Neutral Citation No. : **2024:PHHC:048623**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

CWP-17397-2003 (O&M)
Decided on : 09.04.2024

Maharishi Daya Nand University, Rohtak

. . . Petitioner(s)

Versus

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Rohtak and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Amit Rao, Advocate for
Mr. Anurag Goyal, Advocate
for the petitioner(s).

Mr. N.C. Kinra, Advocate
for respondent No.2.

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SANJAY VASHISTH, J. (Oral)

1. By way of present writ petition, petitioner – Maharishi Daya Nand University, Rohtak (being Management) has assailed the award dated 29.07.2003 (Annexure P-1), passed by respondent No.1 – Industrial Tribunal-cum-Labour Court, Rohtak (in short, 'learned Tribunal'), whereby, Reference No.4 of 1998, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, 'ID Act'), has been answered in favour of respondent No.2 – Sant Ram (workman).

2. Pleaded case of the workman (respondent No.2 herein) is that he was employed as 'Mali' on 25.11.1995 on daily wages by the Management and without assigning any reason; his services were terminated on 07.08.1996. His wages for the month of June, 1996 and July, 1996, were not paid and that he had completed 240 working days in the preceding one year of his termination order. Therefore, termination of the workman was

claimed to be in violation of Section 25-F of the ID Act. Another, plea taken by the workman was that employees junior to him were retained by the Management in service and thus, the principle of *"Last Come, First Go"*, was not followed in violation of Section 25-G & 25-H of the ID Act.

3. In reply to the claim statement, Management (petitioner herein) took a defense that the University is an 'autonomous statutory body' constituted under the MDU Act, 1975 and does not fall within the definition of 'industry'. Worker was engaged as 'Mali' on daily wages on muster roll depending upon the availability of work in the sub division to be carried out departmentally. Service period of the workman was not disputed by the Management, but the specific stand was taken that he was engaged as a stop gap arrangement contingency for a specific period and for a particular work to be carried out and was not engaged against any regular post.

4. After examining the evidence, learned Tribunal reached to the conclusion that the working period of workman is not under dispute before it, and also concluded that though, the workman is found to be working for 227 days, but if 22 rest days are also counted, it would be total 240 working days. Thus, learned Tribunal reached to the conclusion that the workman completed 240 days period and termination of his services without any notice, notice pay or retrenchment compensation, is against the provisions of law i.e. Section 25-F of the ID Act.

Lastly, learned Tribunal held that the workman is entitled for reinstatement with continuity in service and 50% back-wages from the date of demand notice i.e. 09.08.1996.

5. After going through the pleadings of the parties and the appended documents including the impugned award, this Court is also in

agreement with the reasoning assigned by learned Tribunal and does not find any substantial reason to cause interference with the same. Moreover, under Article 226 of the Constitution of India, exercising jurisdiction like an appellate Court, is not warranted and appreciated by the Hon'ble Apex Court. As per the dictum of the Hon'ble Apex Court, rendered in ***Syed Yakoob v. K.S. Radhakrishnan; 1964 (AIR) Supreme Court 477 : Law Finder Doc Id #81222***, this Court does not find any substantial reason to deviate from the view point taken by the learned Tribunal.

6. Moreover, Hon'ble the Apex Court has unequivocally established that the jurisdiction of the High Courts under Article 226, while issuing the writ of *Certiorari*, is limited. It is primarily aimed at rectifying errors of jurisdiction or instances of violation of the principles of natural justice. Therefore, it constitutes a supervisory role, and High Courts ought to abstain from assuming the function of an appellate court in the writ of *Certiorari*. They should refrain from re-examining the evidence, particularly with regards to its sufficiency or adequacy. While exercising its power under Article 226 of the Constitution, High Court must cause interference only when there is error of law, which requires correction and not in general, when there is error of fact. In ***Syed Yakoob's case (supra)***, Hon'ble Apex Court observed in Paragraph No. 7 as under:-

> *"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 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 Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104: Nagendra Nath v. Comm. of Hills Division, 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh, AIR 1960 Supreme Court 1168."

Even, the said view has been reiterated by the Hon'ble Supreme Court recently in ***Central Council for Research in Ayurvedic Sciences and***

Anr. v. Bikartan Das and Others; 2023 AIR (Supreme Court) 4011.

7. Besides above, during the pendency of the writ petition, respondent No.2 – workman filed one application and pointed out that during the pendency of the present writ petition, University/Management has recommended his case for regularization including some other employees, working in the University. In the aforesaid application, on 06.02.2024, following order was passed:-

> *"**103 CM-1921-CWP-2024***
> *in CWP-17397-2003*
>
> *MAHARISHI DAYA NAND UNIVERSITY, ROHTAK V/S PRESIDING OFFICERS AND ANR.*
>
> *Present: Mr. Harsh Kinra, Advocate*
> *For the applicant/respondent No.2.*
>
> -.-
>
> *Counsel for the applicant/respondent No.2 submits that present writ petition filed by the University – Management is listed for its hearing on the Regular Board of this Court at serial No.766.*
>
> *Further submits that during the pendency of the present writ petition, certain recommendations had been issued by the Committee constituted by the petitioner – University/Management for considering the regularization of the employees including respondent No.2 (applicant herein) on the basis of the policy which gave report dated 24.07.2014.*
>
> *Further submits that co-workers have already been regularized but the applicant/respondent No.2 is working on fixed day basis.*
>
> *Notice in the application to the non0applicant/petitioner – University for 09.04.2024.*
>
> *Let the Civil Writ Petition i.e. CWP-17397-2003 be also shown for its hearing for the date fixed i.e. 09.04.2024 in ordinary motion list.*
>
> ***Sd/-***
> ***(SANJAY VASHISTH)***

JUDGE

February 06 2024"

8. Thus, it is obvious that respondent No.2 – workman is retained in service by the petitioner – Management, by implementation of the award, which is under challenge before this Court.

9. As discussed here-above, respondent No.2 – workman is working with the petitioner – University/Management since 1995 and there is a judicial finding in his favour whereby, his termination is held to be bad. On the one hand, finding of the learned Tribunal appears to be according to the settled law and on the other hand, justice also demands that after a period of three decades, the services of the workman cannot be questioned, especially when he has rendered his services to the petitioner – University/Management continuously.

10. At the time of submissions before this Court, there is no such allegation pointed out by the petitioner – Management that the services of respondent No.2 – workman are not to the satisfaction of the Management or there is any serious allegation against him. Rather, it appears that once the case of respondent No.2 – workman is recommended by the petitioner – Management itself for regularization, there is no reason left with the petitioner – Management to contest the well reasoned findings recorded in the impugned award.

11. Therefore, on the basis of aforementioned facts and circumstances and the reasons recorded herein-above, while maintaining the award dated 29.07.2003 (Annexure P-1), present writ petition is hereby **dismissed**.

Needless to say, that monetary relief, if due to be paid to

respondent No.2 – workman by the petitioner – Management in pursuance to the award 29.07.2003 (Annexure P-1), same would be extended to him, without any delay, preferably, within a period of three months from today.

(SANJAY VASHISTH)
JUDGE

April 09, 2024
J.Ram

Whether speaking/reasoned: ✓ *Yes/~~No~~*
Whether Reportable: ✓ *Yes/~~No~~*