

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5699-2014 (O/M)

Date of decision : 28.11.2023

Surinder Kaur and others

..... Petitioners

Versus

Presiding Officer, Industrial Tribunal, Patiala and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Jasminder Singh, Advocate for
Mr. B.S. Sewak, Advocate
for the petitioners.

Mr. Vipin Pal Yadav, Additional A.G. Punjab.

HARSH BUNGER, J.

1. Petitioners have filed the instant writ petition under Articles 226/227 of Constitution of India seeking a writ in the nature of certiorari for quashing of Award dated 13.11.2013 (Annexure P-3), passed by the Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute regarding termination of services of workman (Tarsem Singh) was answered against the workman and the termination of services of workman (Tarsem Singh) was held to be proper and justified.

A further has been made for directing respondents to grant wages from 19.08.2004 to 18.12.2005 of late Tarsem Singh to the petitioners alongwith interest.

2. Briefly, the workman Tarsem Singh (since deceased) through Trade Union Council, Patiala raised an industrial dispute regarding

termination of his services by serving a demand notice dated 01.10.2004 and on failure of conciliation proceedings, the dispute was referred to the Tribunal below under Section 2-A and Section 10(1)(c) of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') for adjudication.

3. The statement of claim was filed on 08.08.2005, however, it appears that during the pendency of the reference, the workman (Tarsem Singh) expired and accordingly, his legal heirs were impleaded and amended statement of claim was filed wherein it was pleaded that the workman (Tarsem Singh) worked with respondents No. 2 and 3-State Transport Punjab and Punjab Roadways (hereinafter referred to as 'respondent-Department') as Conductor No. 205 from 01.11.1981 to 17.08.2004 and it was claimed that the services of workman (Tarsem Singh) were illegally terminated on 18.08.2004 without any notice, charge sheet, enquiry or compensation and at the time of his termination, Tarsem Singh was drawing Rs. 6,800/- per month. It was further claimed that the workman (Tarsem Singh) remained unemployed and his juniors and fresh appointees were still working with respondent-Department, accordingly, prayer was made for reinstatement of the workman (Tarsem Singh) with continuity of services and full back wages.

4. The Respondent-Department contested the claim by submitting that there has been concealment of true and material facts. It was stated that the workman (Tarsem Singh) was found guilty of committing fraud of Rs. 120/- of the State exchequer and accordingly, he was charge-sheeted by the competent authority, to which he had submitted his reply, however, finding his reply unsatisfactory, a regular enquiry was conducted as per the

rules. It was stated that the workman (Tarsem Singh) fully participated in the enquiry proceedings wherein the Enquiry Officer found him guilty and thereafter, a show cause notice was issued to the workman (Tarsem Singh), to which he replied and after giving him personal hearing, the competent authority i.e. Director State Transport, Punjab, Chandigarh, vide his order dated 24.08.2004, dismissed the workman (Tarsem Singh) from service. It was submitted that the workman (Tarsem Singh) had been dismissed after holding a fair and proper enquiry as per the rules after following due procedure. Accordingly, prayer was made for dismissal of reference/claim petition.

5. From the pleadings of the parties, following issues were framed by the Tribunal below :-

“1. Whether the reference is maintainable inspite of the preliminary objections taken in the written statement ? OPW

2. Whether the reference is proper as per law ? OPW

3. Whether termination of services of the workman is improper and un-justified ? OPW

4. Whether the workman is entitled to get any relief from the respondents ? OPW

5. Relief.”

6. After considering the material/evidence placed on record, the Tribunal below decided the reference against the workman/legal heirs of workman (Tarsem Singh) by holding that the termination of services of the workman (Tarsem Singh) was proper and justified.

7. In the aforementioned circumstances, the instant writ petition

has been filed before this Court.

8. Learned counsel for petitioners, after reiterating the facts mentioned in the writ petition, submitted that the impugned Award dated 13.11.2013 (Annexure P-3) has been passed without considering the facts, evidence as well as law on the issue and accordingly, the same was unsustainable in the eyes of law. Learned counsel for petitioners has submitted that the Tribunal below has failed to consider and appreciate the fact that late Tarsem Singh was not feeling well on the day of alleged checking i.e. 27.01.2000 when he was on duty on Bus No. 9027 on Chandigarh-Jammu route, which was checked by Lehimber Singh, Surinder Kumar and Narinder Singh, Inspectors at 16:00 at Chabbewal and during checking, it was found that 50 passengers were travelling in the bus, out of which there were 12 passengers, who were travelling without tickets and he (Tarsem Singh) had charged Rs. 10/- from the said passengers and did not issue tickets to them, thus, caused a loss of Rs. 120/- to the State exchequer. It was submitted that because of abdominal pain, the workman took treatment from the doctor near the bus stand of Mahilpur and on account of severe abdominal pain, the workman (Tarsem Singh) was not able to issue tickets efficiently.

Learned counsel for petitioners has further contended that during the course of enquiry, no independent person has been examined by respondent-Department apart from statements of two inspectors to substantiate that the workman (Tarsem Singh) had taken money and not issued the tickets. It is submitted that on the other hand, the workman (Tarsem Singh) had examined one passenger Santokh Singh son of Sadhu

Singh, who narrated the facts in tune with that of statement of workman (Tarsem Singh). It is further submitted that the concerned inspectors had failed to check the cash with the conductor so as to match the same with the number of tickets issued, therefore, the allegation that the workman (Tarsem Singh) had taken money and not issued the tickets, was not substantiated.

Learned counsel for petitioners has submitted that late Tarsem Singh had worked as a Conductor from 01.11.1981 to 17.08.2004 and had an unblemished service record and there was no complaint against him, therefore, the punishment of dismissal from service awarded to Late Sh. Tarsem Singh was disproportionate for the alleged misconduct. Accordingly, it is submitted that writ petition be allowed by setting aside the termination as well as the impugned award and further direction be issued to respondent-Department for granting wages of late Tarsem Singh from 19.08.2004 to 18.12.2005 to the petitioners alongwith interest.

9. On the other hand, learned State counsel appearing on behalf of respondent-Department has opposed the prayer made on behalf of petitioners by submitting that the workman (Tarsem Singh) and his legal heirs had not approached the Tribunal below with clean hands and they had concealed true and material facts. It is submitted that once a fair and proper enquiry was held, accordingly, the punishment was within the domain of respondent-Department. It is submitted that since workman (Tarsem Singh) was found guilty of embezzlement of Rs. 120/- with respondent-Department, accordingly his termination from service was valid and justified. It is further submitted that the Tribunal below has passed a well

reasoned award and the same is not required to be interfered with in exercise of writ jurisdiction by this Court. Accordingly, prayer for dismissal of the writ petition has been made.

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

11. From a perusal of paperbook, it is borne out that the workman (Tarsem Singh) was working as a Conductor with respondent-Department. On 27.01.2000, while he was on duty on Bus No. 9027 on Chandigarh-Jammu route, then the bus was checked by inspectors at Chabbewal and upon checking, it was found that there were 50 passengers travelling in the bus and out of them, 12 passengers were travelling without ticket and the workman (Tarsem Singh) had charged from them Rs. 10/- per passenger, however, he did not issue tickets to them, therefore, a loss of Rs. 120/- was caused to Government exchequer, which was mis-conduct.

12. The Tribunal below, while considering the case in hand, came to the conclusion that the charge sheet was duly served upon workman (Tarsem Singh), to which he filed reply and the workman appeared before the Enquiry Officer. It was further observed that due opportunity of hearing was afforded to workman (Tarsem Singh) and also to cross examine witnesses produced on behalf of respondent-Department. Even the workman had also moved an application for summoning of one Santokh Singh son of Sadhu Singh, whose statement was also recorded and signatures of workman (Tarsem Singh) on the enquiry file was admitted by widow of Tarsem Singh. Accordingly, it was held that the Enquiry Officer followed proper and fair procedure at the time of conducting enquiry

against the workman (Tarsem Singh). It has also been held that before passing the termination order, the workman (Tarsem Singh) was served with a show cause notice, to which he submitted his reply on 19.07.2001 and the workman (Tarsem Singh) was also given personal hearing. Thus, considering the totality of circumstances, the Tribunal below has recorded a finding that the enquiry against the workman was fair and proper and his termination from service was valid and justified as he was found guilty of committing embezzlement of Rs. 120/- with respondent-Department.

The Tribunal below held as under :-

“13. Before passing the termination order, workman was served with show cause notice and he submitted reply on 19.07.2001 as revealed from the enquiry file as well as termination order dt. 18.08.2004. He was also personally heard before passing the termination order on 18.08.2004. Thus, since the enquiry against the workman was fair and proper, his termination from the service is valid and justified, as he was found guilty of committing embezzlement of Rs. 120/- with the respondent. Reference can be made here to observation of Division Bench of Hon'ble Punjab & Haryana High Court in Nazar Singh Vs. State of Punjab and others cited as 2004 (3) RSJ 228, wherein Labour Court held the termination of services of the workman not justified and found it fit case to award lesser punishment. The workman was found guilty of the charges of issuing tickets of less denomination after collecting the prescribed fare from the passengers. Division Bench of Hon'ble Punjab & Haryana High Court held that “once the employee is found guilty of

embezzlement of funds, the public employer has no option but to bring an end to the relationship of master and servant. It need no emphasis that the public servant is entitled to remain in service so long he does not violate the basic postulate of public service, namely, honesty and unquestionable integrity”.

While giving this observation reliance was placed on Gujarat State Road Transport Corporation, Ahmedabad Vs. Jamnadas Bacharbhai cited as 1983 LAB.I.C. 1349, wherein Hon'ble Supreme Court of India allowed the appeal against the reinstatement of the workman and observed that “If a bus conductor has been dismissed in such circumstances, his reinstatement in the same post would enable him to indulge in the same malpractice in future. Everyday he has to collect fare and issue tickets. Reinstatement in the same post would therefore involves grave risk because of the repetitive opportunity that he would get to indulge in the malpractice and the daily temptation that he would face (face). Perhaps he would be tempted to repair the post losses.”

However, as the workman raised industrial dispute by way of filing demand notice and after failure of conciliation proceedings, the dispute was referred to this Court by the Appropriate Government for adjudication, the reference is maintainable. Accordingly, issue no. 1 and 2 are answered in favour of workman and against the management and issue no. 3 and 4 are answered in favour of management and against the workman since deceased.

RELIEF

17. In the light of my finding on issues no. 3 and 4, this reference is hereby answered against the workman/legal heirs of the deceased workman to the extent that termination of services of the workman since deceased is proper and justified. Parties to the reference are directed to bear their own costs as the case pertains to the year 2005. File be consigned to the record room.”

13. I have gone through the findings returned by the Tribunal below and also considered the submissions made by learned counsel for petitioners.

14. I find that the only explanation rendered by the petitioners on the non issuance of tickets to the passengers was that the workman (Tarsem Singh) was not well on the day when the checking was conducted by the inspectors and on account of ill health, the workman was not able to issue tickets. In my view, the aforesaid submission would rather substantiate the fact that the workman (Tarsem Singh) had infact not issued the tickets to the passengers.

15. As regards the reliance placed upon the statement of one Santokh Singh, who was examined by workman in has favour, it would be appropriate to refer to his cross examination, which reads as under :-

“Cross-examination by P.O.

Question: Can you present any proof regarding your travelling ?

Answer: I have tickets of that day which are D1 to 4.

Question: By giving how much money you had got

tickets from Conductor ?

Answer: Rs. 135/-.

Question: Did the Bus driver not went to get the medicine to the Conductor ?

Answer: The driver remained near the bus.

Question: Any proof regarding taking of medicine ?

Answer: Conductor may be having some receipt etc.

Question: Today you have come by which means and from where you have come ?

Answer: Today I have come with conductor, ticket was not taken and has come from Mahilpur.

Question: On that day why you had gone to Chandigarh and for what purpose you were going to Jammu ?

Answer: I had gone to my relatives.

Question: You live in Mahilpur but in your statement you are saying that you were going from Chandigarh to Jammu, whereas you should have gone from Mahilpur to Jammu, why you boarded from here ?

Answer: I had come to my relative's place at Chandigarh and from here after getting the address of relative had gone to Jammu.

Question: Did you send anything in favour of Conductor to the office ?

Answer: I had sent it to G.M. but now I have no proof of it.

Question: Are you relative of the conductor or

know him or often travels with him ?

Answer: No.”

A perusal of aforesaid cross examination of Santokh Singh does not inspire confidence as the said witness appears to have been called by the workman (Tarsem Singh).

16. Once the workman was charge sheeted and he participated in the enquiry proceedings; due opportunity of personal hearing as well as opportunity to cross examine the witnesses was provided to such workman and no procedural infirmity having been pointed out and the Tribunal below holding that the enquiry was conducted in fair and proper manner, I am of the considered view that no interference is called for in the same.

17. As regards the plea of counsel for petitioner that punishment of dismissal from service as awarded to the workman (Late Sh. Tarsem Singh) was disproportionate to the misconduct alleged, it would be gainful to refer to a few judicial pronouncement. In U.P.S.R.T.C. v. Mahendra Nath Tiwari, 2005(4) S.C.T. 715; Hon'ble the Supreme Court observed as under :-

“7. It is a misconception to consider that the amount involved in an offence of this nature has a material bearing, while considering whether there has been misconduct on the part of an employee. It may be relevant in a criminal prosecution when considering the quantum of punishment to be imposed. When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to

a clear violation of the duty imposed on him. It is really a breach of the duty cast on the conductor who is acting on behalf of the employer. Whether it be one passenger or ten passengers it would make no difference in principle in the absence of any explanation in that behalf. It was simply the case of a conductor who had violated the Regulations or the terms of his employment and had betrayed his employer, which in any event, is a grave misconduct justifying a dismissal.”

18. In U.P. State Road Transport Corporation v. Vinod Kumar, 2008(1) S.C.T. 158; Hon'ble the Supreme Court held as under :-

“10. As stated in the preceding paragraphs, the respondent had confined his case only to the conclusions reached by the Enquiry Officer as well as the quantum of punishment. Therefore, since the respondent had not challenged the correctness, legality or validity of the enquiry conducted, it was not open to the Labour Court to go into the findings recorded by the Enquiry Officer regarding the misconduct committed by the respondent. This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment. Without burdening the

judgment with all the judgments of this Court on this point, we may only refer to a recent judgment in Divisional Controller, N.E.K.R.T.C. v. H. Amaresh, 2006(3) SCT 582 : 2006(6) SCC 187, wherein this Court, after taking into account the earlier decisions, held in para 18 as under:

"In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corporation v. B.S. Hullikatti, 2001(1) SCT 787 : (2001)2 SCC 574 was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was

also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum."

[Underlining is ours]

11. Respectfully agreeing and following the aforesaid decision of this Court, we accept this appeal and set aside the judgment of the High Court as well as the order passed by the Labour Court. Consequently, the order passed by the Punishing Authority dismissing/removing the respondent from service is restored. No costs..."

19. In Uttaranchal Transport Corporation v. Sanjay Kumar Nautiyal, 2008(2) SCT 174 Hon'ble Supreme Court held as under:-

"4. In V. Ramana v. A.P. SRTC and Ors., 2005(4) SCT 353 : (2005(7) SCC 338) it was held as follows:

"4. In Karnataka State Road Transport Corporation v. B.S. Hullikatti, 2001(1) SCT 787 : (JT 2001(2) SC 72), it was held that misconduct in such cases where the bus

conductor either had not issued tickets to a large number of passengers or had issued tickets of lower denomination, punishment of removal is proper. It is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The factual position shows that the appellant's conduct in collecting fare at the designated place and not collecting fare from persons who had already travelled were in violation of various Regulations contained in The Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (in short 'Regulations'). In the Karnataka State Road Transport case (supra) it was held that it is misplaced sympathy by Courts in awarding lesser punishments where on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It was finally held that the order of dismissal should not have been set aside. The view was reiterated by a three Judge Bench in Regional Manager, RSRTC v.

Ghanshyam Sharma, 2001(2) SCT 1057: (2002(1) LLJ 234), where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and Bus Conductors who by their actions or inactions cause financial loss to the Corporations are not fit to be retained in service.

5. The principle was reiterated in Regional Manager, U.P.S.R.T.C. Etawha and Ors. v. Hoti Lal and Anr., 2003(1) SCT 941 : (JT 2003(2) SC 27)."

20. When the case of Late Sh. Tarsem Singh is examined in the light of judicial pronouncements referred above, it is observed that Late Sh. Tarsem Singh was charged for causing loss of Rs. 120/- to the State Exchequer as being a Conductor when checking was carried out by the inspectors on the concerned date i.e. 27.01.2000, it was found that out of 50 passengers travelling in the bus, 12 passengers were travelling without ticket and Tarsem Singh had charged Rs. 10/- from the said passengers and did not issue tickets to them. The aforesaid charge had been duly proved against Tarsem Singh and accordingly, after holding an enquiry, Tarsem Singh was awarded punishment of dismissal from service. It is thus evident that Tarsem Singh had clearly violated the duty imposed upon him as a Conductor, who was acting on behalf of employer. In the judgments referred above, such a conduct has been taken as a grave misconduct justifying dismissal. Accordingly, in the peculiar facts and circumstances of this case, it cannot be held that punishment of dismissal from service awarded to Late Sh. Tarsem Singh was in any way disproportionate to the

charge of misconduct levelled and proved against him.

21. 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.

22. Considering the totality of circumstances and also the legal position indicated above, there is no scope for interference in the impugned Award in exercise of writ jurisdiction by this Court. Resultantly, the instant petition fails and the same is dismissed.

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

(HARSH BUNGER)
JUDGE

28.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No