

259 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-2562-2019 (O&M)
Date of Decision: 4th January, 2024

Chandi

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Ludhiana and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ravi Gakhar, Advocate
 for the petitioner.

Mr. Paras Jhamb, Advocate for
Mr. B.B.S. Sobti, Advocate
for respondent No.2.

HARSH BUNGER J.

1. Petitioner (Chandi) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of impugned award dated 30.08.2018 (Annexure P-1) passed by the Presiding Officer, Industrial Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'), whereby reference of industrial dispute regarding termination of services of the petitioner has been answered against him and his claim has been rejected.

A further prayer has been made for directing respondent No.2- Dayanand Medical College and Hospital, Ludhiana (hereinafter to be referred as 'the Management') to reinstate the petitioner in service along with all the consequential benefits.

2. Briefly, petitioner raised an industrial dispute, regarding

termination of his services by serving a demand notice, which was subsequently referred to the Tribunal, for adjudication.

3. Petitioner, in his claim statement, stated that he was appointed by the Management as a workman (Cleaner-cum-Helper) vide appointment letter No.5915 dated 17.07.2011 on daily wage basis and subsequently vide letter No.7916 dated 14.06.2012, he was engaged on contractual basis on the fixed salary of Rs.4,500/- per month and other allowances. Petitioner claimed that his services were terminated vide letter No.4611 dated 24.05.2013. Petitioner further claimed that he had rendered continuous service with the Management from 17.07.2011 up to 23.05.2013 and his appointment on contractual basis was illegal and unfair labour practice so as to violate mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act'). It was submitted that before terminating services of the petitioner, neither any notice or notice pay nor retrenchment compensation was paid to him, therefore, his services were terminated in violation of Section 25-F of the 1947 Act. It was further submitted that juniors to him had been retained in service and new workmen had been appointed after terminating services of the petitioner, therefore, there was violation of Section 25-G and 25-H of the 1947 Act, as well. Accordingly, petitioner prayed for reinstatement in service along with all the consequential benefits.

4. The aforesaid claim of petitioner was contested by respondent-Management *inter alia* on the plea that petitioner was appointed on contractual basis and his services were terminated as per the terms and conditions laid down in the appointment letter. It was submitted that termination of petitioner's services does not amount to retrenchment but on account of non-renewal of contract, his case would fall under the provisions

of Section 2(oo)(bb) of the 1947 Act. Accordingly, prayer for dismissal of the claim statement of the petitioner was made.

5. From pleadings of the parties, following issues were framed by the Tribunal:-

“(i) Whether the reference is not maintainable as alleged in the preliminary objection? OPM

(ii) Whether the termination of services of the workman is justified and in order? If not, to what relief the workman is entitled to? OPW

(iii) Relief”

6. Thereafter, both the parties led evidence in support of their case. Petitioner (Chandi) examined himself as WW-1 and Sh. Dheeraj Bhandari, Junior M.R.T., E.S.I.C. Model Hospital, Ludhiana as WW-2. On the other hand, the Management examined Sh. Bhawani Parsad, Senior Personnel Officer of the Hospital as MW-1.

7. After considering the material/evidence available on record, Tribunal answered the reference against the petitioner vide impugned award dated 30.08.2018 (Annexure P-1).

8. Being aggrieved against the aforesaid award dated 30.08.2018 (Annexure P-1), petitioner filed the instant writ petition before this Court.

9. I have heard learned counsel for the parties and perused the paper book with their able assistance.

10. It is petitioner's own pleaded case that he was initially engaged on daily wages on 17.07.2011 and subsequently, he was appointed on contract basis on 14.06.2012 at a fixed salary of Rs.4,500/- per month along with other allowances. Some of the relevant terms and conditions mentioned in letter dated 14.06.2012 reads as under:-

“1. That it is clearly understood and agreed that your appointment is purely on contractual basis for the specified period of 1 year only, which may be extended for the period of

further two years in writing, if your work and conduct is found to be satisfactory. In case this period is not extended, your contractual appointment shall come to an end on the expiry of two years automatically by efflux of time. In case at any stage, during the contractual appointment (original or extended) your work and conduct is found to be not satisfactory, your services are liable to be terminated with one month's notice or salary in lieu of one month's notice period and for that purpose, no compensation or wages for the un-expired contractual period of appointment will be payable by the Management. You shall also give a similar notice of one month or forfeit one month's salary in case you want to leave the service during your contractual period.

2. That since your appointment is being made for the specified period, you will neither have any right nor a lien on the job held by you during the period of contractual appointment.”

Admittedly, petitioner was discharged from service vide letter dated 24.05.2013, which reads as under:-

“DAYANAND MEDICAL COLLEGE & HOSPITAL, LUDHIANA

Ref.No.DMCH/HR/2012/4611

Dated:-24 May, 2013

Mr. Chandi, Code No.14374,
S/o Sh. Moti Ram Verma,
Cleaner-Cum-Helper,
Nursing Deptt.

DISCHARGED FROM SERVICE

Your services are no more required. Hence, you are hereby discharged from your service with immediate effect. You will be paid one month salary for short notice period as per the stipulations contained in your contract of your employment i.e. Clause No.1 of your appointment letter No. DMCH/HR/2012/7916 dated 14-06-2012.

*You are advised to submit your **NO-DUES** certificate duly completed on the expiry of the notice period and get your account settled from the Accounts Deptt.*

DGM (Admn. & HR)
D.M.C. & Hospital
Ludhiana”

11. Here, it would be relevant to refer to Section 2(oo)(bb) of the

1947 Act, which reads as under:-

“2. Definitions. In this Act, unless there is anything repugnant in the subject or context,

(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.”

A perusal of the aforesaid provision would clearly indicate that Clause (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf.

12. A perusal of letter dated 14.06.2012 would indicate that petitioner was engaged on contractual basis and he was very well aware that his services were short lived and his services could be terminated prior to expiry of the contract period in accordance with terms and conditions of his engagement/appointment letter. Further, a perusal of the letter dated 24.05.2013 would make it evident that the petitioner was simply discharged from service in accordance with terms of his engagement, which was purely contractual in nature. In my considered view, the termination of services of

petitioner by way of discharge letter dated 24.05.2013 would fall within the ambit of Section 2(oo)(bb) of the 1947 Act and the same would not amount to retrenchment.

13. The Tribunal below, while passing impugned award dated 30.08.2018 (Annexure P-1), held as under:-

“..... He further tried to make out a case that the workman was neither given any notice nor any notice pay before termination of services, but the workman himself has admitted the receipt of Letter dated 20.06.2013, which is final settlement letter, wherein it has been clearly mentioned that he is being paid one month salary as Notice Pay in addition to other dues and he admitted during cross examination that a sum of Rs.6086/- was deposited by the management in his account after deduction of Wheat Loan taken by him. The workman has also admitted to have received Experience Certificate. In these circumstances, this Tribunal is of the opinion that the services of the workman were dispensed with in accordance with the terms of his appointment letter and the provision of Section 2(oo)(bb) of the ID Act are applicable and he cannot be deemed to have been retrenched and as such, there is no violation of provisions of Section 25-F of the ID Act. Thus, both the issues are decided against the workman and in favor of the management.

ISSUE NO.3/RELIEF:-

7. In view of the foregoing discussion, the reference is answered against the workman and in favor of the management. However, this Tribunal feels that since the workman has suffered on account of long litigation and must have incurred expenses on litigation, as such, he is awarded as Rs.20,000/- (Rupees twenty thousand only) as litigation expenses. The management is directed to pay the amount to the workman within a period of two months from the date of Award becoming enforceable.”

It is evident from the findings returned by the Tribunal that the

petitioner had himself admitted receipt of letter dated 20.06.2013, which is a final settlement letter, wherein it was mentioned that petitioner was being paid one month salary as notice pay in addition to other dues. Furthermore, it has been observed that petitioner had admitted that sum of Rs.6,086/- was deposited by the Management in his account, after deduction of Wheat Loan taken by him, and he had also admitted to have received an Experience Certificate.

The said findings have not been dislodged by learned counsel appearing for the petitioner.

14. The parameters for exercising of jurisdiction by the High Court under Article [226](#) of the Constitution of India, in cases involving challenge to the award passed by the Labour Court/Industrial Tribunal and orders passed by other judicial and *quasi*-judicial bodies, are well defined. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly, i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and not appellate one. This necessarily means that the finding 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 except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the

face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a *quasi-judicial* authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or *quasi-judicial* authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding, the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the *quasi-judicial* authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, the mere, possibility of forming a different opinion on re-appreciation of evidence by the parties is not sufficient for issuance of a writ of certiorari. Gainful reference can be made to the judgments rendered by Hon'ble Supreme Court in “[Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477](#)”; “[Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 Supreme Court 61](#)”; “[Jitendra Singh Rathor v. Sh. Baidyanath Ayurved Bhawan Ltd. and another, AIR 1984 Supreme Court 976](#)”; “[R.S. Saini v. State of Punjab and others, 1999\(4\) RCR \(Civil\) 253 \(SC\) : J.T.](#)”

1999(6) S.C. 507” and “*Mohd. Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69*”.

15. Considering the totality of circumstances in the light of legal principles indicated above, there is no scope for any interference in the impugned award dated dated 30.08.2018 (Annexure P-1) passed by the Tribunal, resultantly, the present writ petition fails and is dismissed.

16. All pending application(s), if any, shall also stand closed.

4th January, 2024

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No