



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order: 3rd August, 2023**
 + **W.P.(C) 11852/2005**

RAM LALLAN Petitioner

Through: Mr. Manav Kumar, Advocate.

versus

MANAGEMENT SHANKAR TIN IND Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India, has been filed seeking the following reliefs:

“(a) Issue an appropriate writ in the nature of certiorari for setting aside the impugned order dtd, 5.2.2004, (Annexure 'A ') passed by Sh. Sanjay Kumar, Labour Court-II, thereby directing to reinstate the petitioner with full back wages with full facilities and to restore the continuity of his Services as per the rules. Call for the record of case ID No. 192/96.

(b) Pass any other order which this Hon'ble Court deems fit and proper under the facts and circumstances of the case, in the interest of justice.”

2. The facts leading to the present petition are as follows:

- i. The petitioner was employed for office field work by the respondent since 1st October 1979, on a monthly wage of



Rs.1,500/- and he was removed from his services on 15th September 1995.

- ii. After his termination, the petitioner served the respondent with a notice for demanding the wages and other benefits that were due on the part of the respondent.
- iii. The petitioner was constrained to approach the Labour Court as the respondent management did not provide any relief to the petitioner with regard to the wages that were due.
- iv. Learned Labour Court issued notice to the respondent on 22nd December 1997. The Court decided to pass *ex-parte* Award in favour of the petitioner as the respondent management failed to appear on the date fixed by the learned Labour Court for filing of the written statement on 11th February 1998.
- v. The learned Labour Court passed an Award dated 25th May 1998, and held that the termination of the petitioner by the management was illegal, unjustified and further held the petitioner entitled for reinstatement to his job with continuity and full back wages.
- vi. Aggrieved by the same, the respondent moved an application dated 2nd September 1998, for setting aside the Award dated 25th May 1998, which was allowed by the learned Labour Court subject to cost of Rs.3,000/- on 19th March 1999.
- vii. After the *ex-parte* Award was set aside, further proceedings were conducted and the learned Labour Court erroneously passed the impugned Award dated 5th February 2004, and held that the petitioner failed to prove that his services were terminated illegally or unjustifiably by the management.



3. Learned Counsel appearing on behalf of the petitioner submitted that the said termination is illegal and was done without following the due process of law as no show cause notice was issued to the petitioner.

4. It is submitted that this act of the respondent no. 2 is in contravention and violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter “the Act”). It has been submitted on behalf of the petitioner that the impugned Award dated 5th February 2004 is liable to be set aside as the same does not deal with the issue that was initially referred to the Labour Court i.e., whether the service of the petitioner was terminated illegally, instead it framed new issues i.e., whether the workman tendered his resignation and has received his final dues, and to what relief is the workman entitled to.

5. It is submitted that the impugned Award is illegal and has been decided without considering the merits. The learned Labour Court has failed to appreciate the fact that the evidence produced by the respondent i.e. the resignation letter dated 6th March 1995, the voucher and the receipt dated 9th April 1995 etc., are fabricated and unsubstantial, as the signatures of the petitioner were obtained illegally on some blank papers.

6. It is submitted that the learned Labour Court wrongly observed that the petitioner had resigned and his resignation letter is legally valid. It is submitted that during the cross examination, the petitioner neither admitted to the exhibits (documentary evidence) nor to the receiving of settlement amount of Rs.11,996/-. Therefore, the learned Labour Court gravely erred in observing the same while passing the impugned Award.

7. It is further submitted that the petitioner has filed this petition for issuing a writ in the nature of *certiorari*, to quash the impugned order



dated 5th February 2004 passed by the learned Presiding Officer, Labour Court-II, Karkardooma, Delhi, in case ID No. 192/2016, whereby it has been held that the petitioner/workman has failed to prove that his services were terminated illegally and/or unjustifiably by the management.

8. In view of the foregoing paragraphs, the learned counsel for the petitioners submitted that the instant petition may be allowed and the impugned Award dated 5th February 2004 in case ID No. 192/2016, passed by the learned Labour Court may be set aside.

9. *Per contra*, learned counsel appearing on behalf of the respondent vehemently opposed the averments made by the petitioners and submitted that the present petition is nothing but an abuse of the process of law.

10. As per the contents of the counter affidavit filed, it is submitted that the petitioner has not been able to make valid grounds for interference of this Court with the impugned Award. Further, the petitioner cannot raise grounds which were not raised before the learned Labour Court.

11. It is submitted that services of the petitioner were not terminated by the respondent management rather the petitioner tendered his resignation on 6th March 1995 and got his accounts settled by way of receiving a settlement sum of Rs.11,996/- on 9th April 1995. This fact is duly admitted by the petitioner as well as observed by the learned Labour Court.

12. It is further submitted that no termination order or any documentary evidence was produced by the petitioner to substantiate his plea of alleged termination. Further, the petitioner had not mentioned in any of his documents or pleadings, or in evidence, the name of the



person/s who allegedly terminated his services.

13. It is submitted that the petitioner in his cross examination not only admitted his signatures on the payment register for the period from February 1995 to April 1995, but also admitted to the fact that he has received the final settlement amount of Rs.11,996/-. The same has been rightly observed by the learned Labour Court as one of the grounds for passing the impugned Award.

14. It is submitted that the learned Trial Court has passed the impugned Award after considering the documentary and oral evidence on its record and therefore, the same cannot be perverse in nature.

15. It is submitted that as per the judgment of the Hon'ble Supreme Court in *Syed Yakoob v. K.S. Radhakrishnan*, (1964) 5 SCR 64, the writ courts sit in a supervisory jurisdiction and not as an appellate court, and the findings of fact on appreciation of evidence cannot be re-opened in writ proceedings unless it is found that the Labour Court erroneously refused to admit admissible evidence which influenced the findings of the Labour Court, or the findings are based on no evidence. It is submitted that in view of the abovestated judgment, the petitioner herein cannot be allowed to question the finding of facts given by the learned Labour Court after proper appreciation of evidence in a writ petition and as such, the present writ petition is liable to be dismissed on this ground alone.

16. Learned counsel placed further reliance on *Parshuram Shah v. Govt. of NCT of Delhi*, 2007 SCC OnLine Del 1186, wherein it was held by this Court that the law is well settled with respect to the fact that the Labour Court is the final court of facts and it is not appropriate for a writ Court while exercising jurisdiction under Article 226 of the Constitution



of India, to re-appreciate evidence or to interfere with the findings of facts as arrived at by the Labour Court.

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

18. It is further submitted that the services of the petitioner were not terminated by the respondent management and therefore issuing of any notice and payment of service compensation as per Section 25- F of the Act, does not arise. This very contention has also been rightly observed by the learned Labour Court in the impugned Award.

19. Hence, in view of the foregoing submissions, the respondent seeks that this Court be pleased to dismiss this petition thereby upholding the impugned Award dated 5th February 2004.

20. Heard the learned counsel appearing on behalf of the petitioner and perused the materials on record including the pleadings, and judicial precedents cited.

21. At this juncture, this Court finds it necessary to adjudicate upon the present petition by framing the following issue: -

Whether there is any error on the part of the learned Labour Court in appraising the evidence placed before it, while passing the impugned Award?

22. In order to appreciate the issues involved in this petition, it is necessary to set out the relevant facts here.

23. Aggrieved by the termination of his service, the petitioner's dispute



was referred to the learned Labour Court in I.D No. 192/96. In the said reference, the issue referred was, *'whether the services of Shri Ram Lallan have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?'*

24. The learned Court proceeded to pass an *ex-parte* Award dated 25th May 1998, in favour of the petitioner as the respondent management had failed to file their written statement. The learned Court in the *ex-parte* Award observed the following:

"7. The workman in his affidavit has corroborated the facts stated in the statement of claim, as referred before. In addition he has also proved the documents copy of ESI card Ex.WI/2, copy of demand notice dated 17.9.95 EX.WW1/3, copy of postal receipt Ex. WW1/4, Claim statement filed before conciliation office Ex. WW1/5. In the absence of any cross examination whatever is stated by the workman in his affidavit on oath and the documents proved by him remained unchallenged and unrebutted and there is no reason to disbelieve the same.

8. The termination of the services of, any workman by the employer on any ground whatsoever except the excepted and excluded categories enumerated in section 2(oo) of the I,D, Act (in short the Act) amounts to retrenchment of that workman for which employer is liable to comply the provisions of section 25 F of the Act by giving one month's notice or notice pay in lieu thereof and also payment of retrenchment compensation to the retrenched workman before his retrenchment provided the workman had already completed one year's continuous service.

9. The workman has pleaded in his affidavit that he was employed with the management as office field worker since 1.10.79 and his services were terminated on 15.9.95. In the present case, there is no thing on such record to show that the case of the workman, falls within the excepted and



excluded categories enumerated in section 2 (oo) of the Act, The workman having already completed more than one year of service, he certainly had done continuous service for more than one year within the meaning of section 25 F of the Act. 'Thus the compliance of provisions of section 25 F' of the Act prior to termination of his services on the part of the management were condition precedent for a valid termination of service. The management having not issued any notice to him or offered or paid notice in lieu thereof nor-paid retrenchment compensation before the termination of the services of the workman. Non-compliance of the provisions of section 25 F of the Act on the part of the, management is established on record. Where there is an ineffective order of retrenchment there is neither termination nor cessation of service and declaration follows that the workman concerned continued in service with all consequential benefits (AIR 1981 SC 1253).

10. In view of the above, I hold that the termination of the services of the workman by the management is, illegal and unjustified and he is entitled to reinstatement to the job of the management with continuity and full back wages. The award is passed accordingly."

25. On a bare perusal of the above *ex-parte* Award dated 25th May 1998, it seems that the learned Labour Court passed the said Award on the basis of evidence adduced before it. It was observed by the learned Court that after rendering continuous employment, the petitioner was terminated from the services for no cause, without notice and without following the procedure prescribed under Section 2 (oo) and Section 25 F of the Act. Hence, the prayer of the petitioner for reinstatement was allowed and the termination was held to be illegal.

26. It is noted that, after the passing of the *ex-parte* Award dated 25th May 1998, the respondent management filed an application dated 2nd



September 1998, for setting aside of the *ex-parte* Award and the same was allowed by the learned Court on 19th March 1999, subject to the cost of Rs. 3,000/-. Fresh proceedings were conducted, wherein the written statement and rejoinder were filed by the parties and evidence was led, and examination of the witnesses were held. Thereafter the learned Court reframed the issues *vide* order dated 22nd September 1999, the said issues are reproduced herein:

“(A) Whether the workman tendered the resignation on 6,2,1995, which was accepted by the management on 7,3.1995, and workman received full and final dues from the management on 9.4.95?”

“(B) To what relief, if any, is the workman entitled against the management in terms reference?”

27. After setting aside of the *ex-parte* Award dated 25th May 1998, the parties led the evidence before the learned Labour Court. On the basis of evidence such as the resignation letter dated 6th March 1995, the voucher and the receipt dated 9th April 1995, showing full and final settlement amount of Rs. 11,996/- received by the petitioner etc., and cross examinations, the learned Court passed the impugned Award dated 5th February 2004, thereby, deciding the dispute in favour of the management and against the petitioner. The relevant paragraphs of the impugned Award are reproduced below:

“7. Issue No. 1 :

The issue is framed on the basis of objections taken by management in the written statement and also reply on merit by the management Hence, the onus to prove this issue rest upon the management. The management examined Shri Tejender Singh who proved his affidavit Ex. MW1/A and documents Ex. WW1/1 to M3, In the affidavit, it is



specifically and categorically stated by MW1 that workman worked with management from 1.10.79 to 7.3.95 and on 6.3.95 he had tendered his resignation and requested for settlement of his accounts in full and final for getting employment. It is stated that on 9.4.95 matter was settled and full and final dues of Rs. of Rs. 11996/- given to the workman. The witness subjected to cross—examination. The witness denied the suggestion that workman did not take full and final account and settled the dispute. The witness further explained how the documents WW1/M1 to M3 were executed. The witness further proved attendance register MX1 pertaining to period March, April, 1995.

8. Now burden shifts to workman who himself appeared in witness box and proved his affidavit Ex. WW1/A. In cross-examination he states that Ex. WW1/M1 bears his signatures. The payment register bears his signatures for the month Feb and March, 1995. He further states that his signatures were taken by the management on Ex WW1/M1 to M3, 5-6 days before the termination of his services, may be in the month of February and March. He further states that after signatures on M1 to M3, he did not work with the management. He further states that he had received Rs, 11,996/- from management on 9.4.95 as full and final settlement amount.

9. I have considered respective submissions of both the Ld, ARs, Ld. AR for the workman submits that Ex. WW1/M1 to M3 are false, fabricated documents and workman never resigned or received full and final payment. On the other hand, Ld. AR for management states that the workman has concealed the true facts from the court and framed a false case. He submits that the workman already admitted Ex. WW1/M1 to M3 which were signed by him and also admitted the receiving of the amount. He further submits that in cross-examination, he admitted these facts. Therefore, it is a false and wrong dispute raised by workman.

10. I have carefully considered submissions of both the Ld. ARs and gone through the record. The management has proved three documents which are vital and throw V 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/M3 is the receipt dated 9.4.95, 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 t3ie Ex, W1/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.

On the basis of above observations & discussions, the issue is decided in favour of the management, against the workman,

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. WW1/M1 to M3. In the cross-examination he admitted all these



documents and also admitted the factum of receiving of the money of Rs» 11,996/- 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 own wrong and misuses the process of law. The workman failed to prove that his services were terminated by the management illegally on 15.9.95. Whereas as I have already held that workman resigned and thereafter, settled the dispute 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.

12. On the basis of findings on issue no. 1 and 2, the workman failed to prove that his services were terminated illegally and/or unjustifiably by the management. Award is passed accordingly. Reference is answered in these terms....”

28. It is perceptible from the findings of the learned Labour Court that it had gone in depth into the evidences and examination of the witnesses. The same is apparent because, first, the learned Labour Court passed the *ex-parte* Award dated 25th May 1998, only on the basis of the evidence and witness adduced by the petitioner in the absence of the respondent management. Secondly, after the *ex-parte* Award was set aside on 19th March 1999, the respondent was allowed to file its written statement. Evidences were perused (Ex. WW1/M1 to M3 which are the cross examination of the petitioner by the respondent management, the resignation dated 7th March 1995, voucher and receipt dated 9th April 1995 respectively) and the witnesses were examined, thereafter, the learned Labour Court arrived at a finding different than the earlier finding of the learned Court.

29. The learned Labour Court had recorded the reasons for determining



such findings whereby, it was held that the petitioner had failed to prove that his services were illegally terminated by the management on 15th September 1995. It also held that the petitioner had admitted to his resignation dated 7th March 1995 (Ex. WW1/M1), in his cross examination which was tendered by the petitioner to the respondent management on 6th March 1995, and settled his dispute by receiving a settlement amount, as is evident from the receipt dated 9th April 1995 (Ex WW1/M3), which bears the petitioner's signature.

30. The basis of the aforementioned findings by the learned Labour Court were that despite the petitioner has contended that he had sent a demand notice to the respondent after his alleged termination but the said allegations raised by him are nowhere mentioned in his demand notice. The learned Court also observed that the petitioner never made any complaint to the Labour Department or to the police authorities, with regard to his grievances for alleged fabrication of documents or illegal termination. The evidences (Ex WW1/M1 to M3), i.e., the signed resignation dated 7th March 1995, the signed voucher and the receipt dated 9th April 1995, for receiving the full and final settlement amount of Rs.11,996/-, were found to be authentic by the learned Labour Court.

31. The question at this stage is, whether in view of such categorical findings of the fact arrived at by the learned Labour Court, this Court can exercise jurisdiction under Article 226 to re-appreciate the evidence and come to a different conclusion.

32. At this stage, it is imperative to understand the scope of a writ court's jurisdiction in interference with labour or workman disputes.

33. The Labour Court is the final court of facts in the disputes between



a labour or a workman and employer or an industry. The Hon'ble Supreme Court in the matter of *Hindustan Tin Works v. Employees*, (1979) 2 SCC 80, examined the aspect of perversity by the Labour Court in appreciation of facts, and observed that if *prima facie*, it is visible that the findings arrived at by the Labour Court is not based on some legal evidence, the High Court can go into the question of fact adjudicated and concluded by the Labour Court by exercising its power under Article 226 of the Constitution of India. In the event that there is no such error in the decision that was passed by the Labour Court, the Writ Court will not go into the issue of factual disagreements and the findings that were based on those disputes. The relevant paragraphs are reproduced below:

“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution



of his subjective satisfaction in the place of such satisfaction of the Labour Court.

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9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the



employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct.”

34. Further, in the judgment of ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, the Hon'ble Supreme Court on the aspect of finding of the facts without evidence, observed as



follows:

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

35. In the matter of ***Kitab Singh v. Presiding Officer, Labour Court, 2008 SCC OnLine P&H 1704***, the High Court of Punjab & Haryana observed as follows:

“15. So far as the authorities reported as Amrit Vanaspati Co. Ltd. and Syed Yakoob (supra) are concerned, the same are distinguishable to the facts of the present case. No doubt, the writ Court cannot interfere in respect of fact, but where the High Court comes to the conclusion that the Labour Court has ignored the material evidence while deciding the case, in that case, the High Court can interfere....”

The said judgment was further reaffirmed by the Hon’ble Supreme Court in ***Atlas Cycle v. Kitab Singh, (2013) 12 SCC 573***.

36. As per the recent judgment by the Hon’ble Supreme Court in ***Atlas Cycle (Supra)***, it is a well-established principle of law that a Labour Court cannot arrive at a finding by overlooking the materials on its record, as the same would amount to perversity and a writ court would be fully justified in interfering with the said conclusion. The High Court exercising writ of *certiorari* jurisdiction shall not assume the role of the appellate court. However, if it can be proved that, in the process of recording the finding, the Labour Court erroneously declined to decide upon allowing the admissible and material evidence, or if it can be shown that the Labour Court admitted any inadmissible evidence which is not



permissible in law and has influenced the impugned finding, then the Court will be well within its power to interfere and overturn the impugned finding. In such a situation, the writ court would be justified in exercising its remedy. In other words, if finding of a fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of *certiorari*. The relevant paragraphs of the abovementioned judgment are reproduced below:

“15. We are satisfied that the learned Single Judge thoroughly analysed all the aspects and arrived at a correct conclusion. It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and the writ court would be fully justified in interfering with the said conclusion. We are conscious of the fact that the High Court exercising writ of certiorari jurisdiction would not permit to assume the role of the appellate court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ court would be justified in exercising its remedy. In other words, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.”

37. This Court while relying on the judgment of the Hon’ble Supreme Court in ***K.V.S. Ram v. Bangalore Metropolitan Transport Corpn., (2015) 12 SCC 39***, is of the view that once it is realized and ascertained that the Labour Court has exercised its discretion judicially, the High Court cannot interfere with the impugned award of the Labour Court, otherwise it will vitiate the fundamental purpose of the forums established for adjudicating upon industrial disputes. The High Court is



strictly required to exercise its power within the parameters laid down by the Hon'ble Supreme Court. In the said judgment, it was held as follows:

“13. Emphasising that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution of India, the courts are to keep in view the goals set out in the Preamble and in Part IV of the Constitution while construing social welfare legislations, in Harjinder Singh v. Punjab State Warehousing Corpn. [Harjinder Singh v. Punjab State Warehousing Corpn., (2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] , this Court has held as under : (SCC p. 205, para 21)

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

‘10. ... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.’

(State of Mysore v. Workers of Gold Mines [State of Mysore v. Workers of Gold Mines, AIR 1958 SC 923] , AIR p. 928, para 10.)”



38. Similar findings have also been asserted in *Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd.*, (2014) 6 SCC 434 by the Hon'ble Supreme Court, whereby, the following was observed:

“18. The power of judicial review of the High Court has to be alluded to here to decide whether or not the High Court has erred in setting aside the judgment and order of the Labour Court. In Heinz India (P) Ltd. v. State of U.P. [Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443 : (2012) 3 SCC (Civ) 184 : (2012) 3 SCC (Cri) 198] this Court referred to the position held on the power of judicial review in Reid v. Secy. of State for Scotland [(1999) 2 AC 512 : (1999) 2 WLR 28 : (1999) 1 All ER 481 (HL)] wherein it is stated that: (Heinz India (P) Ltd. case [Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443 : (2012) 3 SCC (Civ) 184 : (2012) 3 SCC (Cri) 198], SCC pp. 470-71, para 68)

“68. ... ‘Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by



such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence.’(Reid case [(1999) 2 AC 512 : (1999) 2 WLR 28 : (1999) 1 All ER 481 (HL)] , AC pp. 541 F-542 A) ””

39. In view of the aforementioned judgments, it is evident that the Labour Court exercises its discretion keeping in view all the relevant circumstances. But the said discretion must be exercised in a judicious manner. The reasons for exercising such discretion must be cogent and convincing, and must appear on the face of the record. It is further observed that when it is said that something is to be done within the discretion of the authority, that something is to be done according to the law. It is not to be arbitrary, vague and fanciful but legal and regular.

40. The learned Labour Court being a fact finding body is entitled to reappraise the evidence. However, a writ court is not entitled to sit in appeal over such fact finding by the learned Court unless, it is shown as perverse or based on no evidence.

41. In view of the above, the only course open to this Court is to find out the satisfaction or otherwise the relevant criteria laid down in catena of judgments, before sustaining the claim of the petitioner, on the facts found and recorded by the fact finding authority i.e., the learned Labour Court. Further, the Court should not embark upon an exercise of reassessing the evidence and arriving at findings of one’s own, altogether giving a complete go-by.

42. As per the law settled by the Hon’ble Supreme Court, this Court cannot undertake an exercise, impermissible for this Court in exercising



the writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions on pure questions of fact, as this Court does not sit in an appellate jurisdiction over the awards passed by the Labour Court.

43. The Labour Court is a fact finding authority, duly constituted for the purpose of adjudicating upon the labour disputes. The findings of fact recorded by it is considered to have become final and cannot be disturbed for the mere reason of having been based on the materials or evidence, not sufficient or credible in the opinion of the writ court.

44. This Court is of the view that from the bare perusal of the *ex-parte* Award dated 25th May 1998, it is clear that the findings arrived by the learned Labour Court was only on the basis of the petitioner's evidence. No such evidence was placed before it to arrive at a different view, as it did in the impugned Award dated 5th February 2004.

45. In regard to the above paragraph, it is prudent to rely on the judgment of *Hindustan Tin Works (Supra)*, wherein it was further held that the relief of reinstatement with continuity of service can only be granted where termination of a service is found to be invalid or illegal. As the same would mean that the employer has taken away the right to work of the workman illegally which is in breach of the contract and is in contravention to the relevant law, simultaneously depriving the workman of his earnings.

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. WW1/M1 to M3. 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.

48. It is also observed that the learned Labour Court had granted sufficient opportunity to the petitioner in justifying the illegality of his termination. But the finding of the facts narrated a completely different view than that alleged by the petitioner.

49. Accordingly, the issue framed has been decided.

50. On perusal of the findings of the learned Labour Court, this Court is of the view that the learned Court had overwhelming material which constituted sufficient basis for recording its findings and this Court is satisfied with the findings recorded.

51. This Court discerns no material to establish the proposition put forth by the petitioner. There is no material to characterise the award of the learned Labour Court as perverse. It is held that the learned Labour Court is well justified in passing the impugned Award.

52. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned Award dated 5th February 2004 passed by Sh. Sanjay Kumar, Presiding Officer, Labour Court – II, Karkardooma Courts, New Delhi.



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

54. Pending applications, if any, also stand disposed of.

55. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 3, 2023

Pa/Ryp