

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

CWP-29471-2019 (O&M)
Date of Decision: 15.09.2023

RAM KUMAR

...Petitioner

Versus

M/S ANIL RUBBER MILLS PRIVATE LIMITED
AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. A.P. Bhandari, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

Petitioner (Ram Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of the Award dated 10.12.2018 (Annexure P-10) passed by respondent No.2-Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad.

2. Briefly, the petitioner-workman raised an industrial dispute through his demand notice dated 26.11.2015, stating therein that he had been working with respondent No.1-Company as Electrician since 1991 and was drawing monthly salary @ Rs.9,000/- and there was no complaint against him during his service period; however, his services were illegally terminated on 03.11.2015 without serving any charge-sheet. Petitioner claimed that the termination of his services was in violation of the principles of natural justice and also the provisions of Industrial Disputes Act, 1947 (for short 'the Act, 1947'). Accordingly, the petitioner claimed his re-instatement with continuity of service and full back wages.

3. The respondent-Company opposed the claim of the petitioner by submitting that the petitioner-claimant had approached the Management in the year 1992 to 2000 for employment and the management had taken him in temporary employment for a period of less than six months and also that he had taken his full and final leaving no dispute. It was claimed by the respondent-Management that the petitioner-claimant had not worked with them after the year-2000; thus, there was no question of any dismissal of the services of the petitioner. It was also claimed that there was no relationship of employee-employer between the petitioner-claimant and the respondent-Management.

4. On the basis of the pleadings of the parties, the Tribunal framed the issues and the parties led their respective evidence.

5. After considering the case of the respective parties and also the evidence/material placed on record, the learned Tribunal below, vide impugned Award dated 10.12.2018 answered the reference against the petitioner-workman, by holding that it was not established on record that the petitioner-workman actually worked for more than 240 days in the respondent-company during the period of twelve calendar months preceding the date of the alleged termination of his services i.e. 03.11.2015, as claimed by the petitioner. Accordingly, it was observed that it cannot be held that the services of the petitioner-workman were terminated by the respondent-Company, illegally.

6. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

7. Learned counsel for the petitioner contends that the learned Presiding Officer, Labour Court-III, Faridabad has returned the perverse

findings without taking into consideration the document (Exhibit W-17), which is also placed along with this writ petition as Annexure P-11, to contend that the said document (attendance card) shows that the petitioner-workman had worked for all the 31 days except the holidays fallen during the month of July-2015. Learned counsel for the petitioner further submits that the Management was supposed to bring the entire attendance cards of all the employees to show that the petitioner had not worked with them. Learned counsel for the petitioner submits that the wage slips (Exhibit M-2) of other workers and the Annual Maintenance Contract (Exhibit M-3) were produced, which had no relevance at all qua the petitioner. Thus, it is contended that adverse inference was required to be drawn against the respondent-Management. Accordingly, it is prayed that the impugned Award dated 10.12.2018 (Annexure P-10) passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad, may be quashed and a direction may be issued to the respondent-Management to re-instate the petitioner with all consequential benefits.

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

9. In the instant case, it is the categorical stand of the petitioner that he has been working with respondent-Company since 1991 and his services were illegally terminated on 03.11.2015. However, the said fact has been disputed by the respondent-Management on the plea that the petitioner had worked as a temporary workman for a period of less than six months between the year 1992 to 2000 and he had already taken his full and final.

10. In the afore-mentioned circumstances, it was incumbent upon the petitioner-workman to prove the relationship of employee-employer

between him and the respondent-Management. Even otherwise, it is the settled law that the onus to prove the relationship of employee-employer is upon the worker himself. In this case, apart from the self serving statement of the petitioner-workman (Ram Kumar), he has neither examined any other co-worker in support of his claim nor any other evidence in shape of salary receipt, etc. has been placed on record.

11. Further, on a pointed query to the learned counsel for the petitioner to refer to any evidence which would suggest that there is a relationship of employee-employer between the petitioner and respondent-Company and also that the petitioner had worked for 240 days immediately preceding the date of his termination i.e. on 03.11.2015; whereupon learned counsel for the petitioner could refer to only Annexure P-11, which is stated to be an attendance sheet for the month of July-2015. However, the said document alone does not advance the case of the petitioner to prove that he had worked for 240 days. Moreover, the said document was duly considered by the learned Tribunal below and it has returned the following findings :-

“...In the present case, the workman in his demand notice has sought the relief to the effect that he may be reinstated in his services with continuity of service and full back wages. In order to get the said relief against the respondent, the workman had to prove that had actual worked for 240 days with the respondent company during the period of twelve calendar months preceding the date of alleged termination of his services i.e. 03.11.2015, as alleged by the workman in his demand notice and claim statement.

But no documentary or any other cogent evidence has been placed on record by the workman to prove the afore-said fact. Oral statement made by the workman Sh. Ram Kumar, while appearing in the witness box as

WW1, is not sufficient to prove the aforesaid fact. The workman in his documentary evidence has placed on record Exhibit W1 i.e. copy of Identity Card issued by the ESI Corporation to the workman, Exhibits W2 to W4, W11, W13 to W15 i.e. copies of wages slips of the workman, Exhibits W5 & W12 i.e. copies of salary/wages packet, Exhibit W6 i.e. copy of envelop of salary/wages packet, Exhibits W7 & W9 i.e. copies of appointment letter issued by the Factory Manager of the respondent company to the workman, Exhibits W8, W16 & W17 i.e. copies of attendance slips and Exhibit W10 i.e. copy of temporary identification certificate of the workman. All these documents are perused carefully but from none of these documents, it is established on record that the workman had actually worked for 240 days with the respondent company during the period of twelve calendar months preceding the date of alleged termination of his services i.e. 03.11.2015, as alleged by the workman in his demand notice and claim statement.

12. On the other hand, MW1 Sh. R.K. Pandey, Personal & Admn. Manager of the respondent company tendered his affidavit Exhibit MW1/A in his examination-in-chief, wherein he testified that he is working as Personnel & Admn. Manager since 1996 and is fully conversant with the facts of the case. The claimant had been appointed on casual basis w.e.f. 26.09.1991 to 24.12.1991 as a temporary workman. The claimant had approached the management in the year 1992 to 2000 for employment and the management had taken him in employment on temporary basis for a period of less than six months. The claimant had taken his full & final including earned leave payment leaving no dispute whatsoever in nature. The claimant had not worked with the respondent management after 2000. The management has been

issuing attendance card and wages slip to its each employee. Copies of attendance cards and wages slips are Exhibits M1 & M2 (collectively). The management marks the attendance of its employees who are working with the management. Copies of attendance registers of the period from January 2001 & July 2001, January 2003 & July 2003, January 2008 & July 2008, January 2011 & July 2011, January 2013 & July 2013, January 2015, July 2015, September 2015 & October 2015 are Exhibits M3 (collectively). The respondent has annual maintenance contract with M/s Svam Power Plant to repair and service of Generators and occupier of M/s Svam Power Plant or its employees usually visited its plant. Copy of written agreement with M/s Svam Power Plant is Exhibit M4. When the employees of M/s Svan Power Plant had to visit its plant for service of the generators and when its concerned workman was not available at that time to verify the work done by employee of M/s Svam Power Plant in that case the management called the claimant to verify the work and reimbursed the payment to the claimant accordingly. Copy of service report is Exhibit M5.

MW1 Sh. R.K. Pandey was cross examined at length by learned Authorized Representative for the workman but nothing favourable to the workman could be extracted in cross-examination of MW1. There is nothing on record to suggest that MW1 has deposed falsely. There is also nothing on record to suggest that any of the documents Exhibits M1 to M5 placed and proved on record by MW1 is false or fabricated. Accordingly, version put-forth by the management of the respondent company in its written statement is established on record.

13. In these circumstances & in view of the above-discussion, it is not established on record that the

workman actually worked for more than 240 days in the respondent company during the period of twelve calendar months preceding the date of the alleged termination of his service i.e. 03.11.2015, as alleged by the workman in his demand notice and claim statement. Accordingly, it cannot be held that the services of the workman were terminated by the respondent company illegally. Therefore, the workman is not entitled to any relief from the respondent. Hence, this issue is decided against the workman.”

12. As regards the contention of the petitioner that the respondent-Management should have produced the entire record to show that the petitioner had not worked with them; suffice it to say that the onus to prove the relationship of employee-employer as well as working for 240 days is on the petitioner and the workman cannot rely on the plea that the respondent-management has not produced the entire record.

13. In *R.M. Yellati v. The Assistant Executive Engineer, 2006(1) SCC 106*, Hon'ble Supreme Court observed as under :-

“...Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workwoman will not suffice in the matter of discharge of the burden placed by law on the workwoman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workwoman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded

by the labour court unless they are perverse. This exercise will depend upon facts of each case...”

14. In the instant case, no plea of suppression of record has been taken. Further, the peripheries of exercising *certiorari* jurisdiction stand authoritatively delineated by the Hon’ble Supreme Court in **Syed Yakoob v. K. S. Radhakrishnan, AIR 1964 Supreme Court 477**; wherein it was observed 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."

15. Specifically on the point of the existence of employer-employee relationship, the Supreme Court, in *Workman of Nilgiri Coop. Mktd. Soc. Ltd. V. State of Tamil Nadu 2004(2) SCT 789*, while placing the onus in that regard on the workman, also went to hold that the said finding, being a pure finding of fact, the High Court would originally not interfere therewith, unless the finding suffered from perversity or was such as could not be arrived at any reasonable man conversant with the facts of the case.

award of the Labour Court cannot be said to have suffer from any such infirmity so as to justify a revisitation of the issue by this Court.

17. In the circumstances, I find no reason to interfere with the impugned award dated 10.12.2018 (Annexure P-10) passed by respondent No.2-Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad, which is sustained in its entirety.

18. The instant writ petition is therefore dismissed.

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

September 15th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No