

(2016) 08 JH CK 0146

In the Jharkhand High Court

Case No : Writ Petition (L) No. 5493 of 2012.

**Kamleshwar Ram - Petitioner @HASH Employers in relation to the
management, State Bank of India, Ranchi**

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (2016) 4 AIRJharR 567 : (2017) 1 CLR 856 : (2016) 151 FLR 921 :
(2016) 4 JCR 597 : (2017) LabLR 446 : (2017) 1 LLJ 227

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Dharmendra Kr. Malityar, Advocate, for the Petitioner; Mr. Rajesh Kumar and Mr. Manindra Kr. Sinha, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

The Ministry of Labour, Government of India vide order dated 30th April, 2001 referred the following dispute for adjudication to the Central Government Industrial Tribunal No.I, Dhanbad :-

"Whether the action of the management of State Bank of India, Dalmianagar of Dehri in terminating the services of Sri Kamleshwar Ram is justified ? If not, what relief the workman is entitled?"

2. This led to institution of Reference Case No.50 of 2002 which has been answered by the impugned award at Annexure-2 dated 1st February, 2011 by the learned Central Government Industrial Tribunal No.I, Dhanbad. Learned Tribunal upon consideration of the written statement, evidence adduced on behalf of the parties and the judgments relied upon by them came to a conclusion that the action of the management State Bank of India, Dalmianagar of Dehri in terminating the services of workman is justified and he is not entitled to any relief.

3. Perusal of the relevant material records and the impugned award shows that the petitioner-workman had failed to produce any document of his appointment as a permanent messenger under the respondent-Bank while he has contended that he was appointed on permanent vacancy on 26th April, 1972 at Nagar Untari Branch and had since been working there till he was dismissed from service on 4th May, 1975. The management in its written statement and evidence stated that the concerned workman had not completed 240 days in a calendar year. The dispute had been raised after 25 years of his termination. The service was terminated as his conduct was not found to be satisfactory. He was a habitual absentee. He was engaged only for temporary period and has worked for 30 days in March, 1975, for six days in April, 1975, for seven days in May, 1975 and in June, July and August, 1975 for four, two and one day only. His services were terminated w.e.f. 4th August, 1975 after giving 14 days notice. He has never completed 240 days attendance in any calendar year and was temporarily appointed. The concerned workman had produced himself as W.W.1 and proved Exbts. W-1 to 5. The management had produced a witness M.W.1 who proved the documents as M-1 series.

4. Though the ground of the claim being stale was raised on behalf of the management, but the learned Tribunal wisely chose not to strike down the reference on that ground and decided it on merits. It has come to a conclusion on the basis of the material evidence that the concerned workman was appointed for a temporary period with a condition that his services would be terminated without any reason at any time and he did not complete 240 days attendance in a calendar year. His conduct was found to be not satisfactory and therefore his services were terminated.

5. Counsel for the petitioner has, however, questioned the award on the grounds that the learned Tribunal has failed to consider that he was a regular employee appointed against permanent vacancy as on 26th April, 1972. However, the evidence of the workman in cross-examination itself shows that there are no papers with him to show that he was appointed as a permanent messenger. The management, on the other hand, have shown that in the entire year of 1975 the workman had worked only for a few days in several months after which he was given 14 days notice and terminated w.e.f. 4th August, 1975. Petitioner, therefore, has not been able to establish that he was a permanent employee. The respondents-management were justified in terminating his services which was on temporary basis with a prior notice of 14 days.

6. I have heard learned counsel for the parties, carefully gone through the record including the impugned award. It is appropriate to first quote the relevant paragraphs of the celebrated judgment of the Hon'ble Supreme Court in the case of Syed Yakoob v. K.S. Radhakrishnan & others reported in AIR 1964 SC page 477 in which the scope and width of a court of record exercising the writ of certiorari has been discussed. The aforesaid proposition laid down in respect of exercise of power of certiorari has held the field till date and has been followed in

subsequent judgments of the Hon"ble Supreme Court and High Courts (para 7 and 8 are relevant):-

"Para 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 wherein 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 Article 226 to issue a writ of certiorari can be legitimately exercised.

Para No. 8:-It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is

experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened".

7. The aforesaid judgment clearly lays down that the scope of the power of High Court under Certiorari Jurisdiction to interfere in the Judgment of the inferior Tribunal ? authorities so as to keep them within the bounds of their jurisdiction. In cases of illegality and perversity the order of the inferior Tribunal can be interfered in exercise of supervisory jurisdiction.

8. Upon consideration of the aforesaid facts and the reasons recorded herein above, the impugned award does not appear to suffer from any legal or factual infirmity warranting interference. Counsel for the petitioner has also not been able to show any perversity in the award which are based on the materials adduced during the course of the proceedings and the evidence on the part of the parties. Petitioner has not been able to show that the finding in impugned Award are based on no evidence. Therefore, no grounds are made out for interference in the impugned award.

9. Accordingly, the writ petition is dismissed.