

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

CWP-37150-2019 (O&M)
Date of decision :24.07.2023

DHARAM VIR

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, JALANDHAR
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Jatin Salwan, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

CM-11521-2023

This is an application for placing on record the promotion letter
ExhibitM-1 along with other documents as Annexures P-2 to P-12.

Civil Misc. Application is allowed as prayed for and documents
Exhibit M-1 along with Annexures P-2 to P-12 is taken on record, subject to
all just exceptions.

CWP-37150-2019

1. Petitioner (Dharam Vir) has filed the instant writ petition under
Articles 226/227 of the Constitution of India for issuance of a writ in
the nature of *certiorari* for quashing the Award dated 21.08.2019
(Annexure P-1) passed by the learned Industrial Tribunal, Jalandhar
(here-in-after called as 'the Tribunal'); whereby, the reference of industrial
dispute raised by him regarding termination of his services has been
answered against him.

A further prayer has been made for directing the respondents to reinstate the petitioner with full back wages and continuity of service.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by respondents No.2 to 5. In the claim petition, the petitioner claimed that he was appointed as a Salesman on 13.04.1984 and he had been working as such till 10.09.2009. Petitioner claimed that he was not allowed to work as Salesman at Bathinda and his services were terminated on 10.09.2009. Petitioner had stated that he was drawing a salary of Rs.14,000/- p.m. and the Management was targeting such employees, who were drawing much salary and had long service; therefore, they adopted an illegal method by putting pressure on them to become Managers so that they may leave the job without raising any issue. Petitioner claimed that a large number of workers were shunted out without giving them anything. Petitioner stated that he was given promotion of Shop Manager and the motive behind the same was that he would not be able to claim any benefit under the Labour Laws; accordingly, the petitioner stated that he was made a victim by not permitting him to work at Bathinda and his services were terminated on 10.09.2009 in an illegal manner, without issuing any notice, charge sheet and enquiry. Accordingly, the prayer was made, seeking reinstatement along with other consequential benefits.

3. On the other hand, the claim of the petitioner was contested by the respondent-Management on the plea that the petitioner was not a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). It was further claimed that the services of the petitioner were never terminated and therefore, the reference was not maintainable. It was also the stand of the Management that they are ready to

take the petitioner back on duty, in case, he is interested to work. On merits, the appointment and length of service of the petitioner was admitted. It was also admitted that the petitioner was promoted and transferred from Bathinda to Ludhiana, vide order dated 01.09.2009; however, he instead of joining at Ludhiana, started absenting from duty without any permission/intimation and despite issuance of various letters dated 09.09.2009, 15.09.2009, 26.09.2009, he failed to join duties and raised the industrial dispute with *mala fide* intention. The allegations made by the petitioner were denied; accordingly, prayer for dismissal of the claim petition was made.

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

- “1. Whether the claimant is a Workman ? OPW
2. Whether the termination is illegal ? OPW
3. Relief.”

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

6. The learned Tribunal below, vide impugned Award dated 21.08.2019, decided the reference against the petitioner.

7. In the afore-mentioned circumstances, the present petition has been filed before this Court.

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

9. It is the primary contention of the petitioner that his services were terminated on 10.09.2009 under the garb of promotion order and without issuing any notice, charge-sheet, enquiry and retrenchment compensation. It is also submitted that the petitioner was transferred to

Ludhiana on the basis of standing orders, which were not applicable to the post of Shop Manager and therefore, he could not be transferred without his consent.

10. A perusal of the impugned Award would reveal that the Management had opposed the afore-said contention of the petitioner on the plea that the petitioner was promoted as Shop Manager and was transferred from Bathinda to Ludhiana, vide order dated 01.09.2009; however, the petitioner instead of joining his duties at Ludhiana, he started absenting from duty without any intimation and various letters dated 09.09.2009, 15.09.2009, 26.09.2009, were written calling upon him to resume duties; however, he failed to do so and on the contrary, he raised the industrial dispute.

11. The learned Tribunal below, while considering the afore-said rival contention of the parties and upon considering the material/evidence available on the record, came to the conclusion that the petitioner did not take charge of the new assignment. Vide letter dated 09.09.2009 (Exh. M-2) written to the petitioner, he was advised to take charge by 14.09.2009; however, the petitioner failed to resume duty; whereupon, the Management again wrote another letter dated 15.09.2009 asking him to join duty at Ludhiana till 21.09.2009. It has been proved on record that the petitioner did not take charge of the new assignment. The letters written by the workman to the Management i.e. Exhibit WX/3 and WX/4 were considered by the learned Tribunal below and in that regard, it has been observed that the petitioner had shown his unwillingness to become a Manager and to join new assignment after his promotion. In the said circumstances, the learned Tribunal has returned a finding that the petitioner was promoted from

Salesman to Shop Manager vide order 01.09.2009 (Exh. M-1) and he was repeatedly advised to take the new assignment; however, instead of complying with the orders of promotion, he had expressed his unwillingness and apprehension to take charge of the new assignment. It has come on record that there is no order of termination as claimed by the petitioner and rather the promotion order is being presumed to be a termination order. It appears that the petitioner was transferred from one district to the other in terms of the standing orders. Therefore, it was held by the learned Tribunal below that there was no positive action with regard to termination of services of the petitioner; therefore, there was no question of issuing any notice, charge-sheet or enquiry and rather, the petitioner himself had shown unwillingness to take charge of the new assignment in compliance of the orders of promotion. Resultantly, the learned Tribunal below has answered the reference against the petitioner.

12. Learned counsel appearing for the petitioner has failed to dislodge the aforesaid findings of fact returned by the learned Tribunal below. Once, the respondent-Management has not issued any termination order and it has come on record that the petitioner was transferred from Bathinda to Ludhiana by promoting him as a Shop Manager, where he failed to join and rather submitted letters to the Management expressing his unwillingness to join at the place of posting, in my considered view, the learned Tribunal below was justified in rejecting the claim of the petitioner.

13. I have also considered the submissions of learned counsel for the petitioner that the petitioner was transferred to Ludhiana on the basis of Standing Orders of Depot and that the said standing orders were not applicable to the petitioner as he was promoted as Shop Manager; however, I

find no merit in this submission. Reference to Clauses 20 and 24-A of the Standing orders, as made by learned counsel for the petitioner, do not indicate that the said Standing Orders are only applicable to Salesman or Shop Assistants and not to Shop Manager i.e. the post on which the petitioner was promoted. Clauses 20 and 24-A of the Standing Orders, clearly refer to term 'employee', which in my considered opinion, would include all employees working with respondent-Management.

As regards the plea of petitioner that he could not be transferred without his consent, it is observed that as per Standing Orders, consent of employee is required in case where employee is to be transferred to other State but in the instant case, the petitioner was transferred from Bathinda to Ludhiana, which is within the Punjab State.

14. 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.

15. Keeping in view the peculiar facts and circumstances of the instant case and considering the totality of circumstances as well as the legal position indicated above, there is no scope for any interference in the impugned Award; resultantly, the instant petition fails and the same is accordingly dismissed.

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

July 24th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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