

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

**CWP-473-2016
Date of Decision: 22.09.2023**

Joginder Singh

..... Petitioner

Versus

Presiding Officer (In The Rank of Addl. District Judge), Industrial Tribunal,
Gurdaspur and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Jagdeep Bains, Advocate
for the petitioner.

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

HARSH BUNGER J. (ORAL)

1. Petitioner (Joginder Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of impugned award dated 11.09.2013 (Annexure P-9) passed by the Presiding Officer (in the Rank of Additional District Judge), Industrial Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal'), whereby the reference regarding termination of services of the petitioner-workman under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act') was decided against the petitioner-workman and in favour of the respondent-Management.

2. Briefly, the petitioner raised an industrial dispute by serving a demand notice dated 04.03.2002 (Annexure P-1) upon the Divisional Forest Officer, Pathankot (hereinafter referred to as 'the Management'), which was subsequently referred for adjudication to the Tribunal below.

3. In the claim statement, petitioner-workman stated that he joined the duties with the respondent-Management as Labourer on 20.09.1993 and he was lastly working under the Pathankot Forest Range Officer. Petitioner-workman claimed that his services were terminated on 01.08.2000 and at the time of termination, he was drawing salary of Rs.1,675/- per month. It was further claimed that at the time of termination of services of the petitioner-workman, he was not given any notice, notice pay, charge-sheet, inquiry or any compensation. It was pleaded by the petitioner-workman that the juniors to him were retained in service and the new persons were also recruited after his termination from the service. Accordingly, he prayed for reinstatement in service along with full back wages and all other consequential benefits.

4. On the other hand, the aforesaid claim of petitioner-workman was contested by the respondent-Management *inter alia* on the ground that the respondent-Forest Department is not covered by the definition of 'Industry'. It was the categorical case of the respondent-Management that petitioner-workman is not entitled to protection of Section 25-F of the 1947 Act as he had not completed 240 days of continuous service in a year preceding the date of his alleged termination. On merits, it was submitted by the respondent-Management that the petitioner-workman was neither engaged in September, 1993 nor he worked up to 01.08.2000 or was drawing wages of Rs.1,675/- per month, as alleged by him. It was the case of the respondent-Management that petitioner-workman worked for nineteen days in May, 1999, twenty one days in February, 2000, twenty five days in

March, 2000, twenty five days in August, 2000 and seven days in October, 2000. It was stated by the respondent-Management that activities of the Forest Department are seasonal; and it was denied that petitioner-workman had completed 240 days of continuous service. Accordingly, prayer for dismissal of the claim statement of the petitioner-workman was made.

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

“(i) Whether the termination of services of the workman Joginder Singh is justified and in order?

(ii) Relief”

6. Thereafter, both the parties led evidence in support of their case. The petitioner examined himself as WW-1 and one Dhiraj Kumar, Forest Guard as WW-2. On the other hand, respondent-Management examined Sh. Joginder Singh, Range Officer, Pathankot as MW-1, Sh. Yash Pal, Block Officer, Pathankot as MW-2 and Sh. Dhiraj Kumar, Forest Guard as MW-3.

7. After considering the respective stands of the parties and also the material/evidence available on record, the Tribunal decided the reference against the petitioner-workman vide impugned award dated 11.09.2013 (Annexure P-9), by holding that the petitioner-workman failed to prove that he completed 240 days of continuous service preceding the date of his alleged termination on 01.08.2000 and thus, he is not entitled to any relief under Section 25-F of the 1947 Act. Accordingly, the petitioner filed the instant writ petition before this Court.

8. Learned counsel for the petitioner, while reiterating the facts mentioned in the writ petition, submits that the Tribunal below has erred in law and fact in passing the impugned award dated 11.09.2013 (Annexure P-9). It is submitted that there was sufficient material on record to show that the petitioner-workman had worked continuously for 240 days

in a year preceding the date of his termination, however, the respondent-Management intentionally did not produce the muster roll, and thus, there was violation of Section 25-F of the 1947 Act. Learned counsel for the petitioner further submits that there was clear admission on the part of respondent-Management that juniors to the petitioner were retained in service; which led to violation of Section 25-G of the 1947 Act. Learned counsel for the petitioner states that subsequently new persons had also been appointed by the respondent-Management, which was clear violation of Section 25-H of the 1947 Act.

9. With the aforesaid submissions, learned counsel for the petitioner has prayed for allowing the instant writ petition by quashing impugned award dated 11.09.2013 (Annexure P-9) and directing the respondent-Management to reinstate the petitioner with all consequential benefits.

10. Per contra, learned State counsel has opposed the prayer made in the instant writ petition by supporting the findings recorded by the Tribunal below. It is submitted that the petitioner has failed to discharge the onus placed upon him to the effect that he had worked for 240 days in the last preceding 12 months from the date of his alleged termination, i.e. 01.08.2000. It is further submitted that there is no illegality or perversity in the findings recorded by the Tribunal below and even otherwise, this Court exercises limited jurisdiction against the award passed by the Tribunal. Accordingly, prayer for dismissal of the instant writ petition has been made.

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

12. Before considering the case in hand, it would be apposite to refer to a few judicial pronouncements.

13. In the case of “*Range Forest Officer v. S.T. Hadimani*”, 2002(3) SCT 382 (SC), Hon'ble Apex Court held as under:-

“2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August, 1998, came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in an year.

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratam Singh Narsinh Parmar, 2001(2) SCT 1081 (SC) : JT 2000(3) SC 326. In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot. Filing be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in an year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be

set aside.

14. In the case of “***Municipal Corpn. v. Siri Niwas***”, 2004(4) SCT 211, Hon'ble Apex Court held as under:-

“12. The provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. In terms of Section [25F](#) of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by employer for effecting a valid retrenchment :

- (i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof:*
- (ii) payment of compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.*

13. For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25-B of the Act. In terms of sub-section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had

worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section [25B](#) of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did not examine any other witness in support of his case.

14. A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration in the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the Appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the Respondent.

15. No reason has been assigned by the High Court as to why the exercise of discretionary jurisdiction of the Tribunal was bad

in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational...”

15. In “**R.M. Yellatti v. The Asstt. Executive Engineer**”, 2005(4) **SCT 695**, it was held as follows :

".... 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/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. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman 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."

16. It is thus well settled that the burden of proof that a workman had worked for 240 days in a given year was on the workman. It is also well settled 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. Further, it is also the settled position in law that mere non-production of muster rolls *per se* without any plea of suppression by the claimant-workman will not be the ground for the Tribunal to draw an adverse inference against the Management. Moreover, drawing of adverse inference is optional and not obligatory and the same was within the domain

of Industrial Tribunal below based upon facts and circumstances of a case.

17. In the instant case, the Tribunal below while answering the reference against the petitioner-workman has held as under:-

“10. This Tribunal after going through the evidence led by the parties, feels that heavy onus was upon the workman to have proved and established that he was working continuously with the respondents w.e.f. 20.9.1993 uptil his alleged date of termination on 1.8.2000. At the same time this Tribunal feels that the heavy duty was also casted upon him to prove that he was regularly getting the salary from the respondents Rs.1675/- and his job was permanent. However, this Tribunal feels that workman his miserably failed to prove the same on the record. The bald statement of workman Joginder Singh did not lead to the conclusion that workman was holding permanent job. Further, the workman also never led any convincing evidence that he had completed 240 days of continuous service in the year preceding to the alleged date of his termination on 1.8.2000. The Hon'ble Supreme Court of India in 2009 (3) R.S.J. Page 223 in the case titled as State of Haryana Versus Ramesh Kumar had categorically held that burden to prove is upon the workman to adduce evidence to prove the factum of his being in employment of the employer for 240 days continuously in the preceding year prior to his retrenchment. This Tribunal coming to the facts of the case in hand and as discussed above is of the view that the workman had failed to lead any cogent and convincing evidence on the record that he had completed 240 days of continuous service in a year immediately preceding the alleged date of his termination on 1.8.2000.

11. The AR on behalf of the workman namely Natha Singh had vehemently contended before this Tribunal that MW2 Yash Pal Block Officer when he was subjected to cross examination had admitted that workman joined the department on 20.9.1993 and he worked continuously uptill 31.7.2000. He was getting salary of Rs.1675/- at the time of his termination. Further AR

on behalf of the workman also submitted that even MW1 Joginder Singh had also admitted that workman was never given any notice, notice pay, charge sheet, enquiry and compensation. Thus it was submitted by AR on behalf of the workman that in view of the admissions made by Sh. Yash Pal it leads to the conclusion that the workman joined the respondent as a labourer on 20.9.1993 and was working continuously and as such the alleged termination of the workman by the respondent on 1.8.2000 is illegal and he should be reinstated in service with continuity of service with full back wages along with other benefits.

10. On hearing the submission of the AR of the workman and after going through the statement of MW2 Sh. Yash Pal Block Officer, this witness had furnished his affidavit Ex.M2 on the record, he has categorically submitted that the workman was never engaged as permanent employee nor he worked continuously as alleged by him and nor he was drawing the wages. He further submitted that as per the record the workman worked for 19 days in May 1999, 21 days in February, 2000, 25 days in March 2000, 25 days in August, 2000 and 7 days in October, 2000. Further MW1 Joginder Singh also produced the muster roll pertaining to the work done by the workman. This witness has categorically submitted that the workman worked from 5/99 to 10/2000 and his services were never terminated on 1.8.2000. Further from the muster roll Ex. MI it can be safely inferred that the workman worked continuously. Further even MW3 Dhiraj Kumar had also produced muster roll for 6/99, 7/99, 11/99, 12/99, 2/2000, 8/2000 and 10/2000 and from the muster roll it no where establishes the fact that the workman ever completed 240 days of continuous service in a calendar year immediately preceding the date of his alleged termination. Rather document Ex.M2 and Ex. M3 speaks the volume that the workman only worked for few days & as stated by MW3 Dhiraj Kumar Forest Guard in his statement that the workman only worked for 19 days in May, 99, 21 days in February,

2000, 25 days in March 2000, 25 days in August, 2000 and 7 days in October, 2000.

11. Besides the above fact that the workman failed to establish that he worked for 240 days continuously preceding the date of his alleged termination of service on 1.8.2000, this Tribunal feels that even heavy onus was also upon the workman to have proved on record his appointment on 20.9.93 as termination a labourer and regarding his on 1.8.2000, but there is no such appointment letter/termination letter proved on record by the workman. So since the activities of respondent are seasonal and workman was only engaged as labourer on daily wages and in light of the above discussion, this Tribunal feels that the workman failed to prove that he completed 240 days in continuous service preceding the date of his alleged termination on 1.8.2000 and as such the workman has got no right to raise dispute under Section 25-F of the I.D. Act, 1947. Hence, the provisions of Section 25-F of the I.D. Act are not applicable in the case in hand. Accordingly this issue is decided in favour of the respondents and against the workman.

ISSUE NO.2 (RELIEF):-

12. Resultantly, the reference is decided against the workman and in favour of respondents by holding that he is not entitled to any relief. File be consigned to the record room.”

18. When the case of petitioner is considered in the light of the legal position indicated above, it is manifest that apart from the self serving statement of Joginder Singh (petitioner), no other evidence was led on record to prove that he had completed 240 days of continuous service in a year preceding the date of his alleged termination, i.e. 01.08.2000. It has come on record that the petitioner-workman was never engaged as a permanent employee by the respondent-Management nor he worked continuously with the Management. It has also come on record that the petitioner was not drawing wages for the whole month, rather the wages

were drawn according to the work done by him, for the days he worked. The Tribunal below has further considered the muster roll placed on record, to hold that the petitioner-workman never worked continuously for 240 days in the year preceding his alleged termination on 01.08.2000 and no appointment letter/termination letter has been proved on record. Accordingly, the petitioner not found entitled to the relief in terms of Section 25-F of the 1947 Act.

19. I have considered the aforesaid findings returned by the Tribunal and the same appear to be based upon the material/evidence led before it.

20. As regards the plea of learned counsel for the petitioner that there has been violation of Sections 25-G and 25-H of the 1947 Act; suffice it to say that learned counsel has failed to refer to any material on record to even *prima facie* indicate that any juniors to the petitioner were retained in service or any new persons had been appointed subsequent to the termination of services of the petitioner.

21. Furthermore, the parameters for exercising 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 issuance of a writ of certiorari. Gainful reference can be made to the judgments rendered by Hon'ble Supreme Court in *“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. Keeping in view the aforesaid discussion, I am of the considered view that once the petitioner-worker has failed to discharge the onus placed upon him to prove that he worked continuously for 240 days in a year preceding the date of his alleged termination, no relief can be granted to him.

23. Accordingly, I do not find any reason to interfere with the impugned award dated 11.09.2013 (Annexure P-9) passed by the Tribunal below, resultantly, the present writ petition is dismissed.

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

22.09.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No