



CWP-18597-2011

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

213

CWP-18597-2011

Date of decision: 20.08.2024

RICHPAL

...PETITIONER

Vs.

**PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-II, GURGAON AND ANOTHER**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. S.K. Bhardwaj, Advocate
for the petitioner.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 31.03.2010 (Annexure P-10) passed by respondent No. 1 whereby it has answered reference against the workman.
2. The petitioner-workman claims that he had worked with respondent from 18.06.1998 to 18.09.2003. He had worked for more than 240 days during preceding 12 months, thus, he was entitled to protection guaranteed by Sections 25-B and 25-F of Industrial Disputes Act, 1947.
3. The Labour Court by impugned Award dismissed the claim of the petitioner and held that he was daily wage worker and there is no evidence that he had worked for 240 days during preceding 12 months. The findings of fact recorded by Labour Court are reproduced as below:-



“24. As per the material placed on file, the workman has failed to prove that his services were engaged on (sic) 18.6.1998 and also that his services were wrongly and illegally terminated on 19.9.2003. There is nothing to prove that the workman had rendered more than 240 days of continuous services in the 12 months just preceding the alleged date of termination on 19.9.2003. It is pointed out that apart from the oral evidence the workman has not produced any evidence to prove the fact that she has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard has been produced; no co-worker has been examined. The evidence produced by the employer has not been contradicted. It is improbable that the workman, who claims to have worked for such a long period could not possess any documentary evidence to prove nature of his engagement and the period he had undertaken with his employer. Hence the workman has failed to discharge the burden that she was in employment for 240 days during the preceding 12 months of the date of termination of her service. Moreover, the arguments advanced by Ld. AR of the workman is devoid of any force when he prayed for drawing adverse inference against the respondent department for having not produced any muster roll etc. On this point it is pointed out that the scope of enquiry before the Labour Court is confined to only 12 months preceding the alleged termination. The workman has failed to prove that he had worked continuously from (sic) 18.6.1998 to 18.9.2003. However, the material placed on file supports the stand of the respondent that the services of the workman were engaged on daily wages as per availability of the work and also as and when the workman made himself available for the job and also that the workman had not rendered more than 240 days of continuous services in the 12 months just preceding the alleged date of termination on 19.9.2003. Hence it can not be said to have withheld any documents when actually no such documents exist. The court can draw adverse inference against the respondent only when any document (sic) are proved to be in existence but not produced



before the court. In order to entitle the court to draw inference unfavorable to the party, the court must be satisfied that evidence is available and could have been proved. On this aspect reliance can be placed on Surindernagar District vs. Dahyabhai Amarsinh 2005 LLR 1222 – ISCL.

25. *It is pertinent to point out that the evidence brought on record has proved that the workman was appointed on daily wages basis with the respondent department. Furthermore, the daily wages report or work as per their own free will. In this case no material is placed on file to show that the respondent department had refused to take work from the workman, when the work was available or terminated his services. The work of the respondent department for which the workman was employed was seasonal in nature. He was paid wages on the Rates fixed by the respondent department for the period he had actually worked with the department. In this case, it is admitted that no appointment letter etc. were issued to the workman. It is also admitted that he was not appointed by the competent authority, thereby following due procedure of Service Rules. This is also pointed out that in this case there is no dispute between the parties regarding the workman having not paid wages for any period for which he had worked with the respondent department, but the evidence brought on record has proved that he has been paid wages on the Rates fixed by the department for the period he had actually worked with the respondent department. But it is also admitted in the course of arguments that he was not appointed by the competent authority, thereby, following due procedure of service rules. No appointment letter or termination order was issued to her. Furthermore, his (sic) services were engaged for doing seasonal work. After completion of the specific job, the services of the workman were not required by the respondent department. The evidence brought on record has proved that the workman was appointed on daily wages basis for doing seasonal work. No adverse inference can be drawn against the respondent department on the ground that the record has been*



weeded out or complete record has not been produced because in this case it has been well explained that the appointment letter termination order etc. and other record are not maintained in case of daily wage workers. Such documents are maintained in the case of regular employees. The material placed on file shows that the workman has failed to discharge the onus to prove that he had rendered 240 days of continuous service in the last 12 calendar year just preceding the date of alleged termination i.e. 19.9.2003. Furthermore, mere non-production of Muster Rolls perse (sic) without any plea of suppression by the workman will not be the ground to draw an adverse inference against the respondent department. On this aspect reliance can be placed on Hon'ble Apex Court judgment on R.M Yellaui Versus Assistant Executive Engineer, 2006 (108) FLR 213.

26. In the instance case, the evidence brought on record has proved that the workman has not worked for 240 days in the last 12 months just preceding the date of his alleged termination i.e. 19.9.2003 and accordingly section 250F (sic) of the Industrial Disputes Act does not come to his rescue. On this aspect reliance can be placed on our own Hon'ble High Court judgment in Haryana Versus Presiding Officer, Labour Court & others, 2007, LLR, 236 and also the Hon'ble Apex Court judgment in Jagmal Singh's case (supra).

4. Labour Court has found that petitioner did not work for 240 days during preceding 12 months. There is no substantial evidence to prove that Labour Court has misread evidence on record or ignored any evidence led by parties. This Court, while exercising writ jurisdiction cannot substitute opinion of Labour Court unless and until there is jurisdictional error or findings recorded by the Labour Court are contrary to evidence on record or there is misreading of evidence on record.



5. Different Benches of Supreme Court including a Constitution Bench in *Syed Yakoob Vs K.S. Radhakrishnan, AIR 1964 SC 477* and a two judge bench 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.

6. 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.



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7. Having scrutinized findings of the Labour Court, this Court does not find any jurisdictional error or manifest illegality or infirmity warranting interference.

8. Dismissed.

20.08.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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