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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 28.02.2024

Director, Puratatav & Sanghralya Department,
Kurukshetra

. . . Petitioner(s)

Versus

Ashok Kumar and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Praveen Chander Goyal, Addl. AG, Haryana.

Mr. Ashok Tyagi, Advocate for
Mr. S.S. Kharb, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. Director, Puratatav & Sanghralya Department, Kurukshetra (being Management) has filed the present writ petition for quashing of impugned award dated 21.02.2021 (Annexure P-8), passed by learned Industrial Tribunal-cum-Labour Court, Panipat (for brevity, 'learned Tribunal'), whereby, Reference No.241 of 2005, under Section 10(1)(C) of the Industrial Tribunal Act, 1947 (in short, 'ID Act'), has been answered in favour of respondent No.1 – workman.

Termination of the workman (respondent No.1 herein) – Ashok Kumar, has been held to be illegal. Therefore, learned Tribunal has directed to reinstate the workman with continuity of service and 50% back-wages, from the date of Demand Notice i.e. 07.02.2005.

2. Pleaded case of the workman (respondent No.1) before the learned Tribunal is that he was employed as 'Chowkidar' in Panipat Sanghralya, Nahar Vishram Grah, Panipat on 15.01.2003, and thereafter, he

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worked up till 06.01.2005. However, in terms of letter dated 23.12.2004, his services were terminated.

He further pleaded that working days of 240 days in the preceding one year had been completed, and despite the said fact, without making payment of any retrenchment compensation or one month notice pay, he was terminated from the service, which amounts violation of Section 25-F of the ID Act.

3. In the written statement filed by the Management, it has been pleaded that workman left the job of his own, therefore, it is a case of abandonment, and not of the retrenchment.

4. In para No.10 of the impugned award (P-8), it has been observed that as per the summoned record by the workman, one Satish Kumar, Assistant, appeared as WW2, who admitted that workman worked for 339 days during the previous 12 months.

5. Learned State counsel also submits that to prove the pleadings raised in the written statement, no evidence has been led by the Management.

6. Since, finding of fact has already been recorded by the learned Tribunal on the basis of the material available before it, and as per the dictum of the Hon'ble Apex Court, rendered in **Syed Yakoob v. K.S. Radhakrishnan; 1964 (AIR) Supreme Court 477 : Law Finder Doc Id #81222**, this Court does not find any substantial reason to deviate from the view point taken by the learned Tribunal.

7. Moreover, the Hon'ble Supreme Court has unequivocally established that the jurisdiction of the High Courts under Article 226, while issuing the writ of *Certiorari*, is limited. It is primarily aimed at rectifying

errors of jurisdiction or instances of violation of the principles of natural justice. Therefore, it constitutes a supervisory role, and High Courts ought to abstain from assuming the function of an appellate court in the writ of *Certiorari*. They should refrain from reexamining the evidence, particularly with regards to its sufficiency or adequacy. While exercising its power under Article 226 of the Constitution, High Court must cause interference only when there is error of law, which requires correction and not in general, when there is error of fact. In *Syed Yakoob's case (supra)*, Hon'ble Apex Court observed in Paragraph No. 7 as under:-

“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

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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. Comm. of Hills Division, 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh, AIR 1960 Supreme Court 1168.)”

Even, the said view has been reiterated by the Hon'ble Supreme Court recently in **Central Council for Research in Ayurvedic Sciences and Anr. v. Bikartan Das and Others; 2023 AIR (Supreme Court) 4011.**

8. Therefore, on the basis of aforementioned facts and circumstances and the reasons recorded herein-above, the present writ petition stands **dismissed**.

Besides, it is observed that already paid amount, if any, under Section 17-B of the ID Act, would be adjusted towards the back-wages, which have been awarded by the learned Tribunal.

**(SANJAY VASHISTH)
JUDGE**

February 28, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ~~Yes~~/No ✓