Sr.No. 14

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 1419/2010

Vishwakarma Gun Works ….Petitioner (s)

Through :- Mr. Nigam Mehta, Advocate.

V/s

Industrial Tribunal Court and ors. ….Respondent(s)

Through :- Mr. Sachin Sharma, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
08.08.2023

Brief Facts:

1. The present writ petition has been filed by the Firm namely Vishwakarma Gun Works, Industrial Extension Area, Jammu through its proprietor Surinder Kumar, who is engaged in manufacturing of Guns. The case which has been projected by learned counsel for the petitioner is that the private respondent Nos. 4 to 6 who were working as piece meal workers on need basis in the petitioner factory somewhere between 1997 upto December, 2002 were not the regular employees of the petitioner firm and were not being paid fixed monthly salary but were being paid on contractual basis as per the works allotted to them and as per the availability of the work and job.

Arguments on behalf of petitioner:

2. Further case of the petitioner is that some of the workers including the private respondents submitted a joint letter on 16.10.2002 to the management of the petitioner firm stating therein that they are resigning of their own free will. It has been further stated in the letter that their accounts/wages be cleared within 15 days i.e. upto 01.11.2022.

3. It has been further projected by learned counsel for the petitioner that some of the workers who were signatory to the aforesaid resignation letter withdrew their resignation by way of subsequent communication dated 17.10.2002 and the request of those workers was acceded to by the petitioner firm and the resignation of the private respondents and other workers were, accordingly, accepted. It has been further projected by learned counsel for the petitioner for the firm that the private respondents after tendering their resignation to the petitioner firm started working as Workers/Workmen with another company namely M/s Khurmi Gun Works from 01.07.2003 with better wages. It is the specific case of the petitioner firm that these workers worked in the aforesaid firm till 2007-08 and thereafter, the workers have joined the services of another company namely M/s Khajuria Gun Works as per the petitioner. Further fact of the matter is that after ten months, the private respondents moved application dated 14.08.2003 for reinstatement in service with back wages against the management of the petitioner firm before the Assistant Labour Commissioner/Conciliation Officer under the Industrial Disputes Act and on the said date, the notices were issued to the petitioner firm for filing objections and statement of claims.

4. Further case of the petitioner is that similar applications were filed by the private respondents on 19.09.2003 before the Deputy Labour Commissioner, Jammu praying for disbursement of the bonus and other facilities wherein, the private respondents have claimed their salary as Rs. 3,000/- per month. The specific case of the petitioner firm is that the private respondents have been paid all their dues/wages and bonus etc and with a view to fortify their claims, the petitioner has also placed on record the proper receipts which were dully signed by the private respondents acknowledging the aforesaid fact.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

5. The specific case which has been projected by learned counsel for the petitioner is that the private respondents have voluntarily submitted their resignation way back on 16.10.2002 and their duties in the shape of wages/bonus etc were also paid by the petitioner company which is evident from the bare perusal of the receipts dated 28.12.2003 and the NOC were also signed by the private respondents. Hence, there was no dispute and thus, there was nothing for adjudication/reconciliation before the Conciliation Officer but the concerned Conciliation Officer instead of dismissing the claim of the private respondents submitted a failure report under Section 12 (4) dated 02.02.2004 without any rhyme or reason.

6. Further case of the petitioner is that after more than two years from the date of submission of failure report by the Conciliation Officer, the erstwhile Government of Jammu and Kashmir without justifying such a long delay issued notification vide SRO 180 dated 05.06.2006 and while exercising powers under Section 10 (1) (C) of the Industrial Disputes Act, 1947 referred the said dispute to the Labour Court for adjudication in respect of the following issues:-

> *i) Legality or otherwise of the action of the management of Vishwakarma Gun Works, Industrial Extension Area, Jammu in terminating the services of its workers namely Manto Mandal, Mahesh Kumar and Manoj Kumar; and*
>
> *ii) Award appropriate relief to the said workmen in case the illegality of the action of the said management is established.*

7. It has been argued by the learned counsel for the petitioner that the above reference by the Government of J&K by way of Notification/SRO 180 dated 05.06.2006 was received by the Industrial Dispute Tribunal/Labour Court, J&K, Jammu on 14.06.2006 and after entering the same in its register, the reference proceedings were commenced and notices were issued to both the parties and the reference was accordingly, fixed for hearing on 06.07.2006 on which date, both

the parties appeared through their representatives and were directed to file claims and counter claims on the date fixed.

8. As per the petitioner, learned Tribunal without issuing any notice to the petitioner-firm initiated ex-parte proceedings and finally, an ex-parte award dated 29.02.2008 was passed against the petitioner firm. The petitioner firm feeling aggrieved of the aforesaid ex-parte award dated 29.02.2008 passed by respondent No. 1 and recovery notice dated 24.07.2010 issued by respondent No. 3 has impugned the same in the instant petition under Article 226 of the Constitution of India read with Section 103 of Constitution of J&K, inter-alia on the following grounds:-

> ***" a) That the order/award impugned is legally unsustainable in the eyes of law and is required to be quashed and set aside.***
>
> ***b) That once the private respondents/workmen had voluntarily resigned vide letter dated 16.10.2002 which was duly accepted by the petitioner firm and they had requested to pay their duces which were paid to them on 28.12.2003 against proper receipts which were witnessed by Labour Union President, Ghansham Sharma, thereafter the relation of private respondents with the petitioner firm came to an end and thereafter private respondents could not raise any dispute with the petitioner firm regarding their termination/retrenchment and the dispute so raised by the private respondents/workers was after thought and does not come within the definition of Industrial Dispute and the authorities under the act and the Labour Tribunal/Court lacked jurisdiction to entertain and decide such disputes.***
>
> ***c) That the private respondents did not fall in the definition of workmen as they were engaged by the petitioner firm as piece rated workers and they were not regularly employed by the petitioner firm and they were not being paid monthly wages of Rs.4000/as alleged and even this assertion has been falsified by the Witnesses of the private respondents and even by way of applications filed before Dy. L.C., the private respondents have specifically mentioned that they were getting Rs.3000/p.m. and***

thus the finding of the tribunal below that the private respondents were getting Rs.4000/p.m. as wages is factually incorrect and is against the evidence on record and on this count alone the impugned award is required to be quashed and set aside.

d) That the failure report submitted by the Conciliation Officer dated 02.02.2004 u/s 12 (4) is in violation of section 12 (6) of the I.D. Act as 14 days time has been prescribed for conciliation officer to submit the report under this section and it may be submitted that the private respondents have approached the conciliation officer/ALC for reinstatement and back wages on 14.08.2003 and the failure report has been submitted after 6 months on 02.02.2004 which is in violation of section 12 (6) of the I.D. Act and on this count alone the impugned award is required to be quashed and set aside.

e) That the appropriate Government is under legal obligation to refer the dispute for adjudication of labour tribunal/court after the receipt of failure report at the earliest and cannot sit over the matter but in the present case it so appears that the Government has sat over the matter for a pretty long time i.e. for a period of more than 2 years and 4 months i.e. from 02.02.2004 upto 05.06.2006 which is against the provisions of 1.D. Act and on this count alone the impugned award is required to be quashed and set aside.

f) That u/s 10 (2A) of the I.D. Act, the Government is under obligation to specify the period within which the labour tribunal/court has to submit its award while referring the industrial dispute to the labour court/tribunal and in case of an individual workman, the period should not exceed 3 months and providing time limit for making award is mandatory requirement u/s 10 of I.D. Act and if some additional time as prescribed in the reference is taken then the same can be extended by the tribunal/labour court after the concurrence of both the parties but in the impugned reference no time limit/period has been specified for making the award and no concurrence of the petitioner firm has been taken for extending the time and in that view of the matter, the whole

> ***award is vitiated and on this count alone the impugned award is required to be quashed and set aside.***
>
> ***g) That the petitioner firm was duly represented by its representatives before the Tribunal below and has filed its objections and from 11.04.2007 upto 07.06.2007 the presiding officer had been transferred and the post was vacant or the petitioner firm had reasonable belief in his mind that after joining of the new incumbent, fresh notices to the parties including the petitioner firm would be issued and the same was conveyed by the concerned clerk to the representative of the firm but nothing of the sort was done and the petitioner firm was illegally set ex-parte and ultimately, ex-parte award dated 29.02.2008 came to be passed by the tribunal below without any notice and intimation to the petitioner firm and the petitioner firm could only know about the passing of the impugned award when it received recovery notice from recovery Tehsildar, Jammu somewhere in August, 2010, then the petitioner applied for certified copy of the same and consulted legal counsel for appropriate action who advised for filing the present writ petition and thus, there is no delay on the part of the petitioner firm in filing the present writ petition."***

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

<u>Arguments on behalf of the Respondents:</u>

9. *Per contra,* the stand taken by Mr. Sachin Sharma, learned counsel for the respondent is that after receipt of reference from the Government, notices were issued to both the parties and from the record available, it is manifestly clear that both the parties have appeared before the Tribunal and the petitioner has filed claim petition in the Court on 28.08.2006 and the respondents have filed objections on 07.12.2006 and thereafter, the Industrial Tribunal/Labour Court, J&K Jammu has initiated ex-parte proceedings against the respondent (petitioner herein) on 07.11.2007 as the respondent (petitioner herein) did not choose to appear in the Court and this was precisely the reason, the petitioner was directed

to adduce his evidence in ex-parte and finally, the award was passed ex-parte which is impugned in the present petition.

10. Learned counsel for the respondents further submits that although the said ex-parte award was passed on 29.02.2008, yet the petitioner slept over the matter and accepted the same gladly and voluntarily for more than two years as the present petition has been filed by the petitioner firm on 08.12.2010, as a matter of afterthought after accepting the said award gladly and voluntarily. Learned counsel for the respondents further submits that there is no explanation on behalf of the petitioner for filing the present petition belatedly and the explanation tendered by the petitioner in para No. 13 is an explanation which has no basis as no plausible reason has been projected/explained by filing the present petition, belatedly. He further submits that once the award has been accepted gladly and voluntarily by the petitioner for more than two years without any demur, then the petitioner is estopped under law to question the same belatedly after a period of more than two years in absence of any plausible reason or explanation tendered for such delay.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

11. Learned counsel for the respondents further submits that even the award was published in Government Gazette and in spite of the aforesaid publication, no grievance was ever raised by the petitioner firm and it was only as a matter of afterthought, the present writ petition has been filed belatedly after two years and ten months. He contended that in the light of the aforesaid fact, the present petition is not maintainable and liable to be dismissed.

12. Learned counsel for the respondents further submits that the reliance placed by the petitioner on the joint letter of resignation dated 16.10.2002 to the management of the petitioner firm is a letter which has been issued jointly by all the aggrieved persons to the firm which by no stretch of imagination, can be

construed as letter of resignation as the period in question which has been reflected in the aforesaid communication is from 16.10.2002 to 01.11.2002 for which, the private respondents were already working and it is specific stand of the private respondents that even the said respondents worked beyond 01.11.2002 till December, 2002.

Legal Analysis:

13. The present writ petition raises disputed question of fact which cannot be gone into while exercising the writ jurisdiction under Article 226 of the Constitution.

14. This Court even cannot exercise the power as an appellate Court to re-appreciate the evidence which has been adduced before the Labour Court in which an opportunity of being heard was given to the respondents and yet the respondents by their own conduct have failed to cause appearance which led to the initiation of the ex-parte proceedings against the petitioner firm. The record does not reveal that whether any steps were taken by the respondents for modification /vacation of that order.

15. It is also established principle of law that the Court while exercising writ jurisdiction under Article 226 of Constitution of India cannot go into the disputed questions of facts. This court while exercising the writ jurisdiction cannot go into the disputed question of fact as all the questions of facts have been gone in detail by the learned Tribunal by adducing the evidence by passing a reasoned order.

16. This aspect of the matter has been decided by Hon'ble Apex Court in catena of judgments. Reliance has also been placed on judgment titled U.P. State Bridge Corporation v. U.P.Rajya Setu Nigam reported in 2004 (4) SCC 268. Hon'ble the Supreme Court in paragraph 14 has held as under:

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

"14. Finally, it is an established practice that the Court exercising extra-ordinary jurisdiction under Article 226 should have refused to do so where there are disputed questions of fact. In the present case, the nature of the employment of the workmen was in dispute. According to the appellant, the workmen had been appointed in connection with a particular project and there was no question of absorbing them or their continuing in service once the project was completed. Admittedly, when the matter was pending before the High Court, there were 29 such projects under execution or awarded. According to the respondent-workmen, they were appointed as regular employees and they cited orders by which some of them were transferred to various projects at various places. In answer to this the appellants' said that although the appellant corporation tried to accommodate as many daily wagers as they could in any new project, they were always under compulsion to engage local people of the locality where work was awarded. There was as such no question of transfer of any workman from one project to another. This was an issue which should have been resolved on the basis of evidence led. The Division Bench erred in rejecting the appellants submission summarily as also in placing the onus on the appellant to produce the appointment letters of the respondent-workmen."

17. In light of what has been stated above coupled with the law laid down by Hon'ble the Supreme Court, the nomenclature of the petition or the nature of relief sought for by the petitioner is the determining factor to exercise the power and accordingly, would determine the jurisdiction to be exercised by the High Court. This court can't exercise the power as an appellate court while exercising powers under Article 226 by re-appreciating the evidence which has been lead before the Labour Court against the award passed by Industrial Tribunal. The finding recorded by the Learned Tribunal is well reasoned and on the basis of evidence lead, I don't find any perversity in the findings recorded by the Tribunal which could be basis for exercising the extraordinary jurisdiction under Article 226 of the Constitution of India. There is no legal foundation of any perversity in the pleadings of the writ petitioner and rather the petition raises disputed questions of fact. The Learned Tribunal on the basis of evidence has recorded finding of facts and reached an appropriate conclusion which cannot be faulted on the mere asking of the party without any logical basis or reasoning.

18. This court in a judgment titled J&K Industrial & Technical Consultancy Organization Vs. R.K Bakshi and ors reported as 2018(2) JKJ 501, has observed as under:-

> "*10. Law is clear that disputed questions of facts cannot be adjudicated in writ petition, unless there is some grave perversity in the award. In present, case I do not find any perversity in the finding of facts recorded by the Tribunal.*
>
> *15. Industrial Disputes Act is welfare legislation and is intended to protect and safeguard welfare and interest of large work-force working under various employers including private managements. Thus, having regard to legislative history and imperative need to give liberal construction to welfare legislation, harmonious construction of provisions is necessary.*
>
> *16. I, therefore, see no perversity in the findings recorded by the Industrial Tribunal necessitating interference by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. It is settled principle of law that the scope of judicial review on award passed by the Industrial Tribunal is very limited to where labour Court commits serious error of law or findings recorded suffers from error apparent on face of it. The writ Court does not Act as a Court of Appeal against the award passed by the Industrial Tribunal."*

19. Further the Hon'ble Supreme Court in State of U.P and anr. Vs. U.P Rajya Khanij Vikas Nigam; reported as (2008) 12 SCC 675 held as under:-

> "*41. Now, whether such action could or could not have been taken or whether the action was or was not in consonance with law could be decided on the basis of evidence to be adduced by the parties. Normally, when such disputed questions of fact come up for consideration and are required to be answered, appropriate forum would not be a writ court but a Labour Court or an Industrial Tribunal which has jurisdiction to go into the controversy. On the basis of evidence led by the parties, the Court/Tribunal would record a finding of fact and reach an appropriate conclusion. Even on that ground, therefore, the High Court was not justified in allowing the petition and in granting relief.*

> ***50. In our considered view, however, all such actions could be examined by an appropriate Court/Tribunal under the Industrial Law and not by a writ Court exercising power of judicial review under Article 226 of the Constitution. If the impugned action of the Corporation of retrenchment of several employees is not in consonance with law, the employees are certainly entitled to relief from an appropriate authority. If any action is taken which is arbitrary, unreasonable or otherwise not in consonance with the provisions of law, such authority or Court/Tribunal is bound to consider it and legal and legitimate relief can always be granted keeping in view the evidence before it and considering statutory provisions in vogue. Unfortunately, the High Court did not consider all these aspects and issued a writ of mandamus which should not have been done. Hence, the order passed and directions issued by the High Court deserve to be set aside."***

20. It is settled law by the Hon'ble Supreme Court in various authoritative pronouncements that by challenging the award under the Industrial Disputes Act, the Labour Court exercises the powers and jurisdiction of a civil Court and orders passed by the Civil Court can only be challenged before the Court by way of a petition under Article 227 of the Constitution of India and pursuant thereto, from such challenge, the intra Court appeal would lie. A writ petition which assails the order of the Civil Court in the High Court has to be construed and understood in all facts and circumstances to be a challenge under Article 227 of the Constitution. When such is the case, the Court has to examine the allegations/averments made in the petitioner and the relief claimed therein as to whether the petitioner wants to exercise its supervisory power under Article 227 or its jurisdiction under Article 226 of the Constitution of India. If the challenge is limited only to the correctness or otherwise of the award, then it has to be considered that the powers under Article 227 of the Constitution of India has been invoked but admittedly, in the present case, the present petition has been filed under Article 226 of the Constitution of India to question the legality of an

award which has been passed by the Industrial Tribunal by raising disputed questions of fact which is not permissible under law. Thus the challenge of the petitioner fails in the light of the law laid down by the Hon'ble Supreme Court in catena of judgments culling out the principles governing the petitions filed under Article 226 of the Constitution of India and the petitions filed under Article 227 of the Constitution of India exercising supervisory jurisdiction.

21. Admittedly, in the present petition, the firm has challenged the award and the recovery notice on the basis of a communication dated 16.10.2002 whereby it has been alleged that the private respondents have resigned voluntarily which was later on accepted by the firm and it has been projected by the firm that the payment has also been made to the petitioner which is evident by way of receipts which have been placed on record. Besides, the grounds which have been urged by the petitioner firm that the private respondents does not fall in the definition of Workmen as they were engaged by the petitioner firm as piecemeal workers and were not regularly paid by the petitioner is an issue which cannot be adjudicated by this Court by exercising the Writ jurisdiction more particularly, when the Tribunal has dealt all the issues on the basis of the evidence adduced and the documents relied by the private respondents. It is not so, even the learned Tribunal has already initiated the ex-parte proceedings against the petitioner firm on 07.11.2007 after the objections were filed and the said order of initiating ex-parte proceedings was never objected to by the petitioner firm and finally, an ex-parte award came to be passed on 29.02.2008 which was gladly and voluntarily accepted by the petitioner firm and was not called in question for two years and ten months even after its publication in the Government Gazette on 29.02.2008. The petitioner firm after having accepted the aforesaid award which was in the active knowledge of the firm has slept over the matter for two years and ten

months gladly and voluntarily without any demur and after having accepted the same for more than two years, the petitioner firm is estopped under law to question the same belatedly which is a matter of afterthought. From the pleadings, it is apparently clear that no explanation in this regard has been pleaded in the instant writ petition,

22. In absence of any specific pleading, the petitioner even otherwise is estopped under law to question the same at this belated stage when the said order passed by the Tribunal has assumed finality and was accepted by the petitioner firm without any grouse. After having accepted the impugned award of the Tribunal dated 29.02.2008 even after its publication in Government Gazette for more than two years, it doesn't lie in the mouth of the petitioners to agitate belatedly that the award is bad as admittedly the instant writ petition was filed on 09.12.2010 i.e after two years and ten months and delay in challenging the award belatedly has not been explained.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

Conclusion:

23. In the light of the aforesaid discussion, the present writ petition being devoid of any merit deserves dismissal and accordingly, dismissed alongwith all connected applications.

24. As a necessary corollary, the Registry is directed to release the awarded amount in favour of the claimants after due verification.

(WASIM SADIQ NARGAL)
JUDGE

Jammu:
08.08.2023
Tarun

Whether the order is speaking? Yes
Whether the order is reportable? Yes