



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

206

CWP-3899-1997

Decided on : 22.05.2024

Maharishi Dayanand University, Rohtak

... Petitioner(s)

Versus

Sahi Ram and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Amit Rao, Advocate for
Mr. Anurag Goyal, Advocate
for the petitioner(s).

Mr. R.S. Kundu, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. By way of present writ petition, petitioner – Maharishi Dayanand University, Rohtak (being Management) has assailed the award dated 24.09.1996 (Annexure P-1), passed by respondent No.2 – Industrial Tribunal-cum-Labour Court, Rohtak (in short, ‘learned Tribunal’), whereby, Reference No.86 of 1992, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, ‘ID Act’), has been answered in favour of respondent No.1 – Sahi Ram (workman).

2. Pleaded case of the workman (respondent No.1 herein) is that he was employed as ‘helper’ against the regular post on 01.10.1988 by the Management and he continued upto 31.05.1989. Subsequently, the workman worked in the Campus School of University w.e.f. 11.09.1989 to 15.06.1990, and thereafter, worked in the Secrecy Branch of Examination wing of the University from 25.06.1990 to 18.08.1990. Later on, he was appointed as Lab Attendant in Campus School of University on 20.08.1990



and worked up-till 15.05.1991. The said school remained closed from 15.05.1991 to 30.06.1991 and on reopening of the school, he was appointed as helper in B.Ed. Correspondence Cell of the University on 01.07.1991. But without assigning any reason, his services were terminated on 17.08.1991. Workman pleaded that he had already worked for more than 240 days in the university during the preceding year of his termination order. The termination of the workman was claimed to be in violation of Section 25-F of the ID Act. Another, plea taken by the workman was that employees junior to him were retained by the Management in service and thus, the principle of "*Last Come, First Go*", was not followed in violation of Section 25-G & 25-H of the ID Act.

3. In reply to the claim statement, Management (petitioner herein) took a defense through preliminary objections that the University is an 'autonomous statutory body' constituted under the MDU Act, 1975 and does not fall within the definition of 'industry'. On merits, it has been pleaded that the workman was engaged as 'helper' on daily wages in different departments up to 31.05.1989. Thereafter, he worked on daily wages basis from 12.09.1989 to 11.10.1989 as Lab Attendant, and thereafter, his engagement on daily wages basis was extended on monthly basis up-till 30.04.1990. He was again engaged on daily wages as 'helper' on 20.08.1990 initially for a month, and subsequently he was engaged as casual worker for specific days of every month, but was not engaged after 15.05.1991, because the students fund from which he was being paid did not have sufficient funds. Management specifically denied that the workman was appointed as Lab Attendant in Campus School w.e.f. 20.08.1990 to 15.05.1991. In the said written statement, it has been added that services of



the workman were required for a particular purpose/work and the same were no longer required after the work for which he was engaged was over.

Besides, the Management also denied the fact that workman had completed 240 days in 12 calendar months. Thus, the Management denied that there is any violation of provisions of Section 25-F & 25-G and Chapter V-A of the ID Act.

4. In response thereto, replication was filed by the workman wherein, he specifically denied the averments made in the written statement, and reiterated those made in the claim statement.

5. After examining the evidence, learned Tribunal reached to the conclusion that the working period of workman is not under dispute before it, and observed that the combined effect of the evidence in the form of the testimony of the official of the University/Management, who deposed on the basis of official record that during the period 20.08.1990 to 16.08.1991, the workman had actually worked for 279 days. In other words, this workman has worked for more than 240 days during the year immediately preceding the date of termination of his service. Besides, it has also been noticed that termination of his services without any notice, notice pay or retrenchment compensation, is against the provisions of law i.e. Section 25-F of the ID Act.

Lastly, learned Tribunal held that the workman is entitled for reinstatement with continuity in service and 2/3 i.e. 67.7% back-wages.

6. After going through the pleadings of the parties and the appended documents including the impugned award, this Court is also in agreement with the reasoning assigned by learned Tribunal and does not find any substantial reason to cause interference with the same. Moreover, under



Article 226 of the Constitution of India, exercising jurisdiction like an appellate Court, is not warranted and appreciated by the Hon'ble Apex Court. As per the dictum of the Hon'ble Apex Court, rendered in **Syed Yakoob v. K.S. Radhakrishnan; 1964 (AIR) Supreme Court 477 : Law Finder Doc Id #81222**, this Court does not find any substantial reason to deviate from the view point taken by the learned Tribunal.

7. Moreover, Hon'ble the Apex Court has unequivocally established that the jurisdiction of the High Courts under Article 226, while issuing the writ of *Certiorari*, is limited. It is primarily aimed at rectifying errors of jurisdiction or instances of violation of the principles of natural justice. Therefore, it constitutes a supervisory role, and High Courts ought to abstain from assuming the function of an appellate court in the writ of *Certiorari*. They should refrain from re-examining the evidence, particularly with regards to its sufficiency or adequacy. While exercising its power under Article 226 of the Constitution, High Court must cause interference only when there is error of law, which requires correction and not in general, when there is error of fact. In **Syed Yakoob's case (supra)**, Hon'ble Apex Court observed in Paragraph No. 7 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 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 Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104; Nagendra Nath v. Comm. of Hills Division, 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh, AIR 1960 Supreme Court 1168.)”

Even, the said view has been reiterated by the Hon'ble Supreme Court recently in **Central Council for Research in Ayurvedic Sciences and Anr. v. Bikartan Das and Others; 2023 AIR (Supreme Court) 4011.**

8. Besides above, during the arguments a copy of letter dated



04.01.2007, issued by the Management, has been produced in Court. A perusal of the same reveals that during the pendency of present writ petition, services of the workman were regularized on the post of Helper.

Copy of said letter dated 04.01.2007, is taken on record, subject to all just exceptions. Office to tag the same at appropriate place in the case file.

9. Thus, it is obvious that respondent No.1 – workman is retained in service by the petitioner – Management, by implementation of the award, which is under challenge before this Court.

10. As discussed here-above, respondent No.1 – workman is working with the petitioner – University/Management since 1988 and there is a judicial finding in his favour whereby, his termination is held to be bad. On the one hand, finding of the learned Tribunal appears to be according to the settled law and on the other hand, justice also demands that after a period of more than three decades, the services of the workman cannot be questioned, especially when he has rendered his services to the petitioner – University/Management continuously.

11. At the time of submissions before this Court, there is no such allegation pointed out by the petitioner – Management that the services of respondent No.1 – workman are not to the satisfaction of the Management or there is any serious allegation against him. Rather, it appears that once the case of respondent No.1 – workman is approved by the petitioner – Management itself for regularization, there is no reason left with the petitioner – Management to contest the well reasoned findings recorded in the impugned award.

12. Therefore, on the basis of aforementioned facts and



circumstances and the reasons recorded herein-above, while maintaining the award dated 24.09.1996 (Annexure P-1), present writ petition is hereby **dismissed.**

Needless to say, that monetary relief, if due to be paid to respondent No.1 – workman by the petitioner – Management in pursuance to the award 24.09.1996 (Annexure P-1), same would be extended to him, without any delay, preferably, within a period of three months from today.

(SANJAY VASHISTH)
JUDGE

May 22, 2024
J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~
Whether Reportable: ✓ Yes/~~No~~