

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-17070-2015(O&M)
Date of Decision: 29.01.2024

MUNICIPAL CORPORATION LUDHIANA

.... Petitioner

Versus

RAMANDEEP SINGH AND ANR

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashok Kumar Bazaz, Advocate
for the petitioner (in CWP-17070-2015) and
for the respondent in COCP-2128-2012.

Mr. Sharwan Sehgal, Advocate
for the respondent (in CWP-17070-2015) and
for the petitioner (in COCP-2128-2021).

SANJAY VASHISTH, J.(Oral)

CM-12356-CWP-2015

(i) Present application has been filed on behalf of
respondent No.1 under Section 17-B of the Industrial Disputes Act,
1947 for seeking payment of full wages to the workman.

(ii) At the very outset, learned counsel for the applicant-
respondent No.1 seeks withdrawal of the present application.

(iii) Dismissed as withdrawn as prayed for.

CM-2125-CWP-2022

(i) Present application has been filed under Section 151
C.P.C. for modification of the order dated 21.01.2020 (Annexure A-

11) by stating that the workman has filed income tax return for the year 2016-17 for an amount of Rs.4.96 Lac only and in the evidence also he admitted his working as Computer programmer. Broadly speaking, petitioner-management has sought modification of the order, whereby compliance of Section 17-B of the Industrial Disputes Act, 1947 has been ordered to the petitioner-Corporation.

(ii) In view of the withdrawal of the application filed under Section 17-B of the Industrial Disputes Act, 1947 by respondent No.1, learned counsel for the applicant-petitioner wishes to withdraw the present application also.

(iii) Accordingly, the present application is disposed of as withdrawn.

CWP-17070-2015

1. Present writ petition has been filed by the petitioner-Management against the award dated 05.11.2014 (Annexure P-9) passed by the presiding officer, Industrial Tribunal, Ludhiana, whereby, reference No.982 of 2005 has been answered in favour of respondent No.1-Ramandeep Singh (workman).

2. Learned Industrial Tribunal-cum-labour Court has held that the services of the workman were terminated without following the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act 1947'). There is a specific observation in the impugned award that at the time when workman was working as a

computer programmer with the petitioner-Corporation, there were only four computers and now there are more than 100 computers installed to accomplish the work of the Corporation. Even, such admission has been made in the statement of the witness of the corporation, who appeared as MW-1. Accordingly, learned Tribunal directed to reinstate the workman-Ramandeep Singh into services of the respondent-corporation with continuity of service alongwith 50% back wages.

While holding workman to be entitled to 50% backwages, learned Tribunal gave the reasoning that the Corporation has not brought any evidence on record that after termination of the services of the workman, he worked as a gainful employee anywhere.

3. During the course of hearing, this Court has gone through the reasoning recorded by the learned Tribunal and has also taken into consideration the submissions addressed by the counsel before this Court. Nothing material has been addressed to point out any discrepancy in the impugned award. Moreover, as per the judgment of Hon'ble Apex Court **Syed Yakoob Vs. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477,** the jurisdiction of this Court under Article 226 to issue a writ of certiorari is a supervisory jurisdiction and this Court cannot act as a Court of appeal.

Relevant paragraph No.7 of the aforesaid judgment is reproduced herebelow:

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

4. This Court is also informed that during the pendency of the present petition before this Court, workman has crossed the age of superannuation and therefore, he would be satisfied if some modification is ordered in the award towards the back wages.

However, learned counsel for the petitioner-corporation submits that workman would not be entitled to any amount of back wages because workman has not discharged his onus by proving that he has never been gainfully employed anywhere else.

5. I have considered the submissions addressed by the counsel before this Court and also the reasoning recorded by the learned Tribunal.

6. Taking note of the fact that the workman has already crossed the age of superannuation and he rendered services also to the establishment/corporation, in routine, Management/Corporation should not be pressed too hard to make payment of heavy wages to the workman. For observing so the viewpoint of this Court is supported with the observation made by the Hon'ble Apex Court in **U.P. State Brassware Corpn. Ltd. and Anr Vs. Udai Narain Pandey, 2006 AIR (Supreme Court)586, Law Finder Doc Id # 93498**

For the sake of convenience, paragraph No.16 of the aforesaid judgment is reproduced herebelow:

'16. Before advertng to the decisions relied upon by the learned counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the Court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.'

7. Therefore, the impugned award dated 05.11.2014 (Annexure P-9)is modified to the extent of saying that instead of making payment

of 50% backwages, respondent No.1-Ramandeep Singh (workman) would be entitled for a lump sum amount of compensation of Rs.3,00,000/- (Three lacs only), towards all his financial claims accruing to him, by virtue of the award in question, before this Court.

8. However, it is clarified that the amount of Rs.3,00,000/- (Three lacs) as ordered by this Court be paid by the Petitioner -Municipal Corporation, Ludhiana, to respondent No.1-Ramandeep Singh, within a period of 12 weeks from today, failing which Petitioner-Corporation would be liable to make payment of the said amount of Rs.3,00,000/- (three lacs) alongwith interest @ 6% per annum from the date of the impugned award i.e 05.11.2014 (Annexure P-9).

With the aforesaid modification made in the impugned award, the present petition stands disposed of.

January 29, 2024
rashmi

Whether speaking/reasoned
Whether reportable?

[SANJAY VASHISTH]
JUDGE

yes/no
yes/no