

**(2023) 05 SHI CK 0048**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No.2518 Of 2017**

Dalesh Kumar

APPELLANT

Vs

Himachal Road Transport Corporation And Others

RESPONDENT

**Date of Decision :** 15-05-2023

**Acts Referred:**

Constitution Of India, 1950 — Article 136, 226, 227  
Industrial Disputes Act, 1947 — Section 10, 25F

**Citation :** (2023) 05 SHI CK 0048

**Hon'ble Judges :** Tarlok Singh Chauhan, J; Satyen Vaidya, J

**Bench :** Division Bench

**Advocate :** Manohar Lal Sharma, Raman Jamalta

**Final Decision :** Dismissed

## Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for the following substantive reliefs:

“(i) That the award dated 30.06.2017, Annexure PE, passed by the learned Tribunal-cum-Labour Court, may kindly be set-aside.

(ii) That the oral termination dated 11.10.2012 of the petitioner may kindly be quashed and set-aside by holding the same as illegal and arbitrary.

(iii) That the respondents may kindly be directed to reinstate the service of the petitioner w.e.f. 11.10.2012 by holding the petitioner as the employee of the respondent-corporation, with all consequential benefits i.e. Seniority, back wages and regularization in the interest of justice and fair play.”

2. The petitioner had raised an industrial dispute which was referred by the appropriate Government under Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') to the adjudication of the Industrial Tribunal-cum-Labour Court, Shimla (for short, 'the Tribunal') in the following terms:

"Whether termination of services of Sh. Dalesh Kumar S/o Sh. Manphool Singh R/o H.No. 145, Manphool Niwas, Ward No. 13, Cleangaon, Tehsil and District Solan, H.P. during October, 2012 by i) The Managing Director, HRTC, Shimla-3, H.P. ii) The Regional Manager, HRTC, Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman is legal and justified? If not, to what amount of back wages, past service benefits, seniority, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/management?"

3. The Tribunal vide award dated 30.6.2017 passed in Reference No.78 of 2015, answered the reference in negative and claim of petitioner was denied. Aggrieved against the award passed by learned Tribunal, petitioner has filed the instant petition for the reliefs as noticed above.

4. As per the claim of petitioner, he was engaged as a Part Time Sweeper by the respondent- Himachal Road Transport Corporation (for short 'HRTC') w.e.f. 12.5.1999 on the fixed emoluments of Rs.1000/- per month. His salary was enhanced to Rs.2000/- per month in the year 2000. Petitioner contends that he continuously worked thereafter till 11.10.2012, on which date, his services were illegally terminated without compliance of Section 25-F of the Act and also in violation of the principles of natural justice.

5. It is further the case of petitioner that the services of similarly situated persons were regularized by the HRTC and when petitioner also represented for regularizing his services, he was terminated. With such claim, petitioner had approached the learned Tribunal after the reference was made.

6. The HRTC contested the claim of petitioner precisely on the ground that the initial engagement of petitioner was as Part Time Sweeper, however, in 2003, the tenders were called by the HRTC for sweeping services. Petitioner also submitted his bid and being the L-1 he was awarded the work. Initial contract was for 11 months which continued to be renewed for 11 months each time and remained in force till May, 2012. The HRTC also alleged that thereafter petitioner or any of his worker did not attend the work and hence, the contract stood terminated.

7. In rejoinder, petitioner submitted that he had been assigned the duty of Peon and office massager. He further submitted that one similarly situated person named Raju was regularized by the respondent-HRTC, whereas, the petitioner was discriminated.

8. Learned Tribunal framed the following issues:

1. Whether the termination of the services of the petitioner during October, 2012 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

OPP

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is

entitled to?

OPP

3. Whether the petition is not maintainable?

OPR

4. Relief.

9. Issues Nos. 1 and 3 were returned in negative, issue No.2 was held as redundant and accordingly the reference was answered in negative.

10. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

11. Learned Tribunal returned its findings on facts as under:

"12. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that initially the petitioner was engaged on 12.05.1999 as a part time sweeper by the respondents but thereafter he had worked as a contractor w.e.f. the year, 2003 for sweeping and cleaning the premises of the respondents for a period of eleven months and the said contract was continuously renewed from time to time. The copies of the agreements have been tendered in evidence as Ex.RW-1/A. The perusal of the aforesaid agreement shows that the petitioner had signed the agreements as a contractor. No evidence to the contrary has been placed on record by the petitioner. It is not the case of the petitioner that he has not signed the agreements Ex. RW-1/A. Therefore, the perusal of the entire evidence on record shows that the work of sweeping and cleaning of the premises had been awarded to the petitioner by the respondents from the year, 2003 onwards and the contract was being renewed from time to time as such it cannot be said that the petitioner was engaged on any regular post by the respondents."

12. Learned Tribunal has returned a specific finding of fact that the petitioner was not a workman rather he had agreed to work for HRTC on contract. Reliance has been placed on the agreements executed between the HRTC and petitioner, from time to time, as Ext.RW-1/A. Learned Tribunal further held that no evidence to the contrary had been placed on record by petitioner and it was also not the case of petitioner that he had not signed the agreements. Petitioner even before this Court has not been able to show that the findings returned by learned Tribunal were not borne from the records.

13. Above are pure findings of fact. The question arises whether this Court in exercise of jurisdiction under Article 226 of the Constitution of India can interfere with the findings of fact returned by statutory Tribunal, if so, to what extent?

14. The scope to interfere with the findings of fact returned by learned Labour Court-cum-Industrial Tribunal has been expounded by Hon'ble Supreme Court in General Manager Electrical Rengali Hydro Electric Project, Orissa and others vs.

Giridhari Sahu and others (2019) 10 SCC 695 as under:

"20. An erroneous decision in respect of a matter which falls within the authority of the Tribunal would not entitle a writ applicant for a writ of certiorari. However, if the decision relates to anything collateral to the merit, an erroneous decision upon which, would affect its jurisdiction, a writ of certiorari would lie. See *Parry & Co. Ltd. vs. Commercial Employees Association* AIR 1952 SC 179. The scope of writ of certiorari came in for an elaborate consideration by this Court in *T.C. Basappa v. T. Nagappa* AIR 1954 SC 440. Therein, this Court, inter alia, held as follows: (AIR p.444, paras 7, 9 & 10)

"7. ... The second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari the superior court does not exercise the powers of an 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 offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person [ Vide *Per Lord Cairns in Walsall Overseers v. London and North Western Railway Co.*, (1878) LR 4 AC 30].

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9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances [Vide *Halsbury*, 2nd Edn., Vol. IX, p. 880]. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess [ Vide *Banbury v. Fuller*, (1853) LR 9 Exch. 111; *R v. Income Tax Special Purposes Commissioners*, (1888) LR 21 QBD 313].

10. A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law." (Emphasis supplied)

21. In *Hari Vishnu Kamath v. Ahmed Ishaque & Ors.* AIR 1955 SC 233, this Court held: (AIR pp.243-44, paras 21 & 23)

"21. ... On these authorities, the following propositions may be taken as

established:

(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.

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23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. ...

The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.” (Emphasis supplied)

22. The question arose in *Dharangadhara Chemical Works Ltd. v. State of Saurashtra and others*, AIR 1957 SC 264. The question was whether the finding by the Tribunal under the Act about the party respondents being workmen was liable to be interfered with. After dealing with various tests relating to determining the issue, this Court also made the following observations: (AIR p. 269, para 19)

“19. ... It is equally well settled that the decision of the Tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless at the least it is shown to be fully unsupported by evidence.”

(Emphasis supplied)

23. A Constitution Bench of this Court, in *Syed Yakoob v. K.S. Radhakrishnan and another* AIR 1964 SC 477, has spoken about the scope of Writ of Certiorari in the following terms: (AIR pp. 479-80, para 7)

“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 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 a 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 Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque* [AIR 1955 SC 233] , *Nagendra Nath Bora v. Commr. of Hills Division and Appeals* [AIR 1958 SC 398] and *Kaushalya Devi v. Bachittar Singh* [AIR 1960 SC 1168])."

(Emphasis supplied)

24. We may more importantly also advert to the view expressed by this Court in a matter which again arose under the Act in *M/s. Perry and Co. Ltd. v. P.C. Pal*, AIR 1970 SC 1334. It was a case related to the scope of the jurisdiction of the Tribunal in the matter of retrenchment under Section 25F. This is what the Court held *inter alia*: (AIR p. 1340, para 11)

"11. The grounds on which interference by the High Court is available in such writ petitions have by now been well established. In *Basappa v. Nagappa*, it was observed that a writ of certiorari is generally granted when a court has acted

without or in excess of its jurisdiction. It is available in those cases where a tribunal, though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural justice where no particular procedure is prescribed. But a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown, can be so corrected. In *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* [(1957) SCR 152] this Court once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence. Likewise, in *State of Andhra Pradesh v. S. Sree Rama Rao* [AIR 1963 S.C. 1723] this Court observed that where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion interference under Article 226 would be justified. ...”

(Emphasis supplied)

25. We may advert to the decision of this Court in *Mukand Ltd. v. Mukand Staff & Officers’ Association* (2004) 10 SCC 460. We may only advert to the following paragraphs: (SCC pp. 486-87, paras 47-49)

“47. In support of his contention that this Court while exercising its power under Article 136 of the Constitution of India in an appeal from the judgment of the High Court rendered in exercise of its powers under Articles 226 and 227 of the Constitution of India will exercise the same power which the High Court could exercise and will not interfere with the finding of facts recorded by a Tribunal, learned counsel cited the judgment in the case of *Parry & Co. Ltd. v. P.C. Pal* [AIR 1970 SC 1334 : (1969) 2 SCR 976] . In the said case, this Court held as under:

(AIR p. 1341, para 13)

“13. Since this is an appeal arising from a writ petition for certiorari we also would not interfere with the conclusions arrived at by the Tribunal except on grounds on which the High Court could have done.”

48. In the case of *Fuel Injection Ltd. v. Kamger Sabha* [(1978) 1 SCC 156 : 1978 SCC (L&S) 33] this Court observed as under: (SCC p. 157, para 3)

“3. ....But the present appeals are from a judgment of the High Court under Article 226 and so the jurisdiction of this Court in entertaining an appeal by special leave under Article 136 must ordinarily be confined to what the High Court could or would have done under Article 226.”

49. In our view, the material that was placed before the Tribunal was not considered or discussed and that there was, as such, no adjudication by the

Tribunal. The whole award of the Tribunal, in our view, is liable to be set aside on the ground of non-application of mind by the Tribunal to the material on record. In the first place, the Tribunal has no jurisdiction to entertain and decide a dispute which covered within its fold "persons who are not workmen". That the material on record before the Tribunal as regards the comparable concerns was admittedly "sketchy" and incomplete as observed by the learned Single Judge of the High Court and that the award based on such material could not have been sustained."

(Emphasis supplied)

26. In Durga Das Basu "Commentary on the Constitution of India" 9th Edition, in regard to the concept of no evidence, we find the following discussion:

"No evidence' does not mean only a total dearth of evidence. It extends to any case where the evidence taken as a whole is not reasonably capable of supporting the finding, or where, in other words, no tribunal could reasonably reach that conclusion on that evidence. This "no evidence" principle clearly has something in common with the principle that perverse or unreasonable action is unauthorised and ultra vires. An order made without "any evidence" to support it is in truth, made without order made without "any evidence is worthless, it is equal to having "no evidence" jurisdiction."

(Emphasis supplied)

27. In fact, in the decision relied upon by the applicants, viz., S. Viswanathan (supra), it is, inter alia, held as follows: (SCC p. 196, para 12) "12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon...."

(Emphasis supplied)

28. On the conspectus of the decisions and material, we would hold as follows:

The jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of Certiorari will not don the cap of an Appellate Court.

It will not reappreciate evidence. The Writ of Certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a Tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to Certiorari jurisdiction, certiorari could be issued when a



jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice.

The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a Writ of Certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter 'off bounds' for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of Certiorari must also one which is apparent on the face of the record.

As held by this Court in Hari Vishnu Kamath (supra), as to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amendable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down [See M/s. Perry and Co. Ltd (supra)].

15. In the given circumstances, neither any jurisdictional error has been pointed out nor has this Court been able to find such error, therefore, impugned award passed by learned Tribunal needs no interference.

16. In result, the petition fails and the same is dismissed. Pending application(s) if any, also stands disposed of.