employed, therefore, the services of the petitioner were terminated in violation of provisions of Section 25-F, Section 25-G and Section 25-H of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). Accordingly, petitioner prayed for reinstatement and other consequential benefits.

3. The aforesaid claim of the petitioner was contested by respondents No. 2 and 3 herein by submitting that the reference was not maintainable as the retrenchment compensation was paid to the workman, but he returned the same with letter dated 01.10.2004. It was submitted that a daily worker has no lien upon any post in the respondent-Department. It was stated that the petitioner was employed on daily wages and the work of the respondent-Department is seasonal in nature. It was categorically stated that the petitioner was legally retrenched by paying retrenchment compensation of Rs. 10,158/- vide cheque No. 582118 dated 01.10.2004, which he refused to accept. It was also stated that no junior workman was retained nor anyone employed after the retrenchment of the petitioner. Accordingly, prayer for dismissal of the claim petition was made.

4. From the pleadings of the parties, issues were framed and the parties led their respective evidence.

5. On the basis of material/evidence on record, the Industrial Tribunal, Amritsar (hereinafter referred to as 'the Tribunal') answered the reference against the petitioner and dismissed the claim of the petitioner.

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

7. Learned counsel for petitioner submits that the services of petitioner have been terminated in violation of provisions of Section 25-F, Section 25-G and Section 25-H of 1947 Act. Accordingly, prayer has been made for reinstatement, continuity of service and back wages alongwith other consequential benefits.

8. On the other hand, learned counsel for respondent-Management submits that services of the petitioner were terminated in accordance with provisions of 1947 Act and while terminating the services, the petitioner was sent retrenchment compensation through post, however, he refused to accept the same, which shows that provisions of 1947 Act were fully complied with before termination of services of the petitioner, accordingly, prayer for dismissal of the instant writ petition has been made.

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

10. Here it would be appropriate to refer to the letter dated 01.10.2004 whereby the services of petitioner were dispensed with.

The relevant extract of the letter dated 01.10.2004 reads as under :-

“PUNJAB STATE FOREST DEVELOPMENT CORP. LTD.
AMRITSAR
No. 4763-66

Dated :1.10.2004

Shri Gurpreet Singh
s/o Sh. Darshan Singh,
r/o Gali Sanglan Wali,
Near Gudwara Simblan
Batala, Gurdaspur

Subject :- Retrenchment Order (Sh. Gurpreet Singh).

You were appointed as Daily Wages Clerk in office of this Division on daily wages and a period of 4 years 6 months 25 days have passed since you were working. Now on completion of the cadre of this corporation and due to non availability of any post of clerk, there is no requirement of your services and in case of need you shall be called again. Under the provisions of Section 25-F, you are given the cheque of one month advance salary and due compensation.

The salary or wages in lieu of advance salary of one month	Period	The due amount of compensation	Total amount in Rs. (1+3)	ChequeNo. and date	Cheque Amount
3071.00	4 years, 5 months, 25 days	7087.00	10,158	582118 Dt. 1.10.04	10156.00

Sd/-
Divisional Manager,
PSFDC Ltd
Amritsar”

A perusal of the above letter would clearly indicate that while dispensing with the services of the petitioner, the provisions of Section 25-F of 1947 Act have been duly complied with as advance salary of one month in lieu of wages was paid alongwith compensation amount.

11. Here it would also be gainful to refer to cross examination of the petitioner, which reads as under :-

“WW1 Gurpreet Singh recalled for cross-examination on S.A.

Xxxxx by Sh. Iqbal Singh Verka, A.R. for management.

No appointment letter was issued to me when I was employed with the management. It is correct that award dt. 8.5.2002 was passed in my favour, whereby I was reinstated. It is wrong to suggest that I was not appointed on regular basis. It is further wrong to suggest that after passing of the award dt. 8.5.2002, I was appointed on daily wages. It is correct that when my service was terminated, the management had paid me retrenchment compensation, but I had refused to accept the same. It is wrong to suggest that I am entitled to reinstatement on regular basis. It is correct that I was appointed on daily wages. It is wrong to suggest that I have deposed falsely.”

A perusal of the aforesaid cross examination of the petitioner would indicate that the petitioner was appointed on daily wages and no appointment letter was issued to him when he was employed with respondent-Management. The petitioner has clearly admitted that when his services were terminated, respondent-Management had paid him retrenchment compensation, however, he had refused to accept the same.

12. It is well settled that a daily wage worker has no right to claim regularization and neither he has any right to continue as a daily wage worker. It is also well settled that in case, the termination of services of a daily wage worker are found to be illegal because of non payment of retrenchment compensation and notice pay as required under Section 25-F of 1947 Act then in those cases, even after reinstatement, it is always open to the Management

to terminate the services of such workman by paying him the retrenchment compensation.

13. In the instant case, the Tribunal below, while passing the impugned award dated 19.03.2012 (Annexure P-11), returned the following findings :-

“13. From the pleadings and arguments, the relationship between the parties as master and servant exists and there is no need to go in detail. It is also the fact that the services of workman were terminated by the management. He approached to the Labour Court and award dt. 8.5.02 has come in his favour, on the basis of which his services were reinstated. These are the admitted facts.

14. Coming to the fact whether the services of workman were terminated on 1.10.2004 without notice, charge-sheet or enquiry, that is without merit because the workman not adduced any evidence on judicial file either the services were terminated without notice, charge-sheet and enquiry. More so, during the course of arguments workman's A.R. not argued this part of the pleadings.

15. Only point argued by the A.R. Sh. Randeep Bhagat is that retrenchment of workman is not following the procedure, while juniors to him were in service. On the other hand, management have taken the specific stand of retrenchment, which was following the procedure.

16. MW1 in examination-in-chief, then in cross-examination unfolded the managements' version that workman was daily wager and employees were surplus,

that is why the services of workman were retrenched and retrenchment compensation of the amount of Rs. 10,158/- was paid. Besides the affidavit, MW1 has proved the document Ex.M2, which is containing pages 274. Ex.M2 proves employment, reinstatement, payment of wages, retrenchment notice, calculation of compensation and retrenchment order dt. 1.10.2004 etc., which proved that workman served four years five months and 25 days and the compensation was sent through cheques, which was not accepted by the workman. So, the statement of MW1, supported by document Ex.M2 containing pages 274, proves that management retrenched the services of workman by following the procedure.

17. So far as the workman's version is concerned, he has not pleaded in his statement of claim which of the employees were juniors to him, who were retained in service after his retrenchment. So much so, the workman not pointed out the names of junior employees in his affidavit Ex.WW1. No suggestion is given to MW1, which of the employees were retained and were juniors to workman. Rather, in cross-examination, workman deposed it is correct that when his services were terminated, the management had paid to him retrenchment compensation, but he has refused to accept the same. It is correct that he was appointed on daily wages.

18. After scrutinizing the pleadings and the evidence, adduced by both the parties, the plea taken by the workman in statement of claim is not touched at the time of final arguments. The retrenchment is admitted by workman. No evidence has come on file, which of

the junior workman was retained in service and the workman was retrenched. In this way, the reference is not maintainable and the services of workman have rightly been retrenched. Both these issues stand determined against the workman and in favour of the management.

Relief

19. In view of my findings on the above issues, the reference is hereby answered against the workman and in favour of the management and the award is passed accordingly. File be consigned to record room.”

A perusal of above extracted findings would show that the services of the petitioner were retrenched and retrenchment compensation of amount of Rs. 10,158/- was paid and, respondent-Management retrenched the services of petitioner by following the procedure. It is on record that it is the petitioner who did not accept the compensation, therefore, the petitioner cannot take benefit of his own wrong.

14. As regards the claim of the petitioner that provisions of Section 25-G and Section 25-H of 1947 Act have been violated, the Tribunal below has observed that the petitioner did not plead in his statement of claim as to which of the employees, who were junior to him, were retained in service after his retrenchment so much so, the petitioner did not point out the names of junior employees even in his affidavit Ex.WW1 and further no suggestion was given to MW1 as to which of the employees were retained and were junior to the petitioner.

15. Therefore, once the Tribunal below, on appreciation of material/evidence on record, has come to the conclusion that the services of

petitioner have been terminated in accordance with provisions of 1947 Act, which finding has not been dislodged by the learned counsel for petitioner, no relief can be granted to the petitioner.

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. In view of the above discussion, I do not find any merit in the instant writ petition and the same is dismissed.

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

(HARSH BUNGER)
JUDGE

23.11.2023

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No