



102

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8288-2010 (O&M)
Date of Decision:25.07.2024

RANBIR

..... Petitioner

Versus

PRESIDING OFFICER AND ANR.

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Jaideep Verma, Advocate
for the petitioner.

Mr. Pawan Kumar Mutneja, Sr. Advocate with
Mr. Viranjeet Singh Mahal, Advocate and
Ms. Suverna Mutneja, Advocate
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 18.12.2009 (Annexure P-10) whereby Industrial Tribunal cum Labour Court has answered reference against the petitioner.

2. On 08.01.1996, the petitioner-workman joined respondent-M/s Kiran Associates/Vastrayalaya International. The respondent was a partnership firm and engaged in the manufacturing activities. The petitioner on 08.01.1996 was drawing salary ₹3000/- per month. He was terminated on 24.01.2003. He served demand notice dated 21.03.2003. A settlement dated 19.05.2003 came to be arrived at between the parties. As per settlement, petitioner had to join on 23.05.2003, however, as per petitioner, he was not permitted to join, thus, on 26.05.2003 he brought



this fact in the knowledge of Labour Inspector. With the intervention of Labour Department, he re-joined on 20.06.2003. As per petitioner, he was not allowed to work. On 22.06.2003, the respondent handed over a cheque of ₹8867/- to him and he was not allowed to enter factory premises on 26.06.2003. He again approached Labour Authorities on 08.07.2003. On his request, a reference under Section 10 of Industrial Disputes Act, 1947 came to be made to Labour Court. Matter came up for consideration before Industrial Tribunal cum Labour Court, Gurgaon which vide award dated 18.12.2009 answered against the petitioner.

3. Mr. Jaideep Verma, Advocate submits that from the perusal of written statement filed by respondent, it comes out that petitioner did not leave factory premises on 20.06.2003 which is further corroborated from the fact that he was delivered cheque of ₹8867/- on 22.06.2003. He was actually thrown out of factory premises on 26.06.2003. The petitioner was never served charge-sheet as mentioned in the written statement. The findings of Tribunal are perverse and contrary to record, thus, intervention of this Court is warranted.

4. Per contra, Mr. Pawan Kumar Mutneja, Sr. Advocate supporting findings of Tribunal submits that it is not a case of retrenchment or termination whereas it is a case of abandonment of service. The petitioner himself abandoned the service. The respondent has closed its unit.

5. I have heard the arguments and perused the record.

6. During the course of hearing, the respondent to show its *bona fide* offered a sum of ₹1 lakh to petitioner, however, he refused to accept and submitted that his matter may be adjudicated on merits.



7. It would be profitable to notice relevant extracts of finding recorded by Tribunal which are reproduced as below:

“9. The workman is proved to be an employee of respondent, having joined w.e.f. 01.09.1997. Earlier, there was dispute between the parties and which led to a settlement Ex.PW-1/4 on 19.05.2003. As per that settlement, the workman was asked to report for duties w.e.f. 23.05.2003. It is the case of workman that on 23.05.2003, he went to join duties but was not taken back on job. Rather, he joined the respondent 20.06.2003 and was not allowed to work and dispensed with his services w.e.f. 26.06.2003. But the version of respondent is otherwise and who took a plea that though there was settlement between the parties to the dispute on 19.05.2003. He did not comply with that order. So, that led to writing letters Ex.R-2 and Ex.R-3 respectively to him. Though he reported for work on 26.05.2003 but left the work of place after sometime.

10. In order to prove the case, the workman examined himself as PW-1 and reiterated his earlier version. However, he could not stand the test of cross-examination. It was admitted by him that there was settlement between the parties to the dispute Ex.PW- 1/4/M-3. As per that settlement, the workman was asked to report for duties w.e.f. 23.05.2003. But the workman did not report for duties. So, that led to writing him letters (copies) Ex.R-2 and Ex.R-3 respectively on 25.05.2003 and 08.07.2003. It is not the case of the workman that his address written on these letters is incorrect one. There is nothing on the record to suggest that after receipt of these letters, the workman replied to any of the same. Then, there is writing Ex.M-1 and which shows the exact mind of affairs of the workman. The version of respondent as evident from the cross-examination of workman as well as testimony of Jawahar Lal Sehgal MW-1 is that though the workman reported for duties for some



hours on 26.06.2003 but left the place of work. Even, he was made an offer to re-join duties while filing written-statement on 10.10.2005. So, in such a situation, it can only be inferred that the workman was not interested to join duties and abandoned the same. In cases of Narendra Singh Solanki Vs. Raw and Finishing Production and another, 2000(1), CLR-901, Inder Dev Yadav V/s National Thermal Power Corporation Ltd. and another, 2002, LLR-361 and Tirloki Nath (Shri) V/s Shri Dharam Paul Arora and another, 2006, LLR-1043, a similar situation arose as in the present case and wherein it was held that when the workman fails to resume duties despite offer being made during conciliation proceedings as well as in the court, then it will be irresistibly presumed that he is no longer interested in the job and has abandoned the same of his own accord. No law to the contrary has been shown or cited at the bar.

11. So, in view of discussion above, it is proved that the services of workman were never terminated. So, the reference made for him is not maintainable and he has no cause of action against the respondent. So, findings on all these issues are hereby ordered to be returned against the workman.”

8. From the perusal of findings recorded by Tribunal, it is evident that respondent to resolve the dispute entered into settlement dated 19.05.2003 and as per settlement petitioner was supposed to report on 23.05.2003 but he did not report. The respondent wrote him letters dated 25.05.2003 and 08.07.2003. The petitioner neither replied to said letters nor refuted receipt of those letters. He himself left the place of work on 26.06.2003 and respondent acting in a *bona fide* manner while filing written statement offered him to re-join duty.

The respondent was a manufacturing unit and it has already closed its unit. A period of 20 years from the date of alleged termination



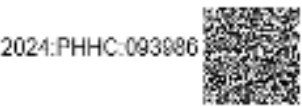
has passed away. Thus, at this belated stage, especially when unit stands closed, compensation could be awarded which petitioner has refused to accept.

9. 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.

10. 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.

11. Considering the findings recorded by Tribunal 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 order warranting interference.

12. Dismissed.

13. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

25.07.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>