

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-227-2013 (O/M)

Date of decision : 30.10.2023

Bhisham

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and another
..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sumeet Jain, Advocate
for the petitioner.

Mr. Akash Yadav, Advocate
for respondent No. 2.

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HARSH BUNGER, J.

1. Petitioner (Bhisham) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the impugned Award dated 08.06.2012 (Annexure P-3), passed by the Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as 'the Tribunal below') to the extent, whereby reference No. 17/2007 has been answered against the petitioner-workman.

Further prayer has been made for issuing a writ of mandamus for directing respondent No. 2-The Technological Institute of Textiles and Sciences, Bhiwani (hereinafter referred to as 'respondent-Management') to reinstate the petitioner-workman alongwith continuity of service including

back wages and all monetary benefits alongwith interest.

2. Briefly, Trade Unions, namely, TIT Karamchari Sangh Jila Bhiwani, Mazdoor Sangh and Kapra Mill Mazdoor Sangh gave demand notices dated 09.10.2001, 12.10.2001 and 15.10.2001 respectively to respondent-Management to claim bonus for the year 2000-2001 at the rate of 30%; in pursuance of which a meeting was held on 03.11.2001, which was attended by respondent-Management and office bearers of the aforesaid Trade Unions and it was impressed upon by respondent-Management that on account of poor financial position of the mill, it was not in a position to meet the demand of payment of bonus, however, respondent-Management offered to pay bonus at the rate of 8.33%. Accordingly, since things did not materialize, the workers stopped working and went on strike. On 9.12.2001, a settlement (Ex.M2) was arrived at between the workers and respondent-Management wherein it was decided to end the strike and the workers undertook to resume the duty on the morning of 10.12.2001. It was further agreed that the workers shall not be paid the wages of the strike period i.e. for the period from 18.11.2001 to 09.12.2001. Accordingly, 15 days' time was provided to the workers to join the duty and it was also stipulated in the settlement that if any worker would not report for the duty within 15 days', it would be presumed that he had relinquished the job and was no more interested in the employment of respondent-Management.

3. The petitioner-workman was an office bearer of Mazdoor Ekta Union, who raised an industrial dispute by submitting that he was appointed in respondent No. 2-Institute on 29.04.1973 in Ring Frame Department as

Doffer and he claimed to have worked with sincerity and honesty with no complaint against his work and conduct. The petitioner-workman stated that since 12.11.2001, there was environment of labour unrest in respondent-Institute and all workmen including the petitioner-workman went on strike, however, on 09.12.2001, a settlement was arrived at between the workers and respondent-Management.

Petitioner-workman alleged that respondent-Management, with a vendetta in its mind, had decided not to reinstate some workmen, who had taken active part in the strike and accordingly, the petitioner-workman was not taken back in work and was orally dismissed from service. The petitioner-workman claimed that before terminating his services, he was not offered opportunity for his defence and neither any charge sheet was issued nor any enquiry was conducted, whereupon he served a notice dated 01.04.2002/10.01.2002, however, no settlement could be arrived at thereon and the matter was taken up before the Labour and Conciliation Officer, Bhiwani, whereupon respondent-Management relied upon two letters dated 27.12.2001 and 07.01.2002, showing the remark 'refusal from acceptance' and it was claimed that no such letters were offered to him either by post or through any other means, therefore, there was no question of refusal from acceptance. The petitioner-workman claimed that respondent-Management was habitual of unfair labour practices and the said correspondence/letters have been fabricated against the petitioner-workman in connivance with the postal authorities.

4. It appears from the paperbook that the Labour Department,

Haryana, had dismissed the demand notice of the petitioner-workman, vide its order dated 21.02.2003 with the comments that during conciliation proceedings, the petitioner-workman was offered to join the duty, but he had not accepted the same. It further appears that the petitioner-workman filed various appeals/review applications, which were time and again rejected by the Labour Department, Haryana. However, it appears that vide order dated 25.01.2007/21.02.2007, the matter was referred to the Tribunal below for adjudication, whereupon the petitioner-workman submitted claim statement, reiterating the aforesaid facts and claimed that the action of respondent-Management was in clear violation of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). Accordingly, the petitioner-workman sought setting aside of the order of his illegal termination and with a further prayer that petitioner-workman be reinstated in service with full back wages and other benefits.

5. The aforesaid claim of the petitioner-workman was contested by respondent-Management wherein it was inter alia stated that the case in hand was a case of refusal to report for employment by the petitioner-workman and although the petitioner-workman was reportedly asked to join the duty, however, he had no intention to resume the work, accordingly, it was not a case of termination and rather, it was a case of refusal for work. It is categorical case of respondent-Management that subsequent to the execution of settlement on 09.12.2001, it was agreed that all the workers will report for work including the petitioner-workman and despite the settlement, the petitioner-workman did not report for work within the stipulated period as per

the terms of settlement and thereafter, respondent-Management had issued notices under registered A.D. Cover on 27.12.2001, however, the petitioner-workman never reported for work and the registered envelopes were also not accepted by the petitioner-workman intentionally and deliberately. Respondent-Management stated that the petitioner-workman was repeatedly given offer to report for work during conciliation proceedings before the Labour-cum-Conciliation Officer, Bhiwani, Deputy Labour Commissioner, Hisar and Joint Labour Commissioner at Chandigarh, however, the petitioner-workman opted to remain away from work. Accordingly, it was prayed that the claim of the petitioner-workman be rejected and the reference be answered against the petitioner-workman.

The petitioner-workman filed replication to the written statement filed by respondent-Management before the Tribunal below.

6. From the pleadings of the parties, the issues were framed and the evidence was led by respective parties.

7. Upon considering the material/evidence on record, the Tribunal below, vide its impugned award dated 08.06.2012 (Annexure P-3), dismissed the claim of petitioner-workman and answered the reference against the petitioner-workman.

8. In the aforementioned circumstances, the petitioner-workman approached this Court by filing the instant writ petition.

9. Learned counsel for the petitioner-workman while reiterating the facts (as noticed above) submitted that the Tribunal below has erred in not appreciating the facts of the case and dismissed the claim of the

petitioner-workman and answered the reference against him. Learned counsel has argued that no prudent man would leave the job after serving for more than 28 years. It is submitted that the letters dated 27.12.2001 and 07.01.2002, which are sought to be relied upon by respondent-Management to show that it is the petitioner-workman who had not reported for duty; were never received by the petitioner-workman and thus, the same cannot be relied upon. It is further submitted that respondent-Management was very well aware that the petitioner-workman was residing in the mill premises and it could have served the said letters by dasti process as well, however, no such steps were taken and no written offer was made to him to join back duty. It is next submitted that the report of refusal from acceptance given by postal authorities is not proved on record, therefore, the premises on which the petitioner-workman has been non-suited is untenable. Accordingly, the impugned award is liable to be set aside and respondent-Management be directed to reinstate the petitioner-workman with all consequential benefits.

10. On the other hand, learned counsel for respondent-Management has opposed the prayer made by the petitioner-workman by submitting that it is not a case of termination of services of the petitioner-workman, rather it is a case of refusal for work. Learned counsel contended that on various occasions before the Labour Department Authorities, the petitioner-workman was time and again given offers to report for work, however, the petitioner-workman never had the intention to report back for work and he intentionally wants to keep the matter pending with the sole aim to harass and humiliate

respondent-Management. It is the submission of learned counsel for respondent-Management that as per the standing orders, the habitual absence has been specifically mentioned in Clause 13.6 (V), which defines abandonment and reads as under :-

“(V) Abandonment: “If a workman remain absent continuously from duty for more than ten days without any notice, information, approval, sanction or remain absent continuously beyond the period of initially sanctioned leave or subsequently extended leave without notice, then he shall lose his lien on his appointment automatically. No notice shall be given to the workman in this regard nor he shall be entitled to notice pay or compensation. It shall be deemed that workman has abandoned his employment by his own acts and conducts.”

It is submitted that since the petitioner-workman had failed to report for employment despite being called time and again to join and also through registered notices dated 27.12.2001 as well as 07.01.2002 and also in the form of reply submitted before various authorities of Labour Department including Deputy Labour Commissioner, Hissar and also before the Joint Labour Commissioner, Haryana Chandigarh, however, the petitioner-workman never reported for work and no reason is forthcoming as to why he is not accepting the offer of joining duty even on numerous repeated requests. It is reiterated that respondent-Management never terminated the services of the petitioner-workman, rather the petitioner-workman himself had abandoned the job and refused to join the job, accordingly, there is no

violation of Sections 25-F, 25-G and 25-H of 1947 Act, thus, prayer has been made for dismissal of the writ petition.

11. I have heard learned counsels for the parties and have also perused the paper book with their able assistance.

12. The Tribunal below, vide impugned award dated 08.06.2012 (Annexure P-3), returned the following findings :-

“17. Having heard the Ld. AR of the parties, going through the evidence on the file and case law referred, I am of the view that the petitioner had left the job of his own and thus he is not entitled to any relief. He has tried to weave a heart rendering story stating that had he left the job of his own he would not have fought a battle for a long period of 6 years to get his case referred to this court for adjudication and that he was not foolish to leave the job without any cause after rendering 28 years of service and thus it was a case of removal from service by illegal and unfair means, but if the facts and circumstances of the case are analyzed deeply the story put forth by the petitioner turns to be hogwash. The reason for the petitioner not to join the duty as appears from the facts of the case was that he was the vice-president of the Mazdoor Ekta Union which was neither registered nor recognized. Said union had also given demand notice dated 31.10.2001 claiming bonus for the workers of the respondent mill. Said demand notice was rejected by the Deputy Labour Commissioner vide order dated 26.11.2001 on the ground that said union was recognized to

represent the workers of M/s Bhiwani Textile Mill, Bhiwani not the workers of the respondent mill. The Mazdoor Ekta Union was not happy with said decision of Deputy Labour Commissioner. It participated in the strike obviously with a view to show its presence in the respondent mill. It was also not happy with the settlement arrived at between the management and the office bearers of other unions which had submitted demand notices for bonus. It was the reason that neither the petitioner nor the other office bearers of the Mazdoor Ekta Union reported for duty and indulged in anti-management activities. For their said activities, Nirbhey Singh President of Mazdoor Ekta Union and Rajender Kumar Advisor of said union who are examined by the petitioner as WW2 and WW3 respectively were dismissed from service. The petitioner too was not interested to join the duty, but at the same time he did not want to lose the job. He kept the issue alive by agitating the matter before the government continuously for a period of 6 years. The documents placed on the file by the respondent leaves no doubt that repeated offers were made to the petitioner by the management of the respondent mill to join the duty, but he did not do so. It was the reason that his demand notice was rejected. He filed an appeal against the rejection of said demand notice stating that the management offered him to join the duty, but said offer was conditional in the sense that it was silent with regard to payment of back wages and continuity of

service. The management made it clear that the offer was not conditional rather it was in continuity of his past service and no offer for fresh employment was given, but still he did not report for duty and came with a new plea that he was not offered back wages. When the back wages were not given to the striking workers for the period they remain on strike, how could the petitioner claim back wages. If he was of the view that back wages were his right, then he could agitate said matter by filing a demand notice after joining the duty. He was sent registered notices dated 27.01.2001 and 07.02.2002 on his residential address calling upon him to join the duty, but he refused to receive both the letters. The reports of refusal on both the envelopes cannot be said to be procured by the management. Had the management procured the reports of refusal, it would not have offered the petitioner an opportunity to join the duty in conciliation proceedings before the Labour-cum-Conciliation Officer time and again and it would have declared that since the petitioner did not report for duty despite notices, he shall be deemed to have left the job. This issue is, therefore, decided against the petitioner.

RELIEF

18. For the reasons discussed hereinbefore, the petitioner has not been found entitled to any relief and, therefore, reference made to this court stands decided accordingly against the petitioner and in favour of the respondent-management.

File be consigned to records after due compliance.”

13. I have gone through the findings returned by the Tribunal below and it appears that the same have been given on the basis of evidence/material available on record. As regards the submission of learned counsel for the petitioner-workman that letters dated 27.12.2001 and 07.01.2002 were never received by the petitioner-workman; it is observed that the petitioner-workman has not disputed the correctness of the address mentioned on the said registered letters and in terms of the judgment in Gujarat Electricity Board and Anr. v. Atmaram Sungomal Poshani, AIR 1989 Supreme Court 1433; there shall be presumption of service of letter sent by registered post under Section 27 of the General Clauses Act, 1897.

In M/s. Madan and Co. v. Wazir Jaivir Chand, 1988 (2) RCR (Rent) 654, Hon'ble the Apex Court observed as under: -

“6. We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to (i) of section 11(1) and the proviso to section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing

the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under Section 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under Order 5 of the C.P.C. The statutory

provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we

have to chose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."

In C.C. Alavi Haji v. Palapetty Muhammed and Anr., 2007(3)

RCR (Criminal) 185, Hon'ble the Apex Court held that Section 27 of General Clauses Act, 1897 and Section 114 [illustration (f)] of the Evidence Act, give rise to a presumption that the service of a notice has been effected when it is sent to the correct address by registered post.

14. Further, a perusal of impugned award would show that a factual finding has been recorded by Tribunal below that the petitioner had left the job on his own. It has been held that documents placed on record leaves no doubt that repeated offers were made to the petitioner by Management of respondent-Mill to join the duty but he did not do so. It has been further held that the petitioner was sent registered notices dated 27.01.2001 and 07.02.2002 on his residential address calling upon him to join the duty, but he refused to receive both the letters. It has also been held that the reports of refusal on both the envelopes cannot be said to be procured by the Management.

15. Learned counsel for the petitioner has failed to dislodge the

aforesaid factual findings returned by learned Tribunal below.

16. The peripheries of certiorari jurisdiction of High Court stands authoritatively delineated in Syed Yakoob v. K. S. Radhakrishnan and others, AIR 1964 (Supreme Court) 477, wherein Hon'ble the 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 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.

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; 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 mis-interpretation 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 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 case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

17. In view of the above discussion, I do not find any merit in the instant writ petition and the same is dismissed.

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

(HARSH BUNGER)
JUDGE

30.10.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No