

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

CWP-1415-2018 (O&M)
Date of Decision: 4th January, 2024

Chairman, Punjab Small Industries and Export Corporation Ltd. and others
..... Petitioners

Versus

Presiding Officer, Industrial Tribunal, Gurdaspur and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Abhilaksh Grover, Advocate
 for the petitioner.

 Mr. Rimple Saini, Advocate
 for respondent No.2.

HARSH BUNGER J.

1. Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of impugned award dated 26.04.2017 (Annexure P-9) passed by the Presiding Officer, Industrial Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal'), whereby reference of industrial dispute regarding termination of services of respondent No.2 (Balwinder Singh) has been answered in his favour and he has been held entitled to reinstatement with continuity in service and 50% back wages from the date of demand notice, i.e. 20.09.2012.
2. Briefly, respondent No.2-workman (Balwinder Singh) raised an industrial dispute by way of serving demand notice, which was subsequently

referred to the Tribunal, for adjudication.

3. In the statement of claim, respondent No.2-workman stated that he was appointed as a Chowkidar on 01.05.1996 on a regular and permanent post. He stated that he was performing his duties to the satisfaction of his superiors and Employees Provident Fund contributions were also being deducted from his salary. Respondent No.2-workman claimed that Executive Engineer, Punjab Small Industries Export Corporation, Jalandhar had sent letter No.1360 dated 08.08.2008 through registered post on 22.08.2008 indicating that respondent No.2 was absent from his duties, however, he had already joined his duty on 05.08.2008. It was stated by respondent NO.2-workman that the Sub Divisional Officer, Punjab Small Industries Export Corporation, Amritsar and Junior Engineer, Punjab Small Industries Export Corporation, Pathankot did not allow him to join the duty, and finally the Department refused to take him on duty on 17.08.2012. Accordingly, respondent No.2 claimed that his services have been terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act') and prayed for reinstatement with continuity in service along with all the consequential benefits.

4. The aforesaid claim of respondent No.2 was contested by the petitioners herein by filing their written statement wherein it was stated that respondent No.2-workman had absented from duty without any permission from his superiors. It was stated that respondent No.2 was asked to perform his duties at the place of his posting but he failed to join there and accordingly, his services were terminated vide order dated 18.11.2008. It was also mentioned that in fact respondent No.2, after remaining absent from the duty, had gone abroad without taking any permission. Accordingly,

prayer for dismissal of the reference was made.

5. From pleadings of the parties, the following issues were framed by the Tribunal:-

“(i) Whether the services of workman were terminated by respondents in an illegal and unjustified manner? If so, what benefit workman is entitled for?”

(ii) Whether the reference is time barred?

(iii) Whether reference is not maintainable?

(iv) Relief”

6. Thereafter, both the parties led evidence in support of their case.

Respondent No.2-workman (Balwinder Singh) examined himself as WW-1.

On the other hand, petitioners examined Sh. Savtej Singh, SDO as MW-1.

7. After considering the material/evidence available on record, Tribunal answered the reference in favour of respondent No.2-workman vide impugned award dated 26.04.2017 (Annexure P-9).

8. Being aggrieved against the aforesaid award dated 26.04.2017 (Annexure P-9), petitioners filed the instant writ petition before this Court.

9. I have heard learned counsel for the parties and perused the paper book with their able assistance.

10. The Tribunal while passing impugned award dated 26.04.2017 (Annexure P-9), held as under:-

“10. I have given thoughtful consideration to these arguments and in order to appreciate the same, have gone through record of this case very carefully.

11. It is conceded fact that workman was appointed as Chowkidar on 1-5-1996 regularly and he had been working with respondents till 1-6-2008. If version of respondents is to be taken as correct, he had absented from duty w.e.f. 1-6-2008 despite notices dated 24-7-2008, 8-8-2008 and 3-11-2008. The question arises whether his removal from service through Ex-R1 is lawful or not. It is further conceded fact that except for

above referred notices for resumption of duty to workman, no departmental proceedings have been held against him, to say, no enquiry was held for his absence, no charge sheet was served upon him, no show notice for termination of his services was issued and no opportunity of being heard was afforded, which are sine qua non. Perusal of Ex-R1 shows that according to this letter, an intimation was given to workman that he had failed to join duty and he had not given any intimation, from which it is clear that he has voluntarily abandoned duty since 1-6-2008 and learned authorised representative for respondents could not show any rule, which provides abandonment methods for removal of a person from service. Thus, it has to be inevitably held that removal of workman from service through Ex-R1 is totally illegal, unlawful and null and void, so it has to be set aside.

12. It was one of the more contention raised by learned authorised representative for respondents that workman had gone abroad without permission of respondents. This is merely an allegation without cogent and convincing proof and as such, this objection has to be ignored out rightly because allegation how so ever strong may be cannot take place of proof without evidence.

13. So far arrears of back wages are concerned despite all above facts, workman has not been able to prove any reason for his absence from 18-11-2008 to 20-9-2012, when he served demand notice resulting in this case. Thus, it will be in the interest of justice that he be not given any wages for this period i.e. for period between 18-11- 2008 to 20-9-2012 due to his own act and conduct. For remaining Period, it is jotted down here that it is undisputed fact that workman is able bodied person and as such he cannot be supposed to remain idle for such a long time. Therefore, it is held that workman is entitled to reinstatement with continuity of service and fifty percent of back wages w.e.f. date of demand notice till reinstatement. This issue is decided accordingly in favour of workman and against respondents.”

A perusal of the above extracted findings would indicate that respondent No.2-workman was appointed as a Chowkidar on 01.05.1996 regularly and he was working till 01.06.2008. As regards the stand taken by the petitioners-Department that respondent No.2 had absented from duties, for which he was served notice dated 24.07.2008, 08.08.2008 and 03.11.2008, it has been observed by the Tribunal that except for the said notices for resumption of duties issued to respondent No.2, no departmental proceedings were held against him. It has come on record that neither any inquiry was held in the absence of respondent No.2 nor any charge-sheet was served upon him or any show cause notice was also not issued to him for termination of his services; and neither any opportunity of hearing was afforded to respondent No.2 before terminating his services. Accordingly, it has been held by the Tribunal that removal of respondent No.2 from service through termination order dated 18.11.2008 (Ex.R-1) was totally illegal, unlawful, null and void; and the same has accordingly been set aside. The stand of petitioners-Department that respondent No.2, after remaining absent from duties, had gone abroad, was also not found substantiated by the Tribunal below.

As regards the arrears of back wages, the Tribunal has denied the back wages to respondent No.2, w.e.f. 18.11.2008 till 20.09.2012, i.e. the date when he served demand notice, and accordingly, he has been held entitled for reinstatement with continuity in service and 50% back wages w.e.f. the date of demand notice till the date of reinstatement.

11. The petitioners have not placed anything on record, either before the Tribunal or before this Court, to show that any departmental proceedings were initiated against respondent No.2-workman for his absence from duties. Once the petitioners have failed to show that any

proceeding/disciplinary action was taken against respondent No.2-workman for his alleged absence, and no opportunity of hearing was afforded to respondent No.2-workman before termination of his services then in my considered view, the Tribunal below was correct in holding that termination of respondent No.2-workman was illegal, unlawful, null and void.

12. Furthermore, the parameters for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India, in cases involving challenge to the award passed by the Labour Court/Industrial Tribunal and orders passed by other judicial and *quasi-judicial* bodies, are well defined. A writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly, i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of *certiorari* is a supervisory jurisdiction and not appellate one. This necessarily means that the finding of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a *quasi-judicial* authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under

challenge along with the documents which have been relied upon by the inferior Court, Tribunal or *quasi-judicial* authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of *certiorari*. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding, the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of *certiorari*. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the *quasi-judicial* authority cannot be gone into by the High Court while considering the prayer for issue of a writ of *certiorari*. Likewise, the mere, possibility of forming a different opinion on re-appreciation of evidence by the parties is not sufficient for issue of a writ of *certiorari* “*Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477*”; “*Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 Supreme Court 61*”; “*Jitendra Singh Rathor v. Sh. Baidyanath Ayurved Bhawan Ltd. and another, AIR 1984 Supreme Court 976*”; “*R.S. Saini v. State of Punjab and others, 1999(4) RCR (Civil) 253 (SC) : J.T. 1999(6) S.C. 507*” and “*Mohd. Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69*”.

13. Keeping in view the totality of facts and circumstances of the present case, I do not find any reason to interfere with the impugned award

dated 26.04.2017 (Annexure P-9) passed by the Tribunal below, resultantly, the present writ petition is dismissed.

14. All pending application(s), if any, shall also stand closed.

4th January, 2024
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No