
(2017) 01 JH CK 0106
In the Jharkhand High Court
Case No : C.W.J.C. No. 1180 of 1999(R)

Workmen

APPELLANT

Vs

The Presiding Officer

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2017) 153 FLR 523 : (2017) 2 JLJR 239 : (2017) 1 LLJ 638

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : M/s. M.M. Pal and Ruby Pandey, Advocates, for the Petitioner; M/s. Satish Bakshi and Nipun Bakshi, Advocates, for the Respondent

Final Decision : Allowed

Judgement

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

2. Reference was made by the Ministry of Labour, Government of India through order dated 16.3.1998 in the following terms:-

" Whether the action of the management of F.C.I. Patna in not regularising the services of workman Smt. Meena Devi in Class IV post and denying payment of wages and all other benefits of regular Class IV was legal and justified? If not, to what relief the concerned workmen is entitled for ?".

That has been answered against the Union and in favour of the Management by the learned Central Government Industrial Tribunal No.2, Dhanbad in Reference Case No. 18 of 1994 by the award dated 16.3.1998, Annexure-3, impugned in the present writ petition.

3. The workman, Smt. Meena Devi represented through the Labour Union set up a case for her regularization on the basis of her engagement as casual workman since January, 1981 in the office of A.R.D.C, Bhagalpur on the basis of circular dated 6.5.1987 adduced as Ext. M-3 by the management. Union examined one

witness namely Rameshwar Ram, employee of A.R.D.C. Union exhibited several documents such as certificate dated 3.1.1991 as Ext.W-1, letter dated 6.5.1990 as Ext.W-2, photo copy of Acquittance roll as Ext. W-3, photo copy of monthly bill of the casual workers as Ext. W-4, photo copy of the Attendance Register Vide Ext. W-5, a certificate vide Ext. W-6, another letter dated 13.11.1988 vide Ext. W-7, office order dated 22.7.1988 vide Ext. W-8, a letter dated 11.4.1994 vide Ext.W-9, Memorandum of settlement dated 27.6.1994 vide Ext. W-10 and other such documents as Ext. W-11 to W-13.

4. The management denied the claim of the workman on the plea that she never performed work in the nature of regular Class IV permanent post, such as Sweeper, Night Guard, Peon etc. She was engaged for few hours on casual basis on working days, in lieu whereof, full wages under the Minimum Wages Act due to a daily wage labourer were however paid. The circular dated 6.5.1987 (Annexure-4 to the Supplementary Affidavit of the petitioner) exhibited as M-3 relaxed the ban on recruitment for filling in any entry level category Class-IV, Class-III posts for considering casual / daily rated employees who have completed three months period on 2.5.1986 i.e. the date of ban and who fulfil other requirement of the posts. However, the decision was not intended to apply for part time casual employees/ casual labour/ workers. Those who did not fulfil the eligibility criteria despite relaxation in age were to be retrenched as per the provisions of Industrial Dispute Act, 1947 after screening. The regularization was to be made against sanctioned posts. It was contended on behalf of the management that the concerned workman did not qualify for regularization as she had not performed the work of any permanent post under the Employer, Food Corporation of India during the said period. It adduced 2 management witnesses namely Sri K.C. Biswas, Assistant Manager of Ex-Bhagalpur Phase I as MW-1 and Prabhat Ranjan Sahay, Assistant Grade-II as MW-2. The management adduced 3 documents as exhibits being bill for casual labourers Ext. M-1, monthly bill for the casual workers as Ext.M-2 and the letter dated 6.5.1987 as Ext. M-3.

5. The learned Tribunal after recording a finding in respect of point no. 1 relating to maintainability of the reference in favour of the Union proceeded to answer point no.2 relating to relief to which the workman could be entitled against her.

6. Learned Senior Counsel for the petitioner has assailed the impugned award inter alia submitting that the learned Tribunal had failed to consider the entire material evidences adduced by the Union by way of documentary evidences that the workman was continuously engaged in casual capacity for performing work, which were in the nature of works performed by the Class-IV employees. The import of circular dated 6.5.1987 has not been considered in its proper perspective. Reliance has been placed on the judgment rendered by the Apex Court in the case of Hari Nandan Prasad & another v. Employer I/r to Management of Food Corporation of India and another reported in (2014) 7 SCC 190 where the applicability of the same circular dated 6.5.1987 was in question.

Learned counsel for the petitioner has also relied upon the judgment rendered by the learned Division Bench of this Court in L.P.A. No. 516 of 2006 with L.P.A. No. 518 of 2006 between the Workman of F.C.I and the Management of F.C.I dated 3.9.2014, which has relied upon the same judgment rendered in the case of Hari Nandan Prasad (supra). It is submitted that material documentary evidences adduced on behalf of the workman if duly considered would dispel the stand of the management that the workman was engaged in casual capacity and was not performing the permanent nature of work like Class-IV employees and that her case required consideration like all other similarly situated casual / daily wage employees.

7. Learned counsel for the management on his part has defended the impugned award. He has submitted that the workman never appeared as witness in support of her case relating to her engagement since 1981 onwards. The learned Tribunal has considered the import of the circular dated 6.5.1987 in its true sense and rightly refused the relief as the workman was not performing any such work of permanent nature as undertaken by Class-IV employee in regular employment of F.C.I. Learned counsel for the management, however has not been able to countenance the submission of learned counsel for the workman that learned Tribunal has failed to consider the entire material documentary evidences adduced by the workman while passing the impugned award.

8. I have considered the submission of the parties and gone through the impugned award in the light of relevant material facts on record. The adjudication by the learned Tribunal on a reference made in 1994 itself on the question of regularization of services of the workman, Smt. Meena Devi on Class-IV post and regarding denial of payment of wages and other benefits of regularization of the Class IV employee has been dealt with in a rather perfunctory manner. Though the workman adduced 13 documents as exhibits including certificate dated 3.1.1991 as Ext.W-1, photo copy of Acquittance roll as Ext. W-3, photo copy of monthly bill of the casual worker as Ext. W-4, photo copy of the Attendance Register Vide Ext. W-5, a certificate vide Ext. W-6 and such other letters / office orders and memorandum of settlement marked as Ext. 7 to 13, however, the only discussion made by learned Tribunal in the impugned Award on that score is to the effect that the documentary evidences are also not sufficient to substantiate the claim for regularization of the services of Smt. Meena Devi. The impugned award therefore appears to be flawed for failing to consider and appreciate the evidences before the learned Tribunal in proper manner.

9. If the findings of learned Tribunal are based upon total non consideration of the material evidence, the decision suffers from perversity which warrants interference under Article 227 of the Constitution of India. Reliance is placed upon the judgment rendered by the Apex Court in the case of Syed Yakoob v. K.S. Radhakrishnan and others reported in AIR 1964 Supreme Court 477. Opinion of the Hon''ble Supreme Court contained at Para- 7 is quoted hereunder

for better appreciation.

"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 parties 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 a result of the appreciation of the 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 a Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously admitted inadmissible evidence which has influenced the impugned findings. 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 findings. 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 v. Ahmad Ishaque*, [1955] 1 SCR 1104: ((S) AIR 1955 SC 233); *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals Assam*, 1958 SCR 1240 : (AIR 1958 SC 398) and *Kaushalya Devi v. Bachitra Singh*, AIR 1960 SC 1168."

10. Reliance is also be placed upon the judgment rendered by the Apex Court in the case of *Ouseph Mathai and others v. M. Abdul Khadir* [(2002) 1 SCC 319]. The relevant para 4 to 6 are quoted hereunder for better appreciation:-

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in

relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In *Waryam Singh v. Amarnath* this Court held that power of superintendence conferred by Article 227 is to be exercised more 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 position of law was reiterated in *Nagendra Nath Bora v. Commr. of Hills Division & Appeals*. In *Babhutmal Raichand Oswal v. Laxmibai R. Tarte* this Court held 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. After referring to the judgment of Lord Denning in *R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw* (All ER at p. 128) this Court in *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* held : (SCC p. 460, para 20)

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see *Trimbak Gangadhar Telang*). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

6. In *Laxmikant Revchand Bhojwani v. Pratapsing Mohansingh Pardeshi* this

Court held that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in a dispute regarding eviction of tenant under the Rent Control Act, a special legislation governing landlord-tenant relationship. To the same effect is the judgment in *Koyilerian Janaki v. Rent Controller (Munsiff)*."

11. The impugned award therefore deserves to be set aside. It is accordingly set aside. The matter is remanded to the learned Central Government Industrial Tribunal No.2, Dhanbad to decide the same on the basis of the pleadings and exhibits on record in accordance with law within a period of 2 months from the date of receipt of the copy of this order. Both the parties shall not take any unnecessary adjournment. Learned Tribunal would proceed to hear the matter on day to day basis as the reference is of 1994 itself.

12. The writ petition is allowed in the aforesaid terms.