



CWP-14028-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14028-2024

Date of Decision:07.08.2024

CENTRAL PHOENIX CLUB

..... Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Brijender Kaushik, 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 29.09.2023 (Annexure P-8) whereby Labour Court has awarded a sum of ₹1.5 lakh to workman.

2. Mr. Brijender Kaushik, counsel for the petitioner submits that there was misconduct on the part of respondent-workman which compelled the petitioner to terminate him. He had a scuffle with other employees of the club. He at his own choice left the office and did not come back for quite long time. When he came back and Management objected, he started fighting with the staff on duty.

3. I have heard the arguments and perused the record.

4. The Labour Court has considered act and conduct of Management as well as workman and held that there has been lot of turbulence and acrimony in the relation of parties, thus, harmonious and



congenial atmosphere at workplace is not expected. Considering totality of the facts and circumstances, the Labour Court has directed the Management to pay a sum of ₹1.5 lakh to workman. The relevant extracts of the award are reproduced as below:

“45. There is nothing on record that before termination of the services the claimant petitioner was served with one month notice nor was paid one month salary in lieu of the notice or gave retrenchment compensation in compliance of the above provisions of the Act, so, the order of his termination was a complete violation of the mandatory provisions of the Act. The plea that his act and conduct remained unsatisfactory even if is assumed to be correct than also it do give any right to the respondent management to forgo the mandatory provisions of the law of serving notice and retrenchment compensation hence, his termination cannot be said to be legal.

46. However, it is a settled law that when the termination is in violation of the statutory provisions of the Act, in all cases reinstatement with/without back wages is not automatic. Alternatively compensation can be granted in this case reliance is placed on the case titled "Bhanwar Singh versus Presiding Officer and Another" 2018 LLR 623 decided by our own Punjab & Haryana High Court.

47. Further, in the case titled "Tilak Raj Vs Presiding Officer, Industrial Tribunal, Jalandhar and others" 2015 LLR 248 (P&H), the Hon'ble High Court of Punjab and Haryana has held that relief of reinstatement and back wages is not automatic since it depends on several contingencies and compensation is also appropriate. The amount of compensation depends upon the facts of the case and there is no hard and fast rule.

48. In case titled "Cafe Coffee Day Vs Ajay Kumar and Another" 2018 LLR 424 (P&H), the Hon'ble High Court of Punjab and Haryana has held that if the management had



lost confidence in the workman due to misconduct of napitude on his part, since such a termination is illegal due to technical lacunas, a lump sum compensation in lieu of reinstatement with back wages is appropriate.

49. *Therefore, in these circumstances keeping in view the facts that there has been lot of turbulence and acrimony in the relation of the parties and there is least expectation of harmonious and congenial atmosphere to be provided by both the parties to each other at the work place, hence, in these peculiar circumstances and in view of the ratio decidendi laid by the Hon'ble High Court in Cafe Coffee Day case (supra) it is deemed expedient that instead of relief of reinstatement, relief in the form of monetary compensation be granted to the claimant."*

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.

7. Considering the findings recorded by Labour Court and afore-cited judgments of Supreme Court, this Court is of the considered opinion that there is no jurisdictional error or manifest mistake or infirmity in the impugned order warranting interference.

8. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

07.08.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>