

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-8372-2016
Date of Decision: 1st December, 2023

Ramesh Chand
..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad
and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

Mr. Kuldeep Sharma, Advocate for
Mr. R.N. Lohan, Advocate
for respondent No.2.

HARSH BUNGER J. (ORAL)

1. Petitioner (Ramesh Chand) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of order dated 05.05.2009 (Annexure P-4) passed by the Presiding Officer, Labour Court-II, Faridabad, whereby Issue No.2, which was treated as a preliminary issue, was decided by holding that enquiry conducted by the Management against the petitioner-workman was fair and proper. The petitioner has also laid challenge to award dated 30.08.2012 (Annexure P-5), whereby the reference of industrial dispute regarding termination of services of the petitioner has been answered against him. A further prayer has been made by the petitioner for directing the respondent-

Management to reinstate him with continuity in service and full back wages.

2. Briefly, the petitioner-workman raised an industrial dispute regarding termination of his services by Co-operative Sugar Mills, Palwal by serving a demand notice. The said dispute was referred by the appropriate Government under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act') to the Labour Court-II, Faridabad, for adjudication.

3. In the claim statement, the petitioner-workman stated that he was engaged by respondent No.2 – Palwal Cooperative Sugar Mills Limited, Palwal (hereinafter referred to as 'the Management') as a Farm Mate in the year 1988 in the pay scale of Rs.390/-. Petitioner-workman claimed that his work and conduct was up to the mark and he was the elected President of the Mill Union for the last 3-4 years; and during his employment, he raised different issues for the welfare of workers, however, the Management always tried to get rid of him by unfair means. It was stated by the petitioner-workman that his entry was prohibited in the month of January, 1999, and thereafter, the respondent-Management issued a charge-sheet on 03.02.1999 upon him, by making false and fabricated allegations, whereupon, the Enquiry Officer was appointed, who, without following the principles of natural justice, conducted one-sided enquiry and held that the charges levelled against the petitioner-workman were proved. The petitioner claimed that no document or list of witnesses was provided to him and the Enquiry Officer concluded the enquiry on 16.03.1999. It was the categorical case of the petitioner-workman that he had submitted his medical certificate and sought for an adjournment but the Enquiry Officer did not consider his request and issued a show cause notice on 18.03.1999; and finally, the petitioner was dismissed from service on 01.04.1999. Petitioner-workman

claimed that the order of dismissal from service was illegal and arbitrary; and he was entitled for reinstatement with continuity in service and full back wages.

4. On the other hand, the aforesaid claim of petitioner-workman was opposed by the respondent-Management on the ground that the petitioner was appointed as Farm Mate in the Mills in the year 1988 vide appointment letter dated 04.11.1988 and he was not taking his duties seriously and was in the habit of disobeying the orders for which he was charge-sheeted and his explanation was called. Petitioner was charge-sheeted on the various charges, which can be summed up as under:-

(a) Petitioner intentionally remained absent from his duty on 16.11.1998, without getting his leave sanctioned;

(b) Regarding petitioner's ailment, an application was received by Mill on 18.11.1998 and despite rejection thereof, petitioner failed to report for duty.

(c) On 16.12.1998, petitioner again moved an application that he has been advised bed rest, for which he was asked to appear in order to get his medical examination done before the Civil Surgeon, Faridabad and to produce Medical Certificate/Report, however, petitioner did not report for duty and remained absent, which was against the certified standing orders of Mill.

(d) On 05.01.1999, 06.01.1999 and 07.01.1999, petitioner came on the Mill gate and held meeting with the employees of Mill; and instigated them for *Chakka Jam* and to create violence; and he further gave false statement of defamation to defame the Mill.

It was the stand of respondent-Management that the petitioner-workman was indulging in anti-mill activities and was instigating other employees against the Mill without any reason and as such he was

suspended vide letter dated 07.01.1999 for certain acts which fall within the definition of major misconduct under the provisions of standing orders of the Mills, accordingly the petitioner was charge-sheeted vide letter dated 03.02.1999, to which the petitioner-workman submitted his reply, which was found to be unsatisfactory and thereafter, Sh. R.S. Rathi, Purchase Officer of the Mill was appointed as an Enquiry Officer to conduct the enquiry of the charges against the workman. It was stated that the charges against the petitioner-workman were fully proved during the enquiry and after affording full opportunity, his services were dismissed from the Mills. According to the respondent-Management, enquiry proceedings were fixed for 16.03.1999 for appearance of petitioner and even a publication was got done in Dainik Palwal Kesari on 11.03.1999 in that regard and the workman was also informed telegraphically, however, petitioner failed to appear on 16.03.1999 before the Enquiry Officer, accordingly he was proceeded against *ex parte*. Further, the workman was also called upon to produce his medical certificate in case of his illness, however, he failed to do so and further failed to cooperate with the Enquiry Officer. Accordingly, it was submitted that all claims of the petitioner were false/fabricated and prayer for dismissal of the claim of petitioner was made.

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

- “1. Whether the termination of the service of Sh. Ramesh Chand is justified or not, if not, along with reinstatement to what amount of back wages he is entitled to? OPW*
- 2. Whether the enquiry conducted by the management is fair and proper? OPM*
- 3. Whether the reference is not maintainable? OPM*
- 4. Relief. ”*

6. Issue No.2 was treated as the preliminary issue, which came to

be decided by the Tribunal vide order dated 05.05.2009 (Annexure P-4), wherein it was held that the enquiry conducted by the respondent-Management was fair and proper.

7. Subsequently, the Tribunal vide impugned award dated 30.08.2012 (Annexure P-5) decided the reference against the petitioner-workman by holding that he was not entitled to any relief. Accordingly, petitioner filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that petitioner was the President of the Mill Union and on that account, the respondent-Management was not happy with the petitioner and he was restrained from entering the Sugar Mill. It is submitted that the enquiry was conducted *ex parte* and no opportunity was afforded to the petitioner to present his defence; and the respondent-Management illegally and arbitrarily dismissed the petitioner from service on 01.04.1999. Learned counsel for the petitioner contends that the Tribunal has failed to take into consideration the length of service rendered by the petitioner before the passing of the dismissal order by Management. Learned counsel further contends that the charges levelled against petitioner were not much serious in nature, and accordingly, the punishment awarded to him was disproportionate to the alleged charges.

9. With the aforesaid submissions, learned counsel for the petitioner has prayed for setting aside order dated 05.05.2009 (Annexure P-4) and award dated 30.08.2012 (Annexure P-5) passed by the Tribunal and further directing the respondent-Management to reinstate the petitioner with continuity in service and full back wages.

10. Per contra, learned counsel appearing on behalf of respondent No.2-Management has opposed the prayer made by learned counsel for the petitioner by raising a preliminary objection that the instant writ petition is

liable to be dismissed on the sole ground of delay and laches as the order/award impugned in the writ petition are dated 05.05.2009 (Annexure P-4) and 30.08.2012 (Annexure P-5) whereas the instant writ petition has been filed in the year 2016, which is beyond the period of three years. Learned counsel for respondent No.2 submits that the petitioner-workman was charge-sheeted for his acts of misconduct, regarding which a proper enquiry was conducted and due opportunity was afforded to the petitioner, however, he failed to participate in the same. It is stated that the Tribunal below, while deciding Issue No.2, has held that the enquiry conducted against the petitioner-workman was fair and proper and once such a finding is returned then the awarding of punishment was within the domain of respondent No.2-Management and no interference was required in the same. Learned counsel for respondent No.2 submits that the Tribunal has passed well reasoned and justified order/award, which do not call for any interference by this Court while exercising its writ jurisdiction. 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. Contours of the scope of interference by High Court in disciplinary proceedings are well settled. In **“Union of India v. P. Gunasekaran, 2015(1) S.C.T. 5”**, Hon'ble Supreme Court held as under:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in

exercise of its powers under Article [226/227](#) of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

Under Article [226/227](#) of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;*
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii). go into the adequacy of the evidence;*
- (iv). go into the reliability of the evidence;*
- (v). interfere, if there be some legal evidence on which findings can be based.*
- (vi). correct the error of fact however grave it may appear to be;*
- (vii). go into the proportionality of punishment unless it shocks its conscience.*

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18. The disciplinary authority, on scanning the inquiry report

and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article [226/227](#) of the Constitution of India.

19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article [226/227](#) of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court....”

13. Coming to the case in hand, the Tribunal, while considering Issue No.2, i.e. whether the enquiry conducted by the Management was fair and proper; has held that the petitioner was charge sheeted vide letter dated 03.02.1999 (Ex.M-1) to which the petitioner submitted his reply dated 08.02.1999. Sh. R.S. Rathi, Purchase Officer (MW-1) was appointed as Enquiry Officer to conduct departmental enquiry on the charges made against petitioner - Ramesh Chand vide letter dated 11.02.1999 (Ex.M-2). This letter (Ex.M-2) was accompanied with list of witnesses and list of documents as mentioned in the letter but the petitioner refused to accept the same and thereafter, notice was affixed at the residence of the petitioner. Tribunal below has held that proper information was sent to the petitioner regarding appointment of Enquiry Officer. It has come on record that the Enquiry Officer sent registered letter No.6476 dated 16.02.1999 as well as *dasti* letter to petitioner for appearing before him on 22.02.1999 but the petitioner did not appear. It appears that the petitioner sent a written request alongwith medical certificate dated 21.02.1999 issued by Jindal Nursing Home; Palwal, whereupon the Enquiry Officer fixed the date of hearing on 03.03.1999 and sent a registered letter dated 22.02.1999 to the petitioner and directed the petitioner to submit medical certificate of Civil Surgeon,

Faridabad on the date of hearing but this letter was also received undelivered. Again the enquiry officer sent a registered letter on 03.03.1999 for next date of hearing i.e. 08.03.1999. Dasti notice was also sent but that was not accepted by the workman and the same was affixed. Petitioner did not appear before enquiry officer on 08.03.1999 and after enquiry proceedings of that day, intimation through telegram dated 08.03.1999 was received regarding illness of the workman. A registered letter was also received on that day alongwith photo copy of medical certificate issued by medical officer B.K.Hospital, Faridabad. Accordingly, the enquiry officer gave last opportunity for his appearance on 16.03.1999 at 3.30 PM and notice was also given to him through publication in local newspaper, Palwal Kesari dated 11.03.1999. The workman was also directed to produce original medical certificate issued by Civil Surgeon, Faridabad. The petitioner was also intimated separately vide telegram dated 10.03.1999 (Ex.M-25). The petitioner did not appear on 16.03.1999 up to 3.00 P.M. and *ex parte* proceedings were conducted against him and the enquiry officer recorded the statements of departmental witnesses and submitted his enquiry report to the management. Enquiry proceedings are Ex.M-5 to Ex.M-8 and Enquiry report is Ex.M-4 on the record. It was noticed by the Tribunal that after enquiry, the management issue a show cause notice (Ex.M-9) dated 18.03.1999 to the workman alongwith enquiry report but no reply of show cause notice was given by the workman and thereafter, notice was given to the petitioner for personal hearing but he did not appear and ultimately, his services were dismissed vide order (Ex.M-10) dated 01.04.1999. Considering the relevant material on record, the Tribunal came to the conclusion that once it is proved on record that the petitioner refused to receive the notice of enquiry officer and he did not participate in enquiry

proceedings deliberately and ultimately, the enquiry was conducted *ex parte* and thereafter enquiry report was submitted to the employer by the enquiry officer; therefore, there is no violation of principles of natural justice while conducting enquiry and hence, enquiry conducted by the management against the petitioner is fair and proper.

14. Further, vide final award dated 30.08.2012 (Annexure P-5), the Tribunal below has answered the reference against the petitioner-workman by observing that the petitioner did not attend the enquiry on any date hence, according to provisions of Clause 22(P) of certified standing orders, the enquiry officer proceeded against the petitioner *ex parte* and submitted his enquiry report to the management, whereupon the petitioner-workman was dismissed from service on 01.04.1999 and due process of law was adopted by the Management. Therefore, the workman cannot say that he was terminated without any cause or reason or without being heard. Tribunal below has held the respondent has produced evidence alongwith documents which clearly shows that ample opportunities were given to the petitioner for hearing and petitioner was terminated after adopting legal procedure.

15. Upon going through the paper book as well as from the impugned order/award, it is observed that the petitioner was aware of the enquiry proceedings pending against him, however, he chose not to appear in the same, despite various letters/intimations being sent to him. Learned counsel for the petitioner has failed to point out any circumstance to justify his absence from enquiry proceedings. In paragraph No.8 of the present writ petition, the only reason given by the petitioner for not participating in the enquiry proceedings is that he was suffering from illness. It is observed that the said fact was not proved before the Court below apparently as the petitioner did not appear in the enquiry proceedings or thereafter. Further,

the petitioner has not shown any medical certificate from a Government Hospital/Institution regarding his illness, before this Court. Accordingly, no observation can be made on the said plea.

16. Moreover, the instant writ petition has been filed by the petitioner in the year 2016, i.e. beyond the period of 3 years from the date of final award dated 30.08.2012 (Annexure P-5) passed by the Tribunal. In writ proceedings, the period of limitation of three years has been read by a judgement of the Constitution Bench of Hon'ble the Supreme Court rendered in the case of ***“State of Madhya Pradesh v. Bhai Lal Bhai” AIR 1964 Supreme Court 1006***. A perusal of the writ petition would reveal that no explanation is forthcoming for challenging the aforesaid award after a lapse of more than three years. Apparently, the writ petition suffers from delay and laches on the part of petitioner.

17. Further, 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*".

18. Keeping in view the aforesaid facts and circumstances, I do not find any merit in the instant writ petition and the same is accordingly dismissed.

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

1st December, 2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No