

(2019) 03 JH CK 0033

In the Jharkhand High Court

Case No : Writ Petition (L) No. 653, 667 Of 2017

Kode Oraon

APPELLANT

Vs

Ranchi Municipal Corporation And Ors

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A, 12, 25(B), 25(F)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 03 JH CK 0033

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Sumir Prasad, L.C.N. Shahdeo

Final Decision : Dismissed

Judgement

1. This writ petition is filed under Article 226 of the Constitution of India wherein the award passed in Reference Case No.20 of 2012 dated 28.05.2014 has been assailed, whereby and whereunder, the reference has been answered against the petitioner-workman in favour of the respondent-management by denying the reinstatement in service with back wages.

2. It is the case of the petitioner that he has joined the duty of the Nagar Nigam, Ranchi in the year 1982 and continued in service till 15.06.2011 but all of a sudden he has been removed from service without issuing any notice, therefore, he has come on road, hence a dispute has been raised by making an application before the appropriate authority, the matter has been placed before the Conciliating Officer but when no decision has been taken within the stipulated period as provided under the provision of Section 12 of the Industrial Disputes Act, 1947, an application has been filed under the provision of Section 2(A) of the Act, 1947 for demanding reinstatement in service with back wages.

The Labour Court treating the said demand as reference, registered a case being Reference Case No.20 of 2012 and issued notice to the Municipal Corporation,

Ranchi, so that the reference be answered.

The Labour Court after hearing the parties had passed the award negating the claim of the petitioner by denying reinstatement in his favour which has been assailed by the petitioner in this writ petition.

3. Mr. Sumir Prasad, learned counsel appearing for the petitioner, has raised the issue of perversity in the finding to the effect that the circular, reference of which has been made i.e. on 18.06.1993 wherein the decision was taken to remove all Class-IV employees who have been appointed on or after 01.08.1985 and have been appointed prior to 01.08.1985 and worked continuously for a period of 240 days, they have been decided to be given preference in appointment, in service however, even accepting the plea of the respondent-Corporation that the petitioner has been appointed after 01.08.1985 even though in view of the subsequent circular issued on 20.05.1996 by which the cut-off date by 01.08.1985 has been extended to that of 31.12.1990 and admittedly the petitioner has been appointed beyond the aforesaid period, therefore, he is entitled to be considered for reinstatement in service but that aspect of the matter has not been considered hence the award is perverse and accordingly not sustainable in the eye of law.

His further submission is that the Tribunal has proceeded with the matter treating it a case of regularization however it is not a case of regularization since the petitioner has already been removed from service, therefore, it is the case of reinstatement and to that effect the reference has also been made by the Labour Court and as such the entire award is without any application of mind.

4. Mr. L.C.N. Shahdeo, learned counsel appearing for the Municipal Corporation has argued by submitting that there is no infirmity in the award rather the Labour Court has taken into consideration the scope of circular dated 18.06.1993 whereby and whereunder the cut-off date of 01.08.1985 has been fixed and the petitioner has failed to show any document before the Labour Court justifying his claim that he has been appointed against the Class-IV post prior to 01.08.1985 rather he has been appointed by way of a seasonal labourer and performed his duty intermittently under the corporation, hence, has not completed continuous period of 240 days service and as such the Circular dated 18.06.1993 is not applicable.

His further submission, while rebutting the argument of the learned counsel for the petitioner, with respect to the applicability of the subsequent Circular dated 20th May, 1996, is that the aforesaid Circular has never been brought on record before the Labour Court and therefore, it cannot be said that the Labour Court has committed any illegality as because the perversity can only be said to arise if any document or plea has been taken by the concerned before any Court of law and if it will not be considered then only it can be said to be non-consideration of the factual aspect but the plea, if not taken, it cannot be said that the finding is perverse.

5. Having heard the learned counsel for the parties and after appreciating their rival submissions, the factual aspect involved in this case is that the petitioner claims to be working in the Corporation since the year 1982 continuously and he after discharging his duty from the year 1982 till 15.06.2011 has been removed all of a sudden without following any procedure as laid down under the provision of Industrial Disputes Act, 1947, therefore, a dispute has been raised by making an application before the appropriate authority, Conciliating Officer when not decided the conciliation and after lapse of period of 45 days, the petitioner has directly filed an application before the Labour Court by invoking the jurisdiction conferred under Section 2(A) of the Act, 1947 which has been treated to be a reference and accordingly the Labour Court has proceeded for answering the reference to the effect as to whether the petitioner was entitled to be reinstated in service.

The respondent-Corporation has been noticed, who has put his appearance before the Labour Court and defended the finding of the award.

It is evident from the award that the plea of the petitioner of continuously discharging his duty since the year 1982 has not conclusively been proved since no documents have been annexed or brought on record by the petitioner before the Labour Court.

6. It is not in dispute that under the provision of Section 25(F) of the Act, 1947 if a casual worker working under the establishment can be removed from service but prior to that notice is required to be given if he has performed continuous service for the period of 240 days.

The definition of continuous service has been provided under the provision of Section 25(B) which stipulates that a workmen shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman.

It is thus evident that continuous service would be said to be a service if performed by the workman for a period of 240 days as stipulated under the provision of Section 25(F) of the Act, 1947 and in that situation, if service of any workman is to be dispensed with, mandatory requirement as stipulated under the provision of Section 25(F) is to be complied with i.e., the workman has to be given one month notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice.

The Labour Court has proceeded to examine the issue in the light of the provision of Section 25(F) read with Section 25(B) but no such document has been placed on record by the petitioner justifying the claim that he has performed continuous service of 240 days warranting the protection or requirement to be fulfilled as provided under the provision of Section 25(F) of the

Act, 1947.

7. This Court has found that the Labour Court has disbelieved the contention of the petitioner-workman claiming therein that he is working since the year 1982 and the petitioner has failed to produce any relevant document save and except one identity card issued in the year 1996.

The Labour Court has also come to conclusive finding with respect to complete embargo of appointment to be made on or after 01.08.1985 in view of the Circular dated 18.06.1993 in absence of any valid document suggesting therein that the petitioner has been appointed in the year 1982. In view of the aforesaid material document, the reference has been answered against the petitioner workman.

So far as the plea of subsequent circular of the year 1996 is concerned the same is not to be considered by this Court since the said circular was not before the Labour Court and as such to examine the perversity in finding the writ court can go into the fact, if any document or fact has been brought before the adjudicator and if not considered but this circular since was not before the Labour Court hence not worth to be considered in scrutinizing the finding of the Labour Court.

8. This Court before concluding thinks it proper to discuss with respect to the jurisdiction of this Court conferred under Article 226 of the Constitution of India which has been invoked for issuance of writ of certiorari by interfering with the fact finding recorded by the Labour Court.

It is the settled position of law that writ of certiorari can be issued if there is perversity in the finding or there is any jurisdictional error as has been held by the Hon'ble Apex Court in the case of Syed Yakoob Vrs. Radhakrishnan reported in A.I.R. 1964 477 Supreme Court wherein at paragraph no.7 their Lordships have been pleased to hold as follows:-

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 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 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 (vide *Hari Vishnu Kamath v. Ahmad Ishaque*, 1955-1 SCR 1104 : ((S) AIR 1955 SC 233); *Nagendra Nath v. Commr. Of Hills Division*, 1958 SCR 1240 : (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168).

Reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of *Hari Vishnu Vs. Ahmad Ishaque and Ors.* reported in 1955 Supreme Court 233 wherein at Paragraph-21, which is quoted hereinbelow :-

"With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, 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) Writ of 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."

In another judgment of Hon'ble Apex Court in the Case of *Sawarn Singh Vrs. State of Punjab* reported in (1976) 2 SCC 868 their Lordships while discussing the power of writ under Article 226 for issuance of writ of certiorari has been please to hold at paragraph nos.12 and 13 as under:

"12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (supra).

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

In another judgment rendered by Hon'ble Supreme Court in the case of Heinz India (P) Ltd. Vrs. State of U.P. Reported in (2012) 5 SCC 443 their Lordships have been pleased to hold at paragraph no.66 and 67 as under:-

"66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant "the feel of the expert" by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land.

67. In Dharangahara Chemical Works Ltd. v. State of Saurashtra this Court held that decision of a 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 it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in Thansingh Nathmal case where this Court held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce for which the writ is claimed."

In the case of Thansingh Vrs. Supdt. of Taxes reported in A.I.R. 1964 1419 Supreme Court, Hon'ble Supreme Court has been pleased to hold that the High Court does not jointly determine question which requires elaborate examination of evidence to establish the right to enforce for which the writ is claimed.

In another judgment rendered by Hon'ble Apex Court in the case of Pepsico India Holding (P) Ltd. Vrs. Krishna Kant Pandey reported in (2015) 4 SCC 270 their Lordships while discussing the scope of Article 226 and 227 of the Constitution of

India in the matter of interference with the finding of the tribunal has been please to hold by placing reliance upon the judgment rendered in the case of Chandavarkar Sita Ratna Rao Vrs. Ashalata S. Guram reported in (1986) 4 SCC 447 at para 17 has held as under:-

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in Bathutmal Raichand Oswal V. Laxmibai R. Tarta where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J, as the learned Chief Justice then was, observed at page 1301 of the report as follows:

..... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways v. Sukumar Mukherjee to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bose V. Commr. Of Hills Division and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extent to quashing an impugned order on the ground of mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeking that the tribunal functions within the limits of its authority."

Thus the position of law as has been settled is that writ of certiorari can be issued if the finding is perverse or there is jurisdictional error, but no such ground has been made out by the petitioner.

9. In the aforesaid legal position and considering the factual aspect as narrated hereinabove, according to the considered view of this Court, no interference is required in the fact finding recorded by the Labour Court, otherwise, this Court will be treated to be acting as an Appellate Court which is not permissible.

10. In view thereof, the writ petition lacks merits, accordingly fails and is dismissed.