



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

202
1. CWP-5082-2022
Date of decision: 19.12.2024

THE GENERAL MANAGER, TELECOM, BATHINDA
....PETITIONER

Vs.

PRESIDING OFFICER, CENTRAL GOVERNMENT, INDUSTRIAL
TRIBUNAL CUM LABOUR COURT-II, CHANDIGARH AND
ANOTHER

...RESPONDENTS

Sr. No	Case Nos.	Name of parties
2.	CWP-13912-2022	SURINDER KUMAR V/S PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT-2 AND ANOTHER
3.	CWP-5024-2022	THE GENERAL MANAGER TELECOM PATIALA V/S PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT-II AND ANOTHER
4.	CWP-13914-2022	SWEETY SINGLA V/S PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT-2 AND ANOTHER
5.	CWP-13929-2022	NARESH KUMAR V/S PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT-2 AND ANOTHER
6.	CWP-4403-2022	THE GENERAL MANAGER, TELECOM, FEROZEPUR V/S PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT-2 AND ANOTHER

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Sanjeev Kaushik, Advocate and
Ms. Manreet Kaur, Advocate
for the petitioner(s) (in CWPs-5082, 5024, 4403 of 2022) and
for respondent No. 2 (in CWPs-13912, 13914 and 13929 of 2022).

Mr. Piyush Khanna, Advocate
for respondent No. 1.

Mr. Hitesh Verma, Advocate
for respondent No. 2-workman
(in CWPs-5082, 5024 and 4403 of 2022) and
for the petitioner(s) (in CWPs-13912, 13914 and 13929 of 2022).

JAGMOHAN BANSAL, J (ORAL)

1. By this common order, above-said petitions are being disposed of since issues involved in all the petitions and prayer sought therein are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-5082-2022.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 12.08.2021 (Annexure P-5) whereby Labour Court has awarded lump sum compensation to the respondent-workman.

These are cross writ petitions. The petitioner-Management is assailing grant of compensation whereas workman is seeking enhancement of compensation.

3. The petitioner is a Public Sector Undertaking. It engaged respondent-workman in 1997. The petitioner claims that workman was engaged through a contractor and it is the contractor who dismissed the workman from service. On the application of workman, matter came up for consideration before

Labour Court which passed Award against the workman. The petitioner



preferred writ petition before this Court which was allowed vide order dated 04.02.2020 (Annexure P-4). The matter was remanded back to Labour Court.

The operative portion of order dated 04.02.2020 is reproduced as below:-

“11. In totality of the above findings, this Court deems it appropriate to quash the award dated 03.04.2014 (P5) and remand the matter(s) back to the Labour Court for afresh adjudication. Since the reference in this case was made in the year 2001, it is deemed appropriate to direct that the proceedings be concluded by the Labour Court expeditiously. Let both the parties be given two opportunities each to lead evidence and it will be appreciated if the fresh award is passed preferably within six months but not later than one year from the date of receipt of certified copy of this order. To ensure that the parties do not squander in approaching the Labour Court, it is directed that let the parties appear before the Labour Court on 04.03.2020 whereafter, the Labour Court shall be at liberty to fix the date as per its convenience. Learned counsel for the petitioner also submits that the liberty be given to the Labour Court to frame any other issue which may be essential for the proper adjudication of the case. So ordered.

12. It is also made clear that nothing observed in this order shall be construed to mean as an observation on merits which may prejudice the passing of the fresh award either way by the Labour Court.”

4. In the wake of aforesaid directions of this Court, the Labour Court has passed fresh Award which is impugned by the petitioner as well as respondent. The Labour Court has not ordered to reinstate the workman, however, granted lump sum compensation of Rs. 1.5 lacs.

5. Mr. Sanjeev Kaushik, Advocate submits that workman did not furnish evidence to the effect that she was not engaged through a contractor but



directly engaged by Management. The Labour Court has blindly relied upon averments of workman and rejected evidence of petitioner.

6. *Per contra*, Mr. Hitesh Verma, Advocate submits that it was duty of the Management to prove that workman was engaged through contractor especially when there was no denial of the fact that workman had worked for Management during the period in question. He further submits that Labour Court has awarded compensation on the lower side and further without interest.

7. I have heard the arguments of both sides and with the able assistance of learned counsel for the parties perused the record.

8. From the perusal of impugned Award, it is evident that Labour Court has recorded categoric findings with respect to engagement of workman. The relevant extracts of impugned Award are reproduced as below:-

“14. Learned counsel of the management contended that there is specific pleading that the contractor namely Amarjeet Singh Bajanda and Ashok Kumar Garg were engaged during the relevant time. It is proved by the witness of the management examined as Sanjeev Kumar, AGM Admn. In fact statement of Sanjeev Kumar is not of much relevance because he has stated during the cross examination that his knowledge is based on the documents on record. According to this witness, he has no any proof with respect to the engagement of workwoman through contractors. As per this witness, there is no register with respect to the engagement of the contractors maintained by BSNL department. Apart from this there is nothing on record which proved that workwoman was engaged by the contractor either in the form of oral evidence or documentary evidence. In fact, management has not produced the best evidence in its possession which should be brought on record to prove that workwoman had been employed by the contractor. For the sake (sic) of argument, if it is presumed that there was no direct



relationship of employer and employee between the management and workwoman and the workwoman has been brought to work in the office of management, it still requires to maintain the prescribed registers and records pertaining to the contract labour as per the provisions of the Contract Labour (Regulation & Abolition) Act, 1960 (in short CLRA). I am of the opinion that management being the principal employer was legally bound to maintain register of contractors and under legal obligation to prove that workwoman is not directly engaged by the management instead she had rendered her services under the contractor.”

9. The petitioner, in view of order dated 04.02.2020 passed by this Court, to prove its case had opportunity to bring on record contract executed with the contractor; evidence of payment of ESI & Provident Fund Contribution; payment of service tax; payment of lump sum payment to contractor etc., however, Management did not bring on record any such evidence which compelled the Labour Court to pass impugned order. The workman has not been ordered to be reinstated whereas lump sum compensation has been awarded.

10. It is settled law that High Court while adjudicating writ petition against award of Labour Court cannot act as an Appellate Court. The Court cannot reappreciate evidence examined by Labour Court. The scope of interference in the orders passed by Tribunals is very limited.

Constitution Bench in **Syed Yakoob Vs K.S. Radhakrishnan, AIR 1964 SC 477** and a two judge bench of Supreme Court recently in **Central Council for Research in Ayurvedic Sciences and another Vs Bikartan Das and others, 2023 SCC Online SC 996** have reminded us that there are two cardinal principles of law governing issuance of writ of certiorari under Article 226 of the Constitution of India i.e. (i) High Court does not exercise the



powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record; (ii) in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. Error of jurisdiction includes order by inferior court or tribunal without jurisdiction or 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 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 Art. 226 to issue a writ of certiorari can be legitimately exercised.

11. In the case in hand, the Labour Court has recorded factual findings and there is no material irregularity or infirmity in those findings.

12. In the wake of findings recorded by Labour Court and afore-cited judgments of Supreme Court, this Court does not find it appropriate to interfere with the impugned Award.



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13. Considering the period of service and connected facts and figures, this Court does not find it appropriate to enhance the amount of awarded compensation.
14. The Labour Court has not awarded interest, though, lump sum compensation has been awarded. The workman is entitled to interest from the date of Award. Accordingly, the petitioner is directed to pay interest @ 9% per annum from the date of Award till the date of payment.
15. Writ petitions stand disposed of in above terms.

19.12.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No