

**(2017) 04 SHI CK 0043**  
**In the High Court Of Himachal Pradesh**  
**Case No : 2417 of 2009**

|                                          |            |
|------------------------------------------|------------|
| H P STATE CIVIL SUPPLIES CORPORATION LTD | APPELLANT  |
| Vs                                       |            |
| PRESIDING JUDGE AND ANOTHER              | RESPONDENT |

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**Date of Decision :** 10-04-2017

**Acts Referred:**

<a href=3998>Constitution of India</a>, <a href=3998-14>Article 14</a>, <a href=3998-226>Article 226</a>, <a href=3998-16>Article 16</a> - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts to Issue certain writs - Dissolution of a District or a Regional Council  
<a href=1824>Industrial Disputes Act, 1947</a>, <a href=1824-25>Section 25</a>, <a href=1824-10>Section 10</a>, <a href=1824-2A>Section 2A</a>, <a href=1824-25F>Section 25F</a>, <a href=1824-25G>Section 25G</a> - Prohibition of financial aid to illegal strikes and lock-outs - Reference of disputes to Boards, Courts or Tribunals - Dismissal, etc., of an individual workman to be deemed to be an industrial dispute - Conditions precedent to retrenchment of workmen - Procedure for retrenchment

**Citation :** (2017) 04 SHI CK 0043

**Hon'ble Judges :** Sandeep Sharma

**Bench :** Single Bench

**Advocate :** Navlesh Verma, P P Chauhan

**Final Decision :** Dismissed

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## Judgement

1. By way of instant petition filed under Article 226 of the Constitution of India, petitioner-Corporation ("Corporation", hereafter) has laid challenge to the award dated 24.3.2009, passed by the learned Industrial Tribunal-cum-Labour Court, Shimla ("Tribunal", for short) in Ref. No. 17 of 2002, whereby reference has been answered against the Corporation.

2. Briefly stated facts, as emerge from the record are that respondent No.2-workman ("workman", hereafter) claimed that he was appointed as a Helper with the Corporation with effect from 23.12.1995. Being aggrieved with his termination by the Corporation, workman served a demand notice under Section

2A of the Industrial Disputes Act (in short, "Act") before the Labour Officer-cum-Conciliation Officer, Shimla but, since there was no amicable settlement of dispute inter se parties, matter was referred under Section 10 of the Act to the Tribunal below by the appropriate Government, for adjudication of following term of reference: "Whether the termination of the services of Shri Puran Dutt s/o Shri Bala Ram w.e.f. 5.2.1997 by the Managing Director, HP Civil Supplies Corporation Ltd. Shimla without serving notice and without complying section 25-F of the Industrial Disputes Act, 1947 is proper and justified? If not, what salary, seniority, service benefits and amount of compensation, the above workman is entitled to?"

3. Workman, by way of filing statement of claim before the Tribunal below stated that he was appointed as a Helper on daily wage basis with effect from 23.12.1995 for one month in the headquarters and then he continued with further extension and had completed 240 days in each calendar year prior to the alleged termination. He further stated that he was discharging his duties to the best of his abilities and entire satisfaction of his superiors. Workman further claimed that on 5.2.1997, his services were terminated by oral order without assigning any reason, which action of the Corporation was arbitrary, malafide and in colourable exercise of power. By way of aforesaid statement of claim, workman further claimed that the action of Corporation in resorting to offering him contract appointment instead of appointing him on ad hoc basis and subsequently on regular basis on a regular post, is/was in sheer violation of Rules, Regulations and Standing Orders as well as provisions contained in Articles 14 and 16 of the Constitution of India. Workman further claimed that his services were terminated solely with a view to prevent him from completing 240 days in each calendar year so that he may not become eligible to be regularized with the afflux of time. Workman further claimed that since while terminating his services, no speaking order was passed, same can not be allowed to be sustained being totally contrary to the provisions of law as contained in the Act. In the aforesaid background, workman claimed that since his termination was against the provisions of Sections 25-F, 25-G and 35-H of the Act, Corporation was estopped on account of its own act, conduct, deed and omission from issuing impugned order and Corporation was bound to retain his services till regularization in accordance with law, against the vacant post, on which he was already working.

4. Corporation, by way of filing detailed reply to the statement of claim, resisted aforesaid claim of the workman by raising preliminary objections that workman was not a "workman" and as such dispute, if any, before the Tribunal below was not maintainable. However, on merits, Corporation admitted that the workman had completed 240 days in calendar year and he was appointed on daily wage basis on 12.12.1995, vide order dated 5.2.1997, after obtaining ex post facto sanction in the case, on co-terminus basis with the appointment of Chairman and as such provisions of Section 25-F are not applicable as the appointment on daily wages was specifically for the limited period i.e. upto the tenure of the then

Chairman of the Corporation and after the resignation of the Chairman, on 24.1.1998, services of workman automatically ceased as per office order dated 5.2.1997. Corporation further contended before the learned Tribunal below that since the workman was initially appointed for a specific period with the tenure of the then Chairman, action of the Corporation in not continuing with the services of workman after expiry of the tenure of the then Chairman is/was in accordance with law and there is no requirement for the Corporation to comply provisions of the Act. Corporation specifically denied that the workman was appointed on regular basis and he was entitled to any notice under Section 25-F of the Act. Corporation specifically placing reliance upon order dated 5.2.1997, whereby services of workman were made co-terminus with the office of Chairman, claimed that there is no violation of any provisions of the Act and prayed for dismissal of the claim petition having been filed by the workman. Learned Tribunal below, on the basis of pleadings, framed following issues: "1. Whether the services of the petitioner were illegally terminated w.e.f. 5.2.1997 without complying the provisions of section 25-F of the ID Act, 1947? If so, its effect? OPP

2. If issue no. 1 is proved in affirmative, whether the petitioner is entitled for relief claimed? OPP

3. Whether the petition is not maintainable in the present form? OPR

4. Relief."

5. However, subsequently, vide award dated 24.3.2009, learned Tribunal below accepted the claim petition of the workman and answered the reference in the affirmative, against the Corporation. Vide aforesaid award, learned Tribunal below ordered reinstatement of the workman in service forthwith, with seniority and continuity in service, however, workman was not held entitled for back-wages. In the aforesaid background Corporation approached this Court, by way of instant petition.

6. Mr. Navlesh Verma, learned counsel representing the Corporation vehemently argued that impugned award is not sustainable in the eyes of law as the same is contrary to the provisions of law, as such, same deserves to be set aside. While referring to the impugned award passed by learned Tribunal below, Mr. Verma, strenuously argued that provisions of Section 25-F, 25-G and 35-H of the Act could not be made applicable in the present case as the Corporation does not fall under the category of "industrial establishment" or "industry", as such on this very ground, impugned award passed by the learned Tribunal below deserves to be set aside. Mr. Verma, contended further that the learned Tribunal below while adjudicating reference made to it, failed to appreciate that services of the workman automatically ceased strictly in terms of appointment order dated 5.2.1997, issued by it and as such there was no occasion for the Corporation to comply with the provisions contained in the Act. Learned counsel representing the Corporation, while placing reliance on order dated 5.2.1997 (Ext. PX), forcefully contended that learned Tribunal below miserably failed to appreciate

that workman was engaged as daily wage peon on co-terminus basis and his services were to be dispensed with automatically with the tenure of the Chairman of the Corporation. Learned counsel representing the Corporation further contended that the learned Tribunal below erred in coming to the conclusion that condition of appointment being co-terminus with the tenure of Chairman of the Corporation, was not incorporated in the appointment letter of the workman in 1995 and as such condition contained in the letter, which is of subsequent date, shows malafides on the part of the Corporation, which amounts to unfair labour practice. To substantiate his aforesaid argument, Mr. Verma argued that the learned Tribunal below failed to appreciate that once the workman had entered into service contract with the Corporation, and he was aware of the fact that his services would be terminated with the tenure of the Chairman of the Corporation, he could not be allowed to raise aforesaid issue at the time of adjudication of the reference by the learned Tribunal below. While concluding his arguments, learned counsel representing the Corporation contended that learned Tribunal below erred in concluding that the petitioner failed to comply with the mandatory provisions of law under Section 25 of the Act, while deciding issue No.1, without appreciating provisions contained in aforesaid provisions of law, because, admittedly, Section 25 of the Act is/was not applicable to the workman since he was appointed purely on co-terminus basis and his services were bound to be terminated with the tenure of Chairman as per service contract. In the aforesaid background, learned counsel representing the Corporation prayed that impugned award passed by learned Tribunal below may be quashed and set aside.

7. Mr. P.P. Chauhan, learned counsel representing the workman supported the impugned award passed by the learned Tribunal below. Mr. Chauhan, while referring to the impugned award passed by learned Tribunal below, strenuously argued that there is no illegality or infirmity in the same as such there is no scope of interference by this Court, especially in the writ proceedings, where findings of fact have been recorded by the Court below that too on the appreciation of the evidence adduced before it. While specifically inviting attention of this Court to impugned award passed by learned Tribunal below, Mr. Chauhan, stated that the learned Tribunal below has specifically returned its findings qua terms of reference as sent to it by the appropriate Government, for adjudication to demonstrate that the learned Tribunal below, while adjudicating the claim of the workman, Mr. Chauhan invited attention of this Court to the terms of reference made to the learned Tribunal below by the appropriate Government, for adjudication, to demonstrate that learned Tribunal below has rightly answered the reference, that too on the basis of evidence adduced on record by respective parties and by no stretch of imagination, it can be said that the learned Tribunal below exceeded its jurisdiction while adjudicating claim referred to it. Mr. Chauhan, further contended that it is admitted case of the parties that the workman was appointed with the Corporation with effect from 12.12.1995 and as such he continued till his illegal termination on 5.2.1997,

meaning thereby that the workman before his illegal termination had completed 240 days in preceding calendar year and as such there was a requirement of serving him with notice as envisaged under Section 25 of the Act. Apart from above, Mr. Chauhan, also invited attention of this Court to the award to suggest that question of jurisdiction, if any, of the learned Tribunal below to adjudicate the claim of the workman was never raised before the learned Tribunal below and as such same can not be allowed to be raised at this stage. Mr. Chauhan, further contended that only objection raised before the learned Tribunal below was that respondent No.2 was not a "workman" but no evidence worth the name was led on record to prove that he was not a workman and as such learned Tribunal below rightly concluded that before terminating services of workman, Corporation ought to have issued notice as envisaged under Section 25-F of the Act. While concluding his arguments, Mr. Chauhan contended that since workman had completed 240 days in calendar year, prior to his termination, it was incumbent upon the Corporation to have served notice upon him under Section 25-F of the Act. He further contended that there is no illegality or infirmity in the impugned award passed by learned Tribunal below and same is based upon correct appreciation of evidence adduced on record by the respective parties and as such there is no scope of interference by this Court, especially while exercising writ jurisdiction. While refuting the submissions having been made by the learned counsel representing the Corporation, Mr. Chauhan, contended that points raised before this Court by the learned counsel representing the Corporation were never raised before the learned Tribunal below, and as such, present petition deserves to be dismissed. Mr. Chauhan further contended that no cogent and convincing evidence was led on record by the Corporation to prove its case within the ambit of the question posed to the learned Tribunal below by the appropriate Government as such there is no force in the contentions of the learned counsel representing the Corporation.

8. During the proceedings of the case, this Court had an occasion to peruse the pleadings as well as documents annexed there to, perusal whereof clearly suggests that the learned Tribunal below while exploring answer to the specific term of reference has dealt with each and every aspect of the matter meticulously and this Court sees no force, much less substantial, in the arguments having been advanced on behalf of the Corporation that evidence adduced on record by the respective parties has not been dealt in its right perspective. It is admitted case of the parties that the workman was appointed as Helper with the Corporation with effect from 12.12.1995 and as such he continued to work till 5.2.1997, when his services were allegedly terminated illegally, without resorting to the provisions of Industrial Disputes Act. Workman while making statement of claim before the learned Tribunal below specifically stated that he was appointed as a Helper with the Corporation with effect from 12.12.1995, for one month but his services were extended from time to time and as such he completed more than 240 days in each calendar year. Workman further stated before the learned Tribunal below that though he was discharging

his duties to the best of his abilities and entire satisfaction of his superiors, but on 5.2.1997, his services were terminated by an oral order without assigning any reason. In his cross-examination, workman admitted that he was engaged as daily wager with Shri Singhi Ram, the then Chairman of the Corporation. However, workman denied the suggestion put to him that appointment was co-terminus with the Chairman. Workman admitted office order dated 5.2.1997 but specifically denied that his appointment was co-terminus with the office of Chairman. On the other hand, Corporation examined one Shri Attar Singh, Assistant Divisional Manager who deposed before the learned Tribunal below that workman was engaged as daily wage basis with the then Chairman on 12.12.1995 on co-terminus basis and in this regard, proved appointment letter Ext. PX on record. Aforesaid officer while placing reliance upon Ext. PX specifically deposed before the learned Tribunal below that workman has no legal right to claim his reengagement with the Corporation. However, in his cross-examination, he admitted that workman was engaged in 1995 but office order dated 5.2.1997 was issued in 1997. Aforesaid witness feigned ignorance that why office order dated 5.2.1997 was issued in 1997 instead of 1995, when workman was initially engaged. He also stated that he does not know whether any office order was issued in 1995 when the workman was engaged and he also feigned ignorance whether staff is only provided when the Chairman is not a Minister.

9. Conjoint reading of evidence adduced on record by the respective parties proves beyond doubt that workman was initially appointed with the Corporation on 12.12.1995 and at that time no appointment letter was ever issued whereby his services were held to be co-terminus with the Chairman, rather careful perusal of office order dated 5.2.1997 (Ext. PX) clearly suggests that workman was appointed on daily wage basis with effect from 12.12.1995 but vide aforesaid letter, ex post facto sanction was obtained and his appointment was held to be coterminus with the tenure of Chairman. Since it is admitted case of the parties that the office order Ext. PX was issued on 5.2.1997, condition contained in the same could not be made applicable to the appointment, which was admittedly made on 12.12.1995.

10. In nutshell, case of the workman before the learned Tribunal below is that since he had worked for more than 240 days, his termination without there being any notice and compensation as envisaged under Section 25-F of the Act, is illegal and as such he is entitled for protection of Section 25 of the Industrial Disputes Act. Careful perusal of documents available on record suggests that workman successfully proved on record that prior to his illegal termination, he had completed more than 240 days in calendar year and as such Corporation ought to have issued notice as per Section 25-F of the Act before terminating his service. Though, the Corporation by way of filing reply to the claim petition made an attempt to prove that workman was engaged as daily wager on co-terminus basis as Peon, whose services were required to be suspended with the Chairman of Corporation on his resignation but save and except communication dated

5.2.1997, there is no evidence worth the name led on record by the Corporation suggestive of the fact that before alleged termination of workman, workman had not completed 240 days in a calendar year. It stands proved on record that workman was engaged as daily wager peon in 1995 but condition if any, contained in office order Ext. PX, which is admittedly dated 5.2.1997 can not have any bearing upon the initial appointment of workman, who successfully proved on record that at the time of his illegal termination, he had completed more than 240 days in preceding calendar year. There is no explanation worth the name available on record by the Corporation that why letter of appointment, if any, to the workman was issued on 5.2.1997, incorporating therein condition that services of workman would be coterminus with the Chairman. Similarly, there is no evidence available on record suggestive of the fact that condition of appointment of workman being co-terminus with the Chairman of the Corporation was incorporated in initial appointment of workman in 1995 as such, learned Tribunal below rightly came to the conclusion that mere issuance of appointment letter in the year 1997, suggests malafides on the part of the Corporation, which amounts to unfair labour practice, especially when workman successfully proved on record that he had been working as Peon on daily wage basis since 1995 without any interruption and completed 240 days in calendar year proceeding his termination. At the cost of repetition, it is stated that condition, if any contained in letter dated 5.2.1997 Ext. PX could not be made applicable in the case of workman, who was admittedly appointed in 1995. There is no evidence available on record suggestive of the fact that prior to illegal retrenchment, workman had not completed 240 days in every calendar year preceding to his termination. This Court was not able to lay its hand to any document led on record by the Corporation save and except Ext. PX suggestive of the fact that workman had not completed 240 days in calendar year preceding to his termination, as such termination of workman without there being compliance of mandatory provisions of law as contained in Section 25 of the Act, can not be allowed to sustain, as such, was rightly set aside by the learned Tribunal below. Otherwise also, no reliance, if any, could be placed upon appointment letter dated 5.2.1997, as relied upon by the Corporation, because, condition of appointment being co-terminus as contained in aforesaid letter could not be imposed subsequently, especially when workman had worked for two years from 1995, without there being any condition as contained in the aforesaid letter.

11. Hence, this Court after carefully perusing impugned award, which is based upon correct appreciation of evidence adduced on record by the respective parties, has no hesitation to conclude that there is no illegality or infirmity in the same.

12. Another contention of the learned counsel representing the Corporation is that the learned Tribunal below had no jurisdiction to entertain the claim of the workman, also deserves to be rejected because, admittedly, pleadings as well as impugned award nowhere suggest that aforesaid point ever was raised before

the learned Tribunal below and as such same can not be allowed to be raised at this stage, in writ proceedings, where legality of impugned award is under challenge. Learned Tribunal below in reference petition was only bound to answer specific term of reference referred to it. Term of reference, nowhere suggests that learned Tribunal below was required to decide with regard to its jurisdiction to decide the claim of workman, who successfully proved on record that he had completed 240 days in calendar year preceding his termination.

13. This Court, is in agreement with the arguments having been made by the learned counsel representing the workman that this Court has very limited jurisdiction to re-appreciate findings of fact returned by the learned Tribunal below, while exercising writ jurisdiction under Article 226 of the Constitution of India and it has a limited scope of appreciating findings of fact. In this regard, reliance is placed upon judgment passed in case Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd. 2014 AIR SCW 3157.

14. As far as judgment passed by the Hon''ble Apex Court in case Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd. is concerned, there can not be any quarrel with the settled proposition of law that the Courts while examining correctness and genuineness of the Award passed by Tribunal has very limited powers to appreciate the evidence adduced before the Tribunal below, especially the findings of fact recorded by the Tribunal below and same can not be questioned in writ proceedings and writ court can not act as an appellate Court. Careful perusal of aforesaid judgment having been relied upon by the learned counsel representing the Management, clearly suggests that error of law which is apparent on the face of record, can be corrected by writ Court but not an error of fact, however, grave it may appear to be. Hon''ble Apex Court has further held in the aforesaid judgment that if finding of fact is based upon no evidence that would be recorded as error of law which can be corrected by a writ of certiorari. Hon''ble Apex Court has further held that in regard to findings of fact recorded by Tribunal, writ of certiorari can be issued, if it is shown that in recording said findings, tribunal erroneously refused to admit admissible evidence or erroneously admitted inadmissible evidence, which influenced impugned findings. It would be profitable to reproduce following paras of the judgment: "16. ....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 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 for questioning 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.

15. In the instant case, learned counsel representing the Corporation was unable to point out any error of law committed by the Tribunal while allowing claim of the workman. Similarly, learned counsel representing the Corporation was unable to point out any illegality committed by the learned Tribunal below, while recording findings of fact, as such, this Court sees no perversity or illegality in the award passed by the learned Tribunal below.

16. Accordingly, the writ petition is dismissed. Impugned award passed by the learned Tribunal below is upheld. Pending applications are disposed of.