

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-22610-2022

Date of Decision: 01.08.2023

NARINDER KUMAR

..... PETITIONER

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATIALA AND
OTHERS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Neeraj Sharma, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

1. Petitioner-workman (Narinder Kumar) has filed this petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari for setting aside the impugned award dated 12.11.2021 (Annexure P-4) passed by Industrial Tribunal, Patiala (*hereinafter referred to as "the Tribunal"*); whereby the reference of the industrial dispute with regard to termination of service of the Petitioner-workman has been decided against him. A further prayer has been made for directing the that the petitioner be reinstated in service with all consequential benefits.

2. Briefly, the Petitioner raised an industrial dispute qua his illegal termination by serving a demand notice dated 15.09.2018. Thereafter, a reference (bearing no. 36/2019) was made to the Tribunal for adjudication, which is read as under:

“Whether the termination of services of workman Narinder Kumar is improper and un-justified? If yes, to what relief and to which extent is he entitled?”

3. As per the claim statement filed by petitioner, he claimed to have been appointed with respondent- department through respondent no. 4 (Village Water and Sanitation Committee, Safera Block Sanour, Patiala) as Pump Operator on 27.04.2004 ***vide Resolution No. 26 dated 27.04.2004 as per notification No. 13/49/2003-5B&R-11/149***. Petitioner claimed to have worked upto 31.07.2018, when suddenly his services were terminated on 01.08.2018 in an illegal and arbitrary manner by adopting unfair labour practice. Petitioner claimed to have worked for 240 days in each year as well in the last calendar year. It was also claimed by the Petitioner-workman that junior to him has been retained in service and even new appointments had been made by management therefore his services were terminated in violation of Sections 25-F, 25-G & 25-H of Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act') . Petitioner claimed that his termination is illegal, unjustified and against principles of natural justice and contrary to the provisions of the Industrial Disputes Act, 1947. Accordingly, the petitioner prayed that he may be reinstated on job with full back wages and continuity of service.

4. The aforestated claim of the petitioner-workman was opposed by the respondent-management by submitting its reply wherein it was inter-alia stated that the water supply scheme has been handed over to G.P.W.S.C. on 01.04.2004 and it was the G.P.W.S.C. who were empowered to hire services by entering into contract in their own name. It was denied that there was any employee-employer relationship between the parties. It is

also the stand of the Respondent- management that the workman did not

work with it for the claimed period and there was no record available with the office of Respondent- management as regards the employees of the Village Water Supply and Sanitation Committee, Safera Block Sanour, Patiala. Accordingly, prayer for dismissal of claim was made.

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

- “1. Whether the services of workman were terminated illegally and unlawfully by the respondent? OPW
- 2. Whether the workman is entitled to get any relief from the respondent in present reference, if so at what extent? OPW
- 3. Relief.”

6. In order to prove his case/claim, the petitioner/workman- Narinder Kumar, examined himself as WW-1 and relied upon the following documents in his documentary evidence:-

Sr. No.	Exhibit	Document
1.	W1	Affidavit
2.	W2	Demand Notice
3.	W3	Statement of Claim
4.	Mark-A	Photocopy of Resolution dated 27.04.2004
5.	Mark-B	Photocopy of Proceeding Book dated 05.12.2021
6.	Mark-C	Photocopy of Resolution dated 17.02.2024
7.	Mark-D	Photocopy of Cheque dated 25.02.2014 in the name of workman
8.	Mark-E	Photocopy of Proceeding Register dated 20.04.2011
9.	Mark-F	Photocopy of Letter dated 01.06.2014
10.	Mark-G	Photocopy of list of Members of Committee constituted by Village Consumers and Gram Panchayat
11.	Mark-H	Photocopy of Salary Certificate
12.	Mark-I	Photocopy of representation by Hari Singh Tohra
13.	Mark-J	Photocopy of Representation by workman
14.	Mark-K	Photocopy of receipts of payments

Thereafter, the petitioner-workman closed his evidence.

7. On the other hand, the respondents have examined Sukhdev

Singh working as SDE with Water Supply and Sanitation Department,

Patiala as MW-1 Thereafter, the respondents evidence was closed.

8. Upon appreciating the material / evidence available on record, the Tribunal below rejected the claim of the petitioner-workman and answered the reference against the petitioner-workman vide the impugned Award dated 12.11.2021 (Annexure P-4).

9. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this court.

10. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

11. It is well settled law that the onus to prove that a workman has rendered continuous service, i.e. 240 days, in preceding 12 calendar months in terms of Section 25-B of the 1947 Act and also to prove relationship of employee and employer is on the workman.

12. In the instant case, the petitioner-workman in order to seek relief in terms of Section 25F of the Act, 1947, was required to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly illegally terminated by respondent-department. Therefore, the relevant period would be 12 months prior to 01.08.2018. In order to discharge the onus of proving the aforestated fact of having worked for 240 days in the 12 months preceding the date of his allegedly termination, the petitioner gave his own testimony only and did not lead any other evidence either in the form of statement of any co-worker or any other evidence in the form of proof of receipt of salary or wages for 240 days or any order/record of appointment or engagement for the relevant period, however the workman only brought on record documents with regard to his initial appointment till year 2014, whereas there is no material on record

substantiating the fact that he continued to be in employment after 2014 till the date of his claimed termination dated 01.08.2018. Apart from the self-serving statement of the petitioner, he did not lead any other evidence to prove that he worked for 240 days in the 12 months preceding the date when he was allegedly terminated (August, 2018) by respondent- department. It is well settled law 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 Amarsingh, 2005(8) SCC 750***.

13. In the instant case, vide impugned award dated 12.11.2021 (Annexure P-4), learned Presiding Officer, Industrial Tribunal, Patiala; has returned the following findings:-

“....It is settled position of law that the strict adherence to the provisions of Evidence Act are not writ large in the nature of enquiry proceedings before the Tribunal under the I.D.A., 1947 and further in order to avoid any second round of proceedings, this Tribunal deems it appropriate to consider the documents placed on record by the claimant/workman. Mark-A resolution dt. 27-04-2004 has been placed record wherein the claimant has been engaged for the employment by Panchayat. Mark-B is the resolution dt. 15-12-2012 wherein it has been resolved that claimant Narinder Singh S/o Raghunandan Lal R/o Safera is working who has requested for enhancement in his salary which was earlier Rs. 4750/- and his salary was resolved to be enhanced to Rs. 7000/- from January 2013, after approval of the higher authorities. Mark-C is the resolution dt. 17-02-2014 wherein it has been resolved

that salary of claimant is due from July 2013 and amount of Rs. 11,500/- through cheque No. 312328 is being paid and rest of payment will be made later on. Mark-D is the copy of cheque No. 312328 for a sum of Rs. 11,500/- Mark-E is the resolution dt. 20-04-2011 wherein it has been resolved that the claimant is working since 2004 and due to paucity of funds there is difficulty in paying salary of the claimant and it is resolved that after seeking approval of Government, the salary be paid from the maintenance head which is received from the Government. Mark-F is the document wherein vide letter dt. 01-06-2014 the BDPO, Sanour has written to Executive Engineer Water Supply and Sanitation Department, Rajpura that salary of the claimant has not been paid from last eight month due to financial difficulty of the claimant, whether the salary can be paid from the maintenance head. Mark-H is the salary certificate dt. 31-12-2012 issued by Sarpanch, Gram Panchayat Safera, wherein it is reflected that the claimant is working since 27-04-2004 at the salary of Rs. 4750/- and his salary is Rs. 57,000/- annually. Mark-K is the document consisting Page 1 to 118 which is also reflect with regard to the employment of the claimant. These documents Mark-A to Mark-K remain un-rebutted as respondent No. 3 was proceeded ex-parte. However, this record as discussed above is only with regard to the initial appointment of the claimant, salary of the claimant etc. till year 2014 and the same has corroborative value only to this extent, whereas there is no material on record substantiating the fact with regard to the employment after 2014 till the date of claimed termination i.e. 01-08-2018. There are mere assertions in the pleadings that service of the claimant were illegally terminated on 01-08-2018.

Xxxxxx

The relevant period for breach of Section 25-F of the I.D. Act, 1947 would be 240 days in preceding the calendar year from the date of claimed termination i.e. 01-08-2018.

7. *Solitary self deposition of the claimant as WW1 and the material on record is not sufficient to prove continuous employment of the claimant with respondents for 240 days in preceding the calendar year from the date of claimed termination i.e 01.08.2018. Perusal of the file also reveals that no endeavour has been made on behalf of the claimant for seeking the record from the respondents by way of moving application for production of record. During the cross examination, no suggestion has been put to MW1 with regarding to working of the claimant till 2018.*

*Once the claim has been denied by the respondent, onus lies on the claimant to show that he had infact worked for 240 days in a year. **Hon'ble Supreme Court of India in Range Forest Officer v. S.T. Hadimani 2002 AIR SC 1147** has held that onus lies upon claimant to show that he had infact worked for 240 days in a year, in the absence of proof of receipt of salary or wages or record of appointment, filing of an affidavit by claimant/workman is not sufficient evidence to prove that claimant had worked for 240 days in a year preceding his termination.*

8. *In view of the above discrepant and insufficient evidence on record the Tribunal concludes that the claimant has failed to prove that termination of his services was illegal and unlawful. The claimant is not entitled to any relief from the respondents. Accordingly. Issues No. 1 & 2 are answered against the claimant.*

RELIEF

9. *In view of the findings on the issues above, this reference is answered against the claimant holding that the claimant has failed to prove that termination of his*

services is improper and unjustified.”

14. The counsel for the Petitioner has not been able to dislodge the aforestated findings returned by Tribunal below. Neither before the Tribunal nor before this court, the Petitioner has not been able to show that he worked for 240 days in 12 months preceding the date of his termination and in absence of the same, no relief can be granted to the petitioner.

15. Further, the peripheries of this court to exercise certiorari jurisdiction stands authoritatively delineated in ***Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 Supreme Court 477***, wherein Hon’ble Supreme Court held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact,

*however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide **Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104; Nagendra Nath v. Commr. of Hills Division, 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh, AIR 1960 Supreme Court 1168.***

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these

cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each cases and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

16. No other point has been urged.

17. When the facts and circumstances of this case and also the findings returned by the learned Industrial Tribunal are considered in the light of the legal position indicated above, I do not find any illegality or infirmity with the impugned award dated 12.11.2021 (Annexure P-4), which may call for any interference by this Court, while exercising its writ jurisdiction. Rather the impugned award dated 12.11.2021 (Annexure P-4) is well reasoned, based upon proper appraisal and appreciation of evidence

and correct interpretation of law. Therefore, the instant writ petition is bereft of any merit and the same is accordingly dismissed in *limine*.

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

01.08.2023

Himani/Apurva

(HARSH BUNGER)
JUDGE

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