* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 718/2015**

Judgment reserved on: 12.03.2015

% Judgment pronounced on: 16.03.2015

CHARAN SINGH ..... Petitioner

Through: Mr. V.K. Sharma, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Rajesh Gogna, Central Government Standing Counsel with Mr. Sameer Sharma and Ms. Nidhi Raman and Ms. Nikhita, Advocates for respondent Nos. 1 to 4.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1**.** Vide the present writ petition the petitioner has challenged the award of the Central Government Industrial Tribunal (hereinafter referred to as 'the CGIT') dated 21.01.2013 whereby his claim was dismissed.

2. From the facts of the case, it is evident that initially the dispute was referred for adjudication to the CGIT vide order No.L-42012/136/98-IR(DU), New Delhi dated 30.11.98 with following

terms:

> *"Whether the action of the management of Carpet Weaving Training Centre in terminating the services of Shri Charan Singh is legal and justified? If not, to what relief the workman is entitled to?"*

3. Vide the award dated 02.08.2006, the CGIT, Kanpur formed an opinion that the reference order lacked in material particulars since date of termination was not mentioned therein and thereafter answered the reference as unarticulable. The petitioner again approached the appropriate government and the appropriate government made the fresh reference vide Order No.L-42012/136/98-IR(DU), New Delhi dated 16.01.2007 with following terms:

> *"Whether the action of the management of Carpet Weaving Training Centre in terminating the services of Shri Charan Singh with effect from 01.01.1985 is legal and justified? If not, to what relief the workman is entitled to?"*

4. The petitioner had filed a statement claim before the CGIT wherein it has alleged that he was appointed as chowkidar on 01.10.1983 after due selection by the respondent. At the time of employment he was also assured vide document dated 01.10.1983 that he would be regularised on the post in due course. He has stated that his wages were paid at the rate of Rs.240/- per month till

31.12.1984 and he rendered continuous service of more than 240 days in a calendar year. The petitioner had challenged his termination being illegal as same in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D.Act') and had prayed for reinstatement with continuity in service and full back wages.

5. The claim of the petitioner was contested by the respondent by filing a written statement before the CGIT. In the written statement it is contended that the claimant was engaged as a daily wager as per requirement from time to time between September, 1983 and December, 1985 and that he had never completed 240 days of continuous service in a calendar year and the provisions of Section 25-F of the I.D.Act were not applicable to him and thus, he was not entitled for any retrenchment compensation and the act of the respondent was not illegal and the claim was liable to be dismissed.

6. The CGIT had framed the following issues which are reproduced as follows:

> *"(i) Whether there is no privity of contract between the claimant and the management?*
>
> *(ii) As in terms of reference.*

(iii) Relief."

7. Thereafter the CGIT had recorded the statements of the parties and heard the arguments and gave its findings.

8. It is clear that the CGIT has followed the procedure while arriving at the conclusion.

9. The petitioner has challenged the said award basically on the grounds that since he had completed 240 days of service before the date of his termination, the act of termination of service without payment of retrenchment compensation and the notice pay is in violation of Section 25-F of the I.D.Act.

10. It is argued on behalf of the petitioner that in support of his contention of being in continuous employment of the respondent and having been completed 240 days preceding the date of termination, he had filed documents Ex.WW1/M2 and Ex.WW1/M3 but the CGIT had wrongly rejected those documents and relied on the documents of the respondents. It is argued that these documents had been issued by the officer of the respondent and therefore, the finding of the CGIT discarding these documents is wrong.

11. I have heard arguments and have perused the record. The trial Court Record was also called in this case and perused.

12. The issue involved in the present case is that whether the petitioner had been in continuous service of the respondent with effect from 01.10.1983 till 31.12.1984 as alleged by him.

13. The findings on this issue is finding of fact and if the tribunal has given due consideration to all the materials on record to reach to a conclusion, then that conclusion cannot be interfered with, unless it is shown that conclusion is based on no evidence, or based on surmises and conjectures and thus perverse. This court cannot substitute its findings on a fact to the findings of the tribunal simply because another interpretation was possible or that the findings do not suit the petitioner. Court in writ jurisdiction does not act as an appellate court. The ground on which this court can interfere by way of writ petition under Article 226 is well settled. In ***Basappa vs. Nagappa***: **(1955) SCR 250**, it was observed by the Supreme Court that a writ of certiorari is generally granted when a court has acted without or in excess of its jurisdiction. It is available in those cases where a tribunal, though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural justice where no particular procedure is prescribed. But a mere wrong

decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown, can be so corrected. In ***Dharangadhara Chemical Works Ltd. vs. State of Saurashtra***: **(1957) SCR 152**, the Supreme Court has again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence. Likewise, in ***State of Andhra Pradesh vs. S. Sree Ram Rao*** : **AIR 1963 SC 1723** the Supreme Court observed that where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion interference under Article 226 would be justified.

14. From the record it is clear that the petitioner has relied on the documents Ex.WW1/M2 and Ex.WW1/M3 in support of this

contention. The CGIT has dealt with both these documents in its award in paras 17 & 18 which are reproduced as under:

> *"17. As projected above, claimant presents that Ex.WW1/M2 was issued when he was appointed on the post of chowkidar. Contents of Ex.WW1/M2 make it clear that the issuing authority opted not to refer it as an appointment letter. As is evident, scale of the post of watchman has not been mentioned. Furthermore, terms and conditions of appointment are not detailed therein. Documents Ex.WW1/M2 bring it to the light of the day that an assurance was given to the claimant for his regularisation in due course of time. Appointment letter generally does not contain such stipulations. Claimant was not put on probation, which fact also pins it down. All these facts lead to an inference that Ex.WW1/M2 does not satisfy standards of it being an appointment letter. Evidently it is fabricated one."*
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> *18. Exhibit WW1/M3 has also been relied by the claimant to establish that he served the Centre from 01.10.1983 till 31.12.1984. When this document is scanned, it came to light that the work 'continuously' was added subsequently in this document. The word 'continuous' overwrites word 'watchman' partially. In this certificate, it has been pointed out that the work of the claimant was satisfactory. It was further written therein that he was paid wages @ Rs.240.00 per month. When scrutinized it emerges that Ex.WW1/M3 purports to be a service/experience certificate. In this document too pay scale, in which claimant was paid his wages, has not been mentioned. At the end of this document words "Pay Rs.240/- per month" has been added. On prima facie appearance, this document is found to be fabricated one."*

15. There is nothing on record to show that the findings of the

tribunal relating to these documents suffer with any infirmity or error apparent on the face of the record. The tribunal has also considered the document produced by the respondent which are Ex.WW1/M5 to Ex.WW1/M17 on which the petitioner had admitted his signatures and in para 19 of the award made the following observations:

> *"19. Ex.WW1/M5 to Ex.WW1/M17 are the documents on which claimant admits his signatures. When these documents are scrutinised, it came to light that these documents were signed by Shri M.K.Jain Signatures of Shri M.K.Jain appearing on these documents are compared with signatures, which appear on Ex.WW1/M2 and Ex.WW1/M3. On comparison, it is observed that signatures, appearing on Ex.WW1/M1 to Ex.WW1/M3, were recorded by someone else other than Shri M.K.Jain. In view of above reasons, these documents are discarded from consideration."*

16. Thus, the findings of CGIT on issue whether the petitioner had completed 240 days of the service preceding his date of termination is based on the evidences oral and documentary produced before it.

17. As the legal aspect is concerned, the CGIT has correctly interpreted the provisions of Section 25-F of the I.D.Act relating to the meaning of 'continuous service of 240 days'. Learned counsel for the petitioner has failed to point out any infirmity in such finding. He only challenges the application of this law on the facts of this case.

Since on the basis of the facts of this case the CGIT has reached to the conclusion that the petitioner had not worked for 240 days prior to the date of his termination, the CGIT had reached to the conclusion that there was no violation of Section 25-F of the I.D.Act. The said finding has been given by the CGIT in para 23 of its award which is re-produced as under:

> *"23. In the light of above law, an enquiry would be made as to whether the claimant could establish that he rendered continuous service of 240 days in preceding twelve month from the date his disengagement. To carry out this exercise, evidence is to be scanned. When documents Ex.WW1/6 and Ex.WW1/6 (originals of which were brought over the record as Ex.WW1/M3 and Ex.WW1/2 respectively) are discarded, only ocular facts remain to be considered. Claimant detailed self serving words to the effect that he served the Centre from 01.10.1983 to 31.12.1984. His self serving words nowhere find any support. Contra to it, documents Ex.WW1/M5 to Ex.WW1/M17 were put to him during the course of his cross-examination. Through these vouchers, payment were released in favour of the claimant from time to time. These documents negate his claim of continuous service with the Centre from 1.10.83 to 31.12.1984. Facts, detailed by Shri Bhuvenender Singh, give jolt to the ocular facts detailed by the claimant. He declares that certificate Ex.MW1/1 was prepared by him, wherein details of the period for which claimant worked with the Centre have been enumerated. This document was not dispelled by the claimant, when Shri Bhuvender Singh was grilled. Shri Bhuvanender Singh projects that while detailing the period for which the claimant worked with the Centre, he had taken into*

account records such as attendance register and monthly muster roll. When Ex.MW1/1 is reconciled with contents of Ex.WW1/M4, to Ex.WW1/M17, it came to light that the claimant worked with the Centre upto August, 1985 and not upto 31.12.1984. Claimant worked for a total period of 118 neither from August, 1985 till September 1984. He worked for 185 days from August, 1984 till September 1983. Therefore, it emerged over the record that in neither of the calendar year, the claimant had worked for 240 days with the Centre. Ocular facts, which are in contradiction of above documents, are not given any weight. Since continuous service of one year had not been rendered by the claimant with the Centre, he is not entitled for protection of provisions of section 25-F of the Act. Neither notice nor pay in lieu there was to be given to the claimant. His claim for retrenchment compensation has not ripened. Therefore, it does not lie in the mouth of the claimant to assert that termination of his service is violative of provisions of section 25-F of the Act."

18. From the above discussion, it follows that the petitioner has failed to give any reason to interfere with the award of CGIT. The writ has no merit and the same is dismissed with no order as to cost.

DEEPA SHARMA, J

MARCH 16, 2015
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