

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

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CWP-15524-2015

Date of Decision : 20.09.2024

VINOD KUMAR TIWARI

.... PETITIONER

V/S

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, FARIDABAD AND ANOTHER

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Amit Kumar Goyal, Advocate
for the petitioner.

None for respondent No.2.

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 22.10.2014 (Annexure P/5) whereby Labour Court has answered the reference against him.

2. The petitioner joined respondent No.2-M/s Shahi Export Pvt. Ltd. as Helper on 14.06.2001. He was drawing salary Rs.2850/- per month. The management suspended him on 16.09.2006. The respondent conducted domestic inquiry and thereafter terminated his services on 01.12.2006. On the application of the petitioner, the matter came to be



referred to Labour Court which by impugned award dated 22.10.2014 answered the reference against him.

3. Mr.Amit Kumar Goyal, Advocate submits that enquiry was not conducted in a just and fair manner. The petitioner was not given opportunity, thus, enquiry proceedings were liable to be vitiated.

4. I have heard the arguments of counsel for the petitioner and perused the record.

5. The Labour Court has passed a detailed order wherein all the contentions of the petitioner have been noticed. The relevant extracts of the findings recorded by Labour Court are reproduced as below :

“10. Both these issues are interconnected. Arguments were also heard together so both these issues taken together. The employment of the claimant with the respondent is not disputed. The case of the respondent against alleged illegal termination setup by the claimant is that the claimant is that the claimant was a habitual nuisance creator in his department. Even on his transfer to another department he misbehaved with the senior and was disobedient, son his services were terminated after holding proper and fair domestic inquiry. The claimant in his rejoinder denied any warning and disobedience and opportunities being hear.

11. Claimant WW-1 admitted that he was given warning by the Respondent-management on 06.09.2006. He further admitted to have given an apology dated 03.05.2006 though he alleged it was obtained forcibly but admittedly against this no complaint was made. The claimant further admitted he was given a charge sheet which he replied. He had admitted his participation in the domestic inquiry also. He has further admitted to receive his bonus, suspension

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allowance of 2006 after deduction. So, inquiry has been conducted before taking action against the claimant.

12. *It was submitted by learned AR of the claimant that the claimant was not allowed to engage a union leader of his choice and as such the inquiry is not a fair. Learned AR of the claimant submitted the standing order of company cannot be said to be law and assistance of office bearer of a union or even advocate could be allowed. Reference was made to Haryana Tourism Corporation Ltd., V/s Presiding Officer, Labour Court, Gurgaon and another 2001 LLR 337, Hindustan Wires Limited V/s Presiding Officer, Industrial Tribunal and another 1992 LAB.I.C. 2098, Nimai Dutt V/s State of Assam 2004(103) FLR 384 and Management of M/s Chidambarm Shipcare Pvt. Ltd. V/s Presiding Officer, Chennai and Ors. 2012 LLR 95. On other hand Ld. AR for the respondent submitted that certified standing order can curtail the right of representation. Reference was made to decision of Hon'ble Supreme Court in Bhart Petroleum Corporation Ltd. V/s Maharashtra General, Kamgar Union & Ors. Manu/SC/0783/1998, The contention of learned AR for the workman in devoid of any merit as in the standing order Ex.M-1 it is specifically mentioned that the delinquent worker can have assistance of a co-worker but he cannot take assistance of any outsider or worker of the union. By the standing order right of representation has not been denied but affected only to the extent that the workman can only have his co-worker as his representation. So long the standing order are in placed the worker cannot raise any objection in this regard. Right of representation can be governed by certified standing order. Reference can be made to Bhart Petroleum Corporation Ltd. Vis Maharashtra General, Kamgar Union & Ors. Manu/SC/0783/1998.*



12. It was submitted by the AR of the claimant that the witnesses of respondent were not allowed to be crossed examined properly regarding which Ex. W-6 was given. Perusal of the proceedings of the inquiry officer Ex.MW-1/1 would show that on 25.10.2006 the claimant sought time to cross-examine the witness on next date. He was allowed to further cross- examine the witnesses of the management in pursuance of his application Ex. W-6. The witnesses of the management of have been cross-examined again by him. So, this contention is without any force. As the services of the claimant have been terminated after holding proper inquiry on the basis of the misconduct in which the claimant has duly participated and the facts that on earlier occasions he had been issued warning and he had tendered apology, alleged illegal termination of the services of the claimant is not prove. Both these issues are decided in favour of the respondent and against the claimant.”

6. From the perusal of afore-cited findings, it is evident that the petitioner was given due opportunity and domestic enquiry was conducted wherein he was found guilty. The petitioner was claiming that he was not allowed to engage a union leader of his choice. The Labour Court has returned a finding that the workman was allowed to take assistance of any co-worker and as per standing order, he could not take assistance of any outsider or worker of the union. The witnesses of management have been cross-examined by workman.

7. 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***



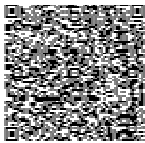
in Ayurvedic Sciences and another Vs Bikartan Das and others 2023

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.

8. 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.

9. The petitioner has failed to point out any patent illegality in the enquiry conducted by management or findings recorded by Labour Court. It is apt to notice here that the petitioner was terminated on 01.12.2006 and a period of almost 18 years has passed away.

10. 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 award warranting interference.

11. Dismissed.

20.09.2024

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(JAGMOHAN BANSAL)
JUDGE

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