



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

Judgment reserved on: 07.08.2023

% **Judgment delivered on: 17.08.2023**

+ LPA 579/2023 and CM APPL. 40150-40152/2023

DELHI TRANSPORT CORPORATION Appellant

Through: Ms. Manisha Tyagi and Ms. Damini
Vishwakarma, Advocates.

versus

BALESHWAR Respondent

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Letters Patent Appeal (LPA) arises out of an order dated 18.04.2023, passed by the learned Single Judge in W.P.(C.) No. 8058/2010. The learned Single Judge has upheld the award dated 31.03.2010 passed by the learned Presiding Officer, Industrial Tribunal II, Karkardooma Court, New Delhi in I.D. No. 18/2002 wherein the Tribunal has directed the Appellant management to, inter alia, reinstate the Respondent workman with 40% back wages.

2. The Appellant/ Delhi Transport Corporation (DTC) has prayed for setting aside of the judgment dated 18.04.2023 passed by the learned Single Judge as well the award passed by the Tribunal dated 31.03.2010.

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3. The undisputed facts of the case reveal that the Respondent workman joined the services of DTC as a conductor on 20.04.1983 and his services were regularized on 20.10.1983. On 05.08.1992, the checking staff of the DTC inspected a bus bearing number 6097 on route from Faridabad to Delhi and the checking staff, and while conducting routine check found that the Respondent workman failed to issue a ticket to one passenger, namely Mr. Vijay Pal after collecting the requisite charges i.e. Rs.2/-. The checking staff seized the unpunched ticket bearing number 04/42471 and the statement of the passenger was also recorded.

4. The matter was reported to the management and based upon the report of Shri. Ram Kishan – checking staff, a charge sheet was issued on 26.08.1992. The imputation of misconduct is reproduced as under:

“You are required to explain, why a disciplinary action should not be taken against you under the provision of Delhi Road Transport Corporation (Amended) Act, 1971, read with Section 15 (2) of Delhi Transport Corporation (Conditions of Appointment and Service Rule 1952 for the following irregularities).

“On 05-08-1992 you were performing your duty on Bus No. 6097 of Route No. Faridabad Sector 7 to Delhi, checking staff check the said Bus at 21.45 hours at Faridabad Adda and found that a passenger was travelling in your bus from Faridabad Sector 7 to Faridabad Adda without ticket. You did not issue the ticket after the collecting the due fare Rs. 2/- from the passenger.”

This shows your dishonesty in dealing with the corporation business and misappropriation of the revenue. Thus, your above mentioned action tantamount to misconduct within the meaning of para 19 (b)(h)&(m)



.of the standing order governing the conduct of the DTC employees. One copy of the report on which the charge sheet is attached herewith. One copy of your past record is also annexed herewith and your past record will be considered while passing the final order in the case.

If you desire to hear in person a request to that effect be made in your explanation. Your explanation should reach the undersigned within 10 days of the receipt of this charge sheet by you. In case you want to inspect any of the relevant documents of reliance available on record, you should report to the undersigned within 24 hours of the receipt of this charge sheet by you.

In the event of failure on your part to report to the undersigned inspection of documents within 24 hours and therefore, your explanation to the charge sheet within 10 days, it will be assumed that you have no explanation, to submit in response to this charge sheet and further action in the case pending against you will be taken in accordance with the regulation without any further reference to you.”

5. In the imputation of misconduct, it was alleged that Respondent No.1, while on duty, serving as a conductor, though collected the amount from the passenger, however, did not issue a ticket even after collecting the money from him. The facts further reveal that Mr. Ramesh Chand, Assistant Transport Inspector recorded the statement of the passenger and the thumb impression of the passenger was also obtained on the statement of the passenger.

6. It is pertinent to note that the disciplinary proceedings in the appellant organization are governed under the provisions of Delhi Road Transport Corporation (Amended) Act, 1971, read with Section 15 (2) of Delhi



Transport Corporation (Conditions of Appointment and Service Rule 1952 for the following irregularities). The inquiry was held strictly in consonance with the disciplinary rules and the standing orders governing the field and in the departmental inquiry based upon the statement of witnesses, the inquiry officer held the charges established against the respondent employee.

7. The inquiry report was submitted on 22.04.1993 and finally an order was passed on 22.07.1993 inflicting punishment of removal from service w.e.f. 22.07.1993. The appellant management filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (ID Act) seeking approval of its action against the respondent employee and the Tribunal while deciding the aforesaid application decided the validity of the inquiry against the appellant organization on 06.09.2003. Finally, on 24.03.2003, the OP No. 438/1993 was dismissed by the Tribunal.

8. The Appellant Corporation being aggrieved by the orders of the Industrial Tribunal dated 06.09.2003 and 24.03.2003, preferred a writ petition before this Court and the same was numbered as W.P.(C.) No. 5757/2003. This Court vide order dated 09.11.2006 set aside the order passed by the Tribunal and allowed the approval application under Section 33(2)(b) of the ID Act filed by the Appellant. Meaning thereby, the writ petition preferred by the Appellant was allowed.

9. The workman being aggrieved by the order of this Court dated 09.11.2006 passed in W.P.(C.) No. 5757/2003, preferred a LPA bearing No. 339/2008 and the same was dismissed by this Court. After dismissal of the LPA, the workman again took shelter of the ID Act and claimed



reinstatement. The industrial adjudicator decided the claim against the workman and held that the workman is not entitled for any relief. ID No. 18/2002 was dismissed vide award dated 16.04.2008.

10. The Respondent employee thereafter again preferred a writ petition i.e. W.P.(C.) No. 879/2009 being aggrieved by the award of the Tribunal dated 16.04.2008 and the learned Single Judge by an order dated 20.01.2010 remanded the matter back to the Tribunal for fresh adjudication.

11. The Tribunal, after hearing the parties at length and appreciating the evidence on record finally passed an award on 31.03.2010 directing reinstatement of the workman in service with 40% back wages. The Appellant organization has, thereafter, preferred a writ petition i.e. W.P.(C.) No. 8058/2010 before this Court and the learned Single Judge dismissed the writ petition upholding the award dated 31.03.2010.

12. The order passed by the learned Single Judge, as contained in paragraph Nos. 29 to 43 read as under:

“29.This Court has heard the rival contentions of the parties and have perused the relevant material brought on record with the assistance of the learned counsels.

30.Before advertng to the facts of the present case, this Court deems it appropriate to reiterate the difference in jurisdiction of Labour Court and this Court while examining the validity of disciplinary proceedings conducted by the Petitioner/Management. The Hon''ble Supreme Court in Workman of M/s Firestone Tyre & Rubber Co of India Ltd Vs Management & Ors reported as 1973 (1) SCC 813 examined the impact of the introduction of Section 11 A to the I.D. Act. After examining the issue in detail, the Hon''ble Supreme Court held as follows:



“40. Therefore, it will-be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under section 11 A about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under section 11 A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may 'hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11A now gives full power to the Tribunal to go into the evidence and satisfy-itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion ensures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by



him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by section 11 A.

41A. Another change, that has been effected by section 11A is the power conferred on a Tribunal to, alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accented by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the, misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under section 11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman any lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by section 11 A.”

31.Hence while exercising power under Section 11 A of the I.D. Act, the satisfaction of the Labour Court regarding the alleged misconduct is important and the Labour Court can re-appreciate the evidence and substitute its own views. However, the jurisdiction of this Court under Article 226 is very limited while examining the Award passed by the learned Industrial Tribunal. This Court while exercising powers under writ



jurisdiction cannot interfere with the factual findings of the Labour Court which are based on the appreciation of facts based on evidence adduced before it (Amrit Vanaspati Company Limited Vs Khem Chand & Anr reported as 2006 (6) SCC 325). This Court can interfere with the findings of the learned Labour Court only on limited circumstances, like violation of principles of natural justice, perversity of findings etc.

32. In view of the above-mentioned settled position of law, this Court now proceed to examine the facts of the present case. In the present case, the learned Labour Court after hearing both the sides adjudicated the dispute in favour of the Respondent/Workman. The relevant extract of the judgment has been reproduced herein below:

“11. I have perused statement of the passenger taken by the checking squad. There are 10 lines in the purported statement of the passenger. His thumb impression has been obtained at the lower end of the paper. Sufficient blank space has been left out between purported statement of the passenger and his thumb impression. Similarly signatures of the workman have been obtained just near thumb impression of the passenger Vijay Pal. Prima facie it appears that signatures of the workman as well as thumb impression of the passenger were obtained on blank papers and subsequently it was converted into statement of the passenger. Otherwise, there would not have been abnormal blank space between thumb impression of the passenger and the point his purported statement ended. In my opinion, statement of the checking members can, not be relied upon inasmuch as record prepared by the checking staff is full of suspicion. Circumstances brought on record clearly makes strong suspicion about veracity of the case of the Management that workman had not issued ticket to the passenger. On the other hand, passenger has not supported



story of the Management, He is specific that workman was new and he was verifying the fare from list of fare before issuing ticket. He has also stated that workman had issued ticket to him in the meantime checking staff snatched ticket from his hand and obtained his signatures on blank papers. In these circumstances, I am of the view that evidence brought on record is not sufficient to warrant conclusion that workman is guilty of any misconduct, in other word. Management has failed to prove misconduct on the part of the workman.”

33. Learned Labour Court was of the view that the checking staff indulged themselves in highhandedness while inspecting the bus and recording the statements. The checking staff not only, without any justification, obtained thumb impression of passenger, who was an educated individual, but also physically intimidated him to affix the same on a blank paper. It is also observed by the learned Labour Court that the thumb impression of the passenger was affixed by the checking staff on the lower end of the paper. It is, therefore, prima facie, apparent that abnormal space was deliberately left by the checking staff to convert it into the statement of the passenger. The learned Labour Court reached the conclusion that the case of the Petitioner/Management is not proved and there exists suspicion regarding veracity of the records brought on record by them.

34. The checking staff took cognizance of the alleged irregularity after confronting the ticketless passenger. The challan and subsequently the chargesheet against the Respondent/Workman was also filed based on the statement of the passenger. Therefore, the statement of the passenger is crucial in the present case which was recorded at the time of enquiry. The statement of the passenger, Sh. Vijay Pal has been reproduced herein below:

“On 05-08-1992, I boarded from YMC. Ahead before Nilam Cinema flying People Came. I had



given money to conductor and that conductor was new and do not know what is the fare. From his own list he was looking the fare. After looking the list the 'conductor was giving me ticket in between one of them caught my hand and snatch the ticket and other one caught my collar. Those tickets were with conductor also taken by them. I was asked to put my thumb impression on blank paper and I used to signature. In between my stand came and I was dropped at Old Faridabad after taking my address. Apart from this I have nothing to say."

35.At the time of enquiry, the passenger categorically deposed that the checking staff used aggression while inspecting the bus and the thumb impression was also obtained forcefully. With such statement, the passenger demolished the averments of the Petitioner/Management, which shows that the story was concocted by the checking staff to falsely charge the Respondent/Workman with misconduct. Hence, to this Court's understanding, the records produced by the Petitioner/Management cannot be made basis for holding the Respondent/Workman guilty of misconduct. Furthermore, while perusing the Labour Court Record (LCR), this Court came across a letter dated 07.08.1992, written by the Respondent/Workman addressing the Petitioner/Management. In aforesaid letter, the Respondent/Workman expressed his grievance to the Petitioner/Management with respect to the frivolous chargesheet filed against him by the checking staff. It is also written that the checking staff misbehaved with him while he was issuing ticket to the passenger and involuntarily obtained thumb impression of passenger. Hence, in the present case, where the passenger who happens to be the star witness of the Petitioner/Management has deposed against the Petitioner/Management, the Petitioner/Management is left with no evidence apart from that of checking staff to prove misconduct on part of the Respondent/Workman.

36.As observed by the learned Labour Court, the statement of the ticketless passenger, Sh. Vijay Pal, was recorded by the



checking staff with his thumb impression at the bottom. During the enquiry proceeding, the passenger stated that he used to sign which implies that he was an educated person. No justification was furnished by the checking staff as to why instead of asking for passenger's signature, they choose to obtain thumb impression. The enquiry officer attempted to brush under the carpet the testimony of the Passenger, which was an important piece of evidence to enquire into the charges levelled against Respondent/Workman.

37.The checking teams of the Petitioner/Management neither tally the cash with the unpunched tickets, nor the passenger supported the case of the Petitioner/Management in his deposition. There is no independent evidence to corroborate the testimony of the checking staff about alleged misconduct of the Respondent/Workman. This Court in Savitri Devi v. Delhi Transport Corporation, reported as 2011 SCC OnLine Del 3507 has discussed briefly about importance of checking cash by the checking staff. Relevant extract of the judgment is reproduced below for perusal.

“14. ...The Tribunal appears to have overlooked that in a majority of the cases where the charges are that after collecting cash from the passengers the conductor has not issued them tickets, the checking of the cash with the conductor is absolutely essential to determine if the passengers who were allegedly travelling without tickets were telling the truth...”

38.Therefore, weighing both the sides, the averments made by the Petitioner/Management stands on a weaker pedestal as no substantive proof exists to establish guilt of the Respondent/Workman. As far as the legality of the above-mentioned impugned award is concerned, the Petitioner/Management failed to point out the perversity in the impugned award.

39.B.S. Hullikatti (Supra), as relied upon by the counsel for Petitioner/Management, lends no assistance to the case of the Petitioner/Management. It was proved in the aforesaid case



that the conductor of the bus charged 50 paise more from as many as 35 passengers and he was found guilty previously 36 times on different dates. However, in present case, statement of checking staff member simpliciter is not sufficient to hold the Respondent/Workman guilty of misconduct, and the guilt remains unestablished.

40.The learned Labour Court, on basis of the evidence led during the enquiry, appreciated the facts and circumstances to reach the conclusion. This Court is of the opinion that the learned Labour Court committed no irregularity or violation of principles of natural justice while adjudicating the dispute and passed the impugned award considering the facts and law. It is a well settled law that the court under Article 226 of the Constitution of India does not sit as a Court of appeal, but rather has a limited role while examining the industrial award. It can only invoke its power under writ jurisdiction when there exists perversity on the face of the award and award is without any reasoning, logic and passed without compliance of principles of natural justice. This Court finds no perversity in the impugned award. In light of the law, this Court is not inclined to invoke its power under Article 226 of the Constitution of India and interfere with the award dated 31.03.2010 passed by the Learned Labour Court.

41.Accordingly, the award dated 31.03.2010 passed by the Learned Presiding officer, Industrial Tribunal-II, Karkardooma Courts, Delhi in I.D. no. 18/02 is upheld.

42.In compliance of the order of this Court dated 22.02.2012, the Respondent/Workman is getting payment under Section 17-B of the I.D Act. The Petitioner/Management is entitled to adjust the payment made under Section 17-B of the ID Act while calculating the back wages of the Respondent/Workman.

43.In view of the above, the present petition is dismissed. No order as to costs. ”

13. The learned Single Judge, while dismissing the writ petition has dealt with the judgment delivered by the Hon'ble Supreme Court in the case of Workman of ***M/s. Firestone Tyre & Rubber Co. of India Ltd. v.***



Management & Ors., 1973(1) SCC 813. The Hon'ble Supreme Court in ***M/s. Firestone Tyre*** (supra) has examined the impact of Section 11A of the ID Act and held that the satisfaction of the Labour Court in relation to the alleged misconduct is important and that the Labour Court may re-appreciate the evidence and substitute its own views. The learned Single Judge has held that the jurisdiction of the High Court under Article 226 is very limited while examining the award passed by the industrial adjudicator and the High Court cannot interfere with factual findings of the Labour Court which are based on appreciation of facts and on evidence adduced before it. The learned Single Judge has also placed heavy reliance upon ***Amrit Vanaspati Company Ltd. v. Khem Chand & Anr.***, (2006) 6 SCC 325.

14. The learned Single Judge has further held that the Labour Court has rightly arrived at a conclusion that the evidence brought on record was not sufficient to warrant the conclusion that the respondent employee was guilty of misconduct. It was brought to the notice of the Labour Court that the passenger in question did not support the version of events as narrated by the checking staff. The passenger has categorically deposed before the inquiry officer that the checking staff, while inspecting the bus, obtained his thumb impression forcefully.

15. The learned Single Judge, after minutely scanning the award, has arrived at a conclusion that the findings arrived at by the Labour Court does not warrant any interference.

16. The learned Single Judge has also placed reliance upon a judgment delivered in the case of ***Savitri Devi. v. Delhi Transport Corporation***, SCC



OnlineDel 3507 wherein the High Court observed the importance of checking cash by the checking staff. In the present case, the checking of cash by the checking staff has admittedly not been carried out and keeping in view the totality of the circumstances of the case, the learned Single Judge has not interfered with the award passed by the industrial adjudicator.

17. Learned counsel appearing for the DTC has vehemently argued before this Court that the present case is a case of fraud and misappropriation of public money and, therefore, as the passenger's statement was recorded on the back side of challan number 214486 by the Assistant Transport Inspector, the same could not have been brushed aside as has been done by the Tribunal. She has also argued before this Court that the learned Single Judge has failed to appreciate that the employee in question has raised the industrial dispute after nine years of his removal and, therefore, in light of the judgment delivered in the case of *U.P.SRTC v. Man Singh*, (2006) 7 SCC 752, the workman is not entitled for any relief.

18. Learned counsel for the DTC has vehemently argued before this Court that the learned Tribunal has re-appreciated the evidence and, by no stretch of imagination, can it be said that the conclusion arrived at by the inquiry officer was based on no evidence. She has vehemently argued before this Court that sufficiency or insufficiency of material cannot be looked into by the Tribunal nor by this Court and in a departmental inquiry charge is not required to be proved beyond reasonable doubt and on the contrary, theory of preponderance of probability is attracted in a departmental inquiry. She has prayed for setting aside of the order passed by the learned Single Judge as well as the award passed by the Tribunal dated 31.03.2010.



19. Learned counsel has vehemently argued that in light of the judgment delivered in the case of *L.K. Textile Mills v. Workmen*, AIR 1961 SC 860, the credibility or efficacy of the evidence are findings wherein Tribunal could not have gone into nor a Court exercising writ jurisdiction could have gone into it and, therefore, the award passed by the Tribunal and the order passed by the learned Single Judge deserves to be set aside.

20. Learned counsel has placed reliance upon a judgment delivered in the case of *U.P. State Road Transport v. Suresh Chand Sharma*, Civil Appeal No. 3086 of 2007 as well as upon a judgment delivered in the case of *D.T.C. v. Anup Singh*, 2006 SCC OnlineDel 1065. She has argued before this Court that in light of the aforesaid judgments even if the cash (unaccounted cash) is not checked, the misconduct has been proved based upon the evidence adduced during the departmental inquiry even though the passenger has not stated against the respondent employee. She has also argued before this Court that the grant of back wages to the extent of 40% is on the higher side and the management cannot be stalled with the liability of paying back wages in the peculiar facts and circumstances of the case.

21. This Court has heard learned counsel for the Appellant at length and perused the record. In the present case, the Tribunal, based upon the evidence has arrived at a conclusion that the statement of so-called ticketless passenger Sh.Vijay Pal was recorded by the checking staff with his thumb impression at the bottom and during the inquiry proceedings, however, the passenger stated that he used to sign and he was an educated person.



22. It was also stated by the passenger that his thumb impression was forcefully obtained by the checking staff. He has not stated anything against the respondent employee and in those circumstances, the Tribunal has arrived at a conclusion that the passenger has demolished the entire case of the management and has held that the misconduct is not proved. No substantive proof/ evidence was brought on record to establish the guilt of the Respondent workman and in those circumstances, the Tribunal has passed the award dated 31.03.2010 directing reinstatement of the workman with 40% back wages.

23. Another important aspect of the case is that the workman has already attained the age of superannuation after serving the department.

24. The Hon'ble Supreme Court in the case of **Amrit Vanaspati** (supra) has held as under:

“This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence.”

25. Furthermore, the Supreme Court in **Puri Investments v. Young Friends & Co.** 2022 SCC OnLine SC 283 observed that the jurisdiction conferred upon High Courts under Article 227 of the Constitution of India is restrictive in nature vis-à-vis factual aspects of a dispute. The Supreme Court agreeing with the High Court's enunciation of the principles of law on the scope of interference by a Supervisory Court on decisions of the fact-finding forum observed that a Supervisory Court may interfere with the findings of the appellate forum if they were found to be perverse i.e. (i)



erroneous on account of non-consideration of material evidence; (ii) conclusions which are contrary to the evidence; or (iii) based on inferences that are impermissible in law.

26. This Court in the case of ***Santosh Devi v. Guru Teg Bahadur Hospital Shahdara Delhi***, 2023:DHC:5017-DB, decided on 20.07.2023, in paragraphs 67-78 has held as under:

*“67. It is not for the High Court to constitute itself into an Appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind, qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. High Courts cannot interfere with the findings of jurisdictional facts which the Tribunal is competent to decide. (See ***Sadhu Ram Vs. Delhi Transport Corporation***, (1983) 4 SCC 156.*

68. 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."

69. *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.*

70. *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."

*71. 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.*

*72. 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.*



73. 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 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 case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

74. *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.*

75. *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.

76. *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.*

77. *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.”

78. *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.””

27. In light of the aforesaid judgment delivered in the case of **Santosh Devi** (supra), wherein this Court has taken into account a large number of judgments delivered by the Hon’ble Supreme Court in respect of exercise of writ jurisdiction under Article 226 and 227 of the Constitution of India while dealing with an award passed by the Labour Court/ Industrial Adjudicator and held that the question of interference by this Court in respect of the findings of fact arrived at by the Tribunal does not arise.

28. In the present case, the finding of fact arrived at by the Tribunal/ Industrial Adjudicator holding that the charges have not been proved and the findings of fact arrived at by the Labour Court having again being minutely scanned by the learned Single Judge and as the learned Single Judge has



affirmed the finding of fact by minutely scanning the entire evidence, therefore, the question of interference by this Court with the award in the absence of any perversity, illegality or jurisdictional error, does not arise.

29. The employee has already attained the age of superannuation and keeping in view the totality of circumstances of the case, this Court does not find any reason to interfere with the award dated 31.03.2010 and the order passed by the learned Single Judge.

30. The writ appeal is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SAURABH BANERJEE)
JUDGE

AUGUST 17, 2023
N.Khanna