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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 25.08.2025***

+ **W.P.(C) 10718/2019**

SH. BIJENDRA SINGH

.....Petitioner

Through: Mr. Sunil Choudhary, Adv.

versus

M/S MURLIDHAR VIJAY KUMAR AND ORS.....Respondents

Through: Mr. Chirayu Jain, Adv. for R-1 & 2.

Mr. Jayesh Khandelwal and Mr. K.G

Gopalakrishnan, Adv. for R-3.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed under Article 226 and 227 of the Constitution of India impugning the award dated 08.01.2019 passed by the learned POLC-V, Dwarka Courts, Delhi [hereinafter referred to as "Impugned Award"]. By the Impugned Award, the learned Labour Court gave a finding that the Petitioner/Workman was not an employee but a professional freelancer accountant, and that the Petitioner/Workman was not terminated by the Respondent No.1/Management No.1 but that the Petitioner/Workman had abandoned his job and thus, learned Labour Court declined the Claim Petition filed by the Petitioner/Workman.

2. At the outset, learned Counsel for the Petitioner/Workman submits that since the offer of the Respondent/Management to take back the Petitioner/Workman on its rolls was rejected by the Petitioner/Workman before the learned Labour Court, the issue qua reinstatement would not survive. Accordingly, the challenge in the present Petition is limited by the



learned Counsel for the Petitioner/Workman to the ground of alleged illegal termination of the Petitioner/Workman.

3. Learned Counsel for the Petitioner/Workman submits that although it was the case of the Respondent/Management that the Petitioner/Workman was not their regular employee but a freelance professional and abandoned his job, the Respondent/Management failed to show any document/communication that was sent by the Respondent/Management to the Petitioner/Workman stating that he had abandoned the job. However, he fairly concedes that the Petitioner/Workman did not join services of the Respondent/Management despite the offer.

4. Learned Counsel for the Petitioner/Workman submits that his challenge in the present Petition is to the fact that the finding of abandonment of the job by the Petitioner/Workman was given by the learned Labour Court without the Respondent/Management leading any evidence, to show that the Petitioner/Workman had abandoned his job. Learned Counsel for the Respondent/ Management submits that the learned Labour Court had found the Petitioner to be a Workman and had also given a finding that he was employed with the Respondent/Management but did not show as to how the Petitioner/Workman had abandoned his job. Relying on the judgment of the Bombay High Court in ***Ocean Creations v. Manohar Gangaram Kamble and Anr.***¹ the Petitioner/Workman has contended that where the workman claims that his services were terminated by the employer without notice or inquiry and the employer contends that the workman had abandoned his duty, the Coordinate Bench of the Bombay High Court has

¹ 2013 SCC OnLine Bom 1537



held that for the employer to claim abandonment of services by the workman, the employer must issue a notice allowing resumption of duty and if the workman is still absent, hold a domestic inquiry. It is thus contended that since no notice was given by the Respondent/Management to the Petitioner/Workman, the termination was illegal.

5. Learned Counsel for the Respondent/Management on the other hand submits that the Petitioner/Workman was working with the Respondent/Management as a part time accountant receiving a monthly consolidate remuneration and, in any event, does not fulfil the criteria as set out under Section 2(s) of the Industrial Disputes Act, 1947. In addition, during the conciliation proceedings, a settlement was entered into with the Petitioner/Workman and payments were made to him in settlement of his final dues.

5.1 Learned Counsel for the Respondent/Management further submits that it is in view of this settlement that the Petitioner/Workman, in his Statement of Claim, filed by the learned Labour Court did not seek any back wages.

6. In addition, it is contended by the Respondent/Management that although, the averment of abandonment of duty by the Petitioner/Workman was set out in the Written Statement by the Respondent/Management, no evidence was led to dispel the same was led by the Petitioner/Workman. It is in these circumstances, that the Impugned Award was passed.

7. Learned Counsel for the Respondent/Management further submits that the Petitioner/Workman has failed to show any ground for interference with the Impugned Award before this Court.



8. In addition, learned Counsel for the Respondent/Management contends that the Petitioner/Workman has admitted in his cross-examination that as on the date of termination, there is nothing due to him by the Respondent/Management. Thus, based on this statement, there can be no further claims by the Petitioner/Workman.

8.1 Learned Counsel for the Respondent/Management further submits that so far as concerns the contentions in respect of violation of Section 25G and 25H of the Industrial Disputes Act, 1947 [hereinafter referred to as "ID Act"], no evidence was led qua the same. The Petitioner/Workman has failed to prove that there were more than 20 employees employed with the Respondent/Management to be an establishment within either of these definitions.

9. Briefly the facts are that the Petitioner/Workman was employed from the year 2005 as an Accountant with the Respondent No.1/Management. The last drawn salary of the Petitioner/Workman was Rs.10,000/- per month. It is not disputed that apart from salary, the Respondent/Management would pay benefits such as LIC premium, however it is the contention of the Petitioner/Workman that he was not granted Bonus, gratuity, ESI or other statutory dues.

9.1 While it is the case of the Petitioner/Workman that his services were terminated on January, 2014 without a cause, while it is the case of the Respondent/Management that the Petitioner/Workman abandoned his services at that time.

9.2 The Respondent has explained that between the end of December, 2013 and January/February, 2014, six Workmen abruptly left their jobs,



which included the Petitioner as well as the Petitioners in W.P.(C) 5003/2019, W.P.(C) 5028/2019 and W.P.(C) 6348/2019. It is contended that the Petitioner in W.P.(C) 6348/2019/Manoj Kumar @ Manphool had started his own business, in competition with the Respondent/Management and some of the others, including the Petitioner in the present case, had left the services of the Respondent to join his business which was called M/s Unique Petco India Pvt. Ltd.

10. The record reflects that a reference was sent to the learned Labour Court on 12.05.2015 which set out the following for adjudication:

“Whether there existed an employer employee relationship between the management and Sh Bijendra Singh S/o Late Sh. Ram Chandra Singh and if so, whether services of said Sh Bijendra Singh have been terminated illegally and/or unjustifiably by the management; and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Laws/Govt, Notification and to what other relief is he entitled and what directions are necessary in this respect?”

10.1 The Petitioner/Workman filed his Statement of Claim. The Respondent/Management filed its Written Statement admitting the employer-employee relationship between the parties as well as the year of the appointment. The Respondent/Management, however, as stated above, contended that the Petitioner/Workman has abandoned his job as Accountant in December, 2013. The learned Labour Court framed two issues. Firstly, whether the Claimant would not fall within the definition of a ‘workman’ as defined under Section 2(s) of the ID Act. The second issue that was framed was in terms of the ‘Terms of Reference’ which are produced above in paragraph 10 above.

11. The learned Labour Court examined the evidence lead before it and



found that the Petitioner/Workman is not covered under the definition of a Workman under Section 2(s) of the Industrial Disputes Act, 1947 and also found that although the Petitioner/Workman was initially employed as a part time Accountant, subsequently he became a full-time employee at an increased salary since the year 2005. The learned Labour Court further found that he continued as an Accountant with Respondent/Management till 2013.

11.1 The learned Labour Court gave a finding that the Petitioner/Workman was admittedly working with the Respondent/Management for the last 09 years while he was appointed at a salary of Rs.5,000/-, it had increased to Rs.10,000/- in 2014, which is more than the minimum wages applicable to a skilled Workman at that time.

11.2 The learned Labour Court then relied on the evidence to give a finding that the Petitioner/Workman was working as a freelancer accountant and that there is no employer-employee relationship between the Petitioner/Workmen and the Respondent No. 1/Management; and that the dues to the Petitioner/Workman were settled by virtue of an Undertaking/Affidavit, which was admitted by him during the course of his cross-examination. Thus, it was held that since there was no employee/employer relationship between the parties, the question of his termination of service would not arise and the Reference was decided and accordingly, the Claim Petition was dismissed. The relevant extract of the Impugned Award is set out below:

“34. The stand of the management is that the claimant was never their employee but was simply a part time Accountant who was paid as such w.r.t. the work being done by him.



35. This factum of being a part time Accountant has also been admitted by the claimant in para no.1 of his claim petition.

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40. Furthermore as discussed in Part D above, it is an admission on, the part of claimant himself that he was an associate of one Mr. Udham Singh who used to look after the accounts of the present management. The claimant also deposed that the said Sh. Udham Singh continued to look after the accounts of the management at least one to two years prior to 2013 which in such circumstances, must be 2011.

41 If Sh. Udham Singh was looking after the accounts work of the management up till 2011 in the words of the claimant, then there is no explanation from the side of the claimant as to what was the need on the part of the management to employ him as a full time Accountant from 2005 till 2013.

42 No management will employ two persons for the same job.

43. This non explanation on the part of the claimant again goes against him but rather prove the case of the management that he was an associate of Sh. Udham Singh and looking after the account works as a part time Accountant only.

44. Hence, in view of the discussion made above, the court hereby comes to the conclusion that there was no relationship of employer and employee between the parties but rather the claimant was a professional free lancer Accountant.”

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46 In view of the outcome of the first term of reference as above, the court having held that the claimant was not an employee of the management, the question of termination of his services by the management could not have arisen. Accordingly, this term of reference is also allowed in favour of the management.

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50. Hence, seen from any angle, there remains no doubt that in these circumstances, it stand proved that the claimant was not an employee of the management and even w.r.t. his work as a professional free lance Accountant he has settled all his dues with the management via Ex.WW1/M1.

51. The next term of reference is to decide as to what sum of money as monetary relief along with other consequential benefits in terms of existing laws and to what other relief is claimant entitled to.

52. In view of the aforesaid discussions, the question of grant of any sum of



money as monetary relief or any other benefit to the claimant do not arise.”

[Emphasis supplied]

12. It is settled law that in a Petition challenging an Award of the learned Labour Court, the High Court is not to reappreciate the facts and evidence. All that is required to be done is to check jurisdictional errors or an error of law which is apparent on the face of the record. The Supreme Court in case of *Syed Yakoob v. K.S. Radhakrishnan & Ors.*², held that while exercising jurisdiction under Article 226, the High Court is not to reappreciate all the facts and evidence as an appellate court. The sufficiency or adequacy of evidence and factual inferences drawn therefrom are matters exclusively within the tribunal's domain and cannot be reopened in writ proceedings. The relevant extract is set out below:

*“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. **A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is 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 properly, as for instance, it decides a question without giving an opportunity, 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***

² 1963 SCC OnLine SC 24



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 Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168])

[Emphasis Supplied]

13. The Respondent/Management has laid emphasis on the fact that no evidence was placed on record in respect of the contention of the Petitioner/Workman that he was entitled to gratuity, Provident Fund and other such benefits. It is thus contended that there is no proof that the Respondent/Management employed more than 20 persons so as to be statutorily liable to make these payments.

14. The evidence of the Petitioner/Workman lead before the learned Labour Court shows that he was working with multiple concerns and that the person with whom he was working-Mr. Udham Singh had been outsourced work. The relevant extract of the cross-examination of the Petitioner/WW-1 conducted on 07.08.2018 is set out below:

“It is correct that Mr Udham Singh has been outsourced the work of accountancy of M/S Patro India and as such I used to work with him during the period 1997 to 2004. Vol. Mr Udham Singh was dealing with not only the work of M/S Patro India but the work of present management also. I was terminated by the management of M/S Shri Durga Laghu



Udyong, Swadesh Enterprises, Tayal Oil Solvent and Chemical, Murlidhar Vijay Kumar and Indian International in 2013.

India International is the proprietorship concern of Sh Naval Kishore Aggarwal.

Murlidhar Vijay Kumar is a partnership firm consisting of Sh Narender Aggarwal and Sh Vijay Kumar.

Swadesh Enterprises is the proprietorship firm of Sh Neeraj Sanghi.

Tayal Oil Solvent and Chemical is the proprietorship firm of Sh Ravi Aggarwal.”

[Emphasis supplied]

14.1 So far as concerns the factum of the payment the same was not denied by the Petitioner/Workman. The Petitioner/Workman has also admitted to executing a Settlement Agreement before the Patiala House Courts. It is apposite to extract the relevant part of the cross-examination of the Petitioner/WW-1, which is set out below:

*“Sh Udham Singh was not doing the work of the present management around 1-2 year prior to 2013. As per my knowledge no one replace Sh Udham Singh. **I admit the document Ex WW1/M1 bearing my signature and TI and its contents.** I do not know anyone by the name of Sh Arjun who has put his signature at point A on Ex WW1/M1. It is wrong to suggest that I intentionally denying acquittance with Mr Arjun.*

*Vol. **The above Ex WW1/M1 was signed by me at Patiala House Court where I was called by the management to settle the matter** and on the pretext of settling the matter, they obtained my signature on the said Ex which was prepared by them before hand under keeping me on a false impression that I will be paid settlement amount but instead of paying the same, they left the Patiala House Court premises with the said **Ex. I presented myself before Notary Public at the time of getting the same attested.** Again said that I had not presented myself before Sh Nathu Ram - EM whose signature and rubber Stamp are appearing at point B. I did not lodge a complaint w.r.t getting my signature on Ex WW1/M1 without making payment as I did not consider it as a criminal offence. I was assured a payment of Rs 8 lacs as settlement amount verbally by the management. It is wrong to suggest that in order to evade tax, the said amount of Rs. 8 lacs was not got mentioned in Ex WW1/M1 by myself. **It is wrong to suggest that no such figure of Rs. 8 lacs was ever assured by the management. It is correct that the said fact has not got***



***mentioned in the claim petition.** I was not a member of any Union as on the date of alleged termination. As on the date of my alleged termination except Sh Vijay Kumar, the other persons named earlier were involved with the management of M/S Murlidhar Vijay Kumar. I am not aware about the composition of M/S Murlidhar as on the date of my alleged termination. I stand by earlier deposition w.r.t composition of the firm except Murlidhar Vijay Kumar qua which I have stated just now.”*

[Emphasis supplied]

15. This Court has also examined the order sheet before the learned Labour Court. The order dated 14.09.2017 records that the authorised representative of the Management states that the Management is ready to take the Workman back to work without prejudice to the rights in the matter. It further sets out that the representative of the Workman would inform the Court as to whether the Workman is ready to join his duties or not. The matter was thereafter adjourned. However, the order dated 01.02.2018 records that the Workman is present in Court and he states that he is not willing to return back to his duties. It is apposite to extract the relevant extract of the orders dated 14.09.2017 and 01.02.2018 in this behalf below:

“Order dated 14.09.2017

Proxy AR for the workman seeks adjournment on the ground that main AR is unwell today.

AR for the managements submits that management has already given its offer to workman to join back duties and he also submits that willingness of workman may be sought in this regard. Workman submits that today his main AR is not available and he will make his submissions in this regard in his presence.

On request, put up for tendering affidavit of workman, his cross-examination as well as remaining evidence of workman on 01.02.2018. Workman is directed to supply advance copies of affidavits of his witnesses to the AR for the management atleast one week before next date of hearing.

Order dated 01.02.2018

The matter is fixed today for the purpose of workman evidence. However, during the course of tendering the affidavit it has been brought to the



knowledge of the court that certain documents have not been filed in original.

Adjournment sought to summon the originals placed in the file of concerned Labour Commissioner. Liberty granted.

In terms of previous order, the court has asked the workman as to whether he want to loin the duties to which the workman stated that he does not want to join the duties. Let the same be made part of record.”

[Emphasis supplied]

16. An examination of the Statement of Claim that has been filed along with the Petition clearly shows that the Petitioner/Workman has only sought payment of his dues in the matter, pertaining to overtime provident fund, gratuity, bonus, etc. No claim for back wages or other demands has been made. A demand letter dated 07.02.2014 claiming reinstatement was also sent. However, the Petitioner/Workman did not join the services of the Respondent/Management even though they offered to take him back in the year 2017. This reflects the intention of the Petitioner.

17. The learned Labour Court has found that the Petitioner/Workman failed to prove that he was a full time employee of the Respondent/Management and has found him to be a part-time employee and that the Petitioner/Workman failed to prove his employment. An examination of the evidence as reproduced does not show otherwise.

17.1 In any event and undisputably however, once a dispute was raised by the Petitioner/ Workman, the Respondent/Management did offer the job back to the Petitioner/Workman, as is recorded above and this offer was rejected by the Petitioner/Workman.

18. The surrounding circumstances in the present case however are that six persons, [four of whose petitions are listed before this Court] were



working on several posts such as assistants, accountants, field representatives, etc. for an extended period of time, all six persons leave the services. Two of those persons Petitioner Shiv Kumar and Petitioner Bijender settled their dues and left their employment. All six persons file a statement of claim not for back wages but for allowances such as over time, bonus etc. The Respondent/Management finds out that one of the persons has set up his own competing business. The offer of reinstatement that was made to the Petitioner after the Claim Petition was filed, was also rejected.

19. No evidence is adduced in respect of over time work, bonus or other requirements. The Workmen have been unable to show that the Respondent/Management employed more than 20 persons, so as to be liable for payments of statutory dues such as provident fund, bonus, gratuity, etc.

20. As set out above, it is settled law that this Court is not required to act as an Appellate Court to re-examine and reappreciate the evidence unless jurisdictional error or errors of law apparent on the face of the record can be seen. In the **Syed Yakoob** case, the Supreme Court has held that although the jurisdiction of the Writ Court is supervisory in nature, it is not entitled to act as the Appellant Court. If there is a finding based on no evidence, then this Court can interfere with the Award passed by the learned Labour Court. The findings which have been discussed above have been made based on the evidence produced before the learned Labour Court.

21. The examination by this Court does not show any jurisdictional error so as to interfere with the Award passed by the learned Labour Court.

22. The Petition is accordingly dismissed.



2025:DHC:8368



23. The parties will act based on the digitally signed copy of the order.

AUGUST 25, 2025/r/gj

TARA VITASTA GANJU, J