



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 15th December, 2023**

+ **W.P.(C) 1520/2014**

RAM MILAN

..... Petitioner

Through: Mr. Akhilesh Kr. Pandey,
Advocate with petitioner in person.

versus

GOVT. OF NATIONAL CAPITAL & ANR. Respondents

Through: Mr. Adhesh Kumar, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

1. The present writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner, praying for the following reliefs :

“a) Set aside the impugned order dated 16.8.2011 and pass the order of reinstatement with full back wages in favour of the petitioner and against the respondent no.2.

b) Pass any such other or further' order(s), which this Hon'ble Court deem fit and proper in the interest of justice.”

FACTUAL MATRIX

2. The petitioner joined M/s Rank and Company at the post of “helper” in the year 1987, drawing a salary of Rs. 3633/- per month. Thereafter, on 12th September, 2008 the petitioner was terminated from



his services by the management of M/s Rank and Company (hereinafter “respondent no.2”) and additionally, no earned wages were paid to the petitioner for the month of September, 2008.

3. Subsequently, the petitioner served a legal notice dated 19th September, 2008 to the respondent no. 2 thereby, demanding reinstatement along with payment of earned wages within a period of 24 hours, failing which the petitioner authorized the Union representatives to initiate necessary action.

4. Thereafter, on 16th September 2008, the petitioner filed a complaint before the Labour Department of Government of NCT of Delhi (hereinafter “respondent no. 1”).

5. Further, on 29th September, 2008 the petitioner filed his claim before the Conciliation Officer and subsequently on 21st November, 2008 the petitioner filed his statement of claim, thereby, stating that he had been working with the respondent no. 2 and his services were terminated without any justified reasons.

6. The respondent no. 2 contested the aforesaid claim and on 2nd September, 2009 filed their written statement, whereby, it had been alleged that the services of the petitioner had not been terminated, in fact, it was the petitioner who chose not to report for his duty.

7. Consequently, on 14th October, 2009 the learned Labour Court framed the issues surrounding the dispute. Thereafter, vide award dated 16th August, 2011 the learned Labour Court held that the petitioner was not entitled to any relief sought by him.



8. Aggrieved by the award dated 16th August, 2011, the petitioner has preferred the present petition seeking setting aside of the said impugned Award.

SUBMISSIONS

(On behalf of the petitioner)

9. Learned counsel appearing on behalf of the petitioner submitted that the respondents have violated all cannons of law, equity and justice by not granting the petitioner the reliefs so entitled to him.

10. It is submitted that the impugned award dated 16th August, 2011 is arbitrary, illegal and against the principles of natural justice and hence, is liable to be set aside.

11. It is submitted that the learned Labour Court failed to take into consideration the report filed by the Labour Inspector. Moreover, the petitioner raised an industrial dispute only due to the failure of the conciliation.

12. It is also submitted that the aforesaid report clearly shows that the respondent No.2 has willfully avoided the conciliation proceedings and shown no effort whatsoever in reinstatement of the petitioner.

13. It is submitted that the petitioner has served the Management for more than 22 years in the capacity of “ Helper” and that the management terminated the petitioner’s services on 12th September, 2008 without having complied with the provisions as laid down Under Section 25F and 25N of the Industrial Disputes Act, 1947 (hereinafter “the Act”).



14. It is submitted that the petitioner filed a complaint dated 16th September, 2008 before the Labour Department stating *inter alia* that the management had not paid the bonus @ 20% for the year 2006-07, as agreed by them in the settlement and rather paid bonus @ 8.33%.

15. It is submitted that the petitioner had addressed a letter dated 28th September, 2008 to the Labour Authority, stating that the Management had not been providing any benefits/facilities such as minimum wages, bonus, leave, etc. in accordance with rules and norms of the Labour Laws. Further, it was also stated in the said letter that the respondents had also not paid wages for the month of September, 2008.

16. It is submitted that despite service, the Management did not appear before the Labour Inspector for conciliation and was adamant on its stance. Moreover, similar findings had been observed by the Labour Inspector in his report dated 6th October, 2008.

17. It is submitted that the petitioner served a demand notice dated 19th September, 2008 upon the Management thereby seeking reinstatement and payment of earned wages within 24 hours from the receipt of the said notice.

18. It is submitted that since the respondent management did not provide any relief to the petitioner with regard to the wages that were due, the petitioner was constrained to approach the Labour Court.

19. It is submitted that a fresh claim dated 21st November, 2008 was filed by the petitioner before the learned Labour Court, wherein, the main relief prayed pertained to the reinstatement of the petitioner with consequential benefits prescribed under the statutory provisions.



20. It is submitted that the learned Labour Court failed to appreciate that the Management, as also observed by the Labour Inspector, had not participated in the conciliation proceedings before the Labour Inspector and never intended for the petitioner to come back to work as no efforts were made to contact the petitioner.

21. It is submitted that the impugned Award is illegal and has been decided without considering the merits as, the learned Labour Court failed to appreciate the fact that the respondent obtained the signatures of the petitioner on some blank papers and hence, the same being a fabricated document is unsubstantial.

22. It is submitted that the petitioner has duly discharged his burden of proof to show that his termination by the management was illegal and not in accordance with the principles of natural justice. Further, the management, on the other hand, has failed to fulfill their side of burden of proof proving that the petitioner absented himself from the services at his own will and that they had made efforts to contact and reinstate the workman, i.e., the petitioner.

23. It is further submitted that the Management has failed to substantiate the alleged gainful employment on part of the petitioner with any documentary evidence. Thus, the petitioner's case that he has been unemployed since the date of his illegal termination holds strength.

24. It is submitted whilst placing reliance on the case of ***J.K. Synthetics Ltd vs. K.P. Agarwal & Anr.***, (2007)2 SCC 433 to contend to the effect that the learned Labour Court erred in not adjudicating



upon the aspect of 'Back Wages' which has been explicitly sought by the petitioner in his plaint.

25. It is further submitted that the petitioner has filed this petition for issuance of a writ in the nature of certiorari, to quash the impugned Award dated 16th August, 2011 passed by Dr. Shahabuddin, Presiding Officer, Labour Court No. IX, Karkardooma Court, New Delhi, whereby, it has been held that the petitioner/workman has failed to prove that his services were terminated illegally and/or unjustifiably by the management.

26. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the reliefs be granted, as prayed.

(On behalf of the respondents)

27. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 2 vehemently opposed the instant petition submitting to the effect that the Award impugned by the petitioner is well reasoned and has been passed after profoundly considering all factors and evidence placed before the learned Labour Court.

28. It is submitted that the petitioner joined the workforce of the management on 31st August, 1993 in the capacity of a 'Helper' and the petitioner collected all his dues and wages on 7th September, 2008 from the management, and thereafter, he stopped reporting to work from 11th September, 2008 and left the respondent no.2 as he was offered a better job with higher salary elsewhere. Thus, the contention made by the



petitioner that wages for the month of September are pending is misleading.

29. It is submitted that no evidence has been produced by the petitioner in support of his contention that he actually worked with the respondent no. 2 for the past 22 years at the post of a 'Helper'.

30. It is submitted that the petitioner's services were not terminated illegally by the Management therefore, the assertion that due procedure was not followed by the Management cannot be asserted. Further the petitioner has failed to produce any shred of evidence to support that he was terminated illegally meaning thereby not even the termination letter has been produced by him to support his claims.

31. It is submitted that the petitioner's contention that he is not a member of the Employees State Insurance (ESI) is totally false as he himself in his cross examination had stated to the effect that he was a member of the ESI since 1st February, 1993.

32. It is submitted that the petitioner has never raised any request as on 11th September, 2008 before the Management to increase his salary. The petitioner has himself in his cross examination before the learned Labour Court admitted that no grievance in writing has ever been given by the petitioner to the Management during the course of his employment.

33. It is submitted that since the services of the petitioner were never terminated by the management, the petitioner's contention that the principles of natural justice were not followed cannot be a relevant ground to assert before this Court. Also the contention on behalf of the petitioner of violating statutory provisions under Section 25F and 25N



of the Act is based on a false premise which again is an invalid ground as sought by the petitioner.

34. It is submitted that the jurisdiction exercised by a Writ Court under Article 226 is supervisory in nature and not appellate. Re-appraisal of evidence without sufficient reasons in law, to arrive at finding of facts contrary to those arrived at by the learned Labour Court, is not the intent of exercising the powers of a Writ Court.

35. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the present petition, being devoid of any merits, may be dismissed.

ANALYSIS AND FINDINGS

36. Heard the learned counsel for the parties and perused the records.

37. It is the case of the petitioner that he had been working with the respondent no. 2 in the capacity of a 'Helper' since the year 1987, and had been drawing a salary of Rs.3633/- per month. It is further contended that the Management illegally terminated the services of the petitioner with effect from 12th September, 2008, without following the due process of law and provisions as prescribed Under Section 25F and 25N of the Act. It is contended that the respondent violated the principles of natural justice by not affording the petitioner with an opportunity to present his case before it. It is further contended that the management had failed to pay the earnest wages as due to the petitioner for the month of September, 2008. It is contended that the learned Labour Court has passed the impugned Award without appreciating the evidence on record. Moreover, the impugned Award has been passed



without considering that the respondent had not approached the learned Labour Court with clean hands and in the process has suppressed certain facts thereby, misleading the Court and abusing the process of law.

38. In rival contentions, it has been contended by the respondent no. 2 that the petitioner received the salary due to him on 7th September, 2008. It is further contended that on finding a better opportunity, the petitioner wilfully stopped reporting for work as on 12th September, 2008. It is contended that the petitioner's services were not terminated; rather, the petitioner stopped reporting to work as per his own will. It is contended that since the petitioner's case is not one of termination therefore, the management is not obligated to comply with Sections 25F and 25N of the Act. It is contended that the petitioner never made any representation communicating any grievance with regard to payment of salary, inclusion of other allowances or any increment thereof, during the course of his employment. It is further contended that the Award so passed by the learned Labour Court, suffers from no illegality and therefore, does not warrant any interference of this Court.

39. Having heard both parties at length, this Court finds it necessary to adjudicate upon the instant petition by framing the following issue: -

Whether the learned Labor Court has passed the impugned award without appraising the evidence placed before it?

40. At this juncture, it is prudent to analyze the findings of the learned Labor Court vis-à-vis the issues framed by it on 14th October, 2009. The issues taken up for adjudication are reproduced herein:



- i. Whether the workman had been working with the management regularly at the post of helper for more than 22 years and drawing last wages @ Rs.36331- per month?
- ii. Whether the workman intentionally absented from his work place w.e.f. 12.09.2008?
- iii. Whether the services of the workman have been terminated illegally and/or unjustifiably by the management?
- iv. Relief.

41. The learned Labour Court heard the parties and perused the evidence produced before it and on the basis of such evidence adduced and cross examinations, the learned Court passed the impugned Award thereby, deciding the dispute in favour of the management and against the petitioner. The relevant paragraphs of the impugned Award are reproduced below:

“8. I perused the entire judicial file minutely and my issue wise decision is as under:

ISSUE NO. 1

*9. In my considered opinion, the primary burden of proof of this issue was upon the workman. In coming to this conclusion, I also find support from an important judgment of Hon'ble Delhi High Court given in the case of **UCO Bank vs. Presiding Officer & Another 1999 V AD (Delhi) 5L4**. In para 13 of this judgment, Hon'ble Delhi High Court held mainly to the effect that principles regarding burden of proof are stipulated in Chapter VII of Indian Evidence Act, 1872 (in short Evidence Act) and that Sections 101 to 114 A of Evidence Act were relevant on this aspect and the Hon'ble High Court further held in this judgment that General Principal, which is laid down in these Sections, particularly under Sections 101 and 102 of Evidence Act was that he who asserts must prove i.e. burden of proof is the obligation to adduce evidence to the satisfaction of the Tribunal or court*



to establish the existence or non-existence of a fact contended to by a party. It was further held in this judgment that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof.

*10. On this point, I, further find support from an important judgment of Hon'ble Allahabad High Court on this point given in the case of **Canara Bank Lucknow vs. Union of India & Ors. L998 LAB.I.C. 2923 (Allahabad High Court)**. The Hon'ble High Court held in para 11 of this judgment mainly to the effect that section 101 of Evidence Act, 1872 postulates that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. It was further held that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Reference was also made by the Hon'ble High Court to the provisions of Sections 102, 103 and 106 respectively of the Evidence Act pertaining to burden of proof in such like cases.*

11. Now turning to the evidence of workman on record pertaining to this issue, he admitted in his cross-examination, inter-alia, that it was correct that he was a member of ESI w.e.f. 01.02.1993; that it was correct that he raised the present case before conciliation officer, Nimri Colony, Delhi and no withdrawal letter was filed before conciliation officer concerned during conciliation proceedings; that it was correct that the same dispute was filed by him before this court again; that he did not give any grievances in writing to the management during course of his employment; that it was correct that management was not annoyed with him during the course of his employment; that it was correct that he was paid salary for the month of August, 2008; that no termination letter in writing was issued to him by the management; that he had never



requested Sh. Sanjitn Marwah to raise his salary on 11.09.2008. I have also seen the documents put on record by the workman in support of his case which are mainly on record w.e.f. Ext. WW1/1 to Ext. WW1/5. In my considered opinion, none of these documents establishes the fact that the workman herein had been working regularly with the management at the post of 'helper' for more than 22 years drawing wages @ Rs. 3633/- per month.

12. In view of the above mentioned own admissions of the workman in his cross examination to the above effect, coupled with entire material on record, including the documents relied upon by the workman in support of his case, I am of the considered opinion that the workman has miserably failed to prove this issue in his favour by way of any cogent evidence, either oral or documentary. Hence, this issue is decided against the workman and in favour of the management.

ISSUE NO. 2

13. In my considered opinion, the primary burden of proof of this issue was upon the management. MW1 has mainly deposed to the effect that the workman intentionally absented from his work place w.e.f. 12.09.2008. MW1 was cross examined at length by learned AR for workman but I do not find any substantial rebuttal in his cross examination on the above mentioned point. In other words, the management has proved on record that the workman himself absented from his work place. w.e.f. 12.09.2008. Hence, this issue is also decided against the workman and in favour of the management.

ISSUE NO. 3

14. In view of the findings of this court on issue nos. 1 & 2 above, the question does not arise about termination of services of workman herein illegally and/or unjustifiably by the management, as alleged. Hence, this issue is also decided against the workman and in favour of the management.



ISSUENO. 4: RELIEF

15. *In view of the findings of this court on issue nos. 1 to 3 to the above effect, I am of the considered opinion that the workman is not entitled to claim any relief in this matter against the management.*

16. *An award is passed to the above effect against the workman and in favour of the management.*

17. *A copy of this Award be sent to the Deputy Labour Commissioner, Govt. of NCT of Delhi of Distt. Area Concerned for publication as per rules and judicial file be consigned to Record Room as per rules.”*

42. A bare perusal of the aforesaid Award makes it apposite that the learned Labour Court had taken into consideration all the evidence on record, including the examination of the witnesses. The primary issues dealt by the learned Court are with respect to petitioner’s employment with the Management for the past 22 years, and whether the petitioner absented himself without prior notice and whether the services so terminated suffers from any illegality.

43. To conclude the said issues the learned Court held that the petitioner himself in his cross examination stated to **the** effect that he is a member of the ESI since the year 1993, and could not support through documentary evidence that stated otherwise. With respect to the petitioner himself being absent, the respondent duly fulfilled their burden of proof and it can be adduced that he in fact did not report **of** his own will. Lastly, since the petitioner himself stopped reporting to work before the Management, the issue pertaining to illegal termination **stood** answered against the petitioner.



44. At this juncture, it is imperative to understand the scope of a Writ Court's jurisdiction in interfering with labour or workman disputes. The Hon'ble Supreme Court in a catena of judgments has reiterated time and again that the Labour Court is the final Court of fact for the disputes between a labour or a workman and an employer or an industry.

45. The Hon'ble Supreme Court in ***Hindustan Tin Works v. Employees***, (1979) 2 SCC 80, dealt with the aspect of perversity by the Labour Court in appreciation of facts wherein, it observed, that if on the face of the record, the High Court observes that the findings of the Labour Court are not based upon some legal evidence, it may go into the question of fact adjudicated and concluded by the Labour Court and exercise its powers vested under Article 226 of the Constitution of India. Whereas in the event the findings are based upon legal evidence and on the face of the record it seems no error has occurred, the Writ Court shall not go into the factual disagreements and the findings that were based on those disputes. The relevant paragraphs of the afore said judgment are reproduced below:

“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes



and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

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9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a



protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram



Panchayat v. Safai Kamdar Mandal [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct.”

46. Similarly, in case titled ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, the Hon'ble Supreme Court observed that in circumstances, wherein, the facts are proved, and the findings so recorded by the Tribunal are on the aspect of finding of the facts without evidence, as follows:

“21... If on the facts proved, the findings recorded by the Tribunal are justified and could not be considered to be based upon “no evidence”, there is no justification for the High Court in exercising writ jurisdiction to interfere with the same...”

47. The Hon'ble Supreme Court in ***Atlas Cycle v. Kitab Singh***, (2013) 12 SCC 573, observed that it is an established principle of law that a Writ Court shall not assume the role of an appellate court while exercising jurisdiction in the nature of a writ of *certiorari*, however, in the event that it can be proved that while recording a finding, the learned Labour Court has erred whilst recording a finding, thereby, declining to decide the dispute on the basis of admissible and material evidence or if it can be proved that the Labour Court admitted any inadmissible evidence which is not permissible in law and it has influenced the impugned finding, then the Court will be well within its power to interfere and overturn the impugned finding. In such a



situation, the writ court would be justified in exercising its remedy. In other words, if finding of a fact is based on no evidence, **that would be** regarded as an error of law **which** can be corrected by a writ in the nature of *certiorari*. The relevant paragraphs of the abovementioned judgment are reproduced as below:

“15. We are satisfied that the learned Single Judge thoroughly analysed all the aspects and arrived at a correct conclusion. It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and the writ court would be fully justified in interfering with the said conclusion. We are conscious of the fact that the High Court exercising writ of certiorari jurisdiction would not permit to assume the role of the appellate court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ court would be justified in exercising its remedy. In other words, 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.”

48. Similar findings have also been asserted in ***Iswar Lal Mohan Lal Thakkar v. Paschim Gujarat Vij Co. Ltd., (2014) 6 SCC 434***, by the Hon’ble Supreme Court, whereby, the following was observed:

“18. The power of judicial review of the High Court has to be alluded to here to decide whether or not the High Court has erred in setting aside the judgment and order of the Labour Court. In Heinz India (P) Ltd. v. State of U.P. [Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443 : (2012) 3 SCC (Civ) 184 : (2012) 3 SCC (Cri) 198] this Court referred to the position held on the power of judicial review in Reid v. Secy. of State for Scotland [(1999) 2 AC 512 :



(1999) 2 WLR 28 : (1999) 1 All ER 481 (HL)] wherein it is stated that: (Heinz India (P) Ltd. case [Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443 : (2012) 3 SCC (Civ) 184 : (2012) 3 SCC (Cri) 198] , SCC pp. 470-71, para 68) “68. ... ‘Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence.’ (Reid case [(1999) 2 AC 512 : (1999) 2 WLR 28 : (1999) 1 All ER 481 (HL)] , AC pp. 541 F-542 A) ””

49. In case titled **Parshuram Shah v. Govt. of NCT of Delhi, 2007 SCC OnLine Del 1186**, a coordinate bench of this Court observed that the law is well settled with respect to the fact that the Labour Court is the final Court of facts, and it is not appropriate for a Writ Court while exercising jurisdiction under Article 226 of the Constitution of India, to



re-appreciate evidence or to interfere with the findings of facts as arrived at by the Labour Court. The relevant portion is reproduced below:

“7. The arguments advanced on behalf of the petitioner workman, if entertained, would amount to interfering with the findings of facts as arrived at by the Labour Court after due appreciation of evidence. Law is well settled in this respect that the Labour Court is the final court of facts and it is not appropriate for this Court, while exercising jurisdiction under Article 226 of the Constitution, to reappreciate evidence or to interfere with the findings of facts as arrived at by the Labour Court. The jurisdiction exercised by the writ court under Article 226 is supervisory and not appellate in nature. Reappraisal of evidence without sufficient reason in law, to arrive at a finding of fact contrary to those arrived at by the Subordinate Court, is not the intent of exercising the powers of judicial review.”

50. With reference to the cases discussed above, it can be concluded that, *firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. Secondly, in matters, wherein, the Labour Court has adjudicated after having gone in the details of both fact and law while carefully adducing the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law has occurred. Thirdly, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to form its own view about the substantial merits of the case. The reasoning must be cogent and convincing.



51. In the instant petition, the petitioner has based his arguments on the ground that his services were terminated by the Management illegally without having adhered to the statutory provisions laid down Under Section 25F and 25N of the Act, and without following the principles of natural justice and that he has not been paid the salary due for the month of September, 2008.

52. This Court is of the considered view that, the learned Labour Court has dealt with three issues and has based its reasoning on each of the three issues, after having appraised the evidence placed on record and the cross examination. Thus, in view of the above stated judgments by the Hon'ble Supreme Court, this Court observes that the learned Labour Court after having taking into consideration the evidence as well as the witnesses cross examined, it has rightly arrived at the conclusion that the services of the petitioner were not terminated illegally, rather, the petitioner had willfully absented himself from the workplace and moreover, the wages pertaining to the month of August, 2008 have also been duly received by him. There exists no evidence on part of the petitioner to support his contention that he was illegally terminated and thus, it cannot be construed otherwise.

53. This Court is further of the view that as the scope of its writ jurisdiction is limited which needs to be is to be exercised sparingly, this Court cannot undertake an exercise, impermissible for this Court in exercising the writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions on pure questions of fact, as this Court is not in an appellate jurisdiction over the awards passed by the Labour Court. Thus, the only course, therefore, open to this Court is to



prima facie ascertain whether there is any error in law as per the evidence and findings observed by the learned Labour Court.

54. Under Article 226 of the Constitution of India, High Courts shall intervene with the Order/Award passed by a lower Court only in cases where there is a gross violation of the rights of the petitioner. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene with the order passed by the concerned Court below.

55. Furthermore, two cardinal principles of law that must be observed by the High Court while exercising an issuance of writ in the form of certiorari is, *firstly*, the High Court does not exercise powers of an appellate authority and it does not review or re-weigh the evidence upon which the consideration of the Court below purports to have based. The writ of certiorari can be issued if, an error of law is apparent on the face of the record and *secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. It may be concluded that the writ of certiorari is issued for correcting errors of jurisdiction exercised by Courts below, for Courts violating principles of natural justice and acting illegally and, the Court issuing such a writ shall act in supervisory capacity rather than an appellate capacity.

56. It is evident that the Court shall exercise its power under Article 226 for granting a writ of certiorari very cautiously and sparingly under exceptional circumstances as it is a highly prerogative writ. It should not be issued on mere asking unless there is something palpably



erroneous manifested on the face of the proceedings adjudicated by the authority concerned.

57. Placing reliance on the findings in *Hindustan Tin Works (Supra)*, wherein, it was observed that relief of reinstatement of a service is found to be invalid or illegal as the same would mean that the employer has taken away the right to work of the workman illegally, which is in contravention to the relevant law, in breach of the contract and simultaneously deprived the workman of his earnings.

58. This Court is of the view that from bare perusal of the impugned Award, it is apparent that the findings arrived at by the learned Labour Court are based on the evidence placed before it by the petitioner and no such evidence was placed before it to arrive at a different view, as it did in the impugned Award. Therefore, the findings that the petitioner himself absented from work can be conclusively deduced from the cross examination and evidence relied upon by the learned Labour Court.

59. Therefore, this Court concludes that the instant matter has been heard at length by the learned Labour Court and the petitioner has been granted sufficient opportunity to justify the illegality of his termination. But the finding of the facts narrated a completely different view than that alleged by the petitioner herein. Thus, since no error on account of appraising evidence by the learned Labour Court is noted by this Court, the relief as prayed by the petitioner cannot be granted.

60. Accordingly, the issue framed has been decided.



CONCLUSION

61. On a perusal of the findings of the learned Labour Court, this Court discerns no material to establish the propositions put forth by the petitioner. There is no material to characterize the impugned Award passed by the learned Labour Court as perverse. It is held that the learned Labour Court is well justified in passing the impugned Award.

62. In view of the above discussions of facts and law, this Court finds no infirmity in the impugned Award dated 16th August, 2011 passed by Dr. Shahabuddin, Presiding Officer, Labour Court No. IX, Karkardooma Court, New Delhi in ID No. 293/08.

63. Based on the aforementioned arguments, this writ petition is accordingly dismissed.

64. Pending applications, if any, also stand dismissed

65. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 15, 2023
PA/DS/RYP