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

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Date of Decision: 22.08.2023

Joint Commissioner, Municipal Corporation, Rohtak and another

...Petitioners

Versus

Ajay and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Padam Kant Dwivedi, Advocate
for the petitioners.

HARSH BUNGER, J. (ORAL)

1. Petitioners-Municipal Corporation, Rohtak (in short 'petitioner(s)-Corporation') have 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 Award dated 28.03.2023 (Annexure P-3), passed by the Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter referred to as 'the Tribunal'), whereby the industrial dispute raised by respondent No.1-Ajay regarding termination of his service by petitioner(s)-Corporation has been answered in his favour and he has been granted a lump sum compensation of Rs.75,000/- in lieu of reinstatement.
2. Briefly, the respondent No.1-workman raised an industrial dispute by filing a claim statement directly before the Tribunal below under Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as

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'1947 Act'). Respondent No.1-workman claimed that he was appointed as a Driver on vehicle number HR-46-D-5781, by petitioner(s)-Corporation on 08.11.2015 and his work was satisfactory.

Respondent No.1-workman stated that his services were illegally terminated on 31.03.2017, without issuing any notice or notice pay and retrenchment compensation despite the fact that he had worked with petitioner(s)-Corporation for about 2 years and had completed 240 days in calendar year. It was next claimed by respondent No.1-workman that his juniors in the same category were retained in service by petitioner(s)-Corporation and other workmen in the same category were appointed after termination of his services, therefore his services have been terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the 1947 Act. Accordingly, prayer for reinstatement with continuity of services and full back wages was made.

3. The aforesaid claim of respondent No.1-workman was contested by petitioner(s)-Corporation by filing its written statement wherein various preliminary objections were raised regarding maintainability, locus standi, cause of action, etc. It was stated that the respondent No.1-workman was not appointed by petitioner(s)-Corporation rather respondent No.1-workman was engaged through outsource agency-M/s New Hindustan Security Services Ltd. It was further stated that the contract between the said contractor and the petitioner(s)- Corporation had already expired and thus, there was no question of giving the respondent No.1-workman a prior notice. Other averments/allegations made by respondent No.1-workman were denied on

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merits. Accordingly, prayer for dismissal of claim of the respondent No.1-workman was made.

4. From the pleadings of the parties, the Tribunal framed the following issues:

- “(1) Whether termination of services of workman is justified and if not, to what relief he is entitled? POW
- (2) Relief.”

5. In order to prove his case, the respondent No.1-workman appeared as WW-1, Sh. Joni as WW2 and Sh. Sunder Singh, C.S.I, MC, Rohtak as WW3 and relied upon the following documentary evidence :-

Sr. No.	Exhibit	Document
1	W1	Copy of demand notice
2	W2	Copy of Identity Card
3	W3	Copy of Driving Licence

6. On the other hand the petitioner(s)-Corporation examined Sh. Sunder Singh, C.S.I as MW-1.

7. On the basis of material/evidence on record, the Tribunal below answered the claim of respondent No.1-workman by holding that workman has worked for more than 240 days in 12 calendar months preceding his termination on 31.07.2017. The plea of petitioner(s)-Corporation that workman was engaged through outsourcing agency-M/S New Hindustan Security Services Ltd. Sample (Rohtak), was not accepted on account of failure of petitioner(s)-Corporation to produce any agreement with such agency. It was accordingly held that services of workman were terminated in violation of Section 25-F of the 1947 Act; however, respondent No.1-workman was granted relief of compensation of Rs.75,000/- in lieu of reinstatement.

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8. In the aforementioned circumstances, the petitioner(s) has filed the instant writ petition before this Court.

9. Learned counsel for petitioner(s)-Corporation submits that this a case covered under Section 2(oo)(bb) of the 1947, Act as the respondent No.1-workman was working on contractual basis through one contractor, namely, M/s New Hindustan Security Services Ltd and the contract between M/s New Hindustan Security Services Ltd and the petitioner(s)-Corporation had come to an end. It is further submitted that the respondent No.1-workman was never issued any appointment letter and there was no employee-employer relationship. The learned counsel for the petitioner(s)-Corporation submits that the awarded compensation is not justified and accordingly, prayer was made for quashing of impugned award.

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

11. The Tribunal below has returned the following findings:-

“9. Petitioner's case is that he started working with the respondents on 8th November, 2015 as Driver on vehicle No. HR46D5781 and was performing his duties with dedication and to the entire satisfaction of the respondents upto 30th March, 2017 but on 31 March, 2017 his service was terminated illegally without assigning any reason and serving show cause notice while retaining persons juniors to him in violation of provisions of Sections 25F, 25G and 25H of the Act. On the other hand, as per the respondents, they have no concern with the appointment and termination of the petitioner as the petitioner was not an employee of the respondents and that the petitioner was engaged through a registered firm M/s New Hindustan Security Service Ltd. Sampla, Rohtak i.e. through

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outsource agency and thus there was no relationship of employer and employee between the parties. At the outset, it must be mentioned that apart from leading his own evidence, the petitioner examined his co-worker WW2, Sh. Joni who fully supported the case of the petitioner. Further, the petitioner also summoned the witness of the respondents i.e. concerned Clerk with the record i.e. Registration Certificate and Logbook of Vehicle bearing registration No. HR-46D-5781 and all vehicles registered in the name of Municipal Corporation, Rohtak, his attendance and salary record from November, 2015 to 31st March, 2017, attendance register of all drivers from November, 2015 to 31 March, 2017 and attendance register, salary statement and list of drivers working at Municipal Corporation and outsourcing agency of Municipal Corporation from April, 2017 till date with date of joining. The witness Sunder Singh, C.S.I., M.C. appeared but out of the summoned record he brought only the attendance register regarding the petitioner from 21st January, 2016 to March, 2017 as Ex.W3/A. Thus, the respondents have withheld the remaining record without any reason. No explanation for not producing the entire summoned record is forthcoming on the record. Accordingly, adverse inference is drawn against the respondents for not producing the entire summoned record as sought by the petitioner and it is held that the petitioner has worked for more than 240 days in the preceding 12 calendar months of his termination on 31 March, 2017. Even, further, the respondents' case is that the petitioner was not engaged by them but the petitioner was engaged through a registered firm M/s New Hindustan Security Services Ltd. Sampla, Rohtak i.e. through outsourcing agency and the respondents have no concern with the appointment and termination of the petitioner. However,

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the respondents have not placed any record/contract to show that the petitioner was engaged through the said registered firm M/s New Hindustan Security Services Ltd. Sampla, Rohtak an outsourcing agency. Had the petitioner been engaged through this outsourcing agency the respondents would have placed agreement to that effect with the said agency on record. However, nothing of the sort was done for the reasons best known to the respondents. Further, their witness MW1 in his cross-examination admitted that he has not brought any record/document showing that the drivers were engaged through outsourcing agency. Though, the witness alleged that the said record would be produced on the next date of hearing but the record was not produced on the next date or thereafter. On further cross-examination, the witness admitted that the drivers used to drive the vehicles of the respondents. He also stated that duty as to which vehicle would go to which Ward for lifting the garbage was used to be assigned by the Chief Sanitary Inspector. On further cross-examination, the witness stated that the drivers used to come to the office of the respondents daily but their attendance was being marked by the contractor but the witness could not tell as to whether the attendance of the drivers were being marked in the office of the respondents or in the office of the contractor. As already elucidated above, on the application of the petitioner to bring the record Sh. Sunder Singh, C.S.I., WW3 appeared and brought the attendance register pertaining to the petitioner from 21st January, 2016 to March, 2017 as Ex. W3/A. Hence, in the circumstances, it can be said that the attendance of the petitioner was being marked in the office of the respondents and the petitioner was also assigned duty by the Chief Sanitary Inspector of the respondents. Further, in his cross-examination, MW1 also admitted

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that the petitioner and other drivers were issued Identity Cards by the respondents. All this would show that for all intents and purposes the petitioner was an employee of the respondents and completed 240 days in preceding 12 months of termination of his service. However, provisions of Section 25F of the Act were not complied with and thus, there has been violation of Section 25F of the Act.

10. Further, the petitioner has also alleged that at the time of termination of his service some persons junior to him were retained. The petitioner has not alleged anything that any new person was also appointed after his termination. However, the petitioner has alleged violation of Sections 25G and 25H of the Act. The petitioner has not mentioned the name of any such person in his claim statement and also did not lead any evidence to that effect. Hence, it cannot be said that there has been any violation of Sections 25G and 25H of the Act.

11. The next question which arises for consideration is as to what relief the petitioner is entitled to get. As per petitioner, he joined on 8th November, 2015 as Driver and served with the respondents till 30th March, 2017 i.e. about a period of one and half years and the petitioner came to the Tribunal after about 2 years and three months. Hon'ble Supreme Court of India in Asst. Engineer, Rajasthan Dev. Corporation and Anr. Versus Gitam Singh (2013)5 SCC 136 while adjudicating the matter of a worker who worked for a short period, instead of granting relief of reinstatement awarded compensation for violation of Section 25F of the Act. By deriving strength from the aforesaid judgment and keeping in view the overall circumstances and also considering the fact that it is not a case of reinstatement rather the appropriate relief is compensation instead of reinstatement and it is quantified as Rs. 75,000/- by applying the rule of thumb.

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12. In view of above findings, the present reference is answered in favour of the petitioner to the effect that termination of his service was vitiated due to non-compliance of Section 25F of the Act and he is awarded just and reasonable compensation of Rs. 75,000/- (Seventy Five Thousand).

File be consigned to record room after due compliance.”

12. A perusal of above extracted findings returned by Tribunal would show that the Tribunal has drawn an adverse inference against the petitioner(s)-Corporation for not producing the relevant record of service of workman and neither any contract/agreement with the outsourcing agency was shown by petitioner(s)-Corporation to substantiate their plea that the workman was not their employee but an employee of contractor. Further, the Chief Sanitary Inspector who was examined by petitioner(s)-Corporation as MW-1, admitted in his cross-examination that the respondent No.1-workman and other drivers were issued identity cards by the petitioner(s)-Corporation. Still further, it has been observed that Sh. Sunder Singh, C.S.I. (WW3) brought the attendance register pertaining to respondent No.1-workman from 21.01.2016 to March, 2017 as Ex.W3/A. Therefore, considering the totality of circumstances, Tribunal below held that there was violation of Section 25-F of the 1947 Act while terminating services of respondent No.1-workman.

13. Learned counsel for the petitioner(s) has failed to dislodge the aforesaid findings returned by Tribunal below. It is observed that the Tribunal below upon considering the facts and circumstances of the case has drawn an adverse inference against petitioner(s)-Corporation for not producing relevant record. It is well established that the drawing of adverse inference is within

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the domain of the Industrial Tribunal and it is not shown as to how the discretion exercised by the Tribunal was illegal or perverse.

14. Taking note of the finding returned by Tribunal below that the respondent No.1-workman has worked for 240 days with petitioner(s)-Corporation in 12 months preceding his termination and the services of the respondent No.1-workman had been terminated in violation of provisions of Section 25-F of 1947 Act. I do not find any illegality or perversity in the impugned award.

15. 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

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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 issuance 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*

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(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. Considering the totality of circumstances, in the light of legal principles indicated above, there is no scope for any interference in the impugned award, resultantly, the instant petition fails and the same is dismissed.

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

22.08.2023
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No