

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

CWP-27176-2022

Date of Decision: 18.08.2023

JAGDISH

..... PETITIONER

Versus

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL CUM LABOUR
COURT PANIPAT AND ANOTHERS**

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

**Present: Mr. Balkar Singh, Advocate
for the petitioner.**

HARSH BUNGER J. (ORAL)

1. Petitioner-workman (Jagdish) 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 07.03.2022 (Annexure P-1) passed Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as “the Tribunal”); whereby the reference of the industrial dispute has been decided against him. A further prayer has been made for directing the respondents to reinstate the petitioner with all consequential benefits.

2. Briefly, Petitioner (Jagdish) raised an industrial dispute, which was referred for adjudication to the learned Industrial Tribunal, Panipat under section 2-A(2) and (3) of the Industrial Disputes Act, 1947

(hereinafter referred to as “the 1947 Act”).

3. In the claim petition, petitioner claimed that he served as Chowkidar w.e.f 12.05.2000 on salary of Rs. 12,001/- per month under the Respondent No.2 – District Food and Supply Controller, Sonapat. Petitioner claimed that his services were terminated in the month of October, 2018 without any notice, chargesheet, enquiry or compensation. Petitioner further claimed that he had completed more than 240 days of continuous service therefore, the termination of services of the petitioner-workman was illegal, unjustified and against the provisions of the 1947 Act.

4. The aforestated claim of the petitioner-workman was opposed by the respondent-management by submitting its reply wherein it was inter-alia stated the workman was appointed purely on contract basis for a period of 89 days by the Inspector Food and Supply, Gohana. It is further stated that the service of the workman was again taken for a specific period of 30 days in January, 2013. It was stated by the respondent-management that apart from aforesaid period, the petitioner was never retained/appointed as Chowkidar and after receiving circular dated 01.02.1999 issued by Chief Secretary, Haryana, the management has outsourced the security work through an agency.

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

“(1) Whether the claimant falls within the definition of ‘workman’ as defined under section 2(s) of the Industrial Disputes Act, 1947? OPC

(2) Whether the service of the claimant was illegally terminated? OPC

(3) Whether the respondent has not followed the principle of

first come last go at the time of termination of service of the claimant? OPC

(4) Relief.”

6. Petitioner in support of his claim, examined himself as WW-1 and closed his evidence.

7. On the other hand, RW-1 Suman Bala, Superintendent from the office of the management was examined and tendered her affidavit as Ex. RW-1/A.

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 07.03.2022 (Annexure P-1).

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.

11. A perusal of the paperbook would manifest that the respondent management had disputed the employee-employer relationship between the petitioner-workman and respondent-management.

12. In *Workmen of Neelgiri Co-operative Marketing Society Ltd. v. State of Tamil Nadu and Others, 2004 LLR 351 (Supreme Court)*, Hon'ble Apex court has held that it is was for the workman to have proved the existence of employer-employee relationship between the parties.

13. In the instant case, the Tribunal below returned the following finding:

“9. Having knocked the doors of Court, it was

incumbent upon the claimant to prove that he was appointed as Chowkidar by respondent however, the verbal statement made by the claimant (WW-1) has not been corroborated by any documentary evidence like appointment letter, attendance record, payment of salary to the claimant by respondent. it is pertinent to mention here that during his cross-examination, the claimant (WW-1) admitted that neither the post of chowkidar was advertised nor his interview was conducted nor appointment letter was issued to him. he also admitted that he was engaged for a period of 89 days. he further admitted that no identity card was ever issued to him by respondent.

10. it is relevant to note that here that in its written statement, respondent has taken specific stand that on 20.04.2001, the claimant was appointed by the Inspector Food & Supply, Gohana purely on contract basis only for a period of 89 days and then for a period of 30 days in the month of January, 2013. It is also submitted that except above said period, the claimant was never retained or appointed as PR Chowkidar and after receiving Circular Letter No. 6/47/98-IGS-I dated 01.02.1999 issued by chief secretary, Haryana Government, the respondent is getting done security work through agency. the stand taken by the respondent has not been disputed by claimant, the way of filing replication/rejoinder, which amounts to admission of said facts on the part of claimant.

11. It is important to note that the name of the claimant is Jagdish s/o Jai Karan. In her affidavit Ex. RW- 1/A, tendered in lieu of examination-in-chief, RW-1 Suman Bala, Superintendent from the O/o respondent had categorically stated that no person in the name of Jagdish s/o Jai Karan was ever appointed as

Chowkidar. She added that the name of the fellow appointed as chowkidar for a period of 89 days by Inspector Food & Supply, Gohana on contract basis on 24.04.2001 was Jagdish S/o of Jai Kishan surprisingly no suggestion to the contrary were put to the witness which amounts to admission of said facts on the part of claimant. Meaning thereby that appointment of Jagdish s/o Jai Kishan did not confer any right on the claimant, name of whose father is Jai Karan. It implies that the case of the claimant that he was an employee of the respondent and there existed a relationship employee and employer between him and respondent, stood falsified.

12. After receiving circular Letter No. 6/47/98-IGS-I dated 01.02.1999 issued by Chief Secretary, Haryana Government, service agreements were executed between respondent and M/s Premier Security and Manpower Service during the year 2016-2018, copy of which have been placed on record as Ex. R-1 to Ex. R-4. Respondent has placed on record copy of bills submitted by above named agency, attendance record of its manpower as well as payment made by respondent to the agency as Ex. R-6 to Ex. R-22. A bare reading of said documents reveals that the claimant was not even engaged by M/s Premier Security and Manpower Service, as his name is not reflecting in any attendance record. Meaning thereby that the claimant was not even employee of Ms/ Premier Security and Manpower Service.

13. On the basis of disclosure made by respondent in his written statement, at the most, it can be said that on 20.04.2001, the respondent had engaged the claimant on contract basis for a period of 89 days and then for a specific period of 30 days in the month of January 2013.

By no stretch of imagination, it can be taken that cause

of action arose in favour of claimant on account of his appointment by the respondent for said two periods.”

14. A perusal of the above extracted findings returned by the Tribunal below would show that the petitioner-workman failed to discharge the onus to prove employer-employee relationship. It is observed that mere self serving statement by the petitioner-workman in this regard was not sufficient to prove the employer-employee relationship between the parties. Something more was required in the shape of documents, that is, appointment letters, payment vouchers, etc. to indicate that petitioner-workman has in fact been in the employment of respondent-management and had worked with it continuously for a period of 240 days in a year preceding the date of termination.

In this case, the workman in his cross examination had admitted that the post of Chowkidar was not advertised and no appointment letter was issued to him.

15. Nothing has been brought on record either before the Tribunal below or before this court to show that there was any employee-employer relationship between the parties or that the petitioner-workman was appointed as Chowkidar, as claimed by him.

16. 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 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 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.”

17. In view of the above discussion, I am of the considered view that a factual finding has been recorded by the Tribunal below that there is no material on record to show the relationship of employee and employer inter-se the parties. Learned counsel for the petitioner has failed to dislodge the findings of the Tribunal below accordingly, there is no scope for interference in the award passed by learned tribunal below. Therefore, the writ petition is accordingly dismissed in *limine*.

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

18.08.2023

Himani/Apurva

**(HARSH BUNGER)
JUDGE**

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