

**(2012) 08 JH CK 0145**

**In the Jharkhand High Court**

**Case No : Writ Petition (C) . No. 2343 of 2002**

M/s Bharat Coking Coal Ltd.

APPELLANT

Vs

Their Workmen and The Presiding Officer, CAT No. 2,  
Dhanbad

RESPONDENT

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**Date of Decision : 02-08-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Mines Act, 1952 — Section 25

**Citation : (2013) 1 AJR 233 : (2012) 4 JCR 617**

**Hon'ble Judges : Aparesh Kumar Singh, J**

**Bench : Single Bench**

**Advocate : Anoop Kumar Mehta, for the Appellant; S.N. Das, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Aparesh Kumar Singh

1. By Court:-Heard the counsel for the parties. The Management- petitioner has preferred this writ application seeking quashing of the award passed by the Presiding Officer, Central Government Industrial Tribunal No. 2, Dhanbad dated 31.10.2001 in Reference Case No. 2 of 1994(Annexure-7) whereby it has answered the reference against the petitioner- management holding that the dependant of the workman, Ramdhani Dhobi, Ex Mining Sirdarof Bhowra Colliery is entitled to employment under clause 9.4.3 of National Coal Wages Agreement-IV ( N.C.W.A.-IV).

2. Learned counsel for the management- petitioner, while narrating the facts submitted that the date of birth of the respondent- workman recorded in Form B lying with the employer was 20.1.1932. He was appointed on 26.4.1946 and at the time of superannuation he was working as Mining Sirdar. It is stated that since, 23rd July 1991 he stopped attending duty and a statutory notice of superannuation was given to him on 27.7.1991 informing him about the date of superannuation w.e.f 20.1.1992 after attaining 60 years of age. The workman

superannuated on 20.1.1992, thereafter an industrial dispute was raised on 23.3.1992 leading to the reference by the Central Government by notification dated 30.9.1993. The parties appeared on notice and filed their written statement where after the impugned award has been passed. The issue in question is quoted herein below:-

Whether the action of the management of M/s BCCL, Bhowra North Colliery, UG Mines in not providing employment to dependant of Ramdhani Dhobi, Ex- Mining Sirdar of Bhowra Colliery(N) (U/G Mines) under clause 9.4.3 of NCWA-IV is justified ? If not, to what relief the concerned workman is entitled?

3. It is submitted on behalf of the management- petitioner that under the terms of 9.4.3. N.C.W.A.-IV, the dependant of a workman, who is permanently disabled on account of injury or disease of a permanent nature resulting into loss of employment and so certified by the coal company concerned, is entitled to employment in place of his parents. The said agreement is quoted herein below:-

9.4.3 N.C.W.A.-IV:- Employment to one dependant of a worker who is permanently disabled in his place:

(i) The disablement of the workman concerned should arise from injury or disease, be a permanent nature resulting into loss of employment and it should be so certified by the coal company concern.

(ii) In case of disablement arising out of general physical disability so certified by Coal Company concern not arising out of injury or disease as in para (i) above, the concerned employee will be eligible for the benefit under this clause if the employee is up to the age of 58 years;

(iii) The dependant for this purpose means.....

(iv) The dependant to be considered for employment.....

4. Learned counsel for the management submitted that employer- management never gave any certificate that the respondent- workman had been disabled by reasons of disease of permanent nature resulting into loss of employment. However, it is submitted that the workman had claimed before the Tribunal that he was examined by the Doctor of the D.G.M.S ( Director General of Mines Safety, Dhanbad), who reported that he is suffering from Pneumoconiosis. It was contended by the workman, that he should have been referred to the Apex Medical Board for a declaration relating to his medical condition, whether he is fit or medically unfit to continue in employment. However, it is submitted that the workman never got examined by the Medical Board of the Company and no declaration or certificate to that effect was issued by the Medical Board of the Company that he is permanently disabled to continue in the employment. It is further submitted that the learned Tribunal further proceeded to go beyond the terms of reference and undertook exercise to hold that on account of the disease Pneumoconiosis, which the workman had alleged to have been suffering, it was incumbent upon the coal company - management to examine him by the Apex

Board and declaring him medically unfit, which they failed to do so. It is further submitted that the learned Tribunal, therefore, failed to appreciate that the statutory Board entrusted with the task of declaration of Medical Fitness of the workman under the Coal Company had never made such declaration which could bring the workman in question within the scope of enabling provision of 9.4.3.N.C.W.A-IV for giving any employment to his dependant. On the contrary, the Tribunal itself proceeded to make the declaration like an expert that since the workman had been recommended by the Medical Officer of D.G.M.S that he is suffering from Pneumoconiosis and as per clause 8.7.4 N.C.W.A.-IV, the workman ought to be examined within a period of 7 days of such reporting by Medical Board and on failure to do so the management has chosen to avoid its responsibility, although the workman was declared unfit by the Medical Officer. It is submitted that the medical officer acted in the capacity of the Medical Board by holding that the workman was suffering from disease, which rendered him medically unfit by way of permanent nature resulting into loss of employment and, therefore, the management was not justified in refusing employment to his son.

5. Learned counsel for the management also has relied on relevant provisions of Section 25 of the Mines Act and the rules framed, thereunder, being Rule 29B, 29K and 29M, based upon which, he has made his submission that the act of declaration of medical fitness or otherwise is the duty of the Medical Board, duly constituted for the said purpose by the employer and the learned Tribunal was not justified in assuming the said role and declaring the workman as medically unfit in order to come within the scope of 9.4.3 N.C.W.A-IV. Based upon the aforesaid facts and circumstances, learned counsel for the management submitted that the learned Tribunal not only went beyond the scope of the reference but posed a wrong question to itself and accordingly, answered it in a wrong manner which is not proper in the eye of law. In the industrial adjudication, the Labour Court or the Tribunal is supposed to confine itself to the terms of the reference. In such a case at hand, the ingredients for fulfillment of the conditions prescribed under 9.4.3 N.C.W.A. -IV are that there ought to have been declaration by the Apex Medical Board in the terms that the workman is suffering from injury, disease of such permanent nature resulting in loss of employment where after, workman cannot proceed to work. It is further submitted that since no such declaration was made, admittedly the workman continued to work till his date of superannuation, although he had stopped attending duty from earlier date.

Since, the aforesaid ingredients of 9.4.3.N.C.W.A-IV were not fulfilled, the Tribunal should not have ventured beyond the terms of reference by assuming the role of Apex Board in holding the workman medically unfit and thereafter, answering the reference by declaring that his dependant is entitled for employment in his place. Accordingly, he has submitted that the impugned judgment suffers from apparent errors of law on the face of it and is fit to be quashed.

6. Learned counsel for the workman, by taking this court to the relevant provisions of 8.7.4 of N.C.W.A.-IV submitted that as per the aforesaid agreement between the management and the workman, in a case of workman suffering from Pneumoconiosis, which is detected while in service, it is the responsibility of the management to refer the case to the medical board for examination within 7 days of receipt of the report of such detection. On such declaration being made, the employee would be stopped from working by any competent authority and he will be made to wait for the entire period of the service. It is submitted that learned Tribunal, after taking into account the submission and evidences of the parties found out a stark fact that inspite of the recommendation / report of the medical officer, of course of D.G.M.S, that the workman was suffering from Pneumoconiosis, the management avoided to refer the matter to the Apex Board for determination of medical fitness forcing the workman to compulsorily remain in service in order to defeat the right of the dependant to seek employment, on account of injury or disease, which obviously leads to the loss of employment. It is submitted that learned Tribunal being confronted with the aforesaid fact could not have ignored the attending circumstances leading to the raising of industrial dispute and no fault can be found in the award of the Tribunal, if it answered the reference in favour of the workman in such manner. Learned counsel for the workman also submitted that the factum of suffering of Pneumoconiosis is not in dispute. However, the workman has claimed compensation in terms of the Employees Compensation Act and these facts have been placed on record before the learned Tribunal. Learned Tribunal has not committed any error of law or of fact in which interference can be sought for from this court in exercise of jurisdiction under Article 226/227 of the Constitution of India.

7. 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 Vrs. K.S. Radhakrishan & 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.

8. 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.

9. In the wake of the terms of the reference, the Tribunal went beyond the terms of the reference in a sense acting beyond the jurisdiction conferred on it, which it derives from the terms of reference being a creature of statute itself, which ultimately led to passing of the award in question.

10. The main issues arising as per the terms of the reference are as to whether the dependant of the workman- Ramdhani Dhobi was entitled to get employment and whether the action of the management in not providing employment to the dependant of Ramdhani Dhobi is justified or not as per the provision of 9.4.3. NCWA-IV. From the terms of reference and the provision of 9.4.3. NCWA-IV, referred to herein above, it is apparent that the certificate or declaration by the coal company in the nature of loss of employment caused due to injury or disease of permanent nature in respect of the workman in question is sine qua non. That exercise is obviously required to be conducted by the authorities either having statutory mandate to do or governed by the standing order of the coal company. In the present case, it is not in dispute and also appears from the discussion made by the Tribunal that there was no such declaration to that effect, which is the very basis of seeking an employment. The declaration or certificate of the coal company resulting in loss of employment of the workman not being in existence, the consequential relief to which dependant of the workman would have been entitled, should not have arisen. However, learned Tribunal perhaps proceeded to hold that the workman, as a matter of fact, was suffering from particular disease, which, as a matter of fact incapacitated him from continuing him as workman and as a result of which, he was entitled to claim employment for dependant under the provision of 9.4.3. NCWA-IV. The factum that Medical Officer of DGMS has made report is not a conclusive evidence, as required in terms of the Mines Act and Rules. The relevant provision of the NCWA-IV itself provides that the Apex Medical Board is required to make a declaration where after the management had to stop the workman from working any further on account of such illness. The Tribunal appears to have went beyond the terms of the reference and answered it accordingly. In such circumstance, it has committed error of law by misdirecting itself and going beyond the terms of reference by assuming the role of an expert in the matter of medical fitness of the workman. In view of the discussion made herein above, it is apparent that Award passed by the learned Tribunal suffers from such apparent errors of law

and facts which falls within the scope of interference by this court under Article 226 of the Constitution of India, as has been laid down in the judgment quoted above. In the aforesaid facts and circumstance, the award passed by the learned Tribunal cannot be sustained and accordingly, it is quashed. The writ petition is allowed.