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

CWP-16267-2023

Date of Decision: 04.09.2024

BALRAJ

..... Petitioner

Versus

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-I, GURUGRAM AND ANOTHER**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ajay Bhardwaj, Advocate and
Mr. Jatinder Pal Singh, Advocate
for the petitioner.

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 20.01.2023 (Annexure P-12) whereby Labour Court has answered the reference against the workman.

2. The petitioner joined respondent company as Junior Associates in PRM Department on 15.12.2006. In July' 2012, a Labour unrest took place in the company. In the clash between Management and workers Union, one Officer of the Management was killed and factory was closed. The Management re-started its factory in August' 2012 and workers were asked to re-join. The petitioner due to his ill health could not re-join. He claims that he attempted to re-join in the last week of November' 2012 and Management did not permit him on one or another ground and thereafter issued charge-sheet alleging absence from duty.



The petitioner was compelled to tender apology in writing. Despite tendering apology, he was subjected to departmental inquiry. The Enquiry Officer declared him guilty and Management terminated him.

3. On the application of petitioner reference was made to Labour Court which by impugned order dated 20.01.2023 (Annexure P-12) has answered against him. The relevant extracts of findings recorded by Tribunal are reproduced as below:

“9. Ex.M-S is copy of Show Cause Notice dated 06.10.2012, Ex.M-8 is copy of Reply dated 19.12.2012 submitted by claimant, Ex.M-1 is copy of Charge Sheet dated 12.02.2013, Ex.M-6 is copy of Reply dated 18.02.2013, filed by claimant, Ex.M-2 is copy of Letter dated 19.03.2013 whereby respondent had informed the claimant that since the management was not satisfied with the explanation submitted by him, it had decided to conduct domestic enquiry and for this purpose Sh. Sudhir Chauhan was appointed as Enquiry Officer. Ex.M-10 is copy of Enquiry Proceedings (running into 22 pages) whereas Ex.M-11 is copy of Enquiry Report dated 14.05.2013 filed by the EO. During his cross-examination, the claimant (PW-1) admitted that he had received Show Cause Notice dated 06.10.2012 as well as Charge Sheet dated 12.02.2013, which were duly replied by him. He also admitted that during the enquiry proceedings, he was provided with copy of Standing Orders.

10. A bare reading of Ex.M-10 i.e. copy of Enquiry Proceedings shows that the same is bearing signatures of claimant on each and every date of hearing. Also, during his cross-examination, the claimant (PW-1) admitted that he was present on every date of hearing and put his signatures on each day's proceedings. A



further perusal of Ex.M-10 reveals that on first date of hearing i.e. 23.03.2013, the claimant as well as representative of management had come present, to whom the EO had explained the procedure of enquiry. The request made by claimant to be represented through Sh. Annu was acceded to and the enquiry was adjourned to 05.04.2013.

11. On 05.04.2013, the claimant accepted few of charges but disputed the others so, the management was directed to produce its evidence on 16.04.2013, when the management had produced list of documents as well as list of witnesses. Ex.M-3 is copy of Letter dated 20.03.2013, whereon the claimant had endorsed on 16.04.2013 that he had received the documents as well as list of witnesses. On next date of hearing i.e. 20.04.2013, the management had examined two witnesses namely Lalit Priya, Representative of respondent and Kuldeep Singh Kataria, Manager as MW-1 and MW-2 respectively, who were cross-examined by the claimant. On next date of hearing i.e. 29.04.2013, the management examined Ram Ratan Yadav, Training HR as MW-3, who was also cross-examined by the claimant where after the management closed its evidence. On next date of hearing i.e. 03.05.2013, the claimant got recorded his statement as WW-1 and closed his evidence.

12. In his claim statement, the claimant has pleaded that the EO had not considered the material evidence produced by him (claimant) however, the same is not proper because a perusal of Ex.M-10 i.e. copy of Enquiry Proceeding shows that except making self serving statement, the claimant had not led any other oral or documentary evidence except Reply dated 19.12.2012, copy of which is available on court file as Ex.M-8 and his medical document, which were duly



considered by the EO in Ex.M-11 i.e. copy of Enquiry Report.

13. Learned AR for claimant contended that the claimant was not paid any amount during the period of enquiry and on this ground, the enquiry report was liable to be set aside. The contention is not sustainable because only an employee, who has been under suspension, is entitled to get the suspension allowance. In the instant case, the claimant was not placed under suspension so, he was not entitled to get any amount during the enquiry. It is a separate matter that no application in this regard was ever filed by claimant before the EO. It implies that plea in this regard is result of afterthought.

14. Another argument raised on behalf of claimant is that he was not given proper opportunity to defend. Even this argument is bereft of merits because a bare perusal of Ex.M-10 i.e. copy of Enquiry Proceedings shows that the EO had afforded proper opportunity to the claimant to defend him, which was duly availed by him by way of cross-examining the witnesses produced by the management as well as by leading his evidence.

15. Needless to say that fair and proper domestic enquiry was got conducted by the management against the claimant, wherein all the principles of natural justice were followed. Resultantly, issue No.1 stands decided against the claimant.”

4. On being confronted with findings of Labour Court, learned counsel for the petitioner expressed his inability to point out any jurisdictional error or manifest infirmity/illegality warranting interference.

5. 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.

6. 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.

7. From the perusal of findings recorded by Labour Court, it is evident that Management had conducted proper inquiry and there is no jurisdictional error or patent illegality in the impugned order warranting interference. The petitioner was concededly absent from duty. He claims that he attempted to re-join in November’ 2012 whereas Enquiry Officer found that he was absent till February’ 2013. These are pure findings of fact and Labour Court being last fact finding authority has already upheld order of termination.

8. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

04.09.2024
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>