

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17808-2023 (O/M)

Date of Decision: 23.08.2023

The Wide Life, Harike-I and another

..... Petitioners

Versus

Sukhpreet Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vipin Pal Yadav, Additional A.G. Punjab
for the petitioners-Department.

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HARSH BUNGER, J. (ORAL)

1. Petitioner-Department has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned Award dated 30.01.2023 (Annexure P-1), passed by the Ld. Industrial Tribunal, Amritsar (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by respondent No. 1-workman (Sukhpreet Singh) regarding termination of his services; has been answered in his favour by holding that termination of his service was bad and he has been granted a lump sum compensation of Rs. 2,00,000/-.

2. Briefly, the respondent No. 1-workman raised an industrial dispute regarding termination of his services, by filing a claim petition under Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'), wherein he claimed that he was appointed as a Video Operator by Petitioner-Department in the year 1996 and he worked continuously till he was illegally terminated on 01.12.2008. It was claimed by respondent No. 1 that juniors to him were retained in service by Petitioner-Department and

other workmen in the same category were appointed after termination of his services. Respondent No. 1 claimed that his services were terminated in violation of the provisions of Section 25-F, Section 25-G and Section 25-H of 1947 Act. It was also stated that respondent No. 1-workman could not secure any other job inspite of his best efforts, accordingly, respondent No. 1 prayed for reinstatement and continuity of services with full back wages.

3. Petitioner-Department contested the claim of respondent No. 1-workman by filing its written statement wherein preliminary objection was raised regarding maintainability of reference and the claim of the respondent No. 1-workman being time barred. It was stated that the respondent No. 1-workman was not employed on regular basis, however, he worked as a Video Operator on requirement basis and as per the availability of work as well as funds. It was stated that the work of the Petitioner-Department is seasonal in nature and the labourers/workers were engaged by the forest guard on day to day basis for the work of plantation and the wages are paid on DC rates. It was stated that when the work is finished; the services of the labourers/workers automatically come to an end. It was denied that respondent No. 1-workman had worked for 240 days in a year. Accordingly, prayer for dismissal of claim of respondent No. 1-workman was made.

4. From the pleadings of the parties, issues were framed and the parties led their respective evidence.

5. Considering the material/evidence on record, the Tribunal below, vide impugned Award, answered the reference in favour of respondent No. 1-workman and granted relief of compensation of Rs. 2,00,000/- in lieu of reinstatement.

filed the instant writ petition before this Court.

7. Learned counsel for petitioner submits that the learned Tribunal below has erred in law and facts in passing the impugned Award. It is submitted that the claim of respondent No. 1-workman was time barred and even otherwise the workman has not rendered 240 days of service in 12 months prior to his alleged termination. Learned counsel for the petitioner-Department stated that while considering the claim of respondent No. 1-workman for regularization, a speaking order dated 30.03.2013 was passed; in which the total number of working days of the respondent No. 1-workman were considered and it was observed that the respondent No. 1-workman did not render 240 days of services. Accordingly, claim of respondent No. 1 was rejected on the ground that the respondent-workman did not complete 10 years of services up to 31.12.2006. It is next submitted that the workman was engaged on requirement basis by the forest guard; and upon completion of work, the services of the workman automatically came to an end. It was further submitted that there is no sanctioned post of a Video Operator in the Petitioner-Department. It is contended that respondent No. 1-workman had failed to prove its pleaded case as he did not produce any document regarding his joining, attendance, salary etc. Therefore, it is prayed that impugned Award be quashed.

8. I have heard counsel for the petitioner-Department and have perused the paperbook with his able assistance.

9. In the instant case, the Tribunal below has returned the following findings :-

“17. The employer-employee relationship between the parties is an admitted fact. The first and foremost

question is whether the workman being daily wager is entitled to the benefit of the provisions of the I.D. Act or not ? The law in this regard is well settled. The judgments cited by the Ld. AR for the workman i.e. Jasmer Singh Vs State of Haryana & Anr, Civil Appeal No. 346 of 2015 decided on 13.01.2015 (S.C.), K.V. Anil Mithra & Anr Vs Sree Sankaracharya University of Sanskrit & Anr, Civil Appeal No (s). 9067 of 2014 decided on 27.10.2021 (S.C), and Assistant Engineer, Rajasthan Vs Gitam Singh, Civil Appeal No. 8415 of 2009 decided on 31.01.2013 (S.C) (Supra) are clearly applicable to the facts of present matter. In the aforesaid judgments, it is clearly laid down that even a daily wager is entitled to the protection of the provisions of the ID Act. The only requirement for claiming above protection is that the workman must have worked for more than 240 days in the preceding 12 months from the date of termination of the service by the managements. In the present matter, the workman has categorically stated that he has worked with the managements from year 1996 to 01.12.2008. On the other hand, the managements have pleaded that the service of workman was not continuous and there were gaps in his service. The managements have also placed on record the service record of the workman including the muster rolls as Ex. M1. Through aforesaid Muster Rolls, the managements have endeavoured to establish that the service of the workman was not continuous and there were breaks in his service. As far as the aforesaid contention of the managements is concerned, it is pertinent to mention here that the managements have not produced any document on the file vide which the services of the workman were terminated prior to 01.12.2008 or vide

which he was re-employed by the managements. The managements have produced the documents of their choice on the judicial file. From a perusal of record Ex. M1, it is clear that the muster rolls of some months of each year are missing from the same. Neither the managements have produced the muster rolls of all the months of each year nor any document regarding the gap in the service of workman has been produced on the file by the managements. The managements have withheld the best evidence for the reasons best known to them. It is settled principle of law that an employer is duty bound to maintain proper record of services rendered by the employees. In cases tilted as R.M. Yellati Versus The Assistant Executive Engineer-2006 (1) Apex Court Judgments 667, the Hon'ble Apex Court has held that "the State Governments should take steps to maintain proper records of service rendered by daily wagers. The daily wager is not a person who could be thrown by the wayside on the mere whims of the management. The management had perforce to maintain the records and admittedly there were muster rolls. The destruction of public records could not have been done without proper procedure nor could the documents pale into their air, for the reason that there was a case pending in relation to the claim of the workman."

In the present case also, it was the duty of the managements to maintain proper muster rolls of the workman but the managements have produced only few muster rolls. In the absence of any document regarding the termination of services of the workman from the year 1996 to 01.12.2008, it cannot be believed that there was any gap in the service of the workman during the aforesaid period. Hence, this Tribunal is of the

considered opinion that the workman had completed more than 240 days of continuous service in the preceding year with the managements before the termination of his service and he is entitled to the protection of Section 25F of the ID Act. The managements have not placed any document on file that before the termination of the service of the workman, the compliance of the provisions of Section 25F of the ID Act was made by them. Hence, in the opinion of this Tribunal, the termination of the service of the workman by the managements is illegal.

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20. *In the present matter, no doubt, the workman has served with the managements for around 12 years but after the termination of his services on 01.12.2008, he raised this dispute after a delay of around 9 years i.e. in the year 2017. He has served merely as a daily wager with the managements. Keeping in view the entirety of facts and circumstances, this Tribunal is of the considered opinion that instead of granting relief of reinstatement in service, compensation would be the proper relief in this matter. Hence, this Tribunal deems it appropriate to grant compensation to the tune of Rs. 2 Lacs to the workman and the managements are directed to pay aforesaid compensation to the workman within a period of 2 months. With above observations, this issue is decided in favour of the workman and against the managements.*

Issue No. 3

Relief

21. *In view of the observations of this Tribunal on issue no. 1 and 2, present reference is answered in favour of the workman and against the managements. It is ordered that the termination of the service of the*

workman by the managements was illegal and the managements are directed to pay lump sum compensation to the tune of Rs, 2 Lacs to the workman within a period of 2 months from the date of publication of award in the official gazette. If the managements failed to pay the aforesaid amount, they shall be liable to pay interest at the rate of 9% per annum from the date of institution of present reference till the realization. Reader of this Tribunal is directed to forward three copies of this Award to Assistant Labour Commissioner/ Labour-cum-Conciliation Officer, Amritsar, as required under section 15 of the I.D. Act read with Notification No. S.O. 66/C.A.14/1947/S.17/2008 dated 01.10.2008. Copy of this order be also sent to the court of Ld. Civil Judge (Sr. Division), Amritsar, as required under Section 11 (10) of the I.D. Act. File be consigned to the record room.”

10. A perusal of above extracted findings returned by Tribunal below would show that relationship of employer and employee between petitioner-Department and respondent No. 1-workman was admitted. The Tribunal below has recorded a finding of fact that respondent No. 1-workman has worked for 240 days in last calendar year from date of termination by observing that the workman had specifically stated that he worked from year 1996 to 01.12.2008 and the Management has failed to show from any record that services of workman were ever terminated during the aforesaid period or that workman was ever re-employed during the said period. The Tribunal below has observed that the Management had failed to produce complete muster rolls and it withheld the best evidence for the reasons best known to it. The Tribunal has held that the workman had

completed more than 240 days of continuous service in the preceding year with the managements before the termination of his service. It has also been held that there is nothing on record to show that while terminating the services of workman, the provisions of Section 25-F of 1947 Act have been complied with.

11. Learned counsel for petitioner-Department has failed to dislodge the findings returned by the Tribunal below. Rather, the Tribunal below has considered the fact that respondent No. 1 worked with petitioner-Department for 12 years as he served with the Management as a daily wager, accordingly, the Tribunal below has not granted the relief of reinstatement and other benefits to respondent No. 1, but granted only compensation of Rs. 2,00,000/- to respondent No. 1-workman.

12. In my considered view, the relief granted by Tribunal below is in consonance with the law laid down by Hon'ble the Supreme Court in the cases of ***Incharge Officer v. Shankar Shetty, 2010 (4) SCT 261*** and ***BSNL vs Bhurumal, 2014 (3) SCT 49***.

13. In ***Incharge Officer v. Shankar Shetty 2010(4) SCT 261***, Hon'ble Supreme Court held as under:-

“2. In the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr., 2009(3) SCT 790 : 2009(5) R.A.J. 153 : (2009) 15 SCC 327 delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court-namely, U.P. State Brassware Corporation Ltd. and Anr. v. Uday Narain Pandey, 2006(1) SCT 77 : 2006) 1 SCC 479; Uttranchal Forest Development Corporation v. M.C. Joshi, 2007(2) SCT 562 : (2007) 9 SCC 353; State of M.P. and Ors. v.

Lalit Kumar Verma, 2007(1) S.C.T. 620 : (2007) 1 SCC 575; Madhya Pradesh Admn v. Tribhuban, 2007(2) S.C.T. 738 : (2007) 9 SCC 748, Sita Ram and Ors. v. Motil Lal Nehru Farmers Training Institute, 2008(2) S.C.T. 660 : 2008(3) R.A.J. 251 : (2008) 5 SCC 75; Jaipur Development Authority v. Ramasahai and Anr., 2006(4) S.C.T. 772 : (2006) 11 SCC 684; Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr., (2008) 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat, Gajraula and Anr., 2008(1) S.C.T. 310 : 2008(1) R.A.J. 295 : (2008) 1 SCC 575 and stated as follows :

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of

Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee".

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5. We think that if the principles stated in Jagbir Singh and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum..."

14. In **BSNL vs Bhurumal, 2014 (3) SCT 49**, Hon'ble Apex Court held as under:-

"21. In the case of Telecom District Manager v. Keshab Deb, 2008(4) S.C.T. 32 : (2010) 6 SCC 773, the Court

*emphasised that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months' pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section [25F](#) of the Industrial Disputes Act. He could not have been directed to be regularised in service or granted/given a temporary status. Such a scheme has been held to be unconstitutional by this Court in **A. Umarani v. Registrar, Coop. Societies, 2004(4) S.C.T. 728 : (2008) 8 SCC 402, and Secretary, State of Karnataka v. Umadevi, (200) 4 SCC 1.***

22. *It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow full back wages should be directed to be paid to the workman. He drew our attention of this Court in the case of **Coal India Ltd. v. Ananta Saha, (2011) 5 SCC 142, and Metropolitan Transport Corporation v. V. Venkatesan, 2009(3) S.C.T. 749 : (2009) 9 SCC 601.***

23. *It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section [25F](#) of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given*

monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

*24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section [25F](#) of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularisation (See: **State of Karnataka v. Uma Devi, (2006) 4 SCC 1**), Thus when he cannot claim regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.”*

15. As regards the submission of learned State counsel that the claim of respondent No. 1 was time barred, it is observed that this is not a case where the respondent No. 1 had slept over his rights. In the year 2012, respondent No. 1 filed a writ petition i.e. CWP No. 23347 of 2012 for regularization of his services, which was disposed of by this Court with a direction to respondent-authorities to take a final decision on his legal notice dated 15.09.2012. Furthermore in **Raghubir Singh v. General Manager,**

Haryana Roadways, Hissar 2014 (4) S.C.T. 262, Hon'ble Supreme Court

observed as under:-

“11. According to Section [10\(1\)](#) of the Act, the appropriate Government 'at any time' may refer an industrial dispute for adjudication, if it is of the opinion that such an industrial dispute between the workman and the employer exists or is apprehended. Section [10\(1\)](#) reads as follows:

"10(1)[Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication."

Thus, it is necessary for us to carefully observe the phrase 'at any time' used in this section. Therefore, there arises an issue whether the question of limitation is applicable to the reference of the existing industrial dispute that would be made by the State Government either to the Labour Court or Industrial Tribunal for

*adjudication at the instance of the appellant. This Court in **Avon Services Production Agencies (Pvt.) Ltd. v. Industrial Tribunal, Haryana and Ors., (1979) 1 SCC 1**, after interpreting the phrases 'at any time' rendered in Section [10\(1\)](#) of the Act, held thus:-*

"7.....Section 10(1) enables the appropriate Government to make reference of an industrial dispute which exists or is apprehended at any time to one of the authorities mentioned in the section. How and in what manner or through what machinery the Government is apprised of the dispute is hardly relevant. The only requirement for taking action under Section [10\(1\)](#) is that there must be some material before the Government which will enable the appropriate Government to form an opinion that an industrial dispute exists or is apprehended. This is an administrative function of the Government as the expression is understood in contradistinction to judicial or quasi-judicial function"

*Therefore, it is implicit from the above case that in case of delay in raising the industrial dispute, the appropriate Government under Section [10\(1\)](#) of the Act has the power, to make reference to either Labour Court or Industrial Tribunal, if it is of the opinion that any industrial dispute exists or is apprehended at any time, between the workman and the employer. Further, in **Sapan Kumar Pandit v. U.P. State Electricity Board and Ors., 2001(3) S.C.T. 806 : (2001)6***

SCC 222, it is held by this Court as under:-

"15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanised by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication under Section [4K](#) of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

(Emphasis laid by the court)

*12. Therefore, in our considered view, the observations made by this Court in the **Rajasthan State Agriculture Marketing Board** case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the*

reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate Government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. *In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate Government in exercise of its statutory power under Section [10\(1\)\(c\)](#) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section [10\(1\)\(c\)](#) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in **Avon Services and Sapan Kumar Pandit** cases referred to supra...”*

When the case in hand is tested on the anvil of the legal position

indicated in the case of **Raghubir Singh** (supra), it cannot be said that the

claim of respondent No. 1 was time barred, therefore, the submission of Ld. State counsel that claim of respondent No. 1 was time barred, is rejected.

16. 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.*

17. Considering the totality of circumstances in the light of legal principles indicated above, there is no scope for any interference by this Court in the findings/Award rendered by the Tribunal below, in exercise of writ jurisdiction. Therefore, the instant writ petition fails and the same is accordingly dismissed.

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

23.08.2023
sjks

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No