



CWP-27159-2015

1

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

219

CWP-27159-2015

Date of Decision : 02.08.2024

MADAN LAL

.... PETITIONER

V/S

CHANDIGARH ADMINISTRATION & ORS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present :- Mr. Sarwan Singh Sabar, Advocate
for the petitioner.

Mr. Pirnce Pushpinder Rana, Advocate for
Ms. Madhu Dayal, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 05.06.2003 (Annexure P-8) whereby he has been awarded punishment of stoppage of four increments with cumulative effect.

2. The petitioner is working with respondent as Ward Attendant. The respondent is having multiple hotels in Chandigarh. Park View is one of these hotels. He joined Hotel Park View on 02.02.2002. An incident of sneaking in the room of a girl student took place in the wee hours of 11.02.2002. The guest raised alarm. The guest was part of a group of doctors which had come from Tamilnadu. The matter was reported to receptionist as well as security. The guest in her statement described physical appearance of the person who had sneaked in her



room. She disclosed that when she woke up at 5.00 O'clock, she found that a man drapping shawl was standing in her room. The electricity of the room was disconnected.

3. The respondent ordered to conduct an enquiry. The enquiry officer exonerated the petitioner from all charges, however, Disciplinary Authority considered evidence on record and formed an opinion that the petitioner is liable to punishment. A show cause notice came to be issued to him. He filed reply to said show cause notice. The Managing Director-Disciplinary Authority considering evidence on record as well as reply of petitioner, passed punishment order whereby four increments of petitioner were forfeited. He preferred an appeal which came up for consideration before Chairman who upheld order of Managing Director.

4. Mr. Sarwan Singh Sabar, Advocate submits that enquiry officer had not found petitioner guilty and Disciplinary Authority without any basis passed punishment order. The disciplinary authority cannot pass an order contrary to findings of enquiry officer. The disciplinary authority has not complied with mandate of Rules governing the service of petitioner.

5. Per contra, counsel for the respondents submits that the Disciplinary Authority had passed a reasoned and speaking order. The order of punishment was passed after issuing show cause notice and getting response from him. The petitioner preferred an appeal before appellate authority as well as reference was made to Labour Court. All the authorities have recorded concurrent findings and there is no infirmity in the findings.



6. I have heard the arguments of counsel for the parties and perused the record.

7. The sole argument of the petitioner is that he was exonerated by enquiry officer, thus, disciplinary authority could punish him after conducting proper enquiry and recording reasons. The authority had failed to comply with mandate of law.

8. From the perusal of record, it is evident that Disciplinary Authority before passing order of punishment, issued a show cause notice to petitioner and he filed reply to said show cause notice. Disciplinary Authority considered evidence on record as well as submissions of petitioner and thereafter passed a reasoned order. The appellate authority has also passed a reasoned order. The Labour Court considered all the submissions of the petitioner and thereafter passed impugned order. The relevant extracts of findings of Labour Court, for the ready reference, are reproduced as below :

9 I have very thoughtfully considered the rival contentions of both the parties. The workman is aggrieved that the management has imposed penalty against principles of natural justice and punishment imposed on the workman is unjust and illegal. Now this Court is to see whether there is any merit in claim of the workman. The workman was charge sheeted as there was allegation against him that during night duty he had sneaked into room and tried to play mischief. The Inquiry Officer exonerated him but the Managing Director did not agree with the findings of the inquiry Officer. The workman has strongly contended that the Managing Director has not



assigned any reasons of disagreeing with the report of the Inquiry Officer but after perusing order of Managing Director it reveals that the arguments of learned representative of the workman is misplaced as the Managing Director while disagreeing with the order of Inquiry Officer has assigned reasons for disagreeing with the inquiry report. A show cause notice was issued to the workman to which he replied and was also given personal hearing and thereafter order dated 5th June, 2003 was passed. The workman preferred an appeal against this order and the Chairman while deciding the appeal has assigned reasons while upholding orders of the Managing Director and passed detailed order so it cannot be said that penalty was imposed by the management in a mechanical way without application of mind. In fact the reasons have been recorded by the Managing Director and the Chairman for disagreeing with the findings of the Inquiry Officer. The punishing authority is not bound to agree with the findings of the Inquiry Officer and I do not find any reason to interfere with the findings of the Managing Director and Chairman which has been done after following the principles of natural justice and giving full opportunity to the workman. Accordingly, this issue is decided against the workman and in favour of the management.

9. From the reading of orders passed by Disciplinary Authority, Disciplinary Authority, Appellate Authority, Labour Court it comes out that all the authorities have recorded concurrent findings. There was no jurisdictional error. All the authorities have recorded findings of fact.

The findings are based upon appreciation of evidence.

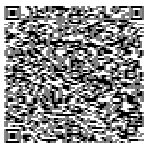


10. Different Benches of Supreme Court including a Constitution Bench in **Syed Yakoob Vs K.S. Radhakrishnan, AIR 1964 SC 477** and a two judge bench recently in **Central Council for Research in Ayurvedic Sciences and another Vs Bikartan Das and others 2023 SCC Online SC 996** have reminded us that 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.

10.1 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



CWP-27159-2015

7

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. In view of concurrent findings recorded by various authorities and afore-cited judgments of Supreme Court, the present petition deserves to be dismissed and accordingly dismissed.

02.08.2024

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(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : Yes