

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12069-2016 (O/M)

Date of decision : 04.01.2024

Sugan Lal

..... Petitioner (s)

Versus

M/s Bhartia Industries Limited and another

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ashwani Bakshi, Advocate
for the petitioner.

Mr. Raman Chawla, Advocate
for respondent No. 1.

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HARSH BUNGER, J.

1. Petitioner (Sugan Lal) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the Award dated 23.10.2015 (Annexure P-20), passed by respondent No. 2-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 has been answered against him and his claim statement has been rejected.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. In the claim statement, the petitioner pleaded that he was working with respondent No. 1-M/s Bhartia Industries Limited

(hereinafter referred to as 'respondent-Management') as 'Store Attendant' since 04.02.1978 and was drawing monthly salary of Rs. 5,000/-. The petitioner claimed that in the middle of August, 2000, respondent-Management forced him to opt for Voluntary Retirement Scheme (hereinafter referred to as 'VRS') and on his refusal to do so, respondent-Management got annoyed with him and issued an order on 04.09.2000 regarding his transfer to Chennai. The petitioner claimed that he accepted the aforesaid order and requested respondent-Management to pay him the transfer allowance for going to Chennai and then the Store Officer of respondent-Management took back the transfer letter and forcibly threw him out while informing him that his services have been terminated. The petitioner claimed that he made a complaint in this regard to Labour Inspector and when he came to the office of respondent-Management after attending the proceedings, the Store Officer and one N.S. Chauhan told him that he would not be allowed to come to factory of respondent-Management.

The petitioner further claimed that when he raised demand notice dated 12.09.2000, on 14.09.2000, respondent-Management handed over a photocopy of his transfer letter and also agreed to pay him the advance money to go to Chennai, but later they started dilly-dallying the matter and petitioner again made a complaint to Labour Inspector on 20.09.2000 and on 27.09.2000, respondent-Management paid a sum of Rs. 2,500/- to him as advance amount, however, Manager (HRD) of respondent-Management told him that he would not get the service at Chennai and would have to either resign or opt for VRS. It is claimed by petitioner that he again intimated the

aforesaid fact to Labour-cum-Conciliation Officer, Ballabgarh (Faridabad), vide letter dated 29.09.2000. The petitioner claimed that he went to Chennai by train on 04.10.2000 and reported for duty at the office of respondent-Management on 07.10.2000, but the office was closed on that day due to some holiday and thereafter, on 09.10.2000, the Manger of Chennai office told him that he must opt for VRS otherwise he would not be allowed to work at all and there was no vacancy for him in the office. Petitioner next claimed that he telegraphically informed respondent-Management at Faridabad regarding the aforesaid matter and then he returned to Faridabad. The petitioner maintained that 2-3 employees at Chennai office of respondent-Management had also been forced to opt for VRS. With the aforesaid pleas, the petitioner claimed reinstatement with continuity of service and other benefits.

3. On the other hand, the aforesaid claim of petitioner was contested by respondent-Management on the ground that petitioner had reported for duty at Chennai office on 07.10.2000 and he also remained present in the office on 09.10.2000, but thereafter he did not attend the office there and started absenting himself from duty with effect from 10.10.2000 and, therefore, he himself left the job at Chennai and respondent-Management had not terminated his services. It was submitted that infact three employees at Chennai office had retired from service under VRS and, therefore, the petitioner had been transferred to Chennai to fill up the vacant post, therefore, the petitioner was not entitled to any relief. The plea of abandonment of service by petitioner as well as objection regarding

jurisdiction was raised by respondent-Management and prayer for dismissal of claim statement was made.

4. On the basis of pleadings of the parties, the issues were framed and parties led their respective evidence.

5. Upon considering the material/evidence available on record, the Tribunal below, vide impugned award dated 23.10.2015 (Annexure P-20), answered the reference against the petitioner and rejected the claim of the petitioner.

6. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court.

7. Learned counsel for petitioner, while reiterating the facts mentioned in the writ petition, argued that the Tribunal below has erred in law and fact in passing the impugned award. It is submitted that respondent-Management had actually terminated the services of petitioner under the garb of transfer order as petitioner had refused to opt for VRS. It is submitted that although the petitioner had accepted the transfer order and reported for duty in Chennai, however, he was not allowed to join there as well. Learned counsel submits that the Tribunal below has wrongly relied upon certain letters written by respondent-Management and has failed to appreciate the conduct of respondent-Management towards the petitioner. It is submitted that there was sufficient evidence on record about the respondent's conduct, however, the same has not been considered by the Tribunal below. Learned counsel submits that the Tribunal below has wrongly observed that respondent-Management was well within its right to transfer the petitioner

from Faridabad to Chennai in view of Clause 22 of its Certified Standing Orders. Accordingly, it is submitted that the impugned award be set aside.

8. Per contra, learned counsel for respondent-Management opposed the prayer of learned counsel for petitioner by submitting that the Tribunal below has considered all the submissions raised by petitioner in the instant writ petition and has passed a well reasoned and justified order, which does not call for any interference by this Court. It is submitted that in terms of Clause 22 of Certified Standing Orders, applicable to respondent-Management, the petitioner was transferred to Chennai where the petitioner did report for duty on 07.10.2000 and also remained present in office on 09.10.2000 but subsequently, he did not report for duty w.e.f. 10.10.2000. It was submitted that services of petitioner were never terminated and infact, various letters were written calling upon him to join his duty at his place of posting and similar offer was made to him during conciliation proceedings, however, the petitioner did not come forward to join duty at his place of posting. Accordingly, it was contended that the petitioner is not entitled to any relief and prayer for dismissal of the instant writ petition has been made.

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

10. As regards the applicability of Certified Standing Orders is concerned, recently in Bharatiya Kamgar Karmachari Mahasangh v. M/s. Jet Airways Ltd., 2023 AIR (Supreme Court) 3596, Hon'ble Supreme Court has observed that the certified standing orders have a statutory force and the Standing Order implies a contract between the employer and the workman.

Therefore, if petitioner was transferred from Faridabad to Chennai in terms of Clause 22 of Certified Standing Orders, the same cannot be faulted with.

11. As regards the stand of the petitioner that in pursuance to his transfer he had gone to Chennai, however, he was not permitted to perform duty there; the Tribunal below, upon considering the material/evidence available on record, returned the following findings :-

“17. Though, during his examination-in-chief as WW-1, the workman has stated that he had been called by the respondent through the letters but whenever he went there, he was not taken on the duty but however, it is again pertinent to mention here that he (workman) has not led any evidence on the file to show that in pursuance of the above call letters, he had ever gone to Chennai again nor he has disclosed the dates of his afore claimed visits to the office of the respondent at Faridabad. Rather, during his cross-examination, he (WW1) has stated that he did not make any complaint to any Authority or Labour Department at Chennai that he was not allotted any duty there.

18. To cap it all, Exhibit W10 is the train ticket of the workman for his return journey from Chennai to New Delhi on 09.10.2000 and at the bottom thereon, the date of reservation of the seat for this purpose has been mentioned as 06.10.2000. The workman himself has categorically disclosed in his demand notice as well as claim statement that he had reached at Chennai on 06.10.2000 and the above said facts make it clear that on the day of his arrival at Chennai itself, he had got his seat/ticket reserved in the train for his aforesaid return journey to New Delhi and these facts lead to an

inference to the effect that he had no intention to join the duty and to stay at Chennai and the same also belie his afore discussed allegations regarding the Branch Manger of the respondent's office at Chennai having refused to let him join the duty and also having told him that there was no vacant post for him in their office. Rather, these unequivocally lead to an irresistible conclusion that the workman himself was not interested in performing the duty at Chennai in pursuance of his above mentioned transfer order.

19. *To add to it, Exhibit M8 is the copy of the written comments as submitted by the respondent-management before the Labour-cum-Conciliation Officer during the conciliation proceedings in respect of the demand notice of the workman which has culminated in the present reference and in para no. 6 thereof, it has been categorically mentioned that its (respondent's) Chennai office is always ready and willing to take the workman on the duty and in para no. 8 therein, it has been further offered that he (workman) should report for the duty at Chennai. To add to it, this offer also finds specific mention in Exhibit M10, i.e. the copy of the failure report qua the demand notice of the workman. However, the workman has not been able to lead any evidence on the file to plausibly explain the factum of his not having accepted the afore-said offer of the respondent. Rather, Exhibit W13 is the copy of the letter dated 08.02.2001 as sent by him (workman) to the Branch Manager of the Chennai office of the respondent mentioning therein that the respondent had no right at all to take any action against him and that its (respondent's) offer was meaningless. In these*

circumstances, it becomes more than explicit that the workman himself did not want to work at Chennai and had, therefore, returned from there and it being so, there was no occasion for the respondent to terminate his (workman's) services.

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22. *In the light of fore going discussion, it is held that the workman has not been able to lead any cogent and trustworthy evidence on the file to prove that the respondent-mangement had allegedly terminated his services and that too, in violation of the mandatory provisions of the Act. Resultantly, this issue is answered against the workman.*

Relief:

23. *As a sequel to the findings as returned by this Court on the sole issue under adjudication and as discussed in the preceding paragraphs, the present reference is hereby answered against the workman and an Award is passed accordingly. File be consigned to the record room after due compliance.”*

12. A perusal of the aforesaid findings would reveal that the respondent-Management has led sufficient evidence on record to show that the petitioner was called upon to resume his duty at the place of posting and the receipt of letters have been proved on record. It also come on record that in pursuance to the letters received by petitioner, he did not go to Chennai again nor he disclosed the dates when he claimed to have visited the office of respondent-Management at Faridabad. It has also come on record that the petitioner had not made any complaint to any authority and labour department that he has not been allowed to perform his duty at Chennai. The

Tribunal below has recorded a finding that the petitioner had reached Chennai on 06.10.2000 and on the same day, he got his seat/ticket reserved in the train for his return journey to New Delhi. Thus, the petitioner had no intention to join the duty and to stay at Chennai and, therefore, it belied the allegation of the petitioner that the Branch Manager of respondent-Management at Chennai had refused him to join the duty. Consequently, a finding has been returned by the Tribunal below that it is the petitioner who was not interested in performing the duty at Chennai in pursuance to his transfer order.

13. The aforesaid factual findings returned by the Tribunal below have not been dislodged by the learned counsel for petitioner before this Court. Therefore, once the petitioner has failed to prove on record that the Management had not allowed him to perform duty at Chennai and rather a finding has been recorded by the Tribunal below that it is the petitioner, who was not interested in performing his duty at Chennai in pursuance to transfer order, accordingly, in my considered view, the Tribunal below was justified in not granting any relief to the petitioner.

14. Furthermore, 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.

15. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for any interference in the impugned Award by this Court. Consequently, the instant writ petition fails and same is accordingly dismissed.

16. 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