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Court : Delhi

Decided On : May-22-2012

Judge : P.K. Bhasin

Appeal No. : W.P. (C) 1034 OF 2011

Appellant : Ramesh Kumar

Respondent : Delhi Jal Board

Judgement :

P.K.BHASIN, J.

1. By way of this writ petition the petitioner-workman, who was employed as a Beldar with the respondent- Delhi Jal Board (erstwhile Delhi Water Supply and Sewage Disposal Undertaking), had challenged the award dated 12-11-09 in ID Case No. 118/2008 whereby the termination of services of the petitioner-workman was held to be legal and justified and therefore no relief was given to him by the Industrial Tribunal and also for the reason that he had raised the dispute after more than six years of the termination of his services. The petitioner-workman felt that he was entitled to be re-instated in service with continuity of service and full back wages and so he knocked the doors of this Court for getting that relief.

2. The petitioner-workman, as per his case, was employed as a beldar with the respondent-management on 01.06.1998 till his illegal termination w.e.f. 01.04.2000. He had approached the labour authorities for his re-instatement in

service in the year 2006 but since he could not get that relief the dispute between him and the respondent-management was referred for adjudication to the Industrial Tribunal vide Reference order dated 19th September, 2008 with the following term of reference:-

"Whether the services of Sh. Ramesh Kumar S/o Sh. Wadhawa Ram have been illegally and/ or unjustifiably terminated by the Management; and if yes, to what relief is he entitled?"

3. The petitioner-workman filed his statement of claim challenging his termination to be illegal. The respondent-management filed a written statement denying the allegations of illegal termination of his services and pleaded that he was a daily wager/muster roll employee engaged for performing duties which were seasonal like de-silting nallas and sewer lines for pre-monsoon season. He was engaged in June, 1998 till December, 1998 and thereafter he was engaged in January, 1999 till April, 1999 and then again in January, 2000 till 31st March, 2000. It was also pleaded that since the petitioner-workman had raised this dispute after six years and so he was not entitled to any relief.

4. Following issues were framed by the Industrial Tribunal for trial:-

(1) Whether the reference is bad for delay and laches as alleged by the Management ?

(2) As per terms of reference.

5. After examining the witnesses produced before it from both the sides the Industrial Tribunal vide its impugned Award dated 12-11-2009 came to the conclusion that the termination of the petitioner-workman was legal and also that he was not entitled to get relief as he had raised the dispute six years after the termination of his services. Relevant discussion and findings of the Industrial Tribunal on the point of delay are in paras no. 8,9, 10,11, 22 and 23 of the impugned Award which are re-produced below:

"8. I have perused the record. In this case, workman was allegedly appointed on 1.6.98 as Beldar and he worked upto 31.8.2000. His services were allegedly

terminated on 1.4.2000. As per record, he served notice of demand on the Management challenging his alleged termination of his service vide Ex WW1/1 dated 18.9.06 after lapse of six and half years.

9. It has been argued on behalf of the Management dispute has been raised after lapse of six and half years and such a belated raising of dispute is bad on account of laches, therefore, same cannot be entertained. On the other hand, on behalf of the workman, it has been argued that no period of limitation has been prescribed for raising of industrial dispute nor the Limitation act is applicable to industrial disputes if at all there is a delay in raising of dispute and it can only affects, the grant of relief in the form of withholding of back wages.

10. AR for the Management has relied upon authorities reported as S.Shalimar Works Limited vs Their Workmen AIR 1959 SC 1217, it was held that though no limitation is prescribed for making reference of the dispute to an Industrial Tribunal, nevertheless, it has to be made within a reasonable period. In that case delay of 4 years in raising industrial dispute was held to be fatal. In another Authority reported as Nedungadi Bank Ltd. Vs. K.P. Madhvakutty and others AIR 2000 SC 839, delay of 7 years was held to be fatal and disentitled the workman to any relief. Similar view was reiterated in S.M. Nilajkar and others vs Telecom District Manager, Karnataka 2003(4) SCC 27. Relying upon abovesaid authorities, our own Hon'ble High Court in Satbir Singh vs Management of Suptd. Engineer and others 138(2007) DLT 528 (DHC), has held that inordinate and unexplained delay in raising industrial dispute would defeat the rights of the workman and would disentitle him to any relief.

11. In view of these authorities by Hon'ble Supreme Court and of our own Hon'ble High Court since workman himself raised the dispute after lapse of six and half years and reference has been made to this Tribunal after more than 8 years after alleged termination of service of the workman, I am of the view that claim of the workman is bad on account of delay and laches. This issue is accordingly decided.”

6. The petitioner - workman felt aggrieved by the Award of the Industrial Tribunal and filed the present writ petition.

7. The learned counsel for the petitioner-workman contended that the award of the Tribunal holding the claim of the petitioner-workman not maintainable on account of delay and laches since he had raised the dispute after 6 years is a serious error and submitted that the Apex Court itself has held in a catena of judgments that the provisions of the Limitation Act do not extend to proceedings under Industrial Disputes Act and to support this submission, the learned counsel for the petitioner had placed reliance on Supreme Court judgments reported as (2003) 4 SCC 27 and AIR 1999 SC 1351.

8. On the other hand, the learned counsel for the management argued that the impugned award does not suffer from any perversity as the workman had raised this dispute after a lapse of 6 years and that delay had remained unexplained. It was also argued that the workman was engaged in exigencies of work without undergoing any selection process as per notified recruitment Rules on daily wage muster roll against specific sanctions for specific period in the pre-monsoon period for cleaning of storm water drains and de-silting of sewer lines which automatically came to end after the expiry of these specific sanctions. It was further pleaded that since he had not worked for a period of 240 days in the year preceding the date of termination of his services Section 25F of the Industrial Disputes Act was not attracted.

9. After having heard the arguments advanced on behalf of both the parties and after having gone through the impugned Award, I have come to the conclusion that delay of 6 years in raising the dispute after the termination of his services having not been justified by the petitioner-workman that delay dis-entitled him to claim any relief and so has been rightly denied the reliefs sought by him. I am in complete agreement with the decision of the Industrial Tribunal and cannot persuade myself to interfere with its Award. In “**Harjinder Singh vs. Punjab State Warehousing Corporation**”; (2010) 3 SCC 192 the Supreme Court had considered as to when and under what circumstances the High Court should in exercise of its jurisdiction under Articles 226/227 of the Constitution of India interfere with the decisions of the inferior courts and tribunals. And this is what was observed:

“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 v. K.S. Radhakrishnan and Ors.** : AIR 1964 SC 477 and **Surya Dev Rai v. Ram Chander Rai and Ors.**: 2003 (6) SCC 675. In **Syed Yakoob's** 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.....

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, of 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.

11. In **Surya Dev Rai's** 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 1-7-2002 in Section 115 of the Code of Civil Procedure 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 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 abovesaid 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 thereagainst 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.”

10. A reading of the impugned award passed by the Industrial Tribunal shows that it does not suffer from any jurisdictional error and is also not vitiated by any error of law apparent on the face of the record. While denying the relief to the petitioner on the ground of culpable delay of over six years in raising of the dispute relying upon some judgments of the Supreme Court, out of which one in **Nilajkar’s case** was cited on behalf of the petitioner himself, the Industrial Tribunal has not committed any illegality which needs to be interfered with by this Court. In **Nilajkar’s case** the delay was ignored as it stood explained while in the other judgment cited on behalf of the management no plea of delay was raised and so relief was not declined on account of delay. So, there being no scope for any interference by this Court this writ petition dismissed.

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