Raj Kumar Dixit vs M/S. Vijay Kumar Gauri Shanker, Kanpur ... on 12 May, 2015

Equivalent citations: 2015 AIR SCW 3681, 2015 (9) SCC 345, 2015 LAB. I. C. 2945, 2015 (5) ALJ 108, AIR 2015 SC (SUPP) 1978, (2015) 4 KCCR 440, (2015) 10 ADJ 14 (SC), (2015) 6 SCALE 265, (2015) 4 ESC 638, (2015) 146 FACLR 158, (2015) 2 CURLR 573, (2015) 4 SERVLR 660, (2015) 3 SCT 27

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Bench: V. Gopala Gowda, Fakkir Mohamed Ibrahim Kalifulla

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4370 OF 2015
(Arising Out of SLP (C) No. 29960 of 2014)

RAJ KUMAR DIXIT …APPELLANT

Vs.

M/S.VIJAY KUMAR GAURI SHANKER,
KANPUR NAGAR …RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

This appeal is directed against the impugned final judgment and order dated 02.07.2014 passed by the High Court of Judicature at Allahabad, in Writ Petition No.19573 of 2010, whereby the High Court quashed the judgment and order of the Labour Court, Kanpur, in Adjudication Case No.66 of 2009 dated 03.07.2009, wherein the Labour Court directed the reinstatement of the appellant-workman in his post along with 50% back wages. The High Court modified the Award by granting compensation of Rs. 2 lakhs to be paid to the appellant-workman in place of the Award passed by the Labour Court.

The factual matrix and the rival legal contentions urged on behalf of the parties are briefly stated hereunder with a view to find out whether the impugned judgment and order of the High Court

warrants interference by this Court in exercise of its appellate jurisdiction and for what relief the appellant is entitled to?

M/s.Vijay Kumar Gauri Shanker, the respondent-firm herein, was carrying on the business of transporting caustic soda from M/s.Modi Alkalies and Chemicals Ltd. in Alwar, Rajasthan. For the said purpose, the respondent- firm was in possession of seven tankers which were used for transporting caustic soda from Alwar to the place of supply.

It is the case of the appellant that he was working as an accounts clerk in the respondent-establishment from the year 1994 and was looking after all the factories of the respondent-establishment. Apart from that he was in charge of maintenance of all the seven tankers in the respondent- establishment and was also looking after the transport office and court work of the respondent-employer and in return he was being paid Rs.1,800/- per month along with bonus as was being paid to other workmen of the respondent-establishment.

On 11.6.2001, when the appellant who had fallen sick approached the respondent-firm for his outstanding salary, the respondent-firm terminated him from his services. However, the workmen who were junior to him were still working in the respondent-establishment. The appellant-workman requested for reinstatement of his services in his post but the respondent- establishment refused the same which action amounts to retrenchment as they have done so without following the mandatory conditions as provided under Section 6N of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter, "the Act"). Aggrieved by the order of termination, the appellant raised an industrial dispute before the Labour Court, Kanpur narrating all the relevant facts and grounds in support of his claim.

The Labour Court on the basis of the pleadings of the parties and in accordance with the claim and written statements of the appellant and the respondent and on re-appreciation of the evidence on record adjudicated the existing industrial dispute between the parties and recorded its finding on the points of dispute referred to it in favour of the appellant which are extracted in the narration of the facts and based on the evidence and circumstances of the case, it held that the appellant was under the employment of the respondent-firm and terminating him from his services by the respondent-firm is in contravention to the provisions of Section 6N and other provisions of the Act which is improper and illegal. The Labour Court directed the respondent-firm to reinstate him in the said post and pay him 50% back wages from the date of termination till the date of passing of the Award.

The correctness of the said Award was challenged by the respondent- establishment before the High Court by filing writ petition urging various legal grounds. The High Court, based on the findings and reasons recorded on the points of dispute, held that the termination order passed against the appellant-workman is not legal. The High Court in exercise of its judicial review power under Article 227 of the Constitution of India modified the Award passed by the Labour Court, holding that the workman has neither stated anything with regard to his gainful employment nor any averments were made by him in this regard during the aforesaid period. Therefore, awarding 50% back wages in favour of the workman by the Labour Court in its Award is held to be not justified and the High

Court modified the Award by awarding Rs.2 lakhs compensation in lieu of reinstatement with 50% back wages as awarded by the Labour Court.

The appellant-workman aggrieved by the judgment and order of the High Court has filed this appeal by special leave, urging various legal grounds in support of his claim and prayed this Court to set aside the impugned judgment and order of the High Court and restore the Award and further direct the respondent to reinstate him in his post and pay him full back wages from the date of the Award passed by the Labour Court.

It has been contended by the learned counsel on behalf of the appellant- workman that the services of the workman have been terminated without complying with the mandatory provisions of Section 6N of the Act. His juniors are still continuing in the employment of the respondent- establishment while his services were arbitrarily terminated which is contrary to the law laid down by this Court in a catena of cases. The learned counsel has further contended that the respondent-firm has erroneously claimed that the appellant-workman is not an employee of the firm as he was carrying out the work of advocacy in the courts on its behalf whenever the tankers of the respondent-firm met with an accident. It has been further contended by him that the maintenance of the tankers was done by the appellant-workman in the capacity of the employee of the respondent-firm as the said work could be carried out by an employee of the respondent-firm only. It has been further contended by the learned counsel on behalf of the appellant-workman that the High Court has erred in its decision in holding that the reinstatement of the appellant-workman was unjustified since the respondent-firm has closed down its business. The High Court has further erred in its decision in holding that the Labour Court was not justified in passing an Award of reinstatement of the workman in his post with 50% back wages as the Labour Court in another case involving the driver working at the establishment of the respondent-firm has not ordered his reinstatement which fact of the case could not have applied to the fact situation of the present case as only the transport business of the respondent-firm has closed down and its other businesses are still continuing and the appellant-workman was working in the capacity of an accounts clerk of the respondent-firm which does not disqualify him from reinstatement in his post.

On the other hand, it has been contended by the learned counsel on behalf of the respondent-firm that the appellant-workman has not placed any evidence on record, either oral or documentary to the effect that he was an accounts clerk employed in the respondent-firm and as such there is no master-servant relationship between him and the respondent-firm. Hence, the provisions of Section 6N of the Act are not applicable to the fact situation of the present case. It has been further submitted by him that the management of the respondent-firm gave special power of Attorney to the appellant-workman for the purpose of getting the tankers released from the custody of the police or the court and he has worked in that capacity only and nothing more. For the said work the respondent-firm used to give him fee for all the necessary expenses that he would incur with regard to the release of the tankers of the respondent-firm from the custody of the police or the court.

It has been further contended by the learned counsel that since M/s. Modi Alkalies and Chemicals Ltd. has been closed down in the year 2000 and the work of transporting caustic soda from the said factory was completely stopped, therefore, the tankers of the respondent-firm were sold off and all

the licenses of the tankers were surrendered to the respective authority. Hence, the Labour Court has erred in directing the respondent- firm to reinstate the workman with 50% back wages and the same has been rightly quashed by the High Court and modified the Award by awarding Rs.2 lakhs towards compensation in lieu of reinstatement and back wages awarded by the Labour Court.

We have heard both the learned counsel on behalf of the parties. On the basis of the aforesaid rival legal contentions urged on behalf of the parties and on perusal of the findings recorded by the Labour Court in its Award, we have to answer the points of dispute on the basis of evidence produced on record. We are of the view that the conclusion arrived at by the High Court is erroneous in law in holding that the appellant workman was not in employment under the respondent-firm and it has erroneously quashed the Award of reinstatement of the appellant-workman passed by the Labour Court along with 50% back wages. In support of the above said conclusion arrived at by us, we record our reasons hereunder:-

> It is an admitted fact that the respondent-firm used to authorise the appellant-workman on its behalf to do the work of releasing of the tankers of the respondent-firm from the custody of police or the court whenever the tankers met with an accident and a special power of Attorney was executed by the respondent-firm in this regard to the appellant-workman. Further, the respondent-firm also used to give him advance amount for the expenses that he would incur for carrying out the said work. The appellant-workman was also given bonus every year and the same has been recorded in the cash- book of the respondent-firm. The fact that the respondent-firm is still continuing with its business of trading betel nut and the new plea that the transport business of the respondent-firm has been shut down has also been considered by us. The question that arises for our consideration in this case, keeping in view the relevant facts, circumstances and the evidence on record is that whether the appellant-workman was gainfully employed in the capacity of the clerk in the establishment of the respondent firm or not. The same is answered by the Labour Court in the positive, on the basis of the evidence on record in favour of the appellant for the reason that one would not simply authorize a person who is not even an employee of its establishment for carrying on with the work of getting the tankers released from the custody of the police or the court. Further, the bonus received by the workman is only given in the case where he would be employed in the establishment of the respondent-firm. Thus, the contention of the learned counsel on behalf of the respondent-firm that the appellant-workman is not the employee of the respondent-firm and there is no master-servant relationship between them, was rightly rejected by the Labour Court by recording its reasons and holding that the concerned workman was employed in the establishment of the respondent-firm. Further, the payment of labour charges for the repair of the tankers was given to the workman through bill or voucher separately, instead of it being mentioned directly in the invoices of the repair of the tankers, which evidence was produced by him before the Labour Court, the same is rightly accepted by it on proper appreciation in exercise of its original jurisdiction.

Further, various records such as court orders or the report given at the police station were placed on record before the Labour Court which would clearly show that the appellant-workman worked in the capacity of Munim/Clerk/Manager in the establishment of the respondent-firm. Even the power of Attorney executed by the respondent-firm clearly states that the appellant-workman was authorised to carry out whatever action necessary in connection with the release of the tankers of the respondent-firm either from the police custody or the court. Thus, it is clear from the above evidence produced on record by the appellant before the Labour Court that he has worked in the capacity of not only a mechanic in the establishment of the respondent-firm but also as an accounts clerk. The witnesses on behalf of the respondent-firm had further deposed before the Labour Court that the appellant-workman used to carry out the repair work of the tankers of the respondent-establishment on a regular basis and the said work was done by the appellant-workman only. Therefore, in the light of the facts and circumstances of the case and the evidence admitted on record before the Labour Court and produced before this Court, it is amply clear that the appellant-workman was employed in the establishment of the respondent-firm and he used to carry out the business of the respondent-firm in the capacity of an employee/clerk and not just a third party agent or a mechanic. Therefore, the High Court has gravely erred in quashing the Award of reinstatement of the appellant-workman with 50% back wages in the establishment of the respondent-firm by awarding a compensation of Rs.2 Lakhs in lieu of the same which modification of the Award of the Labour Court is not only erroneous but also suffers from error in law and therefore, the same is liable to be quashed by this Court.

Awarding compensation to an amount of Rs. 2 lakhs to the workman by the High Court in lieu of reinstatement of the appellant-workman along with 50% back wages is once again contrary to the well settled principles of law as has been laid down by this Court in a catena of cases, particularly, the case of Punjab Land Development and Reclamation Corporation. Ltd. v. Presiding Officer, Labour Court,[1] wherein the Constitution Bench held that the order of termination simpliciter has to be held bad in law for non- compliance of the mandatory requirements provided under the Act and further held that the order of termination will be rendered void-ab-initio in law and therefore, the workman is entitled for all benefits for which he is legally entitled to in law.

The High Court has exceeded in its jurisdiction in setting aside the Award passed by the Labour Court in awarding reinstatement of the appellant- workman in his post along with 50% back wages which is erroneous in law as the High Court has not noticed the fact that the appropriate Government has referred the dispute to the Labour Court for its adjudication on the points of dispute referred to it. Since, there was non-compliance of the mandatory requirements as provided under the provisions of the Act by the respondent- firm at the time of passing an order of termination against the appellant- workman, therefore, the same has been held to be bad in law and as such it should have awarded full back wages to the workman from

the date of termination till the date of passing the Award unless the employer proves that the workman was gainfully employed during the aforesaid period which fact is neither pleaded nor proved before the Labour Court.

Therefore, the impugned judgment of the High Court is bad in law as the normal rule to be followed by the respondent-firm with regard to the termination of the services of the workman has not been done in the present case and further, the High Court has once again exceeded in its supervisory jurisdiction in exercise of its judicial review power under Article 227 of the Constitution of India by setting aside the Award of reinstatement with 50% back wages passed by the Labour Court and has instead awarded Rs.2 lakhs as compensation to the appellant-workman which is contrary to the law laid down by this Court. The High Court cannot exercise its supervisory jurisdiction and act as either original court or appellate court to set aside the finding of fact recorded on the points of dispute referred to the Labour Court on proper appreciation of pleadings and evidence on record in favour of the workman as has been done in the instant case. The Award of compensation of Rs.2 Lakhs awarded in place of reinstatement with 50% back wages as awarded by the Labour Court has been modified by the High Court without assigning any cogent and valid reason which is not only erroneous in law but suffers from error in law as well, as the same is contrary to the catena of decisions of this Court. On this ground itself, the impugned judgment of the High Court is liable to be set aside and we pass an order to restore the Award passed by the Labour Court. Reliance has been placed in the case of Syed Yakoob v. K.S. Radhakrishan[2] which has been elaborately considered by this Court in the case of Harjinder Singh v. Punjab State Warehousing Corporation[3], the relevant para of which reads thus:

"12. In Syed Yakoob case, this Court delineated the scope of the writ of certiorari in the following words:

"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 [pic]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, Nagendra Nath Bora v. Commr. of Hills Division and Kaushalya Devi v. Bachittar Singh).

8. 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 misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which [pic]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."" The findings and reasons recorded by the High Court in its judgment and setting aside the award of the Labour Court is contrary to

the decision of this Court. Further, in the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya[4], this Court, after adverting to the three Judge Bench judgment of this Court in the case of Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court[5], has categorically held that the termination order passed by the employer is the subject matter of dispute either before the Tribunal or before the Labour Court and it is for the employer to show that the workman was gainfully employed from the date of the termination till the date of passing of the Award so as to deny him back wages and this Court further held that if the termination order is set aside, the award of reinstatement is the normal rule and awarding of the back wages must follow, the same need not be awarded if the workman is either gainfully employed during the period of adjudication or if the employer is facing any financial crunch. The said decision of this Court in the Deepali Gundu Surwase's case reads thus:

"24. Another three-Judge Bench considered the same issue in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court and observed:

"6. ... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might [pic]have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted." The contention urged on behalf of the respondent-firm that the Award of compensation of Rs.2 Lakhs in lieu of the reinstatement and 50% back wages by the High Court is on account of the alleged closure of the respondent establishment is neither supported by any pleading nor any evidence has been adduced before the Labour Court or this Court in that regard by the respondent-establishment. If any additional material is produced before the High Court, the same would be impermissible in law for the reason that the respondent-employer was required to plead with regard to the alleged closure and substantial evidence must be produced in support of the same before the Labour Court at the first instance, and no such plea has been taken before the Labour

Court by them. In absence of such a plea, producing additional documents by the respondent-establishment before the High Court is totally impermissible in law for the reason that the High Court's jurisdiction is to examine the correctness of the Award passed by the Labour Court in exercise of its judicial review power under Article 227 of the Constitution of India which is very limited. In the present case, even if we consider the facts, there is no additional material evidence produced on record before the High Court and it has no jurisdiction to receive the same and render its findings. Apart from the said reason no other reason has been assigned by the High Court in its judgment and order for modifying the Award passed by the Labour Court. Therefore, the legal contention urged in this regard on behalf of the respondent-establishment is misconceived and the same is liable to be rejected.

The High Court has erred in its decision, both on facts and in law in setting aside the order of reinstatement with 50% back wages to the workman. It is the workman who was aggrieved with regard to the non- awarding of 50% back wages and this aspect of the matter has not been considered by the High Court while interfering with the Award of the Labour Court and awarding compensation in lieu of the reinstatement and back wages. Therefore, the appeal must succeed in this case. The High Court in awarding compensation to the workman has erroneously held that the order of reinstatement passed in favour of the appellant-workman is illegal and void ab initio in law without assigning valid and cogent reasons and therefore, the same is liable to be set aside as there has been a miscarriage of justice. The grounds urged by the appellant in this case are well founded and we accordingly pass the following order:

The Appeal is allowed. The impugned judgment and order passed by the High Court of Judicature at Allahabad in Writ Petition No. 19573 of 2010 dated

02.07.2014 is hereby set aside and the Award passed by the Labour Court in awarding reinstatement with 50% back wages from the date of termination till the date of passing the Award by the Labour Court is restored.

We further direct the respondent-firm to pay full back wages to the workman from the date of passing of the Award by the Labour Court till the date of his reinstatement in service. The order shall be complied with by the respondent-firm within six weeks from the date of receipt of copy of this order.

.....J. [FAKKIR MOHAMED IBRAHIM KALIFULLA] .....J. [V. GOPALA GOWDA]
New Delhi, May 12, 2015

(1990) 3 SCC 682
[2] (1964) AIR SC 477
[3] (2010) 3 SCC 192
[4] (2013) 10 SCC 324
[5] (1980) 4 SCC 443