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

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Date of Decision: 18.09.2023

% **LPA 635/2023**

SH. ROHIT PANJWANI

..... Appellant

Through: Mr. Mohit Kumar Gupta, Advocate.

versus

M/S BSES RAJDHANI POWER LIMITED
AND ORS

..... Respondents

Through: Mr. Sandeep Prabhakar, Mr. Vikas
Mehta & Mr. Ishaan Lamba,
Advocates for respondents No.1 & 2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, C.J. (ORAL)

1. The present Letters Patent Appeal is arising out of judgment dated 18.04.2023 passed in W.P.(C.) No. 4831/2023, by which the learned Single Judge has affirmed the Award dated 28.10.2022 passed by the Labour Court in LID No.583/2016.

2. The facts of the case reveal that the appellant/ workman was appointed as Field Executive on 12.01.2004 by M/s Safeguards Manpower Consultants and he was directed to work with M/s BSES Rajdhani Power Ltd.(BSES-RPL), w.e.f. 13.01.2004 to 30.09.2006.



3. The facts further reveal that the name of the company M/s Safeguards Manpower Consultants was subsequently changed to M/s Safeguards Human Resourcing Pvt. Ltd. and the workman continued to work with the employer as he was appointed by M/s Safeguards Human Resourcing Pvt. Ltd. though he was offering his services at BSES-RPL. He continued to work up to 28.06.2013 and his services were terminated – as stated by the workman, on 28.06.2013.

4. Against his discontinuance, the workman took shelter under the provisions of the Industrial Disputes Act, 1947 (ID Act) and approached the Labour Court. The following issues were framed by the Labour Court:

“i. Whether there existed any relationship of employer and employee between the management No. 1 and 2, and workman? OPW

ii. Whether statement of claim filed by the workman under Section 2 A of the Industrial Disputes Act, 1947 against management No. 4 is no maintainable inasmuch as management No. 4 was not a party to the conciliation proceedings under Section 2A (2) of the Industrial Disputes Act, 1947. If so, to what effect? OPM4.

iii. Whether statement of claim filed by the workman against management No. 4 is no maintainable inasmuch as workman was not in the employment of management No. 4 in the year preceding the date of alleged termination of his services as pleaded in the statement of claim? OPM4.

iv. Whether the workman worked with the management(s) and his services were terminated illegally/unjustifiably by the management(s) in terms of averments made in the statement of claim? If so, to what relief, and against which management, workman is entitled ? OPW



v. *Relief.”*

5. The Labour Court has finally passed an Award dated 28.10.2022 in LID No.583/2016 holding that the workman has resigned from the service of the Management voluntarily and, therefore, he is not entitled to any relief as he has not been terminated illegally & unjustifiably – as stated by the workman.

6. The workman – being aggrieved by the Award dated 28.10.2022, has approached this Court by filing W.P.(C.) No. 4831/2023, and the finding of fact arrived at by the Labour Court has been affirmed by the learned Single Judge.

7. The learned Single Judge has held that the workman did resign on 20.09.2013 and he made a bald plea that he was forced to submit his resignation on 20.09.2013 without any substance and without there being any supporting evidence. Learned Single Judge has also arrived at a conclusion that immediately after submitting his resignation, the workman applied for release of his provident fund and did not raise any grievance for about four months and it was only on 27.01.2014, that he made a request for withdrawal of his resignation, which request was rejected by the employer. The learned Single Judge – after referring to the Award, in paragraphs 5 to 8 of the impugned judgment, has held as under:

“5. Having considered the submissions of learned counsel for the petitioner and peruse the record, I find no merit in the Petitioner’s plea. I am unable to accept the Petitioner’s bald plea that he was forced to submit his resignation on 20.09.2013. If as sought to be contended by learned counsel for petitioner, the petitioner had indeed been forced to submit his



resignation, there was no reason for him to seek release of his provident fund soon after submitting his resignation. There is also no explanation by the petitioner as to why he did not raise any grievance in this regard for more than four months and it was only on 27.01.2014 that he made a request for withdrawal of his resignation, which request was in my view rightly rejected.

6. *In this regard, it may also be apposite to refer to the relevant findings of the learned Labour Court. The same read as under:-*

The workman has himself admitted his signatures on resignation letter Ex M3W1/2 (wrongly mentioned as Mark WW1/1/XM1) at point A and B and accepted that he tendered it then the management was not bound to bring handwriting expert and the management discharged the onus. The workman has pleaded that it was taken forcibly so in these circumstances, onus again shifted upon him to prove the force used in taking the resignation.

19. *It is also the case of the workman that he withdrew the resignation letter by sending letter dated 27.01.2014 however, the said letter has no significance because the resignation is dated 20.09.2013 and withdrawal is after four months, which is after thought. It has come on the record that he has withdrawn the PF and he cannot sail on two boats firstly by acting upon the resignation and withdrawing the PF and thereafter, withdrawing the resignation. He has admitted that he has applied for withdrawal of PF on 20.09.2013, which was credited to his account which was got opened by the management No. 2, within 20-22 days thereafter. So, mentally also, it is proved that he has voluntarily tendered the resignation. The arguments of workman that he*



should have been given three months notice by the management, does not hold water because it was he who has given the resignation. He has also argued that no inquiry was conducted against him. It is also of no use because the management has not terminated him by taking any penal action.

Further the claimant has stated that he was forced to given the resignation however, the aspect of withdrawing the PF benefits is also relevant because it would indicate the 'voluntariness' of the resignation. It is clear that workman has acted upon his resignation and management has also proceeded further by employing other employees thus, the right of those employed persons will come in dock if any relief is given to the workman that too when he himself is at fault and had himself given the resignation. There is no force in the argument of the workman that resignation was got forcibly. He could have produced witnesses to show coercion if it was so. The management was required to prove only resignation and when particular fact of using the force by management was pleaded, the onus shifted on the workman as per section 101 to 104 of Indian Evidence Act. Even otherwise the workman has himself admitted his signatures on the resignation letter.

20. The Ld.AR for the management has relied upon AIR Indian Express Ltd. Vs. Gurdarshan Kaur Sandhu Dated 22.08.2019, Hon'ble Supreme Court of India discussed the rights and limitations of an employee withdrawing the resignation tendered by her/him, which relying on the judgment of the Hon 'ble Supreme Court in case of Balram Gupta Vs. Union of India dated 01.09.1987 (Air 2354, 1987 SCR (3) 1173), has relied that in case the management had made



arrangements acting on his/her resignation or letter of retirement to make other employee available for his job, that it would be another matter and the withdrawal of resignation shall have no consequence, In another case Union of India Vs. Gopal Chandra Mishra, (AIR 694, 1978 SCR (3) 12' the constitution bench of Hon'ble Supreme Court has held that :

“..... unrestricted choice of an employee withdraw may not be constrained if the employer had made arrangements acting on the resignation letter to make another employee available for the job.”

7. *In the light of the aforesaid, I find no illegality or perversity in the approach adopted by the learned Labour Court warranting interference by this Court in exercise of its extraordinary writ jurisdiction under Article 227 of the Constitution of India.*

8. *The writ petition being meritless is, accordingly, dismissed.”*

8. Learned counsel for the appellant has vehemently argued before this Court that the workman did not submit any resignation at any point of time. He was appointed as a Field Executive by respondent No.3 vide letter dated 12.01.2004 and directed to work in the office of respondents No.1 & 2, i.e. BSES-RPL. It has been further stated that he was shown as a Meter Reader w.e.f. 13.01.2004 to 30.09.2006; thereafter w.e.f. 01.10.2006 to 30.11.2009 and again appointed w.e.f. 01.12.2009 to 28.06.2013 as a Meter Reader. He was not allowed to enter w.e.f. 28.06.2013, and under the garb of resignation, his services have been, in fact, terminated.



9. Learned counsel for the appellant has stated before this Court that the workman was misled to sign the resignation. As he wanted his salary to be released, he was forced to sign some papers. The workman even made a complaint to the concerned police station and also tried to withdraw his resignation, however, his request for withdrawal of the resignation was not accepted. In those circumstances, the workman took shelter under the provisions of the ID Act, however, the Award was passed on 28.10.2022 by the Labour Court without granting any relief to the workman.

10. Learned counsel for the appellant has vehemently argued before this Court that the Labour Court as well as the learned Single Judge has failed to consider the evidence on record and it was not the workman who has resigned from service. He has stated that the workman was, in fact, forced to resign by the respondents, and therefore, the finding of fact arrived at by the Labour Court as well as by the learned Single Judge deserves to be set aside and the workman is entitled to reinstatement in service.

11. Learned counsel for the appellant has argued before this Court that Mr. Sanjeev Kumar, Manager of respondent No.1/ BSES-RPL was called as a witness and he has stated in his cross-examination that he has not checked the service record of the workman and the service record of the workman is being maintained by the concerned agency which is providing contract workers. Learned counsel's contention is that the statement of the Manager establishes that the practice adopted by respondent No.1 is contrary to the statutory provisions contained under Section 21 of the Contract Labour (Regulation & Abolition) Act, 1970.



12. Learned counsel for the appellant has further stated that the statement of the Manager could not have been relied upon by the Tribunal as he was not aware of the service record of the workman, and therefore, based upon the statement of the Manager, by no stretch of imagination, the Award could have been passed against the workman.

13. Learned counsel has also argued before this Court that there was not enough material on record to establish that the workman was involved in alleged misconduct, and by no stretch of imagination, without holding an inquiry his services have been put to an end; the resignation was taken from the workman under coercion, and therefore, the resignation was bad in the eyes of law. Hence, the Award passed by the Labour Court and the judgment delivered by the learned Single Judge deserve to be set aside.

14. Learned counsel has also argued before this Court that the finding arrived at by the learned Single Judge in respect of Sections 101 to 104 of the Indian Evidence Act is erroneous. The onus was certainly not upon the workman and the onus was upon the employer to prove that the workman was discharged from service by following the provisions of the ID Act, especially in light of the fact that the appellant has discharged the initial burden of proof that he had been terminated illegally under the garb of his resignation which was taken from him under coercion. Learned counsel has submitted that the findings arrived at by the Tribunal and the learned Single Judge deserve to be set aside and the workman is entitled to reinstatement in service.

15. Heard learned counsel for the parties. This Court has carefully gone



through the impugned judgment and perused the record. The matter is being disposed of at the motion hearing stage with the consent of the parties.

16. The undisputed facts of the case reveal that the workman in question took shelter under the provisions of the ID Act and the Award was passed on 28.10.2022. The workman vide his statement of claim sought the relief against BSES-RPL and M/s Safeguard Human Resourcing Pvt. Ltd. as he was engaged by M/s Safeguard Human Resourcing Pvt. Ltd. and posted to work with BSES-RPL . The workman took a categorical stand before the Tribunal that he was appointed on 12.01.2004 and when he reported for duty on 28.06.2013, he was not allowed to enter the premises of respondent No.1/ BSES-RPL, and therefore, his services were put to an end without issuing any charge-sheet, without following the procedure prescribed under Section 25F of the ID Act. The workman took a specific stand before the Labour Court that he did not resign from service at any point of time and is entitled to reinstatement in service with back wages.

17. The management did file the reply and took an objection that the workman was not an employee of respondent No.1/ BSES-RPL. He was appointed by the management of M/s Safeguard Human Resourcing Pvt. Ltd., and therefore, no liability can be fastened upon the management of BSES-RPL. It is true that in the written-statement, the respondent No.1 admitted that there were complaints against the workman. The matter was investigated by the Vigilance Department, however, at the same time, the workman submitted his resignation on 20.09.2013.

18. The issues – as already stated earlier, were framed by the Labour



Court and the workman examined himself as WW-1. He tendered his evidence by way of affidavit (Ex.WW-1/A). Documents were also relied upon as Ex.WW-1/1 to Ex.WW-1/11 and they were marked as A to L. The workman did not examine any other witness in support of his case and his evidence was closed on 10.08.2017.

19. In management evidence – on the other side, M/s Safeguard Human Resourcing Pvt. Ltd. examined Mr. Ankur Mahawala (as M3W1), Director of management No.3. He was cross-examined by the workman, and thereafter, on 27.08.2019, the evidence on behalf of the Management Nos. 3 & 4 was closed.

20. The workman also filed an application for bringing additional documents on record which included pay slip as WW-1/32. In management evidence on behalf of respondents No.1 & 2/BSES-RPL, Mr. Sanjeev Kumar was examined as MW-1. He was cross-examined by the workman. The management evidence on behalf of respondents No.1 & 2/BSES-RPL was closed on 29.10.2022.

21. The evidence on record has established that the workman was engaged by M/s Safeguard Human Resourcing Pvt. Ltd.; his salary was paid by M/s Safeguard Human Resourcing Pvt. Ltd.; and, he was posted by respondent No.3/ contractor at respondent No.1/ BSES-RPL. In those circumstances, the Labour Court arrived at a conclusion that the workman was not an employee of BSES-RPL.

22. The most important issue in the present case is that the workman submitted resignation to the management of respondent No.3 and Mr.Ankur



Mahalwala (M3W1) has proved the resignation which is marked as M3W1/2. Mr. Ankur Mahalwala (M3W1) was also cross-examined and he has denied the suggestion that the workman was forced to sign his resignation and he submitted his resignation with open eyes. Not only this, after resigning from service, he also submitted an application for clearing his outstanding dues.

23. The record also reveals that the workman later on submitted an application for withdrawal of Provident Fund on 29.09.2013, which was credited into his account, and thereafter, on 27.01.2014, he submitted a letter withdrawing his resignation, meaning thereby, after it was accepted by the employer and all dues were cleared by the employer.

24. The finding of fact recorded by the Industrial Tribunal – as contained in paragraphs 17 to 23, reads as under:

“17. **Issue No. 2 as framed on 13.02.2020 : whether the workman has resigned from his job and issue No. 4 as framed on 04.04.2016 Whether the workman worked with the management(s) and his services were terminated illegally/unjustifiably by the management(s) in terms of averments made in the statement of claim? If so, to what relief, and against which management workman is entitled to.**

Both the above issues are interconnected and are decided together.

It is case of the workman that when the workman visited the management to receive the salary for the month of June 2013, he was compelled to give resignation by saying that unless and until resignation is not given, salary for the month of June shall not be paid; that the signatures of the workman were obtained on the alleged resignation by the management forcibly



and without his consent, however, said resignation has not been accepted and communicated to the workman by the management and same was withdrawn by the workman before its acceptance by sending letter dated 27.01.2014.

The onus to prove the Issue No 2, as framed on 13.02.2020, was upon management No.3. The relationship of employer and employee has not been denied by management No. 3. The plea taken by the management No. 3 in its WS is that the claim is not maintainable as the claimant was not a workman as on date of filing the claim in terms of Section 2(s) of Industrial Dispute Act 1947 as he had resigned from his job, which is admitted by him in his claim, on his own volition without any undue pressure or threat.

Section 2(s) of Industrial Disputes Act defines the term "workman". The said section is reproduced as below:-

"Workman" means any person (including and apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or*
- (ii) who is employed in the police service or as an officer or other employee of a prison; or .*
- (iii) who is employed mainly in a managerial or administrative capacity; or*



(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

18. The management No. 3, in its support has examined its witness Sh. Ankur Mahawala, Director of management No. 3 as M3W1. He has filed on record resignation letter of workman Ex M3W1/2.

M3W1 has denied to the suggestion that workman was forced for resignation, when he had gone to collect his salary from management No. 3 or that management No. 3 had taken the resignation of the workman forcibly or without his consent. He denied to the suggestion that only on receiving the Email of his client dated 28.06.2013 Ex WW1/19, services of the workman were terminated. He admitted that demand letter was received by management No. 3.

The workman in his cross-examination, denied to the suggestion given by Ld. AR for management No. 3 that he had mentioned reason of PF withdrawal as resignation. He clarified that management No. 3 had withheld his salary for the month of June, 2013 and he was in need of money. The management No. 3 had told that neither he shall be paid salary nor he will be allowed PF withdrawal unless he submits resignation. He further stated that he submitted resignation when the management No. 3 insisted on the same for withdraw of his PF deposits, He further clarified that he had written on paper as per instruction of one person, named perhaps Mr. Subhash but he was not aware of his designation, that person used to be found in the office of Safeguard and also used to visit, to the effect that he want to withdraw his PF and payment of salary and thus, he submitted his resignation. That he had lodged complaint on 27.01.2014 with PS Rajouri Garden regarding resignation have been got written by him. He further admitted that he had given letter to management no. 3 regarding



withdrawal of his resignation. The workman admitted his signatures on resignation letter Ex.M3W1/2 (wrongly mentioned as Mark WW1/1/XM1) at point A and B. He further admitted that he had written the same as per instructions of someone sitting nearby the computer but he does not remember his name. At that time, Subhash was standing nearby them. His name was perhaps Mr. Ankur.

Nowhere in the evidence it has come that any further criminal legal action has been taken by the workman after lodging complaint at PS Rajouri Garden.

The workman has himself admitted his signatures on resignation letter Ex M3W1/2 (wrongly mentioned as Mark WW1/1/XM1) at point A and B and accepted that he tendered it then the management was not bound to bring handwriting expert and the management discharged the onus. The workman has pleaded that it was taken forcibly so in these circumstances, onus again shifted upon him to to prove the force used in taking the resignation.

19. It is also the case of the workman that he withdrew the resignation letter by sending letter dated 27.01.2014 however, the said letter has no significance because the resignation is dated 20.09.2013 and withdrawal is after four months, which is after thought. It has come on the record that he has withdrawn the PF and he cannot sail on two boats firstly by acting upon the resignation and withdrawing the PF and thereafter, withdrawing the resignation. He has admitted that he has applied for withdrawal of PF on 20.09.2013, which was credited to his account which was got opened by the management No. 2, within 20-22 days thereafter. So, mentally also, it is proved that he has voluntarily tendered the resignation. The arguments of workman that he should have been given three months notice by the management, does not hold water because it was he who has given the resignation. He has also argued that no inquiry was conducted against him. It is also of no use because the management has not terminated him by taking any penal action.



Further the claimant has stated that he was forced to given the resignation however, the aspect of withdrawing the PF benefits is also relevant because it would indicate the 'voluntariness' of the resignation. It is clear that workman has acted upon his resignation and management has also proceeded further by employing other employees thus, the right of those employed persons will come in dock if any relief is given to the workman that too when he himself is at fault and had himself given the resignation. There is no force in the argument of the workman that resignation was got forcibly. He could have produced witnesses to show coercion if it was so. The management was required to prove only resignation and when particular fact of using the force by management was pleaded, the onus shifted on the workman as per section 101 to 104 of Indian Evidence Act. Even otherwise the workman has himself admitted his signatures on the resignation letter.

*20. The Ld. AR for the management has relied upon, **AIR Indian Express Ltd. Vs. Gurdarshan Kaur Sandhu Dated 22.08.2019, Hon'ble Supreme Court of India** discussed the rights and limitations of an employee withdrawing the resignation tendered by her/him, which relying on the judgment of the **Hon 'ble Supreme Court in case of Balram Gupta Vs. Union of India dated 01.09.1987 (Air 2354, 1987 SCR (3) 1173)**, has relied that in case the management had made arrangements acting on his/her resignation or letter of retirement to make other employee available for his job, that it would be another matter and the withdrawal of resignation shall have no consequence, In another case **Union of India Vs. Gopal Chandra Mishra, (AIR 694, 1978 SCR (3) 12'** the constitution bench of Hon'ble Supreme Court has held that :*

"..... unrestricted choice of an employee withdraw may not be constrained if the employer had made arrangements acting on the resignation letter to make another employee available for the job.

21. The appointment letter Ex WWI/2 clearly mentions that



workman was appointed as a Temporary employee. It is not the case of the workman that he was regularized and this argument of the management that Section 25 F will not be applicable in view of the Sub Section bb of Section 2(oo), applies to the present case. The said provision of law is reproduced as below:

(oo)"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;

As per section Section 2(oo) (bb) of Industrial Disputes Act mentioned above, it is clear that the term "retrenchment" does not include termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry.

*22. Reliance is also placed on case titled **Nuclear Fuel Complex Vs. K.P. Reddy (2002) 2LLN 966 (AP) (DB) of Hon'ble High Court of Andhra Pradesh** wherein it was held that the contract labour, engaged by a contractor for a*



particular job, are not workman under the I.D. Act. Such employment comes to an end automatically as soon as the time is over and the job is over. The disengagement of contract labour does not amounts to retrenchment and does not attracts Section 25(F) of I.D Act.

In view of the discussion made above, I hold that claimant himself resigned from services of the management No.3 voluntarily so the services of the claimant cannot be said to have been terminated illegally and unjustifiably by the management. Thus, issue no 2 as framed on 13.02.2020 and issue No.4 as framed on 04.04.2016 are decided accordingly against the workman and in favour of the management No. 3.

23. Issue No.5 Relief.

In view of the findings given above, the claim of the rejected. Reference is disposed off accordingly.

24. A copy of this award be sent to the Deputy Labour Commissioner, Government of NCT of Delhi of Disst./ Area concerned for publication as per rules and judicial file be consigned to Record Room as per rules.”

25. The findings of fact recorded by the Tribunal in respect of resignation of the workman – which are based upon evidence, have attained finality and the learned Single Judge has also affirmed the findings of fact arrived at by the Tribunal and has declined to interfere with the Award passed by the Tribunal.

26. The present case is an open & shut case, wherein the workman has resigned from service and after receiving his Provident Fund dues, he has filed an application for withdrawal of the resignation. In these circumstances, the Industrial Tribunal and the learned Single Judge were justified in holding that it is not a case of termination and it is a case of



resignation of workman who was employee of respondent No.3.

27. It is well-settled proposition of law that 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.

28. 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.”

29. 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.

30. 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."*

31. 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.

32. 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.

33. In a Constitution Bench judgement of the Supreme Court in ***Syed Yakoob 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.”



34. 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.

35. 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.

36. 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.

37. 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.”

38. 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.”

39. In light of the aforesaid judgments, as the Award has been based upon the evidence adduced by the parties and the factum of resignation has been established before the Industrial Court, the scope of interference by this



Court in exercise of power under Article 227 of the Constitution of India is quite limited. It is not a case of perverse finding arrived at by the Tribunal and the learned Single Judge.

40. Therefore, this Court is not inclined to interfere with the judgment passed by the learned Single Judge and the Award passed by the Industrial Tribunal. The net result is that the present appeal fails and is hereby dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

SEPTEMBER 18, 2023

B.S. Rohella