

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

CWP-22072-2017 (O&M)
Date of Decision: 15.09.2023

RAJ KUMAR

...Petitioner

Versus

THE PRESIDING OFFICER, LABOUR COURT,
AMBALA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Jagram Singh Cooner, Advocate
for the petitioner.

Mr. Satish Singla, A.A.G., Haryana.

HARSH BUNGER, J. (ORAL)

Petitioner (Raj Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of impugned Award dated 25.02.2016 (Annexure P-1) passed by respondent No.1-The Presiding Officer, Labour Court, Ambala; whereby, the reference was answered against him.

A further prayer has been made for issuance of direction to respondents No.2 and 3/Department to re-instate the petitioner-workman in service with continuity and full back wages.

2. Briefly, the petitioner-claimant raised an industrial dispute by filing his claim petition wherein, he stated that he joined the services of the respondent-department in the year-2006 for plantation and maintenance of plants and continuously worked without any break upto 30.07.2008 when his

services were abruptly brought to an end in violation of the mandatory provisions of the Industrial Disputes Act, 1947 (for short 'the Act, 1947'). The petitioner claims that neither one month notice was served upon him nor any pay in lieu thereof was paid and even the retrenchment compensation was not paid to him before terminating his services despite the fact that he had completed more than 240 days in the year preceding his termination. Petitioner claimed that he had been performing his duties to the best of his ability and there was no complaint of any kind against him. It was also claimed by the petitioner that the post against which he was working, is of permanent nature and is still in existence. It was stated that the petitioner was being paid salary through bills and was on the muster rolls of the management and had worked in the Nursery of Sector 19, HUDA, Kaithal. Petitioner claimed that junior most persons to him namely Ashok, Raj Pal, Bhira and others were retained in service, whereas, his services were terminated, which is in violation of the provisions of the Act, 1947.

3. On the other hand, the claim of the petitioner was opposed by the respondent-department by submitting that the petitioner was neither appointed/recruited by the respondent-department nor did he complete 240 days' service in the calendar year preceding his alleged termination; thus, there was no relationship of employee and employer between the petitioner and the respondent-department. It was submitted that the work in the forest department is of seasonal nature and deployment of labourers depends upon the work under different schemes and therefore, the services of the seasonal workers cannot be regularized. According to the respondent-department, to carry out different forestry operations, the contract system was introduced by the department instead of engaging labourers on muster

rolls as per letter No.3534 dated 06.07.2000 and letter No.4295 dated 22.10.2003 of the Haryana Government. It is the stand of the respondent-department that since there was a contract system from the year-2003 onwards, the question of workman working in the department in the preceding twelve months from the date of his alleged termination, does not arise.

4. The averment of the petitioner-workman that he was being paid salary through bills and was on the muster rolls of the respondent-department was also denied and even the allegation of junior workers being retained and fresh appointments being made, was also denied by the respondent-department.

5. On the basis of the pleadings of the parties, the issues were framed and the parties led their respective evidence.

6. The petitioner-workman, to prove his case, stepped into the witness box as WW1 and tendered his affidavit Ex. WW1/A, wherein he reiterated the averments made in his claim petition. The petitioner-workman further produced one Hawa Singh, working as an Assistant in the office of DFO, Kaithal as WW2, who simply placed on record the copy of order of the DFO, Kaithal bearing No.30 dated 20.06.2012 (Ex.WW2/A); whereby the muster rolls for the period between 1988-89 to 2008-09 have been weeded out after constituting a committee as per the procedure laid down in para No.15.24 of the Haryana Forest Manual Vol-II. He further placed on record the copy of letter dated 02.03.2004 written by the Divisional Forest Officer, Kaithal to Range Forest Officers of Kaithal/Pundri as Ex.WW2/B.

7. On the other hand, the respondent-department examined S/Shri Anil Sheoran, RFO, Kaithal as MW1 and Hawa Singh, Assistant as

MW2 and produced the following documents :-

<i>Sr. No.</i>	<i>Exhibit</i>	<i>Document</i>
<i>1</i>	<i>M1</i>	<i>Seniority list of 299 workers prepared by the Labour Union, DFO, Kaithal vide letter No.1564-66 dated 20.08.2007.</i>
<i>2</i>	<i>M2</i>	<i>Letter No.192 dated 01.10.2007 written by the Range Forest Officer, Kaithal, informing the DFO, Kaithal that the said list is not approved by their office and hence the seniority list dated 06.06.2007 is not authenticated one and the same is not binding upon the respondents.</i>
<i>3</i>	<i>M3</i>	<i>Copy of the abstract of payment made to various contractors for the work done in Kaithal Beat of Kaithal Block during 8/2007 to 07/2008.</i>
<i>4</i>	<i>M4</i>	<i>Copy of the list of various contractors registered/renewed in Kaithal Division in the year 2005-06.</i>
<i>5</i>	<i>M5</i>	<i>Muster rolls system in the department replaced by the contract policy vide letter dated 06.07.2000 of Commissioner & Secretary to Government of Haryana, Forest Department.</i>
<i>6</i>	<i>M6</i>	<i>Weeded out of the Muster rolls of Kaithal Division from 1988-89 to 2008-09 vide order No.30 dated 20.06.2012 of the DFO Kaithal.</i>
<i>7</i>	<i>M7</i>	<i>Copy of the Award dated 10.02.2015 passed in case titled as Jeetvs DFO, Kaithal, whereby the claim of the similarly situated workman was dismissed.</i>
<i>8</i>	<i>MW2/A</i>	<i>Affidavit of Hawa Singh, testifying that no seniority list of the workers was prepared by the department and only the seniority list of regular workers was prepared.</i>
<i>9</i>	<i>MW2/B</i>	<i>Copy of order No.29 dated 19.06.2012, whereby the letter bearing No.1758-59 dated 02.03.2004 of DFO, Kaithal has been weeded out.</i>
<i>10</i>	<i>MW2/C</i>	<i>Photocopy of para No.15.24 of the Haryana Forest Manual Vol-II.</i>

8. In rebuttal, the petitioner-claimant had placed on record the copy of Award dated 30.04.2012 passed in Reference No.34 of 2010 titled as ***Fatia Versus DFO, Kaithal and another*** as Ex.WX and the photocopy of order dated 01.12.2012 passed by this Court in ***CWP-17439-2011*** as Mark-W1.

9. The learned Labour Court, Ambala, after going through the material/evidence available on the record, answered the reference against the workman by holding that the petitioner had miserably failed to prove that he had worked for 240 days continuously with the respondent-department in the preceding twelve calendar months from the date of his alleged termination.

10. Learned counsel for the petitioner contends that the Tribunal below has wrongly decided the reference against the petitioner-workman. It is contended that the petitioner had worked with the respondent-department as a Labourer on daily wages and no appointment letter or any salary slip was ever issued to him and his entire record (if any) is in the custody of the respondent-department, who has deliberately withheld the material evidence and accordingly, adverse inference should have been drawn against the respondent-department. It is submitted that the petitioner-workman had summoned the record of the attendance and wages and said Hawa Singh (WW2) had intentionally not brought the material record to deprive the petitioner of his legal rights. Accordingly, it is contended that the impugned Award dated 25.02.2016 is illegal and arbitrary and the same may be set aside and a further direction may be issued to the respondent-department to reinstate the petitioner with continuity in service and full back wages.

11. Per contra, learned State counsel has opposed the prayer of the petitioner by submitting that the petitioner had failed to discharge the onus

of proving on record that petitioner had worked for 240 days in the preceding twelve calendar months from the date of his alleged termination and in the absence of the same, the petitioner is not entitled to any relief. It is submitted that no adverse inference can be drawn merely on the ground that record was not produced by the Department; moreso when the petitioner had failed to *prima facie* led sufficient evidence to show that he was in continuous service in terms of Section 25B of the Act, 1947. It is contended that it was shown on record that the old record had been weeded out and thus, there was no scope of any interference with the impugned Award. Accordingly, the prayer for dismissal of Writ Petition was made.

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

13. In the instant case, the petitioner has categorically averred that he joined the services of the respondent-department in the year-2006 and he worked continuously without any break upto 30.07.2008, when his services were terminated in violation of mandatory provisions of the Act, 1947, despite the fact that he had completed more than 240 days in the year preceding his termination.

14. On the other hand, it is the categoric case of the respondent-department that the petitioner-workman was never appointed/recruited by the respondent-department nor did he complete his 240 days' service in the calendar year preceding his alleged termination. Even the relationship of employee and employer between the petitioner and the respondent-department has been denied. The learned Presiding Officer, Labour Court, Ambala, vide order dated 25.02.2016 (Annexure P-1), has returned the

following findings :-

“12. In the instant case, the workman has failed to prove his case by producing any documentary evidence i.e. salary slip, appointment letter, attendance register or any other document except making his oral statement that he had worked for more than 240 days in every calendar year since 2006 till his termination on 30.7.2008. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence to come to the conclusion that he had in fact worked for 240 days in a year. Whereas it is the specific case of the management that the seasonal forestry work was got done through contractors since the year 2003 onwards as per the letter dated 6.7.2000 Ex.M5 of Commissioner & Secretary to Government Haryana, Forest Department and therefore, the question of engagement of the workman Raj Kumar or his alleged termination by the department does not arise and the relationship of employer and employee between the parties is not established. Even the workman Raj Kumar, during his cross-examination, could not deny the fact that the department had started getting the work done through contractors since 2003. He also admitted it correct that he used to get wages daily and not month wise. Thus the stand of the management that the department was getting work of seasonal forestry work through various contractors since 2003 onwards has been vindicated by the workman himself. It also could not be established by the workman that the services of any junior worker were regularized by the department or that any junior is still working in the department. As such, the workman in the present case is not entitled to get any kind of relief as he has miserably failed to prove that he had worked for 240 days continuously with the management in the preceding 12 calendar months from the date of alleged termination. Accordingly, this issue is decided against the workman.”

15. It is the settled law that the onus to prove the relationship of employee-employer is upon the worker himself. In the afore-mentioned circumstances, it was incumbent upon the petitioner-workman to prove the relationship of employee-employer between him and the respondent-department.

16. As regards the contention of the petitioner that the respondent-department should have produced the entire record to show that the petitioner had not worked with them; suffice it to say that the onus to prove the relationship of employee-employer as well as working for 240 days is on the petitioner and the workman cannot rely on the plea that the respondent-Department has not produced the entire record.

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."

17. As regards the plea of drawing an adverse inference is concerned, it is observed that Hon'ble Apex Court in *R.M. Yellati v. The Assistant Executive Engineer, 2006(1) SCC 106*, has held as under :-

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore stated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workwoman stepping in the

witness box. This burden is discharged upon the workwoman adducing cogent evidence, both oral and documentary. In case of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workwoman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workwoman will not suffice in the matter of discharge of the burden placed by law on the workwoman 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 workwoman 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.”

18. 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.

19. Furthermore, the peripheries of certiorari jurisdiction of High Court stands authoritatively delineated in ***Syed Yakoob v.***

K.S. Radhakrishnan, AIR 1964 Supreme Court 477, wherein Hon'ble Supreme Court held as under :-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence,

that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said

error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

20. Since the petitioner has failed to prove on record that there is a relationship of employee-employer between him and the respondent-department and neither it has been proved that he had worked for 240 days' period; accordingly, I do not find any illegality or perversity in the findings returned by the learned Tribunal.

21. The instant writ petition is therefore dismissed.

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

September 15th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No