

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

CWP-19711-2023 (O&M)
Date of Decision: 29.11.2023

M/s KIRLOSKAR TECHNOLOGIES PVT. LTD. AND
ANOTHER
Versus
...Petitioners

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND
LABOUR COURT, U.T., CHANDIGARH AND ANOTHER
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Anshul Sharma, Advocate
and Mr. Jagbir Singh Bhadana, Advocate
for the petitioners.

HARSH BUNGER, J.

Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for setting aside the impugned Award dated 12.05.2023 (Annexure P-8) passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh (in short 'the Tribunal'); whereby the industrial dispute raised by respondent No.2-Rajesh Kumar Dhir, regarding termination of his services by the petitioners-Management has been answered in his favour with a direction that respondent No.2 be reinstated with continuity of service along with 50% back wages and other consequential benefits.

2. Briefly, respondent No.2 raised an industrial dispute regarding termination of his services by filing a petition under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'); wherein he claimed that he was selected and appointed by the petitioners-Management as Service Engineer and that he was a regular and confirmed employee of the Management and with the dint of his hard work, he had earned re-designation/promotion as Senior Service Engineer, Area Manager and

lastly as Regional Manager. It is the categoric case of respondent No.2 that as a Service Engineer, he always perform technical and manual duties and even after his re-designation/promotion, except change of designations, his pre-dominant nature of work/duties being technical and manual remained intact. It was specifically stated by respondent No.2 that he never performed any managerial or supervisory functions and he always performed the duties of a workman within the meaning of the 1947 Act. Respondent no.2 claimed that the petitioners-Management is a big concern with more than 100 workmen and therefore, it is an Industrial Establishment under the 1947 Act. Respondent no.2 claimed that vide letter dated 08.05.2020 issued by the President-Radiotherapy, two months' notice was served upon him mandating that on its expiry as on 07.07.2020, his services shall stand dispensed with/terminated. It was further stated by respondent No.2 that even his appeal was rejected and his services stands discontinued w.e.f. 07.07.2020. As per respondent No.2, the termination of his services was illegal *inter alia* on the following grounds :-

- (i) *The termination was done without following the provisions of Section 25-N/25-F of the 1947 Act.*
- (ii) *There was complete violation of Section 25-G of the 1947 Act.*
- (iii) *Respondent no.2, being a confirmed employee of the management, his services could not have been discontinued simply by issuance of two months' notice.*
- (iv) *In the termination order, two reasons were assigned for discontinuation from service; firstly, change of product profile of the company and secondly, loss of business in the segment which was being handled by respondent No.2. As per respondent No.2, the said allegations were wrong, illegal, violative of principles of*

natural justice and stigmatic; especially after his unblemished service of 25 years.

(v) The notice of cessation containing such stigmatic allegations without following due process of law, was not permissible.

(vi) The appeal filed by respondent No.2 was rejected in an illegal manner by an authority which is subordinate to the President, who had passed the punishment order dated 08.05.2020. Therefore, the services of respondent No.2 have been terminated not by the appointing authority but by an authority lower than him.

On the basis of above-said pleas, the respondent No.2 sought reinstatement in service with continuity and full back wages along with other benefits.

3. The afore-said claim of respondent No.2 was contested by the petitioners-Management, primarily on the ground that the claim statement under the 1947 Act was not maintainable until the respondent No.2 falls within the category of workman as defined in Section 2(s) of the 1947 Act. It was maintained by the petitioners-Management that the respondent No.2 was working as a Regional Manager-Services, which does not fall within the definition of workman. It was stated that respondent No.2 was performing the supervisory and administrative functions in his capacity as Regional Manager-Services and he cannot be termed as a 'workman'. It was further stated that respondent No.2 was receiving handsome salary of Rs.20,35,762/- per annum w.e.f. 01.04.2018. It was stated that the cessation of services of respondent No.2 was perfectly legal, valid and does not suffer from any infirmity. The petitioners-Management further spelled out the profile of respondent No.2 as Regional Manager-Services to contend that respondent No.2 would not fall in the category of 'workman'. The

termination order as well as the order rejecting the appeal of respondent No.2 was sought to be justified by submitting that the Management had taken conscious decision to curtail the expenses in non performing divisions in the best interest of the company and the services of respondent No.2 were dispensed with as a consequence thereof. The other averments of the claim statement of respondent No.2 were denied as wrong and prayer was made for rejection of the claim petition.

4. On the basis of the pleadings of the parties, the following issues were framed :-

- “1.Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any? OPW*
- 2.Whether Shri Rajinder Kumar Dhir is not a ‘workman’ as defined under Section 2(s) of the ID Act? OPM*
- 3.Relief.”*

5. In order to prove his case/claim, the respondent No.2/workman- Rajesh Kumar Dhir, examined himself as AW1 and relied upon the following documentary evidence :-

<i>Sr. No.</i>	<i>Exhibit/s</i>	<i>Document</i>
<i>1</i>	<i>AW1/A</i>	<i>Affidavit</i>
<i>2</i>	<i>W1 to W52</i>	<i>Carbon copies i.e. service reports of the workman from year 2013 to 2019.</i>
<i>3</i>	<i>W53</i>	<i>Original documents i.e. termination letter dated 08.05.2020.</i>
<i>4</i>	<i>W54</i>	<i>Departmental Appeal dated 14.05.2020.</i>
<i>5.</i>	<i>W55</i>	<i>Order dated 16.05.2020 vide which appeal of the workman was rejected.</i>
<i>6.</i>	<i>W56</i>	<i>Legal notice dated 04.06.2020.</i>
<i>7.</i>	<i>W57</i>	<i>Reply dated 18.06.2020 to the legal notice.</i>
<i>8.</i>	<i>W58 and W59</i>	<i>Instructions dated 20.03.2020 and 23.03.2020, respectively downloaded from the website.</i>
<i>9.</i>	<i>W60</i>	<i>E-mail record downloaded from the website.</i>

During cross-examination of MW1 recorded on 28.03.2023/12.04.2023, learned representative for the workman had put the following documents :-

<i>Sr. No.</i>	<i>Exhibit/s</i>	<i>Document</i>
1	WX	<i>Copy of letter dated 30.09.2020 issued by the Managing Director of KirloskarTheratronics (P) Ltd.</i>
2	WY	<i>Appointment letter dated 16.08.2000 issued by the Managing Director, KirloskarTheratronics (P) Ltd. to Rajesh Kumar Dhir; whereby, he was appointed on the staff of KirloskarTheratronics (P) Ltd. effective June 17, 2000 as Territory Support Engineer.</i>
3	WX/1 to WX/4	<i>Appointment letters of Mr. D. SasiShekhar dated 11.09.2003, Mr. Sandeep Yadav dated 24.07.2008, Mr.Kailash Ch. Parida dated 16.10.2006 and Mr.Saumitra S. Mannikar dated 03.01.2012, respectively.</i>

Thereafter, the respondent No.2-Workman closed his evidence on 03.02.2023.

6. On the other hand, petitioners-Management examined Sh. Ram Chander Sah-Manager (Commercial) as MW1 and also adduced following documentary evidence :-

<i>Sr. No.</i>	<i>Exhibit/s</i>	<i>Document</i>
1	MW1/A	<i>Affidavit</i>
2	M1	<i>Copy of authority letter dated 04.07.2019 issued by the Managing Director, Kirloskar Technologies Pvt. Ltd.</i>
3	M2	<i>Letter dated 12.09.2018 showing monthly CTC paid to the workman.</i>
4	M3	<i>Copy of Employee Service Rules Manual dated 01.07.2016 of the Management.</i>

Thereafter, evidence of petitioners-Management was closed on 03.05.2023.

7. The learned Tribunal below upon considering the material/evidence available on the record, answered the reference in favour of respondent No.2 vide impugned Award dated 12.05.2023 (Annexure P-8).

8. In the afore-mentioned circumstances, the petitioners-Management has filed the instant writ petition before this Court.

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

10. The sole argument raised by learned counsel for the petitioners-Management is that the learned Tribunal below has erred in law and facts in answering the reference in favour of the workman without considering that respondent No.2 does not fall within the definition of workman, as defined under Section 2(s) of the 1947 Act. It was submitted that respondent No.2 was working as a Regional Manager-Services and he was granted Grade X3, which was issued to the Managerial profiles and he was performing managerial and supervisory functions; therefore, the claim statement under the 1947 Act, at the instance of respondent No.2 was not maintainable.

11. I have considered the afore-said submission made by learned counsel for the petitioner.

12. The learned Tribunal below, while considering the afore-said objection raised by the petitioners-Management, had returned finding under Issue No.2, by making the following observations :-

“...It is the nature of the duties performed by a workman which determine whether he falls within the definition of a ‘workman’ or not under the ID Act. In the present case, workman/AW1 in his claim statement and testimony vide Exhibit ‘AW1/A’ has taken plea that he always performed technical and manual duties and even after his re-designation, except change of designations, his pre-dominant nature of work/duties being technical and manual remained intact and he never performed any managerial or supervisory functions. The management’s witness MW1 when put to cross-examination stated that the

official duty of workman was sales support, application like providing demonstration of medical equipment, providing annual maintenance contract, comprehensive maintenance contract, training to customers on operation of the equipment, collecting payment from the customer on account of sales and service, providing spare parts budget, negotiations with customers for sale of equipment, submitting quotations of spare parts and submitting annual maintenance contract proposal. MW1 admitted as correct that the duty of workman was to install high end instruments, to service the instruments and to replace spare parts. MW1 admitted as correct that the workman used to install high end instruments and for that purpose, he used to take help of other employees/engineers from other branches of Head Office. MW1 admitted as correct that company used to take annual maintenance contract from different hospitals and that the workman used to deal service of the instruments in his region. Wherever the services of the workman throughout India were needed, he was deputed to rectify the snag in the instruments or to install the instruments. MW1 admitted as correct that it was the duty of the workman to collect money from the customer after installing the instrument or replacement of the spare parts of the machines. MW1 admitted as correct that after installing the medical equipment/machines it was the duty of the workman to guide the customer how to operate the said machine. MW1 admitted as correct that none was subordinate to the workman. MW1 voluntarily stated that other Engineers as and when required used to help the workman in performance of his duties i.e. installation of medical equipment/machines and replacement of spare parts. MW1 admitted as correct that the workman was not competent either to sanction leave of anyone or to recommend or to take disciplinary action against anyone. From the aforesaid version of MW1, the plea taken by the

workman that he was performing technical and manual duties stand duly proved. Admittedly, the workman was not competent to sanction leave to any employee of the management or to take or recommend any disciplinary action against any of the employee of the workman accompanied with the fact that one was subordinate to the workman, therefore, the workman was not performing any of his duties in managerial or administrative capacity. To squarely fall within the exception to Section 2(s) of the ID Act, the person must be (a) employed in a supervisory capacity; (b) draw more than INR 10,000 as wages; and (c) primarily perform the functions of managerial nature. The above said ingredients must co-exist to exclude a person from the definition of 'workman' as defined in Section 2(s) of the ID Act. As discussed above, the management has failed to prove that the applicant-workman was discharging any managerial, administrative or supervisory functions, therefore, only on account of monthly salary drawn by the applicant-workman, exception to Section 2(s) of the ID Act is not attracted. Consequently, in view of the nature of the duties performed by the workman, he falls within the definition of the 'workman' as defined under Section 2(s) of the ID Act."

13. A perusal of the above extracted findings would reveal that the Management's witness MW-1 had clearly admitted in his cross-examination that the official duty of respondent No.2 was sales support, providing demonstration of medical equipment, providing annual maintenance contract, training to customers, collecting payments from customers, providing spare parts etc. MW-1 further admitted that the duty of respondent No.2 was to install high end instruments, to service the instruments and to replace spare parts. It was also stated by MW-1 that the services of respondent No.2 were utilized throughout India, wherever needed. He

(respondent No.2) was deputed to rectify the snag in the instruments or to install the instruments. Further, MW-1 admitted that respondent No.2 was not competent either to sanction leave of anyone or to recommend or to take disciplinary action against anyone. It has also come on record that no one was subordinate to respondent No.2.

After taking note of the material/evidence available on the record, the learned Tribunal below has returned a finding that the petitioners-Management has failed to prove that respondent No.2 was discharging any managerial, administrative or supervisory functions; therefore, only on account of monthly salary drawn by respondent No.2, the exception to Section 2(s) of the 1947 Act, was not attracted. Therefore, it was held that respondent No.2 falls within the definition of 'workman'.

14. Learned counsel for the petitioners-Management has failed to controvert the afore-said observations made by the learned Tribunal below which is based upon appreciation of evidence and neither any material/document has been shown to *prima facie* suggest that the respondent No.2 was performing any managerial, administrative or supervisory functions. Rather, the cross-examination of petitioner's-Management witness MW-1 has sealed the fate of the petitioners-Management as regards the status of respondent No.2 as a workman is concerned.

15. Apart from the above, the learned Tribunal below has also observed that since the petitioners-Management was employing more than 100 workmen, accordingly, the provisions of Section 25-N of the 1947 Act, were attracted, which stipulates that before retrenchment of any workman, three months' notice was required, whereas, in the instant case, concededly,

only two months' notice was given; therefore, it was held that the termination of respondent No.2 was bad in law.

16. The learned Tribunal below has further considered the case in terms of the provisions of Section 25-F of the 1947 Act, as well by holding that concededly, the respondent No.2 had worked for more than 240 days in the preceding twelve calendar months from the date of his termination; however, no retrenchment compensation was paid to him at the time of terminating his services; therefore, there was a violation of Section 25-F(b) of the 1947 Act. Accordingly, the learned Tribunal below answered the reference in favour of respondent No.2.

17. I have gone through the findings returned by the learned Tribunal below and it is apparent that the said findings are based upon material/evidence available on the record and the said findings cannot be faulted with.

18. 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.

19. No other point has been urged.
20. Considering the totality of circumstances in the light of the legal principles indicated above, there is no scope for any interference in the Award dated 12.05.2023 (Annexure P-8) passed by the learned Tribunal below; resultantly, the instant petition fails and the same is accordingly dismissed.
21. All pending application/s, if any, shall also stand closed.

November 29, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No