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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-15453-2016

Date of Decision: 06.09.2024

Surender Kumar

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon and  
Anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

**Present:** None for the petitioner.

Mr. Sapan Dhir, Advocate,  
for respondent No.2.

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**JAGMOHAN BANSAL , J. (ORAL)**

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 16.04.2013 (Annexure P-8) and Award dated 13.04.2015 (Annexure P-10) whereby Labour Court has answered reference against the workman.
2. The workman joined respondent on 14.05.1996 and he was terminated from service on 30.09.2000. On his application, the matter came to be referred to the Labour Court which vide order dated 16.04.2013 concluded that respondent-Management has conducted inquiry as per prescribed procedure and there is no infirmity in the inquiry. Vide Award dated 13.04.2015, Labour Court dismissed claim of the petitioner. The relevant extracts of the Award dated 13.04.2015 are reproduced as below:

*“7. The validity and fairness of enquiry proceedings against the workman is sought to be challenged by AR for workman by referring to lack of proper assistance to*



*the workman during the enquiry proceedings, service of charge-sheet at a belated stage, absence of any F.I.R regarding the incident involving Mr. Ravindran etc. However, it is important to note that the issue no.1 relating to the validity and fairness of the domestic enquiry against the workman has already been decided by the Court at an earlier stage. Admittedly, the enquiry proceedings conducted against the workman have been held to be valid and fair by the Court while deciding the above-said issue. If the workman was not satisfied with the adverse verdict against him qua the enquiry issue, he could have challenged the same before the Hon'ble High Court by filing appropriate legal proceedings. Admittedly, this has not been done. Undisputedly, there is no provision for review of orders under the Industrial Disputes Act. Now while deciding the remaining issues, this Court has no power to review the verdict already given by this Court qua the validity and fairness of the enquiry proceedings against the workman. In this background, the above-said pleas taken by the workman do not help him in any manner.*

*8. It was also argued that an adverse inference be drawn against the respondent for not producing certain records demanded by the workman. However, it is important to note that the workman in the present case was dismissed from service for proved misconduct after holding a regular domestic enquiry against him. Admittedly, the validity and fairness of the domestic enquiry conducted against the workman has already been upheld by this Court while deciding the issue relating to fairness of enquiry on a previous date of hearing. In the given facts and circumstances, the workman has not been prejudiced by the non-production of the record demanded by him. Accordingly, the above-said argument on behalf of the*



*respondent is also without any substance.*

*19. As already discussed in the forgoing paragraphs, the present workman was found to have abused, threatened and physically attacked his superior officer by throwing a paper weight upon him on 09.06.2000. Further, the workman was also found to have attacked a fellow co-worker on 20.07.2000 while he was returning from his unit in the factory. A report had also been made to the police relating to the abovesaid incident. It would be seen that the above-said actions of the workman are highly criminal in nature. The above-said actions of the workman would also create a doubt in the mind of any employer about the capacity of workman to work in a discipline and orderly way. The above-said actions of the workman would clearly constitute gross-misconduct by such workman. The above-said gross misconduct by the workman is bound to result in total loss of confidence of the employer in the workman regarding his fitness to perform his job properly. Consequently, in the given circumstances, the respondent was fully justified in imposing the penalty of dismissal from service by upon the workman in this case. It is very clear that in the given circumstances, the penalty of dismissal awarded to the workman cannot be said to be excessive or disproportionate to the misconduct of work in any manner.*

*20. For the reasons stated above, the workman has miserably failed to prove that his services were illegally terminated by the respondent in any manner. Therefore, the workman is clearly not entitled to any relief as claimed by him against the respondent.”*

3. The petitioner has challenged order dated 16.04.2013 along with Award dated 13.04.2015. He had independent remedy to assail order dated 16.04.2013 passed by Labour Court. The Labour Court has recorded



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categoric findings with respect to act and conduct of workman as well as inquiry proceedings conducted by respondent-Management.

4. 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.

5. 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

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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



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jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.

6. This Court does not find any jurisdictional error or infirmity in the impugned orders warranting interference. Hence, the present writ petition is dismissed.

(JAGMOHAN BANSAL )  
JUDGE

06.09.2024  
anil

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