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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

220

CWP-10124-2016 (O&M)
Date of decision: 09.08.2024

DIVISIONAL MANAGER-CUM-DIRECTOR TRANSPORT, UNION
TERRITORYPETITIONER

Vs.

MANOJ KUMAR & ANR ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Suman Jain, Advocate
for the petitioner.

Mr. Shobhit Sharma, Advocate for
Mr. Kshitij Sharma, Advocate
for respondent No. 1.

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 21.10.2015 (Annexure P-3) whereby Labour Court, U.T., Chandigarh has answered reference in favour of workman.

2. The respondent-workman joined petitioner as Conductor in 2004. On 23.06.2006, he was transferred from Computer Section to the Duty Section. He sought leave for two days which was granted by Officer-in-Charge, however, it was granted verbally. He remained on leave from 24.06.2006 to 25.06.2006 and thereafter attempted to join duty on 26.06.2006. As per respondent-workman, he was not allowed to join whereas as per petitioner, he did not join. The workman vide letter dated 28.08.2006 informed the General Manager, CTU, Chandigarh that he may be posted in any other Depot because he has



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apprehension that Nachhattar Singh, Duty Inspector might implicate him in a false case. The management on 07.09.2006 asked the petitioner to joined duty.

3. The management on account of failure on the part of workman to join, initiated inquiry against him. He was issued charge-sheet. An Inquiry Officer as well as Presenting Officer was appointed. The Inquiry Officer found the workman guilty. It is apt to notice here that in the interregnum, petitioner tendered his resignation on 12.09.2006 which was not accepted. The Competent Authority vide order dated 08.09.2009 awarded punishment of reduction of pay and ordered to treat period from June' 2006 to August' 2009 as leave without pay.

4. On the reference made by Administration, the matter came up for consideration before Labour Court, which considered the inquiry report as well as order passed by Disciplinary Authority. The Labour Court came to a conclusion that workman was not afforded fair and reasonable opportunity to lead his defence. The Inquiry Officer and Presenting Officer at their own had collected the record, which was not confronted to workman. The relevant extracts of the findings recorded by Labour Court are reproduced as below:-

“.....Now scrutiny of these notes reveals that the workman was not allowed to lead his defence. learned Law Officer for the management has failed to convince this court as to why notices to the witnesses sought to be summoned by the workman in his application dated 7th September, 2007 were not issued despite the fact that the application moved by the workman was allowed by the Inquiry officer. There is nothing on record to show that this record has ever been shown to the workman or he was supplied with copy of this record. The Presenting Officer has recorded that he did not issue notices to avoid delay and he being Presenting Officer has collected the record in person from duty section and had shown it to the Inquiry Officer. It is nowhere recorded that it was shown to the



workman and even the Inquiry officer has recorded that he has seen record in original and came to the conclusion that the workman has been shown absent from duty on 24th June, 2006 so the workman has been highly prejudiced due to conduct of the Presenting Officer and Inquiry Officer and it stands established that no fair and proper opportunity was granted to the workman to lead his defence as whole case of the workman was that he was not absent on 24th June, 2006 and was on leave.

So far as the second set of charges for which the workman was issued charge sheet is concerned, then the workers' union is aggrieved that the Inquiry officer has held the workman guilty for the charges which were not proved during the inquiry. Now the charges against the workman were mainly that he was directed to join 24th June, 2006 but he refused. I deem it necessary to reproduce below relevant portion of the charge sheet:

“Due to shortage of the conductor, he was directed to join his duty on route which he straightaway refused and did not reported to duty section for on route duty on 24th June, 2006 and made a false allegation on the duty inspector and other inspectorate staff. He has submitted due rest for the year of 2004 and 2005, which he has to utilise during the same calendar year. The official has been directed time and again to join his duty immediately, but on the contrary he submitted his application for due rests and casual leaves on one pretext or the another.

On 10th August, 2006, he has submitted his another application wherein he has stated that due to some unavoidable reasons he could not perform his duties and he may kindly be allowed leave of the kind due with permission to leave the station, whereas he has neither mentioned the station where he is going to nor given any address. In this way the official is trying to mislead the office on different grounds and the act of the official is not supportive in the interest of this undertaking as well as of the public for whom



his services are required in this undertaking and the same amounts to a grave misconduct on his part."

Now this court is to see as to whether the charges against the workman stood proved during the inquiry or not. To prove the charges against the workman the management has examined Shri Ganesh Ram Sharma. Now since the management has examined only one witness to prove the charges against the workman so evidence of this witness is very relevant. This witness during his evidence before the Inquiry Officer has stated that the note given by him on 11th August, 2006 with regard to casual and rest account in respect of Shri Manoj, Conductor No. 200 for the period from 1st January, 2006 to 22nd June, 2006 may please be treated as his statement. Now let us see note given by this witness on 11th August, 2006 which is at page 127 of the enquiry file and the same is reproduced below:

"C.L. and w/ rest account of Shri Manoj, C-200 for the period 1st January, 2006 to 22nd June, 2006 is as under pl.

- (i) Casual leave availed = 3 No.*
- (ii) Weekly rest availed = 21 out of 25 weekly rest*
- (iii) Balance weekly rest = 4 No.."*

This note in no way prove the charges against the workman. The Inquiry officer while submitting his inquiry report at page 191 of inquiry file has recorded as under:-

"It is pertinent to mention here that the official is appointed as Conductor and as per the conditions of the appointment letter he has to perform his duties on the routes in the interest of this Undertaking as well as in the public interest. Due to shortage of conductor, he was directed to join his duty on route, which he straightaway refused and did not report to duty section on route on 24th June, 2006 and made a false allegation on the Duty Inspector/Inspectorate staff and Senior Officers."



Learned Law Officer for the management has failed to convince this court as to on the basis of which evidence the Inquiry officer has come to above conclusion as there was no evidence before him to conclude that the charges against workman stood proved as the only witness examined by the management as already discussed has not ordered even a word qua the charges against the workman so it is a case of no evidence and the workman has been held guilty by the Inquiry officer though there was no evidence against the workman. In the light of discussion made above, it is held that the workman was not afforded full and fair opportunity to lead his defence as far as charge sheet dated 21st August, 2006 is concerned and no fair and proper enquiry has been conducted against the workman qua both the charge sheets i.e. dated 21st August, 2006 and 27th November, 2006 as such impugned order dated 8th September, 2009 is set aside and the management is directed to refix the pay of the workman and pay him consequential benefits accruing after setting aside of impugned order.

Accordingly, this issue is decided in favour of the workers' union and against the management."

5. On being confronted with findings of Labour Court, Mr. Suman Jain, Advocate expressed his inability to point out any jurisdictional error or manifest factual infirmity. He simply submitted that inquiry was conducted as per prescribed procedure, however, he failed to controvert the findings of Labour Court to the effect that workman despite his request was not given opportunity to adduce his evidence. He conceded that, at present, workman without interruption is working with CTU and he has already been extended benefits allowed by Labour Court.

6. 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***



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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.

7. 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

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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.

8. The petitioner has already complied with impugned order and workman is working with them.

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



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- 10. Dismissed.
- 11. Pending miscellaneous application(s), if any, shall also stand disposed of.

09.08.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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