

226

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4588-2014 (O/M)

Date of decision : 11.12.2023

Karan Singh

..... Petitioner (s)

Versus

XEN, Public Health and Sanitation Department, Division No. 1, Rewari and
another

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Mukesh Kumar Verma, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Additional A.G. Haryana.

--

--

HARSH BUNGER, J.

1. Petitioner (Karan Singh) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the Award dated 22.01.2013 (Annexure P-7), passed by Industrial Tribunal-cum-Labour Court-I, Gurgaon (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by the petitioner regarding termination of his services has been answered against him.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. The said dispute was referred for adjudication to the Tribunal below. The petitioner claimed that he joined respondent-Department (Public Health and Sanitation Department, Division No. 1,

Rewari) on 03.10.2004 as Sewer man and was getting monthly salary of Rs. 3,584/-. Petitioner stated that no appointment letter was given to him nor any wage slip was issued to him. Petitioner alleged that his service was terminated in an illegal manner on 01.09.2008 without serving him any show cause notice or conducting any enquiry nor any retrenchment compensation was paid to him, therefore, petitioner claimed that his services have been terminated in violation of Section 25-F of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). Accordingly, petitioner prayed for reinstatement in service and grant of other benefits.

3. The aforesaid claim of petitioner was contested by respondent No. 1 on the plea that petitioner was never employed by respondent-Department and, therefore, there existed no relationship of employer and employee between them. It was submitted that since there was no relationship of employer and employee between the parties, therefore, there was no question of termination of services. The claim/allegations of petitioner were denied and prayer for dismissal of claim petition was made.

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

“1. Whether the services of workman were illegally terminated ? Whether he is entitled to any relief ? OPW

2. Whether the reference is not maintainable in the present form ? OPM

3. Relief.”

In order to prove his case, petitioner examined himself as PW1 and tendered his affidavit Ex P-1 whereas evidence of management was

closed by court order.

5. After considering the material/evidence available on record, the Tribunal below has rejected 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 Tribunal below has erred in law and facts in rejecting the claim of the petitioner. Learned counsel for petitioner contends that there was sufficient material on record to show the existence of relationship of employee and employer between the parties, therefore, the findings returned by the Tribunal below were wrong and contrary to the material available on record. It is submitted that at the time of his termination, juniors to the petitioners have been retained in service, therefore, there is violation of provisions of Section 25-G of 1947 Act. It is also contended that after the petitioner was terminated, new persons have been recruited by respondent-Department, therefore, there is violation of provisions of Section 25-H of 1947 Act as well. Learned counsel for petitioner contends that the petitioner has also established on record that he has worked for more than 240 days in a calendar year, however, the Tribunal below has wrongly rejected the claim of the petitioner. Accordingly, prayer has been made for setting aside of the impugned award and for granting the relief to the petitioner.

8. On the other hand, learned State counsel appearing for respondent-Department has opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has considered the

material/evidence available on record, which does not call for any interference by this Court. It is submitted that the petitioner had failed to prove on record that he has rendered continuous service i.e. 240 days under respondent-Department in the 12 months preceding the date of his termination, so as to claim benefit of Section 25-F of 1947 Act. Accordingly, prayer for dismissal of the instant civil writ petition has been made.

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

10. 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 well established 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 by now 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.***

11. In the instant case, the Tribunal below, while rejecting the claim of petitioner, vide impugned award, has returned the following findings :-

"8. I have given considerable thought to the argumetns advanced by both the parties and also gone through the record of the case file.

9. In support of his case, workman Karan Singh stepped into the witness box as PW-1 and tendered his affidavit Ex. P-1. During cross-examination, he has stated that it is correct that no appointment letter or termination letter was issued by the mgt. I do not know if my claim was maintainable or not. It is correct that I have not mentioned in my affidavit Ex. P-1 the fact mentioned by me under Para No. 3-4 of my claim statement.

10. On the other hand, mgt. took the specific plea that there existed no relationship of employee-employer between the parties, therefore, the workman is not entitled to any relief. However, AR for workman has also contended that no evidence has been led on behalf of mgt.; therefore, the workman is entitled to reinstatement in service of respondent with full back wages. It is settled law that a party has to stand upon own legs and it cannot be allowed to take advantage of the weakness of the case of opposite party. Law on the point is settled that onus of proving the existence of relationship lies upon the workman and not on the management. Such a law was laid down by Hon'ble Supreme Court of India in case Workmen of Niliri Coop. Marketing Society Ltd. V/s State of Tamil Nadu and others, 2004 LLR-351 wherein it was held that in such like cases, the burden of proof for existence of relationship of employer and employee is upon a such person who sets a plea of its existence, the burden would lie upon him. Law was also laid down by Hon'ble Madhya Pradesh High Court in case Hemraj V/s Director, Sericulture, Bhopal and another, 2008, LLR-332 that mere affidavit or self-serving statement

will not be sufficient. Applying the same principles of law to the present facts, workman in this case has not been able to prove in any way that there is any relationship of employee-employer between the parties and he had continuously worked with the mgt. for more than 240 days.

11. Quite identical are facts of the case in the present case because in his case, onus was upon the workman to show that there existed any relationship of employee-employer between the parties and he had worked with the respondent for more than 240 days in the year preceding the order of termination. But the workman failed to discharge that onus. Except his own affidavit, there is no other evidence on the file to prove existence of relationship of employee-employer between the parties and having worked for more than 240 days in a calendar year. No appointment letter, wage slip, ESI cards, PF etc. Were produced by the workman nor any co-worker was examined by the workman. This being so, the workman is not entitled to any relief and this issue is ordered to be decided against the workman.

Issue No. 2

12. Onus to prove this issue was on the mgt. but there is nothing by way of evidences on the file that how the present reference is not maintainable. So, this issue is ordered to be decided against the mgt.

Relief

13. As result of my findings on various issues and discussion above, the reference made for the workman is hereby ordered to be decided against the workman and in favour of the mgt.

14. File be consigned.”

12. A perusal of the above extracted findings of Tribunal below would make it evident that the petitioner-workman failed to discharge the onus placed upon him of proving employee-employer relationship nor it has proved that the petitioner-workman had completed 240 days' work under the Management in terms of Section 25-B of 1947 Act, so as to attract the provisions of section 25-F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by the respondent—Management or any order in that regard was produced; even no co-worker has been examined by petitioner-workman in support of his claim.

13. Furthermore, Annexure P-4 at page 22 of paperbook, which is an application submitted by the petitioner and other workers to the Labour-cum-Conciliation Officer, Rewari for getting their salaries released, reads as under :-

“To

*The Labour cum Conciliation Officer,
Rewari.*

*Subject: For getting released the salary for the
months of July and August, 2007.*

Sir,

*Stated that we the undersigned are doing
the work of Sewer men with Sh. V.P. Yadav, S.D.O.
Public Health Department, Sub Division-2, Bolni
Road, Rewari through contractor Sh. Rakesh Yadav.
Though we have demanded from the contractor many a
times the salary of above said period but till date it has
not been paid. We had apprised this to executive
engineer, Rewari also, but even then we could not get
our salary. Therefore, it is prayed to your goodself to*

take appropriate legal action against the above said respondents and to get release our earned salary. It shall be your kindness.

Dated : 10.09.07

*Sd/- Karan Singh Yadav
President*

*Sd/- Sunil Kumar 1.Sunil Kumar
Sd/- Sony 2.Dharmender/Sony
Sd/- Hoshiyar 3.Hoshiyar Singh
Sd/- Manoj 4. Manoj Kumar
Sd/- Vicky 5. Vicky
Sd/- Bhuna Ram 6. Bhuna Ram
Sd/- Deepak 7. Deepak Kumar
Sd/- Bhim Singh 8.Bheem Singh”*

A perusal of above extracted letter would clearly demolish the pleaded case of the petitioner as perusal of the same would reveal that clear admission is recorded therein that they were employed by the contractor.

14. 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.

15. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for any interference by this Court in the impugned Award dated 22.01.2013 (Annexure P-7), passed the Tribunal below. Resultantly, the instant writ petition fails and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

11.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No