

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10627-2013 (O/M)

Date of decision : 04.01.2024

Satish Singh

..... Petitioner (s)

Versus

M/s Whirlpool of India Limited and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ravinder Malik, Advocate
for the petitioner.

Mr. Mohak Bhadana, Advocate
for respondent No. 1.

Mr. Shiv Kumar, Advocate
for respondent No. 3.

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HARSH BUNGER, J.

1. Petitioner (Satish Singh) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for setting aside the Award dated 24.08.2012 (Annexure P-5), passed by respondent No. 4-Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad (hereinafter referred to as 'Tribunal below'), whereby the reference of industrial dispute regarding termination of services of the petitioner was decided by holding that the petitioner had worked under the contractor i.e. M/s P.M. Caterers Limited (respondent No. 2 herein) with effect from 03.03.1997 till 22.07.2004. and accordingly, it was further held that there was no relationship of employer and employee

between M/s Whirlpool of India Limited (respondent No. 1 herein) and the petitioner. Consequently, the petitioner was held entitled for compensation of 3 ½ years, amounting to Rs. 7,854/- and one month salary for notice pay i.e. Rs. 2,244/-, total amounting to Rs. 10,098/- alongwith 9% interest with effect from 22.07.2004 till its realization within two months and M/s P.M. Caterers Limited (respondent No. 2 herein) was directed to pay the aforesaid amount.

The petitioner has further challenged the order dated 24.08.2012 (Annexure P-6) whereby the application under Section 33(C)(2) of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') was dismissed.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Tribunal below. As per the claim statement, the petitioner claimed that he was appointed by respondent No. 1-M/s Whirlpool of India Limited (hereinafter referred to as 'respondent-WIL') as a kitchen helper in its canteen on 03.03.1997 and his last drawn wages were Rs. 2,244/- per moth. The petitioner claimed that an ESI card was issued to him and he always remained posted in canteen at 28, Industrial Area, Faridabad and he never worked with M/s Tecumseh Product India Limited, Ballabgarh, as shown on the ESI card. The petitioner claimed that on 23.07.2004 when he went to perform his duty then he was not allowed to perform his duty, therefore, there was violation of provisions of Section 25-F of 1947 Act. The petitioner alleged that his signatures were taken on blank papers and vouchers on the same day. Accordingly, prayer for reinstatement with continuity of service and full back

wages was made.

3. The aforesaid claim of petitioner was contested by respondent-WIL wherein it was categorically pleaded that there was no relationship of employer and employee between the parties and remaining allegations were also denied. Accordingly, prayer for dismissal of claim statement of petitioner was made.

4. Respondent No. 2-M/s P.M. Caterers Limited (hereinafter referred to as 'respondent-PMC') filed its separate written statement by submitting that the claimant had never worked with them on any occasion and rather he was working somewhere else and the claim statement has been filed only to extort money by way of illegal means. The remaining allegations were denied and prayer for dismissal of claim statement of petitioner was made.

5. Similarly, respondent No. 3-M/s A.I. Contractor Pvt. Ltd. (hereinafter referred to as 'respondent-AIC') also filed its separate written statement wherein an objection was taken regarding maintainability of the claim statement and it was stated that the petitioner had worked with them only for a few days during the year 2004-2005 and his dues of Rs. 959/- were lying with them and a categoric stand was taken that the petitioner never worked for 240 days and prayer for dismissal of the claim statement was made.

6. On the basis of pleadings of the parties, following issues were framed :-

“1. As per reference. OPW

2. *Whether there is relationship of employee and employer between the claimant and respondent No. 1 as alleged ? OPM-1*

3. *Whether the present reference is not maintainable against respondent No. 2 and 3 as alleged ? OPM-2, 3*

4. *Whether the claimant is gainfully employed as alleged ? OPM-2*

5. *Relief."*

7. The parties led their respective evidence and vide award dated 24.08.2012 (Annexure P-5), the Tribunal below, after considering the material/evidence available on record, concluded that the petitioner was an employee of respondent-PMC, who was contractor and was running the canteen. It was observed that the Employees' State Insurance/Provident Fund have been paid by respondent-PMC, as per the requirement of the Factories Act. The finding of fact has been recorded that the petitioner had worked under contractor respondent-PMC with effect from 03.03.1997 to 22.07.2004. It was further held that there was no relationship of employee and employer between petitioner and respondent-WIL i.e. the principal employer. It was also held that the petitioner had worked with contractor respondent-PMC for more than 240 days and, therefore, his (petitioner's) termination was held to be in violation of mandatory provisions of Section 25-F of 1947 Act. Accordingly, the petitioner was held entitled to an amount of Rs. 10,098/- alongwith 9% interest with effect from 22.07.2004 till its realization and respondent-PMC was directed to pay the aforesaid amount.

8. As regards the application under Section 33 (C) (2) of 1947 Act

is concerned, the petitioner claimed that he was appointed as a Trolleyman by respondent-WIL in its canteen on 20.06.1997. The petitioner claimed an amount of Rs. 4346370/- alongwith 18% interest as per the following detail:-

Sr. No.	Particulars	Amount in Rs.
1.	Overtime of four hours per day from 3.3.97 to 30.6.2004	169594.00
2.	Overtime from 1.7.2004 to 22.7.2004	3797.00
3.	Bonus from the year 1997 to 2004	22722.00
4.	Diwali gift from the years 1997 to 2003	7000.00
5.	Uniform shoes stiching from the year 1997 to 2003	10500.00
6.	Arrears for yearly performance from the year 7/1997 to 7/2003	45520.00
7.	Travelling allowance from the year 1997 to 2003	16250.00
8.	Register allowance from the year 1997 to 2003	12600.00
9.	Arrear of rent allowance from the year 1997 to 2003	133200.00
10	Leave encashment since 3.6.1996 to 2004	17000.00
	TOTAL	439283.00

9. The aforesaid claim under Section 33 (C) (2) of 1947 Act was contested by respondent-WIL on the plea that the company does not allow any overtime to any workman in its company and accordingly, there was no provision of overtime in the company. It was stated that no overtime wages were due and no bonus was applicable to the petitioner. It was also stated that the petitioner was not entitled to claim uniform, shoes, stitching, annual

increment, travelling allowance, attendance allowance, house rent allowance etc. It was categorically stated that there existed no relationship of employer and employee between the parties and plea of non-joinder and mis-joinder of necessary parties was also taken and prayer was made for dismissing the application under Section 33 (C) (2) of 1947 Act.

10. On the basis of pleadings in this application under Section 33 (C) (2) of 1947 Act, issues were framed and parties led their respective evidence.

11. Upon considering the material/evidence available on record, the Tribunal below dismissed the application under Section 33(C)(2) of 1947 Act by holding as under :-

“11. The present application is for the claim since 1997 on the basis of settlement, but claimant has not proved his relationship with the respondent. Even or otherwise the claim is barred by limitation as per the following authorities :- Municipal Corporation of Delhi versus Ganesh Razak and another in which it is held that where the very basis of the claim or the entitlement of the workman to a creation benefit is disputed there being no earlier adjudication or recognition whereof by the employer the dispute relating to entitlement is not incidental to the benefit claimed and is therefore clearly outside the scope of proceeding under section 33-C(2) of the Act. The labour court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit do adjudicated on that basis in exercise of its power under 33-C(2). It is only when

the entitlement has been earlier adjudication or recognized by the employer. It was further argued that the contractor's employees whose ESI and PF is deducted by the principal employer cannot become the workman of principal employer. In support of the same AR for respondent placed upon authorities cited as Cement Corporation of India Limited versus Presiding Officer, Labour Court, Hissar and others 2010 LLR 704 in which it has been held that merely that the principal employer has been depositing ESI/PF contribution, providing medical facilities and shoes and uniform which were in terms of the Award of the wage Board and also under the requirement of Factories Act besides the directions given under Section 33-C(2) of the Act these will not be the factors for construing that the relationship of employer and employee existed between the principal employer and the workers as engaged through the contractors. In Nanu Ram versus Mahesh Chandra and others 1991 SCC (L&S)-648 it is held that the claim unde Section 33C-2 we are in full agreement with the high court and the labour court that the claim was belated. It was rightly refused on the ground of laches. In Ram Chander Morya versus State of Haryana 1999 (1) SCT 141 it is held that E.D. Act, 1947 section 33C(2) every application under this section has to be made within one year from the date on which the money becomes due to the workman from the employer. In Hindalco Industries Limited versus Association of Engg. Workers Supreme Court of India 2008 LLR 509 wherein it has been laid down that the workers working through

canteen contractor seeking absorption by the principal employer to be entitled to the same benefits. Plea of principal employer that instead of complain under the latter Act, the appropriate remedy for seeking redressal of grievance is under the former Act, whereby it is to be resolved by the machinery as provided under the I.D. Act, is untenable.

12. *Admittedly the claimant has not impleaded the contractor as a party to the application under whom he was working, as such the application is bad for non-joinder and mis-joinder of necessary parties. In view of the above referred authorities it is crystal clear that there is no relationship of employee and employer among the parties and the workman is not entitled for computed amount. Hence issue No. 1 is decided in favour of respondent and against the workman.*

Relief

13. *In view of the foregoing findings on the aforesaid issue, the present application filed under section 33-C(2) of the Industrial Disputes Act, 1947 is merit-less and stands dismissed. File be consigned to record room after due compliance.”*

12. Being dis-satisfied with the aforesaid award dated 24.08.2012 (Annexure P-5) and order dated 24.08.2012 (Annexure P-6), the petitioner has filed the instant writ petition before this Court.

13. Learned counsel for petitioner submits that the impugned award as well as impugned order under Section 33 (C) (2) of 1947 Act have been passed erroneously by the Tribunal below without considering and appreciating the material/evidence available on record. Learned counsel

submits that infact the petitioner was in the employment of respondent-WIL from year 1997 till year 2004 without any break and he has nothing to do with respondent-PMC and respondent-AIC (respondents No. 2 and 3 herein), who are the dummy agents created by respondent-WIL with the sole intention to defeat the rights of the petitioner. Learned counsel contends that the petitioner was regular employee of respondent-WIL and it had deducted ESI and PF contributions of the petitioner continuously, however, respondent-WIL did not produce relevant record and, therefore, adverse inference was required to be drawn against it. Accordingly, it is prayed that impugned award dated 24.08.2012 (Annexure P-5) and impugned order dated 24.08.2012 (Annexure P-6) be set aside with a further direction to reinstate the petitioner into service with all consequential benefits and also for directing respondents to pay the amount claimed under Section 33 (C) (2) of 1947 Act.

14. Per contra, the aforesaid prayer of petitioner has been opposed by learned counsels appearing for respondents No. 1 and 3 i.e. respondent-WIL and respondent-AIC. It is submitted that mere deposit of contributions of ESI and PF does not make the principal employer as the actual employer as regards a workman who was hired through the contractor. It is next submitted that since the petitioner had failed to prove the relationship of employee and employer between him and respondent-WIL, therefore, application under Section 33(C)(2) of 1947 Act has been rightly dismissed.

Learned counsel for respondent-WIL (respondent No. 1 herein) has further referred to Annexure R-4, which is copy of agreement

dated 01.01.2003, executed between M/s Whirlpool of India Limited and M/s P.M. Caterers (respondents No. 1 and 2 herein) and the same is stated to be exhibited as Ex.M2. Further reference has been made to Annexure R-5, which also copy of agreement dated 25.06.2004, executed between M/s Whirlpool of India Limited (respondent No. 1 herein) and M/s A.I. Contractor Private Limited (respondent No. 3 herein) and same is stated to be exhibited as Ex.M3. By referring to the said agreements, it is submitted that agreements executed between M/s Whirlpool of India Limited (respondent No. 1 herein) and contractors were genuine. Accordingly, there was no question of drawing any adverse inference. Learned counsel has submitted that the impugned award and impugned order are well reasoned and justified and same have been passed by the Tribunal below after proper appreciation of facts and evidence placed before it. It is submitted that the petitioner was never employed by respondent-WIL and it was not the case of petitioner that he had worked for 240 days as an employee of respondent-WIL, so as to claim statutory benefits under 1947 Act. It is submitted that the petitioner has failed to discharge the onus of proving that there existed relationship of employee and employer between the petitioner and respondent-WIL and in the absence of same, no relief could have been granted to the petitioner. It is next submitted that finding of fact has been recorded by the Tribunal below, which does not call for any interference by this Court in exercise of its writ jurisdiction. Accordingly, prayer for dismissal of the instant writ petition has been made.

15. It requires to be noticed here that one Mr. Gurbir Singh,

Advocate appeared for respondent-PMC (respondent No. 2 herein) on 20.09.2017, however, subsequently, there has been no representation on its behalf.

16. Learned counsel for respondent-AIC (respondent No. 3 herein) has also submitted that the impugned award as well as impugned order are well reasoned and justified, which do not call for any interference by this Court. Accordingly, prayer for dismissal of the instant writ petition has been made.

17. I have heard learned counsel for respective parties and have perused the paperbook with their able assistance.

18. In the instant case, the petitioner had raised an industrial dispute regarding termination of his services on the plea that he was an employee of respondent-WIL (respondent No. 1 herein), however, the Tribunal below, while considering the material/evidence available on record, has returned the finding that the petitioner was an employee of respondent-PMC (respondent No. 2 herein), under whom the petitioner had worked for 240 days and since his services were terminated in violation of provisions of Section 25-F of 1947 Act, accordingly, respondent-PMC was directed to pay compensation of Rs. 10,098/- alongwith 9% interest to the petitioner. The aforesaid finding has been returned by the Tribunal below by taking note of the fact that the petitioner has admitted in his demand notice as well as in his affidavit that he was kept on the rolls of respondent-PMC, respondent-AIC and M/s Tecumseh Product Private Limited. The Tribunal below has referred to documents Ex.W13, Ex.W14, Ex.W10 and Ex.W11 in the application under

Section 33 (C) (2) of 1947 Act to hold that the claimant was working with M/s P.M. Caterers Limited. Further reference has been made to Ex.M8 which is an inspection report, submitted by summoned witness Shri Hukam Singh (WW2) from DLC Office, who had confirmed in his cross examination that the petitioner was an employee of contractor.

19. The only submission raised by learned counsel for petitioner at this stage is that respondent-WIL had failed to produce relevant record and, therefore, adverse inference should be drawn against it.

20. However, I am not convinced with the said argument as the drawing of adverse inference is optional and is not obligatory. Furthermore, drawing of adverse inference is within the domain of the Tribunal below and it is well settled that adverse inference cannot be drawn only because it is lawful to do so. In this regard, reference can be made to judgment rendered by Hon'ble the Supreme Court in '*R.M. Yellatti v. The Asstt. Executive Engineer*', 2005(4) SCT 695, wherein it was held as under :-

".... Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the

basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour Court unless they are perverse. This exercise will depend upon facts of each case."

21. Apart from above, the parameters for exercise 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 issue of a writ of certiorari *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.*

22. Considering the totality of circumstances in the light of legal

position indicated above, I do not find any illegality or perversity in the impugned award dated 24.08.2012 (Annexure P-5) and impugned order dated 24.08.2012 (Annexure P-6). Consequently, the instant writ petition fails and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

04.01.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No