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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Judgment reserved on: 15.09.2023**% **Judgment delivered on: 16.10.2023**+ **LPA 481/2023 & CM APPL. 30566-30568/2023****DINESH KUMAR AND ORS Appellant****Through: Mr. Dinesh Kumar, Advocate.****versus****CENTRAL PUBLIC WORKS DEPARTMENT
AND ORS****..... Respondents****Through: Mr. Vivekanand Mishra, Senior Panel
Counsel, UOI for R1.
Mr. Rishikesh Kumar, ASC, GNCTD
with Ms. Sheenu Priya, Mr. Sudhir
Kumar Shukla, Mr. Muhammad Zaid,
Mr. Sudhir and Mr. Sumit Chaudhary,
Advocates for GNCTD.****CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA****J U D G M E N T****SATISH CHANDRA SHARMA, CJ.**

1. The present LPA impugns judgement dated 17.03.2023 passed by the Ld. Single Judge in W.P.(C) 4387/2010 titled ***Dinesh Kumar &Ors. vs. C.P.W.D &Ors.*** whereby the writ petition filed by the Appellants herein was dismissed.



2. The facts relevant to the present appeal are that the Appellants herein were employed by various private contractors i.e., Respondents No. 3-10 to provide security services in Respondent No. 1 Department/ CPWD from 1992-2002.

3. In 2001, the Appellants preferred an application before the Industrial Tribunal (the 'Tribunal'), under Section 33C (2) of the Industrial Disputes Act, 1947 being L.C.A No. 13/2001, claiming dues of wages against the CPWD, amounting to the difference between wages received and minimum wages payable for the period of 01.08.1992-27.10.2000. Based on the documents filed by the Appellants, the Tribunal found that the Appellants had been appointed by private contractors and worked under the private contractors. In this context, it was held that the real and final liability for payment fell on the private contractors, not the CPWD. *Vide* order dated 12.12.2005, the Tribunal rejected the application preferred by the Appellants on the sole ground that the dues, if any, payable to the Appellants could not be ascertained as no documentary evidence regarding payment of wages was filed by the Appellants and moreover, the actual employers i.e., the private contractors were not impleaded in the proceedings thereby denying them the opportunity to disprove claims made by the Appellants.

4. Aggrieved, the Appellants preferred the underlying writ petitions submitting that CPWD, being the principal employer, was statutorily obligated to pay the dues of wages as mandated under Section 21(4) of the Contract Labor (Regulation & Abolition) Act, 1970 (the 'CLRA') and inter alia praying for issuance of directions against the CPWD to determine the dues of wages payable to the Appellants.



5. The Ld. Single Judge, on a thorough examination of the facts and circumstances held that the principal employer i.e., CPWD would be liable to pay the dues in wages under Section 21(4) of the CLRA. However, two necessary pre-conditions must be satisfied before such liability could be fastened on the principal employer. Firstly, the amount payable has to be determined and secondly, there must be a failure on the part of the contractors to make such payment. In this context, the Ld. Single Judge noted that no liability could be fastened on the CPWD at this stage as the factum of dues payable to the Appellants was not yet established. Accordingly, the Court found no perversity with the holding of the Tribunal that the contractors were necessary parties for the determination of dues in wages, if any, payable to the Appellants.

6. By way of the present appeal, the Appellants contend that they ought to be treated as direct employees of the CPWD as their contractual engagements were sham and illegal. It is submitted that the CPWD is not registered under Section 7 of the CLRA and further, that the contractors were not licensed as required under Section 12 of the CLRA. On this basis, the Appellants submit that the primary liability for the payment of their dues falls on the CPWD.

7. This Court has heard the parties and perused the record. With the consent of the parties, the present appeal is being disposed of at the stage of admission itself.

8. At the outset, it is imperative to note that the plea raised by the Appellants is essentially a question requiring factual adjudication i.e., whether CPWD exercised direct control and supervision over the



Appellants, rendering their contractual agreements sham and colorable. A categorical finding regarding the relationship of the Appellants and CPWD was made by the Tribunal as follows:

“The case of the workmen applicants is that they have been appointed directly by the management. They have stated in cross examination that they were appointed by Junior Engineer, Shri Rabindra Kumiit. It transpires from the documents filed by the applicants that they worked under different contractors viz. Fair Deal Services, Universal Security Services, Reliable Security Services and hunter Security Services. It is established by the documents filed by the applicants that they have worked through several contractors from 1992 onward. They have not been appointed by the respondent and they have not worked under respondents.”

9. Thus, on a factual determination, the Tribunal held that the Appellants were neither appointed by the CPWD, nor worked under the Department. In fact, as a consequence of this finding, the primary liability of dues in wages, if any, payable to the Appellants, was fastened on the private contractors. Thereafter, this plea was raised by the Appellants again in the underlying writ petition, but the finding of the Tribunal was not disturbed by the Ld. Single Judge.

10. On a perusal of the record, it becomes evident that the contention of the Appellants regarding the colourable nature of their contractual engagement amounts to nothing more than a bald and unsubstantiated averment. Despite being given reasonable opportunities, the Appellants have failed to bring on record any documents/material to disprove the finding made by the Tribunal.



11. The Hon'ble Supreme Court in paragraph 17 of the judgment in ***Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, has held as under:

“17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken... .. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below.”

12. The Hon'ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.



13. The Hon'ble Supreme Court has taken a similar view in ***Hari Vishnu Kamath v. Ahmed Ishaque & Ors.***, AIR 1955 SC 233, *inter alia* held as under:

“21. ... On these authorities, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.

23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. ... The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

14. In ***Dharangadhara Chemical Works Ltd. v. State of Saurashtra***, (1957) SCR 152, the Supreme Court, once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact,



such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

15. In *Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan*, (2005) 3 SCC 193, the Apex Court, held that the Labour Courts/ Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.

16. In a Constitution Bench judgement of the Supreme Court in *Syed Yakooob vs. K.S. Radhakrishnan & Ors.*, AIR 1964 SC 477, the Apex Court has inter alia 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 properly, as for instance, it decides a question without giving an opportunity, 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 a 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. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

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 misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded 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 case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

17. The Hon’ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference by this Court does not arise.

18. The Hon’ble Supreme Court in ***State of Haryana vs. Devi Dutt & Ors.***, (2006) 13 SCC 32, has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant



facts; or the Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations.

19. In the present case, the Labour Court has arrived at a conclusion based upon the evidence adduced by the parties and the learned Single Judge has affirmed the findings of fact again after minutely scanning the entire evidence, and therefore, the question of interference by this Court does not arise.

20. The supervisory jurisdiction of the High Courts under Article 227 of the Constitution of India, was discussed by the Supreme Court in **Mohd. Yunus v. Mohd. Mustaqim**, (1983) 4 SCC 566, whereby it was, *inter alia*, held as under:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited “to seeing that an inferior court or tribunal functions within the limits of its authority”, and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

21. Furthermore, in **Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala**, (1988) 1 SCC 155, the Supreme Court held as under:



“13. The intention here is manifest. In any event this is a possible view that could be taken. This Court in Venkatlal G. Pittie v. Bright Bros. (P) Ltd. [(1987) 3 SCC 558] and Beopar Sahayak (P) Ltd. v. Vishwa Nath [(1987) 3 SCC 693] held that where it cannot be said that there was no error apparent on the face of the record, the error if any has to be discovered by long process of reasoning, and the High Court should not exercise jurisdiction under Article 227 of the Constitution. See in this connection the observations of this Court in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137 : (1960) 62 Bom LR 146] . Where two views are possible and the trial court has taken one view which is a possible and plausible view merely because another view is attractive, the High Court should not interfere and would be in error in interfering with the finding of the trial court or interfering under Article 227 of the Constitution over such decision.”

22. In light of the aforesaid judgment, a finding of fact made by a Tribunal which has the jurisdiction to make such finding cannot be questioned by the High Court exercising writ jurisdiction unless the finding is shown to be perverse or entirely unsupported by evidence. Under these circumstances, this Court has no hesitation in holding that the Ld. Single Judge rightly dismissed the writ petition filed by the Appellants.

23. In light of the aforesaid, no case for interference is made out in the present LPA, accordingly, the present appeal stands dismissed.

**(SATISH CHANDRA SHARMA)
CHIEF JUSTICE**

**(SANJEEV NARULA)
JUDGE**

OCTOBER 16, 2023

LPA 481/2023

Page 11 of 11