

CWP-17352-2013

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

219

CWP-17352-2013
Decided on : 18.04.2024

Shri Ram

. . . Petitioner(s)

Versus

Presiding Officer,
Industrial Tribunal and Labour Court,
UT, Chandigarh and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rajesh Bansal, Advocate
for the petitioner(s).

Mr. Chanderdeep Singh, Advocate
for respondent No.2.

SANJAY VASHISTH, J. (Oral)

1. By way of present writ petition, petitioner – Shri Ram, has assailed the order dated 01.03.2013 (Annexure P-5), passed by respondent No.1 – Industrial Tribunal and Labour Court, UT, Chandigarh (for brevity, ‘learned Tribunal’), for the purpose of its modification, whereby, learned Tribunal while dealing with an application filed under Section 33-C (2) of the Industrial Disputes Act, 1947 (in short, ‘ID Act’), held that the petitioner is entitled for gratuity amount of Rs.16,242/- (Rs. Sixteen Thousand Two Hundred Forty Two only), within a period of three months from the date of order, failing which, he would be entitled to recover the amount along with simple interest @ 12% per annum from the date of order, till realization.

2. In the application filed under Section 33-C (2) of the ID Act, petitioner averred that he joined the service in the factory of respondent No.2 w.e.f. 01.01.1983 and served there up-till 21.01.2009. Therefore, on that

CWP-17352-2013

- 2 -

account, petitioner claimed the total gratuity amount of Rs.1,24,524/- including some other claims also, as mentioned in para No.6 of the application filed under Section 33-C (2) of the ID Act.

3. While dealing with the application, learned Tribunal examined the record and reached to the conclusion that the facts pleaded in the application have not been substantiated with any kind of evidence, therefore, petitioner is not entitled for the complete amount, as claimed by him, except amount of Rs.16,242/-.

4. Learned Tribunal took into consideration the facts narrated in the affidavit of the Management, and same were reproduced in paragraph No.6 of the impugned order (P-5). Observations made by learned Tribunal, while deciding with the issues No.1 & 2, and findings recorded thereto, in paragraphs No.6, 7 & 8, are reproduced here-under for convenience:-

“ISSUE Nos.1 and 2:

6. *The applicant vide his affidavit Exh.AW1/A has deposed as per his statement of claim in his cross examination. He has admitted that after leaving his application for leave from 17.11.2008 to 01.12.2008, he did not come back from leave on 02.12.2008. He has no documentary proof that his services were terminated by the employer. He has admitted that he is paid commission Agent of LIC of India and he was the agent of LIC during his employment with the respondent also. He has volunteered that he was part-time worker with LIC. Admittedly he changed the name of the industry from M/s Aggarwal to Ajit Rubber in his own hand on documents Mark A and H. He was not given any appointment letter by the employer as stated by him but he had no document to show that he joined the job with the management on 01.01.1983. On the other hand, affidavit of Balbir Singh Saini MW1/A, is to the effect that the applicant joined the services on 01.01.2001 and after leaving his leave application in the premises of the mill of the respondent on 15.11.2008 he never returned for duty. He has abandoned the job for his work with LIC as Agent. Rebutting the allegations of the applicant in the affidavit, MW1 has concluded in para 10 of the affidavit as under :-*

10. "That the workman has admitted duly signed payment vouchers Ex.M12, Ex.M13 and Ex.M15. As per Ex.M12 and Ex. M13 the workman received due amount of leave encashment and as per Ex.M14

Rs.2600/- as advance against wages on 15.11.08 which is recoverable from him. The respondent is liable to pay Rs. 1871/- as 15 days wages of November 2008 and an amount of Rs. 17270.76/- rounded to Rs.17271/- to the workman on account of due gratuity for his eight years of service. Out of this amount Rs.2600/- taken as advance by workman are recoverable from him thus Rs. 16242/- as net total are payable to the workman by the respondent and nothing more is payable by the respondent to the workman.

In view of above fact it is evident that except the amount of Rs. 16242/- payable as mentioned in para 10 above, nothing more is payable to him and no other relief prayed by him is deserved by him. It is therefore respectfully prayed that suitable orders accordingly may kindly be passed in this matter."

Oral and documentary evidence goes to prove that the applicant abandoned his job with the management after 15.11.2008. Leave was not duly applied by him and he has failed to prove that thereafter he reported for duty with the respondent. The respondent has not terminated the services of the applicant rather it is a case of abandonment of the job, not attracting Section 25F of the ID Act.

7. *Above discussed claims of the applicant are baseless. He has not worked in January 2009 as claimed by him. He is not entitled to any bonus in view of para 9 of affidavit Exh.MW1/a. claim of the applicant, for gratuity, is also baseless as he has failed to prove that he joined the respondent-employer w.e.f. 01.01.1983. Although the applicant has not claimed his 15 days wages of November 2008, the said liability has been admitted by the respondent. The respondent has further admitted that amount of gratuity Rs. 17,271/- for & years of service of the applicant is due, which he did not come to collect from the employer. Contents of para 10 of affidavit Exh.MW1/A produced above stand proved. This issue is decided in favour of the applicant to the effect that he is entitled to recover admitted amount of Rs. 16,242/- without any interest from the respondent.*

ISSUE No.2 :-

8. *The applicant has mis-stated many facts in his application however I deem it proper not to decline the application on the ground of concealment material facts. This issue is decided in favour of the applicant."*

5. On the other hand, counsel appearing for respondent No.2 submits that already, there is a finding of fact on the basis of the material available before the learned Tribunal and at this stage, it cannot be interfered in the absence of any glaring error.

6. I have considered the rival submissions and gone through the

CWP-17352-2013

- 4 -

impugned order dated 01.03.2013 (P-5). After going through each and every aspect, I find that the impugned order dated 01.03.2013 (P-5), has been passed on the basis of the evidence adduced by the petitioner before the learned Tribunal. Therefore, petitioner cannot be awarded with the complete amount towards gratuity, as had been claimed by him in the application filed under Section 33-C (2) of the ID Act.

Accordingly, findings recorded by learned Tribunal after appreciating the evidence and material available before it, do not want any interference at this stage.

7. Besides, as per the dictum of the Hon'ble Apex Court, rendered in ***Syed Yakoob v. K.S. Radhakrishnan; 1964 (AIR) Supreme Court 477 : Law Finder Doc Id #81222***, this Court does not find any substantial reason to deviate from the view point taken by the learned Tribunal.

8. Moreover, the Hon'ble Supreme Court has unequivocally established that the jurisdiction of the High Courts under Article 226, while issuing the writ of *Certiorari*, is limited. It is primarily aimed at rectifying errors of jurisdiction or instances of violation of the principles of natural justice. Therefore, it constitutes a supervisory role, and High Courts ought to abstain from assuming the function of an appellate court in the writ of *Certiorari*. They should refrain from reexamining the evidence, particularly with regards to its sufficiency or adequacy. While exercising its power under Article 226 of the Constitution, High Court must cause interference only when there is error of law, which requires correction and not in general, when there is error of fact. In ***Syed Yakoob's case (supra)***, Hon'ble Apex Court observed in Paragraph No. 7 as under:-

“7. The question about the limits of the jurisdiction of High

Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is 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 Article 226 to issue a writ of certiorari can be

CWP-17352-2013

- 6 -

legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104; Nagendra Nath v. Comm. of Hills Division, 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh, AIR 1960 Supreme Court 1168.”

Even, the said view has been reiterated by the Hon'ble Supreme Court recently in **Central Council for Research in Ayurvedic Sciences and Anr. v. Bikartan Das and Others; 2023 AIR (Supreme Court) 4011.**

9. Present writ petition stands **dismissed** accordingly.

However, it will be open for the petitioner to contact respondent No.2 for early release of the amount, which was already ordered to be paid to him, in view of the claim raised by him under Section 33-C (2) of the ID Act, in case the same has not been released so far.

(SANJAY VASHISTH)
JUDGE

April 18, 2024
J.Ram

Whether speaking/reasoned: ✓ *Yes/No*
Whether Reportable: *Yes/No* ✓