

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

CWP-10470-2018 (O&M)
Date of Decision: 31.08.2023

THE EXECUTIVE ENGINEER, PUBLIC HEALTH
ENGINEERING DIVISION, AMBALA CANTT.
AND ANOTHER

...Petitioners

Versus

SOM NATH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Praveen Chander Goyal, Addl. A.G., Haryana
for the petitioners.

Mr. Lalit K. Gupta, Advocate
for respondent No.1.

HARSH BUNGER, J. (ORAL)

1. Petitioners (The Executive Engineer/Sub-Divisional Engineer, Public Health Engineering Division, Ambala Cantt.) have filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for quashing the impugned Award dated 29.05.2017 (Annexure P-1) passed by the learned Presiding Officer, Labour Court, Ambala (here-in-after referred to as 'the Labour Court'); whereby, the reference of industrial dispute raised by respondent No.1-workman (Som Nath) regarding termination of his services; has been answered in his favour and he has been held entitled to reinstatement and continuity of service along with 50% of back wages from the date of his termination.
2. Briefly, respondent No.1 raised an industrial dispute regarding

termination of his services by the petitioners-Management. The said dispute was referred for adjudication to the Labour Court below. In the claim statement, respondent No.1-workman claimed that he was employed as a Tubewell Operator by the petitioner-Management on 04.04.2012 at the Tubewell in *Sai Ka Bagh* (Ambala) and he claimed to have worked upto 01.08.2015 without any break and interruption. Respondent no.1-workman claimed that his services were abruptly terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (here-in-after called as 'the 1947 Act'). Accordingly, the prayer was made by respondent No.1-workman for his reinstatement in service along with other consequential benefits.

3. The afore-said claim of respondent No.1-workman was contested by the petitioners-Management on the plea that respondent No.1/workman was never appointed by the Management nor any appointment letter was issued to him. Accordingly, prayer for dismissal of the claim statement was made.

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

“1. Whether the termination of the services of workman is liable to be set-aside being wrong, illegal, null and void, etc. and the workman is entitled to reinstatement in service with full back wages and all the benefits including the continuity of service ? OPW

2. Whether there is no relationship of employee and employer between the workman and the respondent no.1 & 2 ? OPM. 1&2

3. Whether the claim statement is not maintainable in the present form ? OPM

4. Relief ?”

5. The parties led their respective evidence in support of their claims.

6. The learned Labour Court below, upon considering the material/evidence available on the record, answered the reference in favour of respondent No.1-workman by holding him entitled to reinstatement with other consequential benefits.

7. Being aggrieved against the afore-said award, the petitioner has filed the instant writ petition before this Court.

8. Learned State counsel appearing for the petitioners submitted that the learned Labour Court below has erred in law and facts in answering the reference in favour of respondent No1-workman by ignoring the material facts that the workman was never engaged by the petitioners-Management. It is submitted that even if, it is presumed that respondent No.1-workman had worked at the Tubewell in question, as claimed by him, even then, he was not entitled to any relief as his appointment was made by not following the due process of law. It is submitted that the learned Labour Court has failed to consider and appreciate that the provisions of Sections 25-F, 25-G and 25-H of 1947 Act were not attracted in the present case; accordingly, it is prayed that the impugned award be set aside.

9. On the other hand, learned counsel appearing for respondent No.1-workman has supported the findings returned by the learned Labour Court below. It is submitted that the learned Labour Court below has passed a well-reasoned and justified award, which does not call for any interference by this Court. Accordingly, prayer for dismissal of the writ petition has been made.

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

11. The learned Labour Court below, vide impugned Award dated 29.05.2017 (Annexure P-1) has returned the following findings :-

“7. Ms. Reetika Singh, learned Government Pleader has stated that there is no relationship of workman and management between the parties to the petition. She has stated that Rs.1000/- per month was paid to the persons engaged for operating the Tubewells on part time basis for running tubewells in the morning time and in the evening time. After that wages were enhanced to Rs.4050/- per month.

8. Sh. R.S. Saini, learned counsel for the workman has stated that these tubewell operators were engaged by the Public Health Engineering Department of State and salary of Rs.4050/- was also given by the Public Health Engineering Department of State and work of the tubewell operator was monitored by the Samiti Panchayat. It has been argued that the workman has worked for more than 240 with the respondents and after his termination another person Babu Ram has been engaged by Sh. Kuldeep Singh Sidhu, SDE, Public Health. It has been argued by Sh. R.S. Saini, learned counsel for the workman that the salary for eight months was not given to the workman when he demanded for the salary at that juncture his services were terminated by the respondents. Sh. Lal Singh, Nambardar has stated that the salary of the workman for four months is pending with the respondents and shall be given to the workman Som Nath. Workman has appeared in the witness box as WW1 and filed his affidavit Ex.WW1/A and documents Mark-A to Mark-L in his evidence. In cross examination his testimony had remained unshaken. Sh. Rattan Singh Garg, SDE, Public Health, Ambala Cantt has appeared

as MW1 and tendered his affidavit Ex.MW1/1 and documents Ex.M1 to Ex.M4. In cross examination he has admitted that the management No.1 and 2 are the owner of Tubewell and electric connection is in the name of management No.1 and 2. He has also admitted that the respondents no.1 and 2 used to pay wages of Tubewell Operator through Gram Panchayat/Nambardar of the village. He has also admitted that the workman worked as Tubewell Operator at Sai Ka Bagh village Machhonda from 4.4.2012 to 1.8.2015. He has stated that when the workman was appointed on 4.4.2012, he was paid Rs.2000/- per month as wages thereafter on 2.1.2014 his salary was increased to Rs.2672/- and on 29.7.2014 the salary of the workman was increased to Rs.4050/- by the management. He has admitted that no complaint regarding work and conduct of the workman. He has also admitted the documents Mark-B, Mark-G, Mark-I, Mark-J and Mark-K. It has been admitted by the management that after termination of the services of the workman on 1.8.2015, management no.1 & 2 engaged Babu Ram on the post of Tubewell Operator for operating tubewell at Sai Ka Bagh.

9. *In view of the law laid down in case titled **State of Himachal Pradesh Vs Suresh Kumar 1996(2) SCT 359** it is held that temporary employee cannot be replaced by any temporary employee. In the case in hand the management has committed unfair labour practice and terminated the services of the workman illegally without following the provisions of section 25-F of the Act. The management has employed another daily wage worker on the same post on the same work after the illegal termination of the workman which is against the law.”*

12. A perusal of the above extracted findings would clearly indicate

that the petitioner-department's own witness namely, Sh. Rattan Singh Garg,

SDE, Public Health, Ambala Cantt. had clearly admitted in his cross-examination that the tubewell and electric connection, where respondent No.1-workman was posted, was owned by the Department and it is the petitioners-Department, who used to pay wages to the Tubewell Operator through Gram Panchayat/Nambardar of the village. Further, the said witness has also admitted that the workman worked as Tubewell Operator at Sai Ka Bagh Village Machhonda from 04.04.2012 to 01.08.2015. It was categorically stated by the said witness namely, Sh. Rattan Singh Garg that when the workman was appointed on 04.04.2012, he was paid Rs.2,000/- per month as wages and thereafter on 02.01.2014, his salary was increased to Rs.2,672/- and on 29.07.2014, the salary of the workman was increased to Rs.4,050/-. The said witness has further admitted the documents Mark-B, Mark-G, Mark-I, Mark-J and Mark-K. It was also admitted that after the termination of services of respondent No.1-workman on 01.08.2015, the Department had engaged one Babu Ram on the post of Tubewell Operator for operating tubewell at *Sai Ka Bagh*. The afore-said findings of fact have not been dislodged by the learned counsel appearing for the petitioners. Further, learned State counsel appearing for the petitioners has not been able to show that while terminating the services of respondent No.1-workman, the provisions of Section 25-F of the 1947 Act have been complied with. It is thus manifest that there is a clear violation of the provisions of Sections 25-F and 25-H of the 1947 Act.

13. In view of the above discussion, I am of the considered view that the learned Labour Court below was justified in directing reinstatement

of respondent No.1-workman with continuity of service along with 50% of back wages and no fault can be found with the said findings returned by the learned Labour Court below.

14. 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.***

15. Considering the totality of circumstances in the light of the legal principles indicated above, there is no scope for any interference by

this Court in exercise of its writ jurisdiction, resultantly, the instant writ petition fails and the same is hereby dismissed.

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

August 31, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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