



2023:0102:9490-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **LPA 833/2023 & CM APPL. 65998-66000/2023****RAM LALLAN**

..... Appellant

Through: Mr. Manoj Kumar Sahu, Advocate.

versus

**THE MANAGEMENT M/S SHANKER TIN
INDUSTRIES**

..... Respondent

Through: None.

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*Date of Decision: 19th December, 2023***CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T**

1. Present appeal has been filed challenging the order dated 3rd August, 2023 passed by the learned Single Judge in *W.P.(C) 11852/2005*, by which the writ petition filed on behalf of appellant challenging the Award dated 5th February, 2004 passed by the Labour Court was dismissed. By the Award dated 5th February, 2004, the Labour Court had held that the appellant herein had failed to prove that his services were terminated illegally. The Labour Court further returned a finding that the appellant had resigned and had received full and final payment for his dues.

2. Facts in brief are as follows:

2.1 It is the case on behalf of appellant that he was terminated illegally from service on 15th September, 1995 without issuance of any notice. Thus,



industrial dispute was raised by the appellant, which culminated into an *ex-parte* Award dated 25th May, 1998 in favour of the appellant, wherein it was held that the appellant was wrongly terminated from service and was entitled for reinstatement.

2.2 Subsequently, the respondent filed an application for setting aside the Award, which was allowed and the respondent was allowed to file written statement. In the written statement, the respondent submitted that the appellant had tendered his resignation on 6th March, 1995, pursuant to which he had settled his claim and received Rs. 11,196/- on 9th April, 1995.

2.3 Ultimately, by Award dated 5th February, 2004, the learned Labour Court held that the appellant had failed to prove that his service had been terminated illegally or unjustifiably. Aggrieved by the Award passed by the learned Labour Court, the appellant filed writ petition before this Court being *W.P.(C) 11852/2005*. By the impugned order dated 3rd August, 2023, the learned Single Judge upheld the Award passed by the learned Labour Court. Hence, the present appeal has been filed.

3. On behalf of the appellant, it is contended that the appellant had filed additional documents i.e. Job sheet and Delivery receipt etc. showing that the appellant was working with the respondent from the period of March, 1995 to September, 1995. These documents show that appellant was working with respondent till 15th September, 1995. Therefore, the appellant could not possibly have resigned on 7th March, 1995, as alleged by the respondent. The learned Single Judge ought to have taken into consideration the additional documents filed by the appellant. It is further contended that the learned Single Judge has relied upon Exhibits *WW1/M1 & M2* to arrive at findings against the appellant, while completely ignoring that appellant



had categorically deposed that the signatures of the appellant were obtained when those were blank documents.

4. Having heard learned counsel for the appellant and having perused the record, this Court at the outset notices that it was the clear stand of the respondent before the learned Labour Court that the appellant herein had tendered his resignation on 6th March, 1995, which was accepted by the respondent on 7th March, 1995. Thereafter, the appellant had also got all his claims/dues settled and had received Rs. 11,196/- in full and final settlement from the respondent. Thus, respondent in its written statement filed before the learned Labour Court had stated as follows:

“XXX XXX XXX

2. That the contents of para 2 are wrong, self praising and contrary to the true facts & denied. In fact the workman did not come after acceptance of his resignation i.e. 7.3.95 which he tendered his resignation on 6.3.1995 and thereafter he came on 9.4.1995 and got settled his all claims/dues including right to his employment in full and final settlement with the management on the receipt of Rs. 11,196/- (Eleven Thousand One Hundred and Ninty Six Only) from the management.

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4. That the contents of para 4 are also wrong and denied. The alleged story of illegal termination w.e.f. 15.9.95 is fabricated and afterthought and at the instance of ill advice and misguidance of some outer agency. In fact the workman had worked with the management upto 7.3.95 and day before that he tendered his resignation voluntarily and requested for settlement of his account in full and final settlement. As the workman has told the management that he had got better employment and therefore he is not willing to continue with the management. On his request his resignation was accepted w.e.f. 7.3.95 and was asked to collect his dues after few days. However thereafter he approached the management on 9.4.95 for collection of his dues and the management had paid his all outstanding dues on the same day (9.4.95) and the workman collected the payment of Rs. 11,196/-(Eleven Thousand One Hundred and Ninety Six Only) from the management against his full and final settlement of his dues and executed the receipt of full



and final settlement in token thereof. Thus after the full and final settlement of his account. 'No dispute' of whatsoever nature left between the parties. The alleged plea of termination on 15.9.95 is prima facie, ill motivated in order to black mail the innocent management by abusing the process of law. As the workman was never terminated on any ground so the question of issuing the charge sheet or holding of enquiry against him does not arise.

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(Emphasis Supplied)

5. This Court also notes that the documents being WW1/M1 & M2 relied upon by the respondent, which was the resignation letter of the appellant and the receipt towards full and final settlement of dues, were duly admitted by the appellant by admitting his signatures on the same, though he raised the defense that the same were taken on blank papers. However, the said defense raised by the appellant was rejected by the learned Labour Court by noting that such defense or facts were not stated by the appellant in his demand notice, nor any objection was raised by the appellant regarding the documents produced by the management. Accordingly, it was held that the respondent management had successfully proved the documents showing the resignation by the appellant and receipt of his full and final dues. Thus, the learned Labour Court has held as follows:

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*10. I have carefully considered submissions of both the learned ARs and gone through the record. **The management has proved three documents which are vital and throw light on the issue. These documents are Ex. WW1/M1. It is signed by workman, is a resignation letter. Ex. WW1/M2 is a voucher of receiving full and final settlement amount of Rs. 11996/- and Ex. WW1/M1 is the receipt dated 9.4.095. The workman admitted his signatures on these documents as well as receiving of the amount. The workman alleged in the statement of claim that management got signatures on blank papers, false vouchers. Further in the demand notice Ex. WW1/3, he has not mentioned such facts. The workman at no Point of time raised any objection regarding the Ex. WW1/M1 to M3. He has not***



made any complaint to the Labour Department or to the police. Therefore, the authenticity and genuineness of these documents cannot be surrounded by clouds of suspicion. The workman also not alleged at any point of time that these three documents were forged by the management. In my opinion, the management successfully proved these three documents. On the basis of these three documents, it is crystal clear that workman has resigned from the job and received his full-and final settlement amount.

11. Issue No. 2 :-

The onus of this issue is on the workman. As I have already discussed the relevant findings while deciding issue no. 1. The remaining facts and material is discussed here-in-after. The workman has framed his case that since 1.10.79 till 14.9.95, he worked with the management and then on 15.9.95, his services were terminated illegally. The workman is guilty for suppressing of true facts which are caught by the management. The workman who has received the amount in the month of April and admitted by him. Therefore, there is no question of continuing with the management. In the demand notice, the date mentioned is totally wrong and his alleged termination of the services. The workman at no point of time agitated regarding preparation of Ex. WWI/M1 to M3. In the cross-examination he admitted all these documents and also admitted the factum of receiving of the money of Rs. 111996/- as full and final payment for his dues. The workman has also concealed the fact of his resignation. Hence, in my opinion, the workman tried to take advantage of his his own wrong and misuses the process of law. The workman failed to prove that his services were terminated by the management illegally on 15.09.95. Whereas as I have already held that workman resigned and thereafter, settled the disp.ite and received full and final payment of his dues. Hence, in these circumstances, issue no. 2 is also decided in favour of the management against the workman.

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(Emphasis Supplied)

6. In view of the aforesaid finding, the learned Labour Court categorically held that the appellant had concealed the fact of his resignation. He had failed to prove that his service was terminated illegally, as he had resigned and settled all his dues with the respondent.



7. The findings of the learned Labour Court have been upheld by the learned Single Judge by holding as follows:

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46. *This Court is further of the view that the learned Labour Court while passing the impugned Award, has rightly considered the cross examination of the petitioner by the respondent management, the resignation dated 7th March 1995, the voucher and the receipt dated 9th April 1995 which are marked as Ex. WW I /M 1 to M 3. All the evidences, as rightly observed by the learned Labour Court bears the petitioner's signature and hence, the same cannot be denied to be true and fabricated. The same has been done by following the due process laid down under the law.*

47. *In view of the aforementioned discussion and judgments cited, it is held that sufficient material is on the record and the learned Labour Court has rightly arrived at the finding that the petitioner indeed furnished his resignation and has received all the settlement amount, as also recorded in the payment register and deduced during the cross examination.*

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8. The aforesaid discussion clearly demonstrates that the appellant had resigned from the service on 6th March, 1995, which was duly accepted by the respondent on 7th March, 1995. Further, the appellant had also received his dues towards full and final settlement of his claims. The appellant had admitted the documents i.e. his resignation letter and receipt of dues as full and final settlement, during the course of the cross examination, by admitting his signatures on the said documents. Therefore, on the basis of evidence on record, the learned Labour Court categorically held that the appellant had suppressed the fact of his resignation. On account of the aforesaid finding, the contention of the appellant regarding his illegal termination was rejected.

9. The additional documents sought to be placed on record by the appellant are clearly in the nature of afterthought. The appellant filed the



said documents before the learned Single Judge in the year 2005, ten years after his alleged termination, in order to contend that he continued to work till September, 1995. However, this Court notes that the appellant had duly led his evidence before the learned Labour Court and no reference was made to any such documents as are sought to be relied upon now.

10. Further, even during the course of his cross examination, the appellant did not mention about the existence of any documents showing that he worked with the respondent till September, 1995 to dispute his resignation in March, 1995. Therefore, this Court finds no error in the findings of the learned Labour Court that have been given on the basis of detailed evidence before it.

11. Holding that it would not be open for High Court to re-appreciate the evidence before the learned Labour Court and concurrent findings of facts do not call for interference, Supreme Court in the case of *State of Madhya Pradesh and Others Versus Kumari Arati Saxena, (2020) 18 SCC 601*, has held as follows:

“XXX XXX XXX

6. In this regard what is necessary to be taken note, in a proceeding of the present nature is that when such conclusion as reached by the Labour Court is assailed in a proceeding in the higher forum what is necessary to be taken note is as to whether there is any perversity in the conclusion reached by the Labour Court **and it would not be open to re-appreciate the evidence**. In that regard the finding of fact recorded by the Labour Court is that the respondent herein had served for more than six months as a temporary employee attracting the requirement in Standing Order 2(vi). When the said finding of fact is undisputed the subsequent conclusion as reached by the Labour Court cannot be considered as perverse.

7. Be that as it may, when the award passed by the Labour Court was carried in the appeal bearing Appeal No. 269/MP/IR/2000, the learned Judge of the appellate authority has also adverted to the very same aspect and has upheld the order passed by the Labour Court. In the



said circumstance, the appellant (State) herein was before the Division Bench of the High Court in WP No. 4225 of 2005. The Division Bench keeping in view the principle that is required to be followed while examining such matter has noted that the Labour Court has recorded a finding of fact while ordering classification of the respondent herein to the post of Typist as a permanent employee. In that view when such conclusion is reached concurrently by the three courts below such finding of fact would not call for interference in the proceedings of the present nature where the scope for examination is limited.

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(Emphasis Supplied)

12. It is settled law that decision of an Industrial Tribunal or Labour Court on a question of fact is not liable to be questioned in proceedings under Article 226 of the Constitution, unless it is shown to be unsupported by any evidence.

13. It is further settled law that the High Court exercises only supervisory jurisdiction and not appellate jurisdiction over the Industrial Tribunal or Labour Court. Thus, Supreme Court in the case of **General Manager, Electrical Rengali Hydro Electric Project, Orissa and Others Versus Giridhari Sahu and Others, (2019) 10 SCC 695**, has held as follows:

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21. In *Hari Vishnu Kamath v. Ahmad Ishaque* [*Hari Vishnu Kamath v. Ahmad Ishaque*, AIR 1955 SC 233] this Court held: (AIR pp. 243-44, paras 21 & 23)

“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.”

(emphasis supplied)

22. The question arose in *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* [Dharangadhara Chemical Works Ltd. v. State of Saurashtra, AIR 1957 SC 264 : 1957 SCR 152]. The question was whether the finding by the Tribunal under the Act about the party respondents being workmen was liable to be interfered with. After dealing with various tests relating to determining the issue, this Court also made the following observations: (AIR p. 269, para 19)

“19. ... ‘... It is equally well settled that the decision of the Tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless at the least it is shown to be fully unsupported by evidence.’”

(emphasis supplied)

23. A Constitution Bench of this Court, in *Yakoob v. K.S. Radhakrishnan* [Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477], has spoken about the scope of writ of certiorari in the following terms: (AIR pp. 479-80, para 7)

“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 improperly, as for instance, it decides a question without giving an opportunity to 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. Ahmad Ishaque* [*Hari Vishnu Kamath v. Ahmad Ishaque*, AIR 1955 SC 233] , *Nagendra Nath Bora v. Commr. of Hills Division and Appeals* [*Nagendra Nath Bora v. Commr. of Hills Division and Appeals*, AIR 1958 SC 398] and *Kaushalya Devi v. Bachittar Singh* [*Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168]).”

(Emphasis Supplied)

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14. In view of the aforesaid detailed discussion, the present appeal is found without any merits. The same is accordingly dismissed along with the pending applications.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

DECEMBER 19, 2023
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