

(2010) 06 GUJ CK 0009
In the Gujarat High Court
Case No : S.C.A. No. 6367 of 2010

Rohitsinh Vakhatsinh Darbar

APPELLANT

Vs

Arvind Rubber-Well Control Ltd.

RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 11A, 25F

Citation : (2011) 1 LLJ 177

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : P.C. Chaudhari, for the Appellant;

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. P.C. Chaudhari for Petitioner. Petitioner workman has challenged award passed by Labour Court in Reference No. 1647/1996 Exhibit 49 dated February 13, 2009. Labour Court, Ahmedabad has set aside termination order dated June 21, 1996 and granted reinstatement with continuity of service with 25 per cent back wages for interim period with costs of Rs. 25,000.00, to be paid by employer to workman.

2. Learned advocate Mr. P.C. Chaudhari for Petitioner has raised contention before this Court that while denying 75 per cent back wages to workman, Labour Court has not given proper reasons and relevant factors have not been considered by Labour Court and merely raising presumption about gainful employment, Labour Court has wrongly denied 75 per cent back wages for interim period. He also submitted that earlier, while passing ex parte award, 40 per cent back wages were granted by Labour Court and now it has been reduced to 25 per cent and relevant factors like nature of work, nature of employment, permanent operator etc. has been ignored by Labour Court. He relied upon two decisions of Apex Court. One is Reetu Marbles Vs. Prabhakant Shukla, and

another is Novartis India Ltd. Vs. State of West Bengal and Others, While relying upon aforesaid two decisions of Apex Court, learned advocate Mr. Chaudhari submitted that in case when order of termination has been held to be invalid, then, workman is entitled for full back wages for interim period because gainful employment has not been proved by employer. Except that, no other submission is made by learned advocate Mr. Chaudhari before this Court and no other decision has been cited by learned advocate Mr. Chaudhari before this Court.

3. I have considered submissions made by learned advocate Mr. Chaudhari. I have also considered contentions raised by Petitioner in memo of petition. I have also considered order passed by this Court in Special Civil Application No. 29876/2007 dated August 14, 2008. I have also considered statement of claim and other documents which are annexed to present petition. I have also perused award passed by Labour Court at Exhibit 49 in Reference No. 1647/1996. It is necessary to note that order of reference is dated November 15, 1996. Initially, an ex parte award was passed by Labour Court on June 4, 2001 vide Exhibit 13 wherein Labour Court has granted reinstatement with 40 per cent back wages for interim period. This Court has, vide order passed in Special Civil Application No. 29876/2007 dated August 14, 2008, set aside ex parte award and directed Labour Court to decide reference on merits on or before January 31, 2009. Before Labour Court, statement of claim was filed by Petitioner at Exhibit 5 and according to Petitioner, he was working for more than five years as permanent employee with Respondent employer having daily wage of Rs. 53.00. Earlier, first party establishment was running in the name of Arvind & Co. and in the year 1995, name of the establishment was changed as Arvind Rubber Well Control Ltd. Service of Petitioner workman was terminated by first I party establishment on June 21, 1996 without following due process of law. No compensation and notice "pay was paid by employer and his service was orally terminated by employer, vide Exhibit 22, written statement was filed by employer denying averments made by workman in his statement of claim filed by him before Labour Court. Defence was taken by employer that workman has abandoned job voluntarily and he has given in writing that he is voluntarily leaving job and due to that, all the accounts were settled with workman which fact was not disclosed by workman before Labour Court in his statement of claim. According to employer, Petitioner has obtained good job elsewhere and, therefore, he voluntarily left job and accordingly his amount has been settled and payment has been made to him. Respondent employer has also made clear statement in its written statement that it was clearly stated by second party company before High Court that they were prepared to reinstate workman and letter was written by employer to workman for reinstatement on February 10, 2008 and yet second party had not come for work and after one month. It was denied that subsequently on February 13, 2008, workman has reported for work. According to Respondent employer, in fact, workman had not reported for work. Even though, without prejudice to their rights and contentions, employer is ready and willing to reinstate workman in service. Workman has not completed 240 days

continuous service and service of workman has not been terminated by employer but it is a case of voluntary abandonment of service by workman after receiving total due amount from company. Petitioner workman had joined first party company on September 1, 1995 and had willingly collected the amount of his account from company.

4. Before Labour Court, workman was examined at Exhibit 7. He obtained leave for one month and 16 days sanctioned by Sheth Subhashbhai. On June 17, 1996, he had reported for work and on June 20, 1996, he was directed to work for over time which was denied by him and that is how his service was terminated orally on June 21, 1996 contrary to provisions of Section 25F of I.D. Act, 1947. According to workman, he made sincere efforts to obtain job but he has not been able to get job, however, if employer is prepared to reinstate him, he is prepared to resume duty. It was also stated by second party workman in his further examination in chief that while he was serving in Arvind Rubber, he was being given presence card but subsequently were taking it back. Salary slip was not being given. It was also stated by him that when he joined first party establishment, at that time, signatures were obtained from him on blank papers and signatures on blank vouchers were obtained. It was stated by him that it is not correct that he joined establishment in 1995. It was deposed by him that in documents mark 23/1 to 23/3/1-2, establishment had obtained signatures from them in blank papers. Such similar signatures of all the workmen were obtained. In ESI Card produced at mark 23/4, date of joining of the year 1995 has been shown. In Identity card produced at mark "23/4, date of joining of the year 1992 has been shown. In the year 1995, his marriage was fixed, therefore, he was on leave for one month and 16 days. He was shown presence card produced at mark 23/4. They are of May 1996 June 1996. In May, 1996, there is presence of six days. Thereafter, he was on leave. Thereafter, on June 17, 1996, he had resumed and there is note to the effect that his service was terminated on June 21, 1996. According to workman, he had reported for work but he was not permitted by employer to report for work. Workman was working in Mixing Department as Karigar and he insisted to resume duty on his original post as Karigar and he was not agreeing to resume duty as helper and, therefore, he has left job and not reported for work. It was denied by him that he had settled account with employer. According to workman, he had completed 300 days continuous service within 12 months preceding date of termination. He was not allowed to resume duty on his original post. At present also, he is in search of job but job has not been obtained by him and if the employer is prepared to reinstate him on his original post of operator, then, he is prepared to resume duty. It was denied by him that he had given resignation in Arvind & Company. It was stated by him that the writing in Exhibit 26 is not his writing. It was admitted by him that there is his signature at the bottom wherein date May 6, 1995 has been written. He was shown Exhibit 27. It is voucher of Arvind & Company. It was stated by him that the amount of Rs. 3565.00 as written therein has not been received by him but has admitted that it bears his

signature. No complaint has been filed in police department and labour commissioner about obtaining signature by employer on blank papers. As regards cards produced at mark 29/3, 29/4, it was stated by him that same were obtained by demanding same from security department of company. No any card of company was bearing seal of the company. On February 10, 2008, he was not allowed to report for duty on his original post but he was allowed to report on the post of helper and, therefore, he has not reported for work on February 10, 2008. It was also deposed by him that there are four members in his family, workman, his wife and two children and his brother is maintaining the family. On behalf of first party, vide list Exhibit 23, documents were produced at mark 23/1 to 23/4 which were exhibited as Exhibit 26, 27, 28 and 29. Thereafter, workman has closed his evidence by Exhibit 30 and thereafter, first party produced documents vide list Exhibit 31.

5. On behalf of first party, vide Exhibit 32, one witness Sitaram Purushottambhai Vaghela was examined before Labour Court. It was deposed by him in his examination in chief that he. has been working in the establishment since 1984 and he was working as supervisor and on the date- on which evidence was given, he was working as Production Manager. According to his evidence, workman was working on mixing machine as a Helper. He was shown Exhibit 26. He has identified signature of second party, therein. According to him, signature on Exhibit 26 was obtained on a paper containing writing. Said writing was given to him by the workman. It was signed in his presence. It was deposed by him that there is no system in his establishment to obtain signature on blank paper. He was shown Exhibit 27 which is a voucher. On seeing the said voucher Exhibit 27, signature of the second party was identified by him. Workman was paid Rs. 3565.00 and, thereafter, his signature was obtained. Ultimately, on May 11, 1995, workman had left job. According to employer, on February 13, 2008, workman had come to resume duty and on that day, he was asked to resume duty and he had gone saying that he will come on next day but had not come on the next day. On February 13, 2008, he was allowed to resume duty as helper in mixture machine but had not agreed to resume duty as helper in mixture machine. Thereafter, he has not reported for work. According to employer, after settling account, workman has not come for reporting for duty and even employer is prepared to allow to resume duty to workman in the post of helper on mixing machine. Petitioner was permanent employee of Company. Exhibit 27 payment was made on May 10, 1995 but for what purpose, payment was made, he is having no knowledge but said payment was made in his presence. Another witness was examined by Respondent namely Mukesh Ratilal Kachhiya at Exhibit 34. He is General Manager in Arvind Rubwell Company. Exhibit 26 and 27 both were shown to him and witness has made clear statement on oath that in both documents, no signature has been obtained on blank papers. In PF Form upto May, 1996, deduction has been made by company where amount comes to Rs. 2486.00 only. Labour Court has discussed oral evidence of witness Mukeshbhai Ratilal Kachhiya Exhibit 34. In establishment, there are two mixing machine. He

has no knowledge as to who were the mixing machine operator from 1990 to 1996. At present, one Bipinbhai and Another Ashokbhai are operators on mixing machines. Workman has not completed 240 days continuous service. On behalf of employer, documents have been produced vide list Exhibit 36. vide application Exhibit 37, application for witness summons was given which was allowed and summons was issued to witness. After said summons was served, Shri Hasmukhbhai Popatlal Jansari, Manager of ESI Corporation, Local Branch had remained present who was examined by first party at Exhibit 39 who has stated in his examination in chief that he is serving in ESI since 1971. He was shown mark 36/2 which is a declaration form of the workman which is containing the information relating to workman like insurance number, status, code number of employer, name/address of workman, date of birth, date of joining the company, name of branch of ESI Office, Number of Dispensary, details of family etc. and signature of workman and date at the bottom, counter signed by the responsible officer of the company with seal/stamp of the company containing its name/address. Mark 36/2 was admitted in evidence as Exhibit 40. On seeing mark 29/2 which is Identity card, it was stated that it is being filled on the basis of declaration form having photograph of workman. It is bearing signature stamp of the Manager of ESI. Mark 29/2 was admitted in evidence as Exhibit 41. It was also stated by him that he has no knowledge whether the designation of helper is written in all the declaration form of the year 1995-96 or not. Labour Court has also considered affidavit of Witness for establishment, filed at Exhibit 42 who was examined at Exhibit 32 wherein it was stated that in his cross examination, that documents will be produced if same are available but on inquiry being made in the company in respect of the said documents, same are not available and, therefore, unable to produce the same. Similar affidavit is also filed by witness for establishment vide Exhibit 43 who was examined at Exhibit 34 on behalf of company. Thereafter, evidence of employer has been closed vide Exhibit 44. Labour Court has appreciated oral and documentary evidence produced by both parties and thereafter has come to conclusion that defence which has been raised by employer cannot be accepted and workman has not left job voluntarily and he has completed 240 days continuous service. Such positive finding has been arrived at by Labour Court and on that basis, Labour Court has set aside order of termination. Before this Court, award of Labour Court setting aside termination order of workman is not under challenge and no petition is filed by employer for setting aside said finding.

6. Now only question to be considered by this Court is whether workman is entitled for full back wages for interim period and whether finding given by Labour Court in para 25 is proper or not. It is necessary to note that the reference was made on November 15, 1996 and workman filed his statement of claim in 1997 and thereafter, oral evidence was given by workman in 2000. Initially, ex parte award was passed by Labour Court which was set aside by this Court in Special Civil Application No. 29876/2007 by order dated August 14, 2008. Clear statement was not made by workman on oath that after 1996, what

attempts were made by him for getting job. Therefore, Labour Court considered that it is not believable that any person has remained continuously unemployed during long span of thirteen years. For that, no cogent evidence has been produced by workman before Labour Court. Burden is upon employee to prove by producing cogent evidence before Labour Court that he remained unemployed continuously though serious efforts were made by him to secure job or employment elsewhere. This fact has not been proved by workman by producing satisfactory evidence before Labour Court and, therefore, for a period of thirteen years, it cannot be presumed that workman has remained unemployed. Then, question has to be considered how he has maintained his family. Labour Court has considered facts and circumstances of the case and also conduct of workman who was offered job by employer but he was not prepared to report for duty in the post of helper, meaning thereby, that if employee would have been really starving, to save himself and his family from starvation, he would have readily accepted such offer made by employer for the post of helper. If employee is really unemployed, then, he cannot insist for particular post because he is unemployed and he is getting job, naturally, he will get salary from employer. Considering two posts namely post of helper and operator, there is no deduction or reduction or decrease in salary of workman which he was receiving from employer when his service was terminated by employer, therefore, in such circumstances, workman must have to be interested only in getting job for saving himself and his family from starvation but on the contrary, conduct shows, as discussed by Labour Court that workman is interested in reinstatement on original post of operator and not interested in getting job, otherwise, he would have readily and willingly accepted job in the post of helper offered by employer as considered by Labour Court. Before Labour Court, it was not proved by workman that he was working as operator. Apart from that, it was not case of employer that if workman was prepared to work on the post of helper, then, his salary is going to be reduced. No such inquiry is made by workman whether his salary will be reduced or not if he accepts post of helper. Therefore, after appreciating entire evidence of workman as well as employer, it suggests that workman is not really interested in job but he is insisting for particular post of machine operator for which employer is not able to give post of operator as other persons are working in the post of operator and workman was not appointed on the post of operator. This suggests many things, about intention of workman not to work but to get back wages as a premium for unemployment. This aspect has been rightly examined by Labour Court and this being relevant factor, keeping in mind entire facts and circumstances of case, Labour Court rightly has granted only 25 per cent back wages for interim period because it is discretionary order which is required to be passed by Labour Court after considering evidence which are on record. According to my opinion, one who is in real need of employment and whose family is starving cannot afford to insist for particular post and it is a luxury for such a person who is starving.

7. It is not a settled law that in case if termination order is found to be bad or

violative of mandatory provisions of Section 25F of I.D. Act, 1947, then, workman automatically becomes entitled for relief of reinstatement with 100 per cent back wages. It is for employee to prove unemployment during interim period and it is also required to be proved by employee that all sincere and most earnest efforts were made by him to secure job but he failed to get job. In this case, this has not been proved by employee before Labour Court. In light of this reasoning given by Labour Court, two decisions which are relied upon by learned advocate Mr. Chaudhari namely in case of Reetu Marbles v. Prabhakant Shukla and Anr. (supra) and Anr. decision in case of Novartis India Ltd. v. State of West Bengal and Ors. (supra) have been considered by this Court.

8. In case of Reetu Marbles and Prabhakant Shukla and Anr. (supra), Labour Court has not granted any amount of back wages while granting reinstatement after period of fifteen years. High Court granted full back wages for interim period which has been modified by Supreme Court in peculiar facts of that case to 50 per cent from the date of termination till date of reinstatement. This decision of Apex Court is almost based on peculiar facts of that case but relevant discussion made in paragraph 20 and 21 are quoted as under Reetu Marbles Vs. Prabhakant Shukla,

20. After examining the relevant case law it has been held as follows 2009 II LLJ 523 at p. 515 :

Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the Court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

In Haryana Urban Development Authority v. Om Pal it is stated that :

... It is now also well settled that despite a wide discretionary power conferred upon the Industrial Courts u/s 11A of the 1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors, one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

In deciding the question, as to whether the employee should be recompensed with full back wages and other benefits until the date of reinstatement, the Tribunals and the Courts have to be realistic albeit the ordinary rule of full back wages on reinstatement. {Western India Match Co. Ltd. v. Industrial Tribunal)

21. Applying the aforesaid ratio of law we have examined the factual situation in

the present case. The services of the Respondent were admittedly terminated on June 11, 1987. The Labour Court gave its award on September 27, 2002. Therefore, there is a gap of more than 15 years from the date of termination till the award of reinstatement in service. Labour Court upon examination of the entire issue concluded that the Respondent would not be entitled to any back wages for the period he did not work. A perusal of the award also shows that the Respondent did not place on the record of the Labour Court any material or evidence to show that he was not gainfully employed during the long spell of 15 years when he was out of service of the Appellant. In the writ petition the Respondent was mainly concerned with receiving wages in accordance with the Minimum Wages Act and for inclusion of the period spent in Conciliation Proceedings for the calculation of financial benefits. The High Court without examining the factual situation, and placing reliance on the judgment in *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. and Ors.* held that the normal rule of full back wages ought to be followed in this case. We are of the considered opinion that such a conclusion Could have been reached by the High Court only after recording cogent reasons in support thereof. Especially since the award of the Labour Court was being modified. The Labour Court exercising its discretionary jurisdiction concluded that it was not a fit case for the grant of back wages. In the case of *P. V.K. Distillery Ltd. (supra)*, it is observed as follows :

The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable.

9. I have also considered another decision of Apex Court in case of *Novartis India Ltd. and State of West Bengal and Ors. (supra)* where learned advocate Mr. Chaudhari relied on paragraph 35, 36 and 37 which I have considered. In aforesaid decision, relief of reinstatement has been denied to workmen because they have attained age of superannuation. In light of these facts, it was observed by Apex Court that in such circumstances, when workman has reached age of superannuation within few years, back wages was the only relief which could have been granted and, therefore, aforesaid decision cannot be made applicable in facts of this case because in this case, Labour Court has granted reinstatement with continuity of service in favour of present Petitioner with 25 per cent back wages, so, in this case, Petitioner is getting relief of reinstatement over and above 25 per cent back wages for interim period. So, it is not a case wherein workman has reached age of superannuation and so only relief which can be granted is about back wages. However, Labour Court has considered facts which are on record, conduct of Petitioner employee who was offered job but not

accepted it and insisted for particular post of machine operator. If Petitioner would have been really unemployed, then, he would have readily and willingly accepted offer made by employer and would have happily worked on the post of helper without insisting for being reinstated on the post of machine operator. Therefore, that conduct is also rightly appreciated by Labour Court and on that basis, presumption has also rightly been drawn by Labour Court that workman must have been earning or having gainful employment, otherwise, he cannot survive for a period of thirteen years and based upon such consideration, Labour Court has rightly denied 75 per cent back wages for interim period and has rightly granted only 25 per cent back wages for interim period and, therefore, discretionary power has been rightly exercised which is found to be just and proper and same cannot be considered to be unreasonable or unjust or arbitrary, therefore, contentions raised by learned advocate Mr. Chaudhari relying upon aforesaid two decisions cannot be accepted because of peculiar facts and circumstances of the case which have been discussed by Labour Court and also reasoning is given accordingly in paragraph 25 and presumption of earning has been rightly drawn by Labour Court on the basis of conduct of workman who has not accepted job offered by employer for reinstatement on the post of helper, therefore, in light of this back ground, according to my opinion, Labour Court has rightly examined matter in respect of back wages in paragraph 25 and has rightly given reasoning for denying 75 per cent back wages for interim period and workman has not produced cogent evidence before Labour Court that whether he has made sincere efforts for obtaining job or gainful employment at any other place, therefore, contentions raised by learned advocate Mr. Chaudhari cannot be accepted and hence same are rejected. Labour Court has not committed any error in denying 75 per cent back wages for interim period and according to my opinion, Labour Court has rightly passed balanced award granting relief of reinstatement with 25 per cent back wages for interim period. Mere technical breach of Section 25F of I.D. Act, 1947 would not automatically entitle workman for relief of reinstatement with full back wages for interim period. There is no straight jacket formula decided by Apex Court that in such circumstances, full back wages must have to be granted in favour of employee. Therefore, considering powers enjoyed by Labour Court u/s 11A of I.D. Act, 1947 which give discretion to Labour Court to grant reinstatement, if Labour Court is satisfied, with such terms and conditions thinks proper. That discretionary powers have been rightly exercised by Labour Court and such exercise cannot be considered to be arbitrary or unjust in any manner, therefore, there is no substance in the present petition and present petition is liable to be dismissed.

10. This Court is having limited jurisdiction under Article 227 of Constitution of India. This Court cannot act as an appellate Court for correcting errors in the decision of subordinate Courts or Tribunals but is having mere powers of superintendence to be used to keep them within bounds of their authority. Recently Apex Court has considered scope of Article 227 of Constitution of India in case of State of Haryana v. Manoj Kumar (2010) 3 MLJ 1412 decided on March

9, 2010. The relevant Para 22 to 29 are quoted as under :

22. The Appellants urged that the jurisdiction of the High Court under Article 227 is very limited and the High Court, while exercising the jurisdiction under Article 227, has to ensure that the Courts below work within the bounds of their authority.

23. More than half a century ago, the Constitution Bench of this Court in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, settled that power under Article 227 is limited to seeing that the Courts below function within the limit of its authority or jurisdiction.

24. This Court placed reliance on Nagendra Nath Bora and Anr. v. Commissioner of Hills Division and Appeals, Assam and Ors. (supra) case in a subsequent judgment in Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, The Court observed that jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This Court had an occasion to examine this aspect of the matter in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, The Court observed as under :

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. For this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision.

26. This Court again clearly reiterated the legal position in Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, The Court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this Court in Mrs. Rena Drego Vs. Lalchand Soni, Etc., again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate Court or the Tribunal while exercising

its jurisdiction under Article 227. Its function is limited to seeing that the subordinate Court or the Tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it.

28. In *Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others*, this Court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate Courts function within its limits.

29. This Court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the Courts below on merit.

11. Recently, the Apex Court has examined similar aspect in the case of *Harjinder Singh v. Punjab State Warehousing Corporation* (2010) 3 MLJ 127: 2010 11 LLJ 277. Relevant observations are in Paras 10, 11 and are quoted as under at pp. 281, 282 & 283 of LLJ :

10. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, and *Surya Dev Rai Vs. Ram Chander Rai and Others*, In *Syed Yakoob v. K.S. Radhakrishnan and Ors.* (supra) case, this Court delineated the scope of the writ of certiorari in the following words :

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, 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 (vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* (1958) SCR 1240 and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*,

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 misinterpretation 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.

12. In *Surya Dev Rai v. Ram Chander Rai and Ors.* (supra) case, a two-Judge Bench, after threadbare analysis of Articles 226 and 227 of the Constitution and

considering large number of judicial precedents, recorded the following conclusions :

(1) Amendment by Act 46 of 1999 with effect from July 1, 2002 in Section 115 of the Code of CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by Code of CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the

conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of; correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate Courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case.

13. In case of *Munshi Singh Vs. Nagar Panchayat*, Full Bench of MP High Court (Gwalior Bench) question of entitlement for reinstatement and back wages in case of violation of Section 25F of I.D. Act, 1947. Relevant observations made in para 15 by Full Bench of MP High Court (Gwalior Bench) are reproduced as under at p. 684 :

15. Thus, from the cases referred herein above, it is clear that the normal rule is that once it is found that the termination order is violative of Section 25F of Industrial Disputes Act, then, the said order is ab initio void and the employee is entitled to reinstatement with full back wages. However, in a particular case, the Court can refuse to grant relief of reinstatement for a particular reason which will depend on the facts and circumstances of each case. Thus, there is no hard and fast rule that the Court should grant the relief of reinstatement with full back wages in each and every case. The same relief shall depend on the facts and circumstances of each case. Hence, the reference is answered accordingly. Now the case be listed before appropriate Division Bench.

14. Therefore, in view of facts and circumstances of this case, decisions relied upon by learned advocate Mr. Chaudhari are not applicable to facts of present case and also in view of aforesaid decisions of Apex Court, this Court cannot interfere with finding of fact based on appreciation of evidence made by Labour

Court. Therefore, there is no substance in this petition and same is, therefore, dismissed.