

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

(1)

CWP-525-2014 (O&M)

THE KARNAL CENTRAL COOPERATIVE BANK LIMITED,
KARNAL THROUGH ITS CHIEF EXECUTIVE OFFICE.

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT AND OTHERS

...Respondents

(2)

CWP-591-2014 (O&M)
Date of decision : 05.10.2023

THE KARNAL CENTRAL COOPERATIVE BANK LIMITED,
KARNAL THROUGH ITS CHIEF EXECUTIVE OFFICE.

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. C.R. Dahiya, Advocate
for the petitioner(s).

Mr. Naveen Daryal, Advocate
for respondents No.2 to 4.

HARSH BUNGER, J.

1. This order shall dispose of two writ petitions bearing
CWP-525-2014 titled as *The Karnal Central Cooperative Bank Limited,
Karnal through its Chief Executive Officer vs Presiding Officer,
Industrial Tribunal-cum-Labour Court, Panipat and others* and

CWP-591-2014 titled as *The Karnal Central Cooperative Bank Limited, Karnal through its Chief Executive Officer vs Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and others.*

2. **CWP-591-2014** titled as *The Karnal Central Cooperative Bank Limited, Karnal through its Chief Executive Officer vs Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and others*, has been filed by petitioner-The Karnal Central Co-operative Bank Limited, Karnal (in short 'the Bank') seeking quashing of the impugned Award dated 12.10.2012 (Annexure P-6) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat; holding that no fair and proper enquiry was conducted by the petitioner-Bank against the workman-Rajbir Singh (since deceased), who is now represented by his legal heirs (respondents No.2 to 4, herein).

3. Vide **CWP-525-2014** titled as *The Karnal Central Cooperative Bank Limited, Karnal through its Chief Executive Officer vs Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and others*, the petitioner-Bank seeks quashing of the final Award dated 27.11.2012 (Annexure P-6) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat; whereby, it was held that termination of the services of the workman-Rajbir Singh (since deceased) was not justified and in order and since, he had died; accordingly, relief of re-instatement was not found admissible and the legal heirs of deceased-workman were held entitled to benefit of full back wages from the date of demand notice dated 03.09.2003, till the death of the said workman- Rajbir Singh. The legal heirs were further held entitled to all other benefits admissible to the deceased workman on the date of his superannuation.

4. For the sake of convenience, the facts are being extracted from

CWP-525-2014 titled as ***The Karnal Central Cooperative Bank Limited, Karnal through its Chief Executive Officer vs Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and others.***

5. Briefly, the workman-Rajbir Singh (since deceased) was working as a Secretary with the Jalamana, Kurlan and Basdhara Cooperative Credit and Service Societies Limited. During his service, it was alleged that he had embezzled huge amount out of the funds of the said societies, for which, he was charge-sheeted under Rule 27 of the Common Cadre Rules, 1975.

A perusal of the paper-book would reveal that upon completion of the inquiry, the Board of Administrators of the Bank, in its meeting held on 15.12.1997, passed the following order :-

“Considered and after going through the whole case of Sh. Rajbir Singh, Sec. U/S as well as hearing him in person it is decided that his three annual increments are stopped with cumulative effect. Further resolved that the suspension period from 25.9.95 to 5.12.95 is treated towards duty period for all intents and purposes but nothing shall be paid except subsistence allowance already paid to him. Employee is directed to furnish a landed tangible security one and half times of the embezzled amount. Further M.D. is authorized to make sure that all the amount including interest has been recovered from the employee.”

6. It appears that thereafter, the Enquiry Officer was appointed and the enquiry proceedings were conducted on various dates. The Enquiry Report dated 23.02.1999 (Annexure P-1) was submitted and the following charges were held to have been proved against the workman-Rajbir Singh.

1. *Mis-appropriation of Rs.12820/-*
2. *Embezzlement of Rs.23476/-*
3. *Mis-appropriation of Rs.28856.39/-*

4. *Embezzlement of Rs.66538/-*

5. *Fraud with the society.*

7. Thereafter, vide Memo No.533 dated 19.04.1999 of final Show Cause Notice along with copy of the Enquiry Report, proposing the penalty of dismissal from service was issued to the workman-Rajbir Singh, to which, he did not submit any reply and the case was put up before the Board of Administrators of the Bank. Petitioner-Bank claims that the workman-Rajbir Singh (since deceased) appeared before the Board of Administrators, in its meeting held on 17.09.1999, and admitted the embezzlement charges and also gave in writing that he has committed a mistake; therefore, he will deposit the embezzled amount and will also furnish the tangible security.

8. That on 17.09.1999, the Board of Administrators, took the following decision :-

“Fail to furnish the tangible security till today. He is habitual embezzler and found involved in more embezzlement as agenda item No.5.”

9. Accordingly, considering the act and conduct of the workman, the charge-sheets; findings of the enquiry report and also the admission made by the workman, a decision was taken to dismiss the workman- Rajbir Singh (since deceased) from services of the Bank and the said order of dismissal from service was conveyed to the workman vide letter dated 28.09.1999 (Annexure P-3).

10. It appears that the aforesaid decision of dismissal from service was challenged by the workman-Rajbir Singh (since deceased) by way of filing an appeal before the Registrar Co-operative Societies, Haryana, which is stated to have been dismissed in default vide order dated 06.06.2000.

11. Thereafter, the workman-Rajbir Singh (since deceased) raised an Industrial dispute by way of demand notice dated 22.08.2003 (Annexure P-4). The petitioner-Bank submitted its detailed reply dated 27.09.2004 (Annexure P-5) to the afore-said demand notice.

12. It appears that during the pendency of the proceedings before the Tribunal below, the workman-Rajbir Singh, had expired and accordingly, his legal heirs were brought on record.

13. The issue as to whether the domestic enquiry was not fair and proper, was treated as a preliminary issue by the Tribunal below and the parties led their respective evidence.

14. The learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, vide Award dated 12.10.2012 (Annexure P-6 in ***CWP-591-2014***) held that the enquiry was not competent and not conducted in a fair and proper manner and there is no evidence ever led to prove the charges. Accordingly, it was held that the enquiry as conducted, is not fair and proper and the same is vitiated.

15. That subsequently, the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, after considering the case of the respective parties and also on the basis of the material/evidence available on the record, passed a final Award dated 27.11.2012 (Annexure P-6 in ***CWP-525-2014***) by holding that termination of the services of the workman-Rajbir Singh (since deceased) was not justified and in order and since, he had died; accordingly, relief of re-instatement was not found admissible and the legal heirs of deceased-workman were held entitled to benefit of full back wages from the date of demand notice dated 03.09.2003, till the death of the said workman-Rajbir Singh. The legal heirs were further held entitled to all

other benefits admissible to the deceased workman on the date of his superannuation.

16. In the afore-mentioned circumstances, the petitioner-Bank has filed these two separate writ petitions challenging the interim Award dated 12.10.2012 (Annexure P-6 in **CWP-591-2014**) as well as final Award dated 27.11.2012 (Annexure P-6 in in **CWP-525-2014**).

17. Learned counsel for the petitioners contends that the learned Tribunal below has wrongly held that no opportunity of hearing was afforded by the Enquiry Officer, whereas from the record, it would be apparent that sufficient opportunities were afforded to the workman-Rajbir Singh (since deceased). It is submitted that the workman was fully satisfied with the enquiry proceedings and had also recorded so in writing and even after the submission of the enquiry report, a Show Cause Notice was issued to the workman; however, he did not file any reply to the same to assail that he was not given any opportunity of hearing. Learned counsel for the petitioners further submits that due notices were sent by the Enquiry Officer and on various dates, the hearing in the enquiry proceedings were postponed; thus, the findings recorded by the Tribunal below in the interim Award dated 12.10.2012 (Annexure P-6 in **CWP-591-2014**), is perverse and is liable to be set aside. Learned counsel for the petitioners also contends that once the workman had admitted the charge of embezzlement in writing before the Board of Administrators of the Bank, and also stated that he will deposit the embezzled amount, accordingly, there was no occasion to pass the impugned awards. It is next submitted that once the workman had already availed the remedy of appeal against the order of dismissal before the Registrar Cooperative Societies (Appellate Authority) and upon dismissal of the same, the workman was not entitled to approach the Labour Court by raising an

industrial dispute. It is submitted that the findings returned by the learned Tribunal below vide Final Award dated 27.11.2012 (Annexure P-6 in **CWP-525-2014**) are wrong, illegal and without any evidence and are accordingly, liable to be set aside. It is also submitted that the petitioner-Bank had lost confidence in the workman and accordingly, the reinstatement was not warranted.

18. On the other hand, learned counsel appearing for the legal heirs of the deceased workman-Rajbir Singh, had supported the findings returned by the learned Tribunal below. It is submitted that once the workman had died, it was incumbent upon the petitioner-Bank to prove the documents of enquiry as well as charges against the deceased workman by producing the Enquiry Officer; however, no such Enquiry Officer was produced before the learned Tribunal below. Accordingly, the findings returned by the learned Tribunal below are fully justified and are in accordance with law. Learned counsel for respondents No.2 to 4 further submits that after the passing of the interim Award dated 12.10.2012 in **CWP-591-2014**, holding that the enquiry against the workman was vitiated, thereafter, it was the duty of the petitioner-Bank to lead sufficient evidence to prove the charges. However, no such evidence was led, except filing of an affidavit of Jai Singh (MW-1/A). It is submitted that the evidence, which was already in the enquiry file, could not be read in evidence to prove charges against the deceased workman by submitting that the same would not constitute “fresh evidence”. In this regard, reliance is placed upon the judgment rendered by the Hon’ble Supreme Court in the case of *Neeta Kaplish vs Presiding Officer, Labour Court and another 1999(1) SCC 517*. It is thus submitted that since the petitioner did not lead any fresh evidence on merits, therefore, the impugned

Awards are justified, legal and valid and no interference is required to be made in the same.

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

20. Vide an interim Award dated 12.10.2012 (Annexure P-6 in **CWP-591-2014**), it was held by the learned Tribunal below that no fair and proper enquiry was conducted against the workman-Rajbir Singh (since deceased) and accordingly, the same was vitiated. In that regard, the relevant extract of the findings recorded by the learned Tribunal below are as under :-

“...This proposition of law is not disputed but fact remains that enquiry proceeding depicts that no witness was examined to depose against workman. Moreover, in the absence of any evidence on file and documents produced by respondent as Ex. M-7, it is explicit that no witness deposed to prove charge as spell out in charge sheet and finding of Enquiry Officer such are not based upon any evidence and in enquiry proceedings no proper procedure was followed in accordance with principles of natural justice in the course of enquiry. I find force in these submissions which are primarily based upon cited case law as well as examination of Ex. M-7.

14. Ld. AR for respondent cited certain judgement reported in 2006 LLR 452 in the case of Vasant P. Patil vs. I.U.T. Powai, Mumbai & others, 2005 LLR-1137 in the case of Ajit Kumar Nag vs. General Manager (P.J) Indian Oil Corporation Ltd, Haldia & Others, 1983-11-LLB-908 but the ratio of these judgment is of no help to respondent as in this case Enquiry Officer, who conducted the proceedings was not produced and it is not proved as to how enquiry was conducted and why statement of workman was recorded on 23.2.1999, which is date when

some proceedings were recorded as per Ex. M-7 and on other dates it was simply adjournment and it is not proved who were the witnesses who deposed against workman proving the charges.

15. From perusal of enquiry report, it is evident that report is based upon mere presumption and there is no authenticity in allegation levelled against the workman. There is also discrepancy of amount embezzled detailed in charge-sheeted enquiry. The details of other employees who are alleged to have taken loan was not given in charge sheet. It is pointed out by Ld. AR of management that workman admitted charges in enquiry but there is mere reference of the fact that workman utilized amount of Rs.11803/- but there is no document to support this fact. It has been observed by Hon'ble Apex Court in State of U.P & Ors versus Saroj Kumar Sinha 2010(1) SCT wherein it has been held that "when a departmental enquiry is conducted against the Govt. servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a Govt. servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

16. As a sequel to the fore-going discussion, it is held that evidence as led by the respondent-management proves that enquiry was not competent and not conducted in fair and proper manner and there is no evidence ever lead to prove the charges. Thus contentions of workman are proved on the basis of record of the domestic enquiry, as conducted against the workman, and it is held that enquiry was not fair and proper. Resultantly, this preliminary issue stands disposed off holding that enquiry as conducted is not fair and proper and same is hereby

vitiated. In view of above, issue No.2 is decided holding that enquiry as conducted is not fair and proper and same stands vitiated.”

21. Further, vide final Award dated 27.11.2012 (passed in **CWP-525-2014**), the learned Tribunal below returned the following findings :-

“15. However, Ld. Authorized Representative for the respondent has argued that the even though enquiry is held as vitiated even then the documents placed on the file cannot be ignored as the same have to be read for the purpose of evidence. This plea of Ld. Authorised Representative for the respondent is not tenable and admittedly there is no independent or fresh evidence lead by them to prove charges against workman. In view of law laid down by Apex Court, evidence of enquiry cannot be read as evidence.

16. In the light of fore-going discussions, it is held that there is nothing in the evidence on the record to establish that charges against workman are proved and termination of services of workman is not legal, valid and proper. Resultantly, issue No.1 is answered in favour of LRs of workman and against the respondent.

RELIEF

17. As a sequel of my findings on the above-said issue, the court comes to conclusion that termination of services of workman is not justified and in order. In this case workman has died so relief of re-instatement is not admissible. However, claim of LR of deceased workman is accepted and benefit of full back wages from the date of demand notice 3.9.03 till death is allowed and LRs are also held entitled to other benefits admissible to him on superannuation which dependents will be entitled to claim apart from other legal dues admissible to him on the basis of death accruing in employment and award is passed accordingly.”

22. I have considered the afore-said findings and am of the view that the petitioner has not been able to refer to any material to justify that the enquiry proceedings conducted against the deceased workman were carried out in accordance with law and principles of natural justice, *moreso*, when the enquiry officer was not examined in this case. Once, the petitioner-Bank had failed to prove that the enquiry proceedings were fair and proper, thereafter, the petitioner-Bank was required to bring fresh evidence to justify the charges levelled against the workman-Rajbir Singh (since deceased). Since, no fresh evidence was led before the learned Tribunal below except the statement of one Jai Singh (MW-1/A), who had submitted his affidavit and relied upon the documents produced by the Bank in the Domestic Enquiry, it could not be held that the charges against the workman-Rajbir Singh had proved and the termination of his services was legal, valid and proper. Learned counsel for the petitioner has not been able to dislodge the findings returned by the learned Tribunal below; accordingly, I do not find any illegality or perversity in the findings returned in the interim Award dated 12.10.2012 (passed in **CWP-591-2014**) as well as final Award dated 27.11.2012 (passed in **CWP-525-2014**) by the learned Tribunal below.

23. As regards the submission of the learned counsel for the petitioner that the petitioner-Bank had lost confidence in the workman, accordingly, his reinstatement was not warranted; suffice it to say, the learned Tribunal below had not ordered reinstatement as the workman had already died. However, the legal heirs of the deceased-workman were held entitled to the benefit of full back wages from the date of demand notice dated 03.09.2003 till the death of the workman and they are further entitled to other benefits admissible to the deceased workman upon his attaining the age of superannuation.

24. Furthermore, the peripheries of this Court to exercise *Certiorari* jurisdiction 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 misinterpretation 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."

25. Keeping in view the above said principles, this Court is of the opinion that there is no scope for interference in the well-reasoned order(s) and in the finding(s), which has/have been recorded by the learned Tribunal below and hence, both the writ petitions i.e. **CWP-525-2014** and **CWP-591-2014** are hereby dismissed.

26. No other point has been urged.

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

October 05, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No