

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-25807-2015
Date of Decision: 4th January, 2024

Mahavir Sharma
..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Circle-1,
Faridabad and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Dr. Deepak Jindal, Advocate
for the petitioner.

Mr. Viranjeet Singh Mahal, Advocate and
Ms. Suverna Mutneja, Advocate
for respondent No.2.

HARSH BUNGER J.

1. Petitioner (Mahavir Sharma) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking setting aside of impugned award dated 31.08.2015 (Annexure P-1) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Circle-1, Faridabad (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by petitioner has been answered against him.

A further prayer has been made for directing respondent No.2- M/s Bharat Gear, Faridabad (hereinafter referred to as 'the Management') to reinstate the petitioner in regular service.

2. Briefly, petitioner raised an industrial dispute, regarding termination of his services by serving demand notice, which was subsequently referred to the Tribunal, for adjudication.

3. As per the demand notice, the petitioner claimed that he was appointed in January, 2008 as Store Executive and underwent training from January, 2008 till February, 2010 as a trainee. Petitioner claimed that he was asked to work under contractor in February, 2010 and he was further told that he would be regularized after sometime. Petitioner claimed that he took 15 days leave from 06.05.2011, however, he was not allowed to join duty on 25.05.2011 and ultimately, the respondent-Management refused to take back the petitioner on duty on 08.08.2011. Accordingly, petitioner claimed reinstatement with continuity in service along with other consequential benefits.

The claim statement was also filed by the petitioner on similar lines.

4. The respondent-Management contested the aforesaid claim of petitioner by submitting that there was no relationship of employee and employer between the petitioner and respondent-Management, and therefore, petitioner has no cause of action against the Management. It was categorically stated by respondent-Management that petitioner was engaged as a trainee w.e.f. 02.01.2008 and was paid stipend of Rs.5,500 per month. It was further stated that petitioner took up employment with M/s Third Eye Guarding Services Private Limited w.e.f. 01.02.2010 and continued in employment till 30.09.2010; subsequently, he took up employment with M/s Hyper Networks (a unit of Hyper HR Nucleus Solutions P. Ltd.) w.e.f. 01.10.2010, where he was on duty up to 07.05.2011; and afterwards, he remained absent and did not report for duties on 21.05.2011.

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

- “(i) Whether the services of the workman were terminated illegally? If so, its effect? OPW*
- (ii) Whether the reference is not maintainable? OPR*
- (iii) Relief”*

6. Thereafter, both the parties led evidence in support of their case. The petitioner examined himself as WW-1. On the other hand, respondent-Management examined Sh. Naresh Verma as MW-1, Sh. Lalu Kumar as MW-2 and Sh. Vikram Kumar as MW-3.

7. After considering the material/evidence available on record, Tribunal answered the reference against the petitioner vide impugned award dated 31.08.2015 (Annexure P-1).

8. Being aggrieved against the aforesaid award dated 31.08.2015 (Annexure P-1), petitioner 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 vide impugned award dated 31.08.2015 (Annexure P-1) has returned the following findings:-

“10. The claimant is claiming reinstatement in service with continuity in service and back wages on the ground that he was appointed by the respondent since January, 2008 as 'Store Executive'. The respondent has denied the relationship of employee and employer between the parties. It is claimant's own case that he got training under the respondent from January, 2008 to February, 2010 and he was directed to work under contractor w.e.f. February, 2010 on the assurance that after some time he was be regularized and believing the assurance the claimant started working under contractor as he was given the impression that he would be treated as regular employee of the company. So, it is claimant's own case

that he has worked under a contractor from February, 2010 onwards till termination of service. Thus, on the date of alleged termination of service the claimant was not under employment of the respondent but a contractor. A perusal of appointment letter of claimant as trainee dated 02-01-2008 Ex.M-1 would reveal that stipend of Rs.5500/- per month was to be paid to the claimant. Under clause 3 it was specifically mentioned that the training assignment was purely on request of the claimant and the company neither intended nor had any compulsion to absorb him nor any obligation to provide employment to the claimant based on the training provided to him. So, the plea of alleged assurances runs counter to the terms of appointment.

11. Learned AR of the claimant having referred to register of payment of wages Ex.M-3/9 to Ex.M-3/13 and leave card Ex.W-2 submitted that admittedly a deduction from wages is made for leave, but claimant has been paid full wage despite the fact that he was on leave on various dates which would show that the claimant was a regular employee of the respondent. This contention is devoid of any merit. Leave Card Ex.W-2 is only up to April, 2010 whereas the wages register are of December, 2010, January, 2011, February, 2011, April, 2011 and May, 2011. The claimant has also placed on record canteen receipts Ex.W-3 to Ex.W-6 wherein last receipt Ex.W-6 is dated 09-02-2010 but in view of admitted fact of working of the claimant in the factory premises under contractor this receipt cannot establish the relationship of employer and employee between the respondent and claimant. The claimant was a trainee with the respondent. A trainee would not become a workman U/s 2(S) of the I.D. Act, 1947. Reference can be made to Raj Kumar Rastogi V/s P.O. Labour Court-X & Anr. 2015 LLR 682 and Pardeep Kumar V/s Presiding Officer and Another 2015 LLR 726. The respondent has produced MW-3 Vikram Kumar Singh, Manager of M/s Hyper Network (A unit of Hyper HR Nucleus Solutions Pvt. Ltd.), to depose that they were supplying employees to the respondent on contract basis.

The claimant was appointed by them on 01-10-2010. Bio Data and appointment letter of the claimant are Ex.MW-3/1, Ex.MW-3/2 (Ex.M-14 and Ex.M-15 also respectively). Admittedly these documents bear signatures of the claimant. Appointment letter Ex.MW-3/2 is issued by M/s Hyper Networks. So, in the facts and circumstances of the case the claimant has failed to establish the relationship of employer and employee between the parties on alleged date of termination. So, he is not entitled to any relief. This issue is decided in favour of the respondent and against claimant.”

A perusal of the aforesaid findings would manifest that it was petitioner's own case that he had worked under a contractor from February, 2010 till termination of his services, therefore, on the date of alleged termination, he was not under the employment of respondent-Management but that of a contractor. The Tribunal has held that as per appointment letter dated 02.01.2008 (Ex.M-1) of the petitioner as trainee, a stipend of Rs.5,500/- per month was to be paid to him and under Clause 3 of the said letter, it was specifically mentioned that training assignment was purely on request of the petitioner and the Company neither intended nor had any compulsion to absorb him or any obligation to provide employment based upon the training provided to him. Tribunal also negated the petitioner's reliance upon the Leave Card, by holding that the same was up to April, 2010 whereas the Wages Register was of December, 2010, January, 2011, February, 2011, April, 2011 and May, 2011. Further, the petitioner's reliance upon Canteen Receipts (Ex.W-3 to W-6) was also not accepted by the Tribunal by holding that in view of the admitted fact that petitioner was working in the factory premises under a contractor, accordingly the said receipts do not establish relationship of employee and employer between the parties. It was accordingly held by the Tribunal that petitioner was a trainee

with the respondent-Management and he would not become workman under Section 2(S) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act').

11. Further, the Tribunal has referred to the statement of one Vikram Kumar Singh (MW-3), Manager of M/s Hyper Networks (A unit of Hyper HR Nucleus Solutions Pvt. Ltd.), wherein he deposed that they were supplying employees to the respondent-Management on contract basis and petitioner was appointed by them on 01.10.2010. The Bio Data and Appointment Letter of the petitioner was produced by M/s Hyper Networks (A unit of Hyper HR Nucleus Solutions Pvt. Ltd.) on record as Ex.MW-3/1 and MW-3/2, which bear signatures of the petitioner; accordingly, it was held by the Tribunal that petitioner had failed to establish the relationship of employee and employer between him and the respondent-Management, and he is not entitled to any relief.

12. Learned counsel for the petitioner has failed to dislodge the aforesaid findings returned by the Tribunal. Neither before the Tribunal below nor before this Court, petitioner has shown any material to establish that relationship of employee-employer existed between the parties or that petitioner had rendered continuous service under the respondent-Management in terms of Section 25-B of the 1947 Act, so as to attract Section 25-F of the 1947 Act. In the absence of any such material on record, no relief can be granted to the petitioner.

13. The parameters for exercising 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 issuance of a writ of certiorari. Gainful reference can be made to the judgments rendered by Hon'ble Supreme Court in “*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*”.

14. Considering the totality of circumstances in the light of legal principles indicated above, there is no scope for any interference in the impugned award dated 31.08.2015 (Annexure P-1), resultantly, the instant writ petition fails and the same is dismissed.

15. 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