

2023:PHHC:166338

228-4

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-9942-2015
Date of Decision: 03.11.2023

Sushil Kumar
..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Jalandhar and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate,
Mr. Sahil Kumar, Advocate and
Mr. B.P.S. Thakur, Advocate
for respondents No.2 and 3.

HARSH BUNGER J. (ORAL)

1. Petitioner (Sushil Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking setting aside of award dated 23.11.2012 (Annexure P-6) passed by Presiding Officer, Industrial Tribunal, Jalandhar (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by petitioner, regarding termination of his services, has been answered against him.

A further prayer has been made for directing respondents No.2 and 3, i.e. Punjab Small Industries and Export Corporation Limited (hereinafter to be referred as 'Management'), to reinstate the petitioner with full back wages and continuity in service, including arrears along with interest @ 18% per annum from the date of admissibility till payment.

2. Briefly, the petitioner raised an industrial dispute, with regard to termination of his services, which was referred to the Tribunal below, for adjudication.

3. As per the claim of petitioner, he was appointed as Sewerman by the respondent-Management and his salary was Rs.2,255/- per month. Petitioner claimed that he had joined the service on 01.02.1999 and his services were terminated on 01.03.2001, without issuance of any charge-sheet or notice; nor any inquiry was conducted or any retrenchment compensation was paid to him. Petitioner further claimed that since termination of his services, he remained unemployed and new persons had been recruited by the respondent-Management.

4. Per contra, the aforesaid claim of petitioner was opposed by the respondent-Management by stating that the petitioner used to be engaged as a casual labourer on daily rate basis, as approved by P.W.D. (B&R), Punjab, whenever the necessity arose. It was further stated that the petitioner was never recruited by the respondent-Management at any post, and therefore, there was no question of issuing appointment letter to him. The date of appointment and the alleged date of termination of petitioner's services were also denied by the respondent-Management; and even the salary claimed by the petitioner was denied by the respondent-Management. It was specifically stated by the respondent-Management that the petitioner had not completed 240 days service at any point of time. Accordingly, prayer for dismissal of

claim of the petitioner was made.

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

*“1. Whether the has continuously worked for 240 days in last 12 calendar months immediately before the alleged date of termination?
OPW*

2. If issue No.1 is proved, whether termination of services of the workman is justified and in order? OPM

3. Relief”

6. Thereafter, both the parties led evidence in support of their case. Petitioner examined himself as WW-1. On the other hand, the respondent-Management examined Sh. Gurmit Singh, S.D.O. as MW-1.

7. Upon considering the material/evidence available on record, Tribunal below answered the reference against the petitioner vide award dated 23.11.2012 (Annexure P-6) by holding that the workman could not prove the facts that he was appointed on 01.02.1999 as Sewerman and his services were terminated on 01.03.2001. The Tribunal has further held that the workman also failed to prove that he worked for 240 days immediately before the alleged date of termination of his services.

8. Being aggrieved against the aforesaid award dated 23.11.2012 (Annexure P-6), petitioner has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of petitioner. It is submitted that petitioner had worked with the respondent-Management from 01.02.1999 up to 01.03.2001 on regular basis and his services were terminated in an illegal and arbitrary manner. Learned counsel contends that the finding returned by the Tribunal below that petitioner had not worked for

240 days is wrong as he had worked with the respondent-Management from 01.02.1999 till 01.03.2001. It is further contended that during pendency of the proceedings before the Tribunal, petitioner-workman had sought production of record by the respondent-Management, however, the Management had failed to produce the relevant record with regard to the petitioner, and accordingly, an adverse inference should have been drawn against the Management.

With the aforesaid submissions, learned counsel for the petitioner has prayed for allowing the instant writ petition by setting aside award dated 23.11.2012 (Annexure P-6) passed by the Tribunal and further directing respondents No.2 and 3 to reinstate the petitioner in service along with all the consequential benefits.

10. Per contra, learned counsel for respondents No.2 and 3 has opposed the prayer made by learned counsel for the petitioner by submitting that the Tribunal below has passed a reasoned and justified order, after appreciating the material/evidence available on record, and the same does not call for any interference by this Court. It is submitted that the petitioner had failed to prove on record his date of appointment as well as date of termination of his services, before the Tribunal. It is further submitted that petitioner had also failed to prove the fact that he had rendered continuous service of 240 days in the 12 months preceding the alleged date of termination of his services, with the respondent-Management, in terms of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act'), so as to claim protection under Section 25-F *ibid*. Accordingly, learned counsel for respondents No.2 and 3 has prayed for dismissal of the instant writ petition.

11. I have heard learned counsel for the parties and perused the

paper book with their able assistance.

12. It is well settled law that the onus to prove existence of relationship of employer and employee between the parties is upon the workman. In “*Workman of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors.*”, (2004) 3 SCC 514, Hon'ble Supreme Court held as under:-

“47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Others, 1973 LIC 398, the Kerala High Court held :

"The burden of proof being on the workmen to establish the employeremployee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employeremployee relationship."

49. In Swapan Das Gupta and Others. v. The First Labour Court of West Bengal and Others, 1975 LIC 202, it has been held :

"Where a person asserts that he was a workmen of the Company, and it is denied by the company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse..."

It is also well settled law that the onus to prove that the workman has rendered continuous service in terms of Section 25-B of the

1947 Act, i.e. the workman has worked under the Management for 240 days in 12 months preceding the date of termination, is also on the workman. It is further 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. In this regard, reference can be made to the case of “*Municipal Corpn. v. Siri Niwas*”, 2004(4) S.C.T. 211 and “*Surendranagar District Panchayat v. Dahyabhai Amarsinh*”, 2005(8) SCC 750.

13. In the instant case, the Tribunal below vide the impugned award dated 23.11.2012 (Annexure P-6), has returned the following findings:-

“Issue No.1 and 2

6. Both these issues need common discussion and have been taken up together for discussion. It was for the workman to prove that he continuously worked for 240 days in 12 calendar months preceding his termination. He was also to prove that he was appointed by the management as claimed by him. The workman appeared as WW1 and reiterated his case saying that he was appointed on 1.2.99 as Sewerman and his services were terminated on 1.3.01. when the workman was put to cross-examination, he admitted that no appointment letter was issued to him. He has got no attendance record. He admitted that he was working on daily wages and used to get wages at the end of month as per days he worked. He admitted that he was used to be called by the management whenever there was work. He claimed that he was given appointment letter but he has not brought the same. The workman has not produced any document at all to support his claim. Rather, the cross examination of workman shows that he was working on daily wages. The date of his initial engagement is also not proved. He used to be called as per needs of the work. Therefore, it is proved from the admission of the workman that he was not a

regular employee as sought to be projected in the statement of claim. Rather, he was a casual daily wage labourer. The respondent is a Semi Govt. Corporation and any appointment made by it is governed by the instructions of the Govt. and they have to follow the rules relating to the public appointment. No such procedure is alleged to have been followed. The management examined Gurmit Singh SDO as MWI who stated that the workman was engaged on need basis whenever necessity arose and he was a casual labourer. His appointment and termination as claimed is denied by him. It was stated that he never completed 240 days. Burden to prove continuous service for 240 days in the preceding 12 calendar months immediately before the alleged date of termination was on the workman. Except the bald statement of the workman which is further eroded by his admission in the cross examination, the workman could not prove that he was appointed as alleged on 1.2.99 and his services were terminated on 1.3.01. He also could not prove that he worked for 240 days immediately before the alleged date of his termination. Accordingly, both these issues are decided against the workman and in favour of the management.

Relief

7. In view of foregoing discussion on the abovesaid issues, the reference is answered against the workman holding that as the workman has failed to prove his case, he is not entitled to any relief. I accordingly pass the award. File be consigned.”

A perusal of the above extracted findings of the Tribunal below would make it evident that the petitioner-workman failed to discharge the onus placed upon him of proving employee-employer relationship nor it has been proved that the petitioner-workman had completed 240 days' work under the respondent-Management in terms of Section 25-B of the 1947 Act, so as to attract the provisions of Section 25-F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of

engagement by the respondent-Management or any order in that regard was produced; even no co-worker has been examined by the petitioner-workman in support of his claim. Therefore, once the petitioner has failed to discharge the onus placed on him to prove his pleaded case, no relief could have been granted to him.

14. As regards the plea of petitioner that adverse inference be drawn against respondent-Management for not producing the relevant record, it is observed that drawing of adverse inference is optional and not obligatory and the same is within the domain of Industrial Tribunal. Further, drawing of adverse inference depends on facts and circumstances of each case and adverse inference cannot be drawn only because it is lawful to do so. In the instant case, the Tribunal below has not drawn any adverse inference. Furthermore, apart from the bare plea of non-production of relevant record by the respondent-Management; there is no plea of the petitioner that respondent-Management has suppressed the relevant record. In the absence of such plea of suppression, no adverse inference can be drawn against respondent-Management. In this regard, reference can be made to the judgment of Hon'ble Apex Court in ***"R.M. Yellatti v. The Asst. Executive Engineer"***, 2005(4) S.C.T. 695, wherein it has been held as under:

"15. ... 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...”

15. Furthermore, the parameters for exercise of jurisdiction by the High Court under Article [226](#) of the Constitution of India, in cases involving challenge to the award passed by the Labour Court/Industrial Tribunal and orders passed by other judicial and *quasi-judicial* bodies, are well defined. A writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly, i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of *certiorari* is a supervisory jurisdiction and not appellate one. This necessarily means that the finding of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a *quasi-judicial* authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or *quasi-judicial* authority. An error, the discovery

of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of *certiorari*. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding, the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of *certiorari*. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the *quasi-judicial* authority cannot be gone into by the High Court while considering the prayer for issue of a writ of *certiorari*. Likewise, the mere, possibility of forming a different opinion on re-appreciation of evidence by the parties is not sufficient for issue of a writ of *certiorari* “*Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477*”; “*Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 Supreme Court 61*”; “*Jitendra Singh Rathor v. Sh. Baidyanath Ayurved Bhawan Ltd. and another, AIR 1984 Supreme Court 976*”; “*R.S. Saini v. State of Punjab and others, 1999(4) RCR (Civil) 253 (SC) : J.T. 1999(6) S.C. 507*” and “*Mohd. Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69*”.

16. No other point has been urged.

17. When the facts and circumstances of this case and also the findings returned by the Tribunal below are considered in the light of legal position indicated above, I do not find any illegality or infirmity with impugned award dated 23.11.2012 (Annexure P-6), which may call for any

interference by this Court, while exercising its writ jurisdiction. Therefore, the instant writ petition is bereft of any merit and the same is accordingly dismissed.

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

03.11.2023
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No