



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

205

CWP-26473-2016

Date of Decision : 22.11.2024

MAHENDER PAL

.... PETITIONER

V/S

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-1, GURGAON & ORS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Suresh Kumar Kaushik, Advocate
for the petitioner.

Mr. Sumit Jain, Advocate
for respondents No.2 to 5.

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 16.09.2016 (Annexure P-4) whereby Labour Court has declined his reference.

2. The petitioner claims that he worked as Chowkidar on daily wage basis with respondent from 22.01.1996 to 22.09.2000. He was terminated without complying with mandate of Section 25-B read with Section 25-F of Industrial Disputes Act, 1947 (for short 'ID Act'). He in



1997 approached Civil Court apprehending his termination. The Civil Court dismissed his suit in April' 2000. He preferred appeal which was dismissed in default. He approached this Court which directed the Appellate Court to restore the appeal. The petitioner did not argue the matter on merits but opted to withdraw his appeal with liberty to avail remedies as permissible by law. His appeal was dismissed on 22.02.2013 with liberty to avail remedies. He served demand notice in 2015 and matter reached to Labour Court which by impugned order has answered the reference against him.

3. Mr. Suresh Kumar Kaushik, Advocate submits that findings recorded by Labour Court are contrary to record. The petitioner has duly led oral and documentary evidence in support of his contention but Labour Court has mechanically dismissed his reference.

4. The relevant extracts of findings recorded by Labour Court are reproduced as below :

“10. At the outset, the workman claims to have remained employed under the respondent No.III. However, the respondent No.III has strongly contested the above-said claim of the workman. It is settled law that the onus to prove a fact is upon the party that pleads the existence of such fact. Accordingly, the onus was upon the workman to prove his above said claim by adducing cogent evidence. It is necessary to refer to the evidence adduced by the workman in this behalf.

11. In support of his case, the workman examined himself as a witness (PW-1). Appearing as a witness, the workman reiterated the averments as made by him

2024:PHHC:154003



in his claim statement. However, the workman is a highly interested witness and is bound to depose in his own favour. Accordingly, the deposition of the workman can be relied upon by the Court only if the same is corroborated by some independent cogent documentary evidence.

12. Further, the workman has examined Sh. Gajraj Singh 12 PW-2) and Barfi Devi (PW-3) as witnesses in support of his case. Both the above-said witnesses have deposed in favour of the workman. However, both the above-said witnesses have failed to produce any document to prove that the workman had remained in the employment of the respondents at any stage. Both the above-said witnesses have also failed to produce any other evidence to establish the claim of the workman. In this background, it is apparent that the both the witnesses are tutored witnesses and their depositions cannot be relied upon by the Court.

13. Further, the workman has relied upon documents Ex.P-1 to P-34 in support of his case. However, it is important to note that all these documents do not bear any stamp of respondents. Admittedly, all the above-said-documents are the photocopies of some documents. The above-said photocopies have not been authenticated by the respondents. The original documents in respect of the above-said photocopies are also not produced before the Court. It is not explained as to why the original documents in respect of above-said photocopies have been withheld from the Court. Consequently, the above-said documents produced by the workman do not prove his case in any manner.

14. Thus, it would be seen that the workman has not



adduced any cogent evidence to prove that he remained employed under the respondents at any stage.”

5. It is settled law that High Court while adjudicating writ petition against award of Labour Court cannot act as Appellate Court. The Court cannot reappreciate evidence examined by Labour Court. The scope of interference in the orders passed by Tribunals is very limited.

Constitution Bench in **Syed Yakoob Vs K.S. Radhakrishnan, AIR 1964 SC 477** and a two judge bench of Supreme Court 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.

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.

In the case in hand, the Labour Court has recorded factual finding and there is no material irregularity or infirmity in those findings.

6. There is another aspect of matter which needs to be taken care of. The petitioner claims that he was terminated on 22.09.2000. He approached Civil Court in 1997 i.e. much prior to his termination. He did not approach Civil Court or Labour Court till 2015 against his termination. There was inordinate delay on the part of petitioner in approaching the Labour Court against termination. During the period in question, no specific period for approaching Labour Court was prescribed, however, the petitioner was bound to approach Labour Court within reasonable period of limitation especially when he was so vigilant that he approached Civil Court even prior to his termination.

7. The findings recorded by Labour Court are findings of facts; there was delay of more than 15 years on the part of petitioner in



approaching of Labour Court and a period of 24 years from the date of his termination has passed away, thus, this Court keeping in mind judgment of Supreme Court in **Central Council for Research in Ayurvedic Sciences (supra)** does not find it appropriate to interfere in the impugned order.

8. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

22.11.2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No