

CWP-9725-2000 (O&M)

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

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CWP-9725-2000 (O&M)

Decided on : 12.02.2024

Isham Singh

. . . Petitioner(s)

Versus

The Presiding Officer, Industrial Tribunal-cum-
Labour Court, Panipat and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Pawan Attri, Advocate
for the petitioner(s).

Mr. Arvind Seth, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. By way of Present writ petition, petitioner – Isham Singh, has challenged the award dated 09.04.1999, passed in Reference No.180 of 1997, by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat (for brevity, ‘learned Tribunal’).

2. Reference through which, industrial dispute was raised by the petitioner – workman, has been answered by negating the rights claimed by him. Pleaded case of the petitioner – workman is that from 01.07.1995 to 31.12.1995, he was ill and in support of it, reliance is placed upon the medical certificate dated 01.01.1996, issued by Midha Clinic, Sector 13, Karnal. Learned Tribunal has dealt with said fact and found that before the Court, a different set of period of illness, has been stated by the workman i.e. January 1995 to June 1995. Even the medical certificate (Mark ‘X’) has not been proved in accordance with law.

3. Petitioner – workman has further admitted during his cross-

examination that '**he worked from July 1995 to December 1995**'. Learned Tribunal found that the evidence led by the workman is quite vague and for proving, his claim that he worked for 240 days in 12 months preceding the date of termination, said evidence cannot be termed as adequate.

4. Finding recorded by the learned Tribunal, in paragraph Nos. 7, 8 & 9, says as under:-

"7. Examines as WW-1 the workman stated that he was appointed in July 1991 as Sewerman and was removed from service in December, 1995. He further sited that he remained ill from January, 1995 to June, 1995 and he obtained treatment from Dr. Satish Middha who also issued him a medical certificate. The medical certificate which has not been proved and is mark-X discloses that the petitioner remained ill from 1-12-1994 to 30-6-1995. It is quite for a different period for which neither in the demand notice nor as a witness the petitioner claims to have been remained ill. Three things can not bear reconciled at all. In cross examination the petitioner stated that he was not allowed leave for the period of illness. On further cross examination he stated that he worked from July, 1995 to December, 1995. In fact there no evidence that he never remained ill. It is quite contrary to what he has been alliged in the remained notice.

8. The management examined MW-1 Sh. A.K. Arora, S.D.M. HUDA Karnal Sub Division No.1 who stated that the petitioner worked from July, 1995 to November, 1995. In cross examination the witness stated that no application of the petitioner for leave from January, 1995 to June, 1995 was received in his office.

9. The evidence in this case is quite vague. The statement of the examined as ww-1 cannot be reconciled with his demand notice and the medical certificate placed on record by him and there is no credible evidence that the petitioner

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worked for more than 240 days in the period of 12 months preceding the day of termination his service and thus I am of the view that the petitioner has failed to made out a case of illegal retrenchment. This issue is returned against the workman and in favour of the management.”

5. This Court does not find any substantial reason to deviate from the view point taken by the learned Tribunal.

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 v. K.S. Radhakrishnan; 1964 (AIR) Supreme Court 477 : Law Finder Doc Id #81222***, 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.*

6. Therefore, on the basis of aforementioned facts and circumstances and the reasons recorded herein-above, the present writ petition stands **dismissed**.

(SANJAY VASHISTH)
JUDGE

February 12, 2024
J.Ram

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