



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
206

1. CWP-7126-1997 (O&M)
Decided on : 18.07.2024

Mann Singh (deceased) through LRs . . . Petitioner(s)

Versus

Presiding Officer,
Industrial Tribunal-cum-Labour Court-II,
Faridabad and another . . . Respondent(s)

2. CWP-16275-1997 (O&M)

The Faridabad Central Cooperative Bank Ltd. . . . Petitioner(s)

Versus

Presiding Officer,
Industrial Tribunal-cum-Labour Court-II,
Faridabad and another . . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: None for the petitioner(s) (in CWP-7126-1997),
for respondent No.2 (in CWP-16275-1997).

Mr. R.S. Panghal, Advocate
for the petitioner(s) (in CWP-16275-1997) and
for respondent No.2 (in CWP-7126-1997).

SANJAY VASHISTH, J. (Oral)

1. This order shall dispose of aforementioned two writ petitions
i.e. CWP-7126-1997, filed by the workman, and CWP-16275-1997 filed by
the Management, as the controversy involved in both the aforementioned
writ petitions, is one and the same. In fact, impugned award in both the writ
petitions is one i.e. dated 30.07.1996.

However, for the purpose of disposal of these writ petitions,



main/common order is being passed in CWP-7126-1997.

2. Award dated 30.07.1996 has been passed in pursuance to the demand notice/claim statement filed under 10(1)(C) of the Industrial Disputes Act, 1947 (in short, 'ID Act'). While concluding the award, learned Tribunal held that the order of termination of the workman is not sustainable in the eyes of law, and therefore, workman is entitled for reinstatement with benefit of continuity of service, but without back-wages.

3. For challenging the award dated 30.07.1996, passed by learned Presiding Officer, Central Government, Industrial Tribunal-cum-Labour Court, Faridabad (for brevity, 'learned Labour Court'), workman – Mann Singh (petitioner herein) has filed CWP-7126-1997, seeking modification of the award by claiming full back-wages, apart the already granted relief of reinstatement with continuing in service, by the Labour Court.

Similarly, Management i.e. M/s The Faridabad Central Cooperative Bank Ltd., NIT Faridabad, has filed CWP-16275-1997, seeking to set-aside the award dated 30.07.1996 and to decline the relief granted therein by learned Labour Court.

This is how, both the sides have filed their respective writ petitions before this Court.

4. Pleaded case of the workman is that he joined the Cooperative Department of Haryana in the year 1975 and was posted at different places including Fatehpur Chandila Cooperative Credit and Service Society Ltd. There was an allegation against him that he embezzled a sum of Rs.51,690/-, and also committed certain financial irregularities with regard to certain goods of the cooperative store to the tune of Rs.2,232.84/-. Resultantly, he



was served with a charge-sheet dated 11.04.1985, and after holding an inquiry, he was found guilty of embezzling Rs.29,502/- on account of loan recovering receipts from different members of the society, Rs.1242.70 for consumer goods and Rs.1060.14 ps. on account of shortage of stationary.

Workman while appearing as witness before the learned Tribunal, stated that no proper inquiry was conducted and no witnesses were examined by the Management. He also stated that he was found faultless by the Registrar (Arbitrator), and therefore, directed him to help the Society in recovering the loan amount.

5. Regarding issue No.4, learned Tribunal examined whether alleged inquiry conducted by the Management was fair and proper or not ?

While examining the sustainability of the order of termination and the standard of the inquiry, learned Tribunal held that no admissible evidence was placed on record during the course of inquiry and only the oral statements of some of the persons were recorded. Placing reliance upon such a weak evidence was deemed contrary to the legal standards and the principles of natural justice. Therefore, there being no evidence to hold the workman guilty, the learned Tribunal discarded the result of the inquiry, and answered the reference partly in favour of the workman by holding his entitlement for reinstatement with the benefit of continuity of service. However, his claim *qua* back-wages was declined.

6. There is a finding of fact recorded by learned Tribunal that except of the oral statements, no sufficient evidence was there to declare the workman guilty on the matter of financial irregularities. It has been observed that no documentary evidence is available to connect the workman



with the alleged act of embezzlement of amount.

Even, during the course of hearing before this Court, representing counsel of the management could not point out any specific evidence to substantiate the claim that workman was actively involved in the matter of financial irregularities or embezzlement. Thus, charge-sheet dated 11.04.1985 was not found as worth to sustain.

Even, during the course of hearing, on giving opportunity to Management, its counsel could not point out any material evidence from the record, connecting the workman with the alleged charge of embezzlement/financial irregularities.

Counsel appearing for the Management Could not explain the current interest of the Society – Management in the matter.

7. It is also noticeable that during the pendency of the present writ petitions, workman – Mann Singh, had expired on 03.11.2013, and his legal representatives were brought on record vide order dated 03.03.2017, passed in CM-4420-CWP-2017 in CWP-7126-1997, when the said application for impleading the legal representatives of workman was allowed by taking the amended memo of parties on record.

8. Since, long period of about 29 years has already passed, and the operation of the impugned award dated 30.07.1996 was never stayed by this Court, and even the workman has already expired, finding of fact recorded by learned Tribunal, is not warranted to be re-examined at this stage by this Court, while exercising the jurisdiction under Article 226 of the Constitution of India. As per the observations given by the Hon'ble Apex Court, 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.

9. Moreover, the Hon'ble Supreme 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 reexamining 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.**

10. Therefore, on the basis of aforementioned facts and circumstances and the reasons recorded herein-above, this Court does not



deem it appropriate to cause interference in the findings recorded by the learned Tribunal. **Accordingly, both the writ petitions are hereby dismissed.**

Misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

July 18, 2024
J.Ram

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