2024:DHC:9259

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

% *Judgment reserved on: 20.11.2024*
Judgment pronounced on: 29.11.2024

\+ **W.P.(C) 5664/2010**

SATISH KUMAR .....Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

versus

HOLISTIC CHILD DEVELOPMENT INDIA AND OTHERS
.....Respondents

Through: Mr. Babu Malayil, Advocate.

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

GIRISH KATHPALIA, J.:

1. This writ action, brought under Article 226 of the Constitution of India assails the Labour Court Award dated 13.04.2010, whereby the Reference was answered against the petitioner, holding that he had failed to prove the relationship of employee and employer between him and the respondent. The petitioner has impleaded New Delhi and Pune offices of M/s. Holistic Child Development India as two separate respondents, though basically they are only one entity. Therefore, the respondents in the present judgment are collectively referred to as "the respondent". Upon issuance of notice, the respondent entered appearance through counsel. I heard learned

counsel for both sides and examined the digitized record of the Labour Court.

2. Succinctly stated, circumstances leading to the present case are as follows.

2.1 The petitioner filed directly before the Labour Court his Statement of Claim dated 27.01.2006 against the respondent, challenging the termination of his services and seeking reinstatement with consequential benefits. In his Statement of Claim, the petitioner pleaded that since 29.03.1995 he had been continuously working with the respondent on permanent job at a monthly salary of Rs. 3,120/-, but was shown by the respondent as daily wager and was not being provided statutory benefits, as provided to the other permanent employees; that since he raised a dispute seeking regularization of his services, which dispute was referred to the Industrial Tribunal vide Reference dated 17.01.2006, the respondent got annoyed and on 13.10.2005 verbally refused to take him back on employment and did not even pay his earned wages; that he issued Demand Notice dated 04.11.2005, which was ignored by the respondent; and that termination of his services by the respondent was illegal, so he is entitled to reinstatement with full back wages.

2.2 On service of notice, the respondent appeared before the Labour Court and filed their written statement denying the pleadings of the petitioner. In their written statement, the respondent pleaded that they are

public charitable trust, duly registered by the Registrar of Cooperative Societies and their aims and objects are to show compassion to the poor, orphaned, abandoned and destitute children, so they are not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act; that no formal appointment letter was issued to the petitioner as the respondent never intended to take him in employment; that the New Delhi office of the respondent is in small premises where the petitioner used to work for short duration by cleaning floors and dusting the office premises within two hours and no other work was taken from him, so he was free to work elsewhere to earn money; that the petitioner was not employed against any permanent post or vacancy and his wages were paid day to day on consolidated basis for the number of days he worked in a month; that as regards the regularization dispute, the same culminated into award dated 18.02.2006 of the Industrial Tribunal against the petitioner as he did not file any Statement of Claim; that the entire staff of the respondent at Delhi office comprises of only one office manager and no other employee, so there was no occasion of granting any statutory benefits to anyone; that since the petitioner was extending threats to the office manager and using filthy language, the respondent told him that he was not required for the work of sweeping and dusting the office from 13.10.2005; that on account of conduct of the petitioner, his complaint was disposed of by the Labour Inspector; that the petitioner never completed 240 days of continuous service under the respondent in any calendar year; and that there is no substance in the case set up by the petitioner.

2.3 The petitioner filed a rejoinder, denying the pleadings of the respondent and reaffirmed his claim contents.

2.4 On the basis of rival pleadings, the learned Labour Court framed the following issues on 24.08.2006:

> *"(i) Whether the management is an 'industry'?*
> *(ii) Whether there is relationship of employer and employee between the parties?*
> *(iii) Whether the workman is entitled to reinstatement with consequential benefits including full back wages?*
> *(iv) Relief."*

2.5 On the basis of above issues, the Labour Court conducted trial in which both sides examined one witness each. After hearing both sides, the Labour Court passed the award impugned in the present case. In the impugned award, on the basis of analysis of the rival pleadings and evidence the Labour Court delivered the findings that there is no evidence to establish that the present respondent is "industry" within the meaning of Section 2(j) of the Industrial Disputes Act; and that there was no relationship of employer and employee between the parties; and that consequently there was no occasion for the respondent to terminate services of the petitioner.

3. Hence, the present writ petition.

4. During arguments, learned counsel for petitioner took me through the rival pleadings and evidence and contended that the impugned award is not sustainable in the eyes of law. Learned counsel for petitioner contended that the evidence adduced on behalf of petitioner clearly shows that he was

engaged by the respondent as full time employee against permanent vacancy, so the findings in that regard are not sustainable. Further, learned counsel for petitioner also contended that since now the respondent has closed down, there is no scope of reinstatement, as such a reasonable amount of compensation be awarded to the petitioner.

5. On the other hand, learned counsel for respondent supported the impugned award and contended that the present writ petition is completely devoid of merits. Learned counsel for respondent also laid emphasis on the settled legal position as regards limited scope of interference by the High Court as regards appreciation of evidence already done by the Labour Court.

6. To begin with, it would be apposite to briefly traverse through the scope of interference by this court under Article 226 of the Constitution of India while dealing with disputes of the present nature. The jurisdiction available to the High Court under Article 226 of the Constitution of India is not in the nature of appellate or revisional jurisdiction. It is an extraordinary jurisdiction in which the discretion can be exercised within the limited parameters, delineated by the Supreme Court.

6.1 In the case of ***Sangram Singh vs Election Tribunal, Kotah & Anr.***, 1955 SCC OnLine SC 21, the Supreme Court examined the jurisdiction under Articles 226 and Article 136 of the Constitution of India thus:

> *"13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all Tribunals to see whether they have acted illegally. That*

jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis a vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105.

14. ***That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensure. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not lightly entertained in this class of case****."*

(emphasis supplied)

6.2 In the case of ***Indian Overseas Bank vs. IOB Staff Canteen Workers Union and Anr.***, AIR 2000 SC 1508, the Supreme Court held thus:

"***The learned single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing***

> ***conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer****. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly one taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable.* ***The only course, therefore, open to the writ Judge was the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below****."*
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> *(emphasis supplied)*

6.3 Most recently in the case of ***State of Rajasthan & Ors. vs. Bhupendra Singh,*** 2024 SCC OnLine SC 1908, the Supreme Court recapitulated the legal position on the scope of Article 226 of the Constitution of India thus:

> *"23. The scope of examination and interference under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution') in a case of the present nature, is no longer res integra. In State of Andhra Pradesh v. S Sree Rama Rao, AIR 1963 SC 1723, a 3-Judge Bench stated:*

'7. … The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.' (emphasis supplied)

24. The above was reiterated by a Bench of equal strength in State Bank of India v. Ram Lal Bhaskar, (2011) 10 SCC 249. Three learned Judges of this Court stated as under in State of Andhra Pradesh v. Chitra Venkata Rao, (1975) 2 SCC 557:

'21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25 : (1964)

2 LLJ 150]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

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23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court

exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not 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 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. Again 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. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a 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. See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64].

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

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26. For these reasons we are of opinion that the High Court was wrong in setting aside the dismissal order by reviewing and reassessing the evidence. The appeal is

accepted. The judgment of the High Court is set aside. Parties will pay and bear their own costs.'

25. In State Bank of India v. S.K. Sharma, (1996) 3 SCC 364, two learned Judges of this Court held:

'28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [[1949] 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664].) As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262], the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [[1984] 3 All ER 935 : [1984] 3 WLR 1174 : [1985] A.C. 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding — which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the

proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries : a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin [[1964] A.C. 40 : [1963] 2 All ER 66 : [1963] 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (Calvin v. Carr [[1980] A.C. 574 : [1979] 2 All ER 440 : [1979] 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing

the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.'

26. In Union of India v. K.G. Soni, (2006) 6 SCC 794, it was opined:

> *'14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., [1948] 1 K.B. 223 : [1947] 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.*
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> *15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.'*

27. The legal position was restated by two learned Judges in State of Uttar Pradesh v. Man Mohan Nath Sinha, (2009) 8 SCC 310:

> *'15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the*

> *evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.'*
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> *28. Turning our gaze back to the facts herein, we find that the learned Single Judge and the Division Bench acted as Courts of Appeal and went on to re-appreciate the evidence, which the above-enumerated authorities caution against. The present coram, in Bharti Airtel Limited v. A.S. Raghavendra, (2024) 6 SCC 418, has laid down:*
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> *'29. As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference. We do not think such a situation prevailed in the present facts. Further, the ratio of the judgments relied upon by the respondent in support of his contentions, would not apply in the facts at hand."*

7. So far as the claim of the petitioner that the respondent is "industry", as mentioned above, the admitted pleadings are to the effect that the respondent is a public charitable trust, engaged in amelioration of poor, orphaned, abandoned and destitute children. The onus to prove that the respondent is "industry" was on the petitioner but he did not lead any evidence on this aspect. The situs of the burden to prove as to whether the establishment in which the claimant was working is or is not an "industry" is no longer *res integra*. In the case of ***State of Gujarat vs Pratamsingh Narsinh Parmar,*** (2001) 9 SCC 713, the Supreme Court specifically held that if a dispute arises as to whether a particular establishment or part thereof wherein an appointment had been made is or is not "industry", it would be

for the person concerned who claims the same to be "industry", to give positive facts for coming to conclusion that it was "industry". In the present case, since the petitioner did not lead any positive evidence to show that the respondent constitute an "industry". On the contrary, in his chief examination affidavit, the witness MW1 examined by the respondent categorically deposed that the respondent is a charitable institution and their object is to help poor and orphaned children, so it is not an "industry" within the meaning of Section 2(j) of the Act. Although MW1 was cross examined substantially, his testimony in this regard was not assailed. Therefore, I find no infirmity in the findings recorded by the learned Labour Court that the respondent is not an "industry".

8. Coming to the other aspect, viz, the relationship of employer and employee between the respondent and the petitioner, it would be significant to note that in his Statement of Claim, the petitioner did not specify the post on which he was appointed or was employed. Admittedly, the petitioner was never issued any appointment letter by the respondent and no steps were taken by the petitioner to summon employment records from office of the respondent. Towards the records of remuneration, the petitioner placed on record of the trial court certain payment vouchers. Although those vouchers were not proved in accordance with law, but the same having been filed by the petitioner himself, those vouchers can be read against him. Those vouchers clearly reflect that he was being paid on day to day basis for the work of cleaning office of the respondent. In other words, there is no reliable

documentary evidence to establish the relationship of employer and employee between the parties.

9. Thence, on both counts, namely the status of the respondent being an "industry" and the existence of employer-employee relationship between the parties, no cogent evidence could be brought on record by the petitioner.

10. In view of the aforesaid, I am unable to find any infirmity in the impugned award, so the same is upheld and the present petition is dismissed.

GIRISH KATHPALIA
(JUDGE)

NOVEMBER 29, 2024/*ry*