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

CWP-19970-2024

Date of Decision:20.08.2024

THE EXECUTIVE ENGINEER UHBVN SONEPAT FAZILPUR

..... Petitioner

Versus

**THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL CUM
LABOUR COURT PANIPAT AND ANOTHER**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. R.D. Bawa, Advocate and
Mr. Rishabh Rana, 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 12.04.2024 (Annexure P-5) whereby Labour Court has answered reference in favour of workman.

2. The workman joined as Truck Cleaner on 03.09.2008 on D.C. Rate. The petitioner claims that after 2019, the permit of the truck was not extended and workman was asked to work as Sewadar after 26.09.2019. He worked as Sewadar till 10.09.2020. The Management terminated his services vide memo dated 10.09.2020.

3. Mr. R.D. Bawa, Advocate submits that no work is available for workman, thus, Management has terminated his services. He may be



paid compensation, however, he cannot be ordered to be reinstated.

4. I have heard the arguments and perused the record.

5. The Labour Court has considered all the arguments raised by the petitioner and held that workman is entitled to reinstatement with 25% back wages from the date of claims statement i.e. 11.05.2022. The relevant extracts of impugned award dated 12.04.2024 are reproduced as below:

“Now, if we take a look on the evidence on record, the claimant has filed his affidavit Ex.CWI/A reiterating the stand taken in the claim statement. It has been stated that the claimant had joined respondent on 03.09.2008 and worked till 15.10.20 and claimant continuously worked with the respondent and had also completed 240 days of continuous service in the 12 calendar months from the date of alleged termination of his services. In cross-examination CW-1 Vikram stated that it is correct that there was agreement with the department as per which the department could have removed him from service any time that it is correct that he had received the letter regarding the diesel vehicle which has completed 10 years. The witness admitted that vehicle belonged to the govt. and thereafter for about one year department continued to take work from him on the post of peon.

12. RW-1 Sh. Ashwani Kaushik, XEN (OP) S/U Divn. UHBVN, Sonapat has filed his affidavit Ex.RWI/A reiterating the stand taken in the written statement. In cross-examination, this witness stated that it is correct that respondent department had appointed claimant on 03.09.2008. That as per policy, claimant had been appointed for six months. That notice had been given to claimant on 10.09.20 for being removed from the job and thereafter the claimant was removed. The witness stated that final notice



was given on 15.10.20. That extension used to be given by the department to the claimant after every six months and one day gap was given to the claimant and claimant continued on the job. That after seeing the record, he could tell that when claimant was appointed for six months by the department, he had not been given extension. That he could tell after seeing the record as to when the registration of the truck expired on which the claimant was cleaner. That he did not know if claimant was kept as Sewadar after 28.09.2019. That it is correct that the record regarding the service and salary of the claimant is with the department. That he could not show that claimant worked every year at least 240 days.

13. Perusal of Ex.R-1 reveals that the same is copy of memo No.77/outsourcing dated 03.09.2008 by which approval had been granted to engage minimum persons as per requirement against vacant posts and name of claimant finds mentioned in this letter Ex.R-1 on DC rate for the post of Truck Cleaner. Ex.R-2 is the service agreement, Ex.R-3 is the notice of termination dated 10.09.20, Ex.R-4 is the relieving letter dated 15.10.20, Ex.R-5 is the letter dated 04.05.22 sent by XEN Operation UHBVN, Sonapat addressed to ALC, Circle-1, Sonapat. Ex.R-6 is the policy for outsourcing of services/activities.

14. In view of above discussed evidence, it is evident that one thing is evident RW-1 Ashwani Kaushik, XEN admitted in his cross-examination that claimant was appointed on 03.09.2008. Notice of termination was given dated 10.09.20 whereas final notice was given on 15.10.20. RW-1 Ashwani Kaushik has also admitted that it is correct that department used to give extension to the claimant. The witness stated that after every six months one day gap was given to the claimant and claimant continued to work with respondent. Therefore, claimant was continuously working with respondent and giving of one day gap amounts to unfair



Labour Practice. Reliance can be placed upon judgment of Hon'ble Punjab and Haryana High Court in Jagan Nath Vs. Presiding Officer, Labour Court and others CWP No.18422 of 2006 date of decision 16.02.2009.

15. Further, the witness RW-1 Ashwani Kaushik was unable to tell as to when the registration of the truck on which the claimant was cleaner had expired. He further showed his ignorance that claimant worked as Sewadar after 26.09.2019. The witness has not denied that claimant did not work for more than 240 days every year. Ex.R-5 has been perused which is dated 4.05.22. There is specific recital in the affidavit of claimant in Ex. CW-1/A that truck had been stalled on 29.09.19 since the permit of the same was not renewed/extended and thereafter the claimant was made to work on the post of peon. No evidence has been brought on record by the respondent to show as to on which date the truck got stalled. Hence, if the claim of the claimant has to be believed that the passing of the truck was not done after 29.09.19, the memo No.165/S-65 dated 10.09.2020 by which notice of termination was given to the claimant itself goes on to show that the claimant was made to continued to work in the department for extended period up to 10.09.20. It has already been come in evidence that claimant had completed the continuous service of more than 240 days in the last calendar year preceding the date of alleged termination of his service. Hence, this issue is decided in favour of the claimant.

Relief

16. In view of my findings on the above-discussed issues, the claim of the claimant is accepted against the respondent and this reference is decided in favour of the claimant to the effect that the service of claimant was terminated illegally, hence, the claimant is ordered to be reinstated with continuity of service with 25% back wages from the date of



claim statement i.e. 11.05.2022 on the same terms and conditions as claimant had earlier been appointed and an Award is passed accordingly. Copy of this Award be sent immediately to Deputy Labour Commissioner, Rohtak for information and necessary action. Record of this Court be consigned to the records.”

6. From the scrutiny of impugned award and arguments of Mr. R.D. Bawa, Advocate, this Court does not find any jurisdictional error or manifest factual infirmity warranting interference. The workman had concededly worked with respondent for 12 years. The permit of the truck was not renewed after September’ 2019, however, workman continued to work till September’ 2020. The petitioner is a State Government undertaking. It cannot behave like a private organization. The Government is a model employer and if a public undertaking would leave its employees in lurch after availing service of 12 years, nothing can be expected from private organizations.

7. 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.

8. 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.

9. Considering the findings recorded by Labour Court and afore-cited judgments of Supreme Court, this Court is of the considered opinion that there is no jurisdictional error or manifest mistake or infirmity in the impugned order warranting interference.

10. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

20.08.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>