# M/S Atlas Cycle (Haryana) Ltd vs Kitab Singh on 24 January, 2013

## Equivalent citations: AIR 2013 SUPREME COURT 1172, 2013 AIR SCW 1016, 2013 LAB. I. C. 1337, 2013 (2) SERVLJ 452 SC, 2013 (2) SCALE 49, 2013 (3) KCCR 167 SN, 2013 (12) SCC 573, (2013) 1 CURLR 592, (2013) 2 SCT 160, (2013) 2 SERVLR 343, (2013) 2 SCALE 49, (2013) 2 ALL WC 1803, (2013) 136 FACLR 893, (2013) 1 LAB LN 561

## Author: P. Sathasivam

## Bench: P. Sathasivam, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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2 CIVIL APPEAL NO. OF 2013

3 (Arising out of SLP (C) No. 1674 of 2009)

M/s Atlas Cycle (Haryana) Ltd. .... Appellant (s)

Versus

Kitab Singh .... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 04.10.2008 passed by the High Court of Punjab & Haryana at Chandigarh in Letters Patent Appeal No. 48 of 2008 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant-Company herein and confirmed the order of the learned Single Judge in Civil Writ Petition No.11450 of 1995.

3) Brief facts:

(a) In the year 1977, Kitab Singh – respondent herein was employed by the appellant-Company on piece rate basis in the Packing Department. On 28.11.1988, respondent was charge- sheeted for committing theft of goods belonging to the appellant-Company for which a written explanation dated 12.10.1989 was submitted by the respondent seeking pardon and assuring that he would not indulge in any such misconduct in future. This was accepted by the appellant-Company.

(b) On 01.10.1992, respondent submitted his resignation citing domestic circumstances and the appellant-Company accepted the resignation on the same day.

(c) On 07.10.1992, respondent wrote a letter to the Chief Minister of Haryana, leveling certain allegations against the management of the appellant-Company. In that letter, he alleged that on 30.09.1992, in the evening after finishing his duty, when he went to the puncture shop outside the factory to collect his scooter, which he had left in the morning, the security guard accused him of taking stolen goods in a bag. He further alleged that he was beaten up, given electric shock and forced to write the resignation letter and thereafter, left him in his home in an unconscious condition. It was further stated in that letter that when the respondent had gone to the factory in the morning of 01.10.1992, he was not allowed to enter.

(d) Respondent sent a notice dated 13.10.1992 to the appellant-Company stating that when he went to attend duty on 01.10.1992, the security officer refused to enter him and he had not been given compensation under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and that he should be reinstated with continuity of service.

(e) The State Government, vide letter dated 11.01.1993, rejected his request for a Reference on the ground that he himself had resigned from the job after submitting resignation.

(f) Aggrieved by the said reply, respondent filed a Writ Petition being CWP No. 10642 of 1993 before the High Court praying for referring the dispute to the Labour Court. The High Court allowed the same with a direction to the State Government to refer the matter to the Labour Court for adjudication.

(g) On 21.04.1994, respondent filed a Claim Statement before the Labour Court alleging that he had not resigned and that he should be ordered to be reinstated on duty with continuity of service and back wages.

(h) Appellant-Company filed a written statement stating, inter alia, that respondent is not entitled to any relief by way of re-instatement or by way of back wages as he himself resigned from the service.

(i) The Labour Court, by order dated 02.02.2005, dismissed the Reference and the Claim Statement of the respondent.

(j) Aggrieved by the said order, on 07.08.1995, respondent filed a Petition being Civil Writ Petition No. 11450 of 1995 before the High Court. Learned single Judge, by order dated 09.01.2008 set aside the Award of the Labour Court and directed the appellant-Company to reinstate the respondent in service with 25% back wages.

(k) Not satisfied with the order of learned single Judge, on 07.02.2008, the appellant-Company filed a Letters Patent Appeal No. 48 of 2008 before the Division Bench of the High Court. By judgment dated 04.10.2008, the Division Bench dismissed the said Appeal.

(l) Being aggrieved, the appellant-Company preferred this appeal by way of special leave.

4) We heard Mr. Raj Kumar Mehta, learned counsel for the appellant- Company and Mr. S.N. Bhat, learned counsel for the respondent-workman.

5) The only question that was posed and discussed before the learned single Judge of the High Court was as to whether the workman had voluntarily resigned on 01.10.1992, as claimed by the Management or was he forced to resign on 30.09.1992 as alleged by the workman? After finding that had the workman resigned voluntarily on 01.10.1992, he would not have complained to the Management on that very day and run from pillar to post, by making various complaints to higher authorities, including the Chief Minister of the State and if the workman had committed any misconduct like theft etc., the Management could have held a domestic inquiry and taken a suitable action as per law, the single Judge ultimately concluded that the workman was retrenched from employment without complying with Section 25-F of the Act.

6) Before the Division Bench of the High Court, the Management raised a question relating to the scope of interference by a writ Court in a finding of fact rendered by a Tribunal/Labour Court. It was urged by the Management that the Labour Court, having arrived at a firm finding that the workman was never tortured or that the story of forcible resignation claimed by him was unreliable, the learned single Judge ought not to have interfered with the same in exercise of his extraordinary writ jurisdiction under Article 226 of the Constitution of India. Learned counsel for the Management further contended that in no circumstance, a direction for reinstatement of the workman in service is warranted, particularly when having regard to his misconduct, the Management had completely lost confidence in the workman. On the other hand, learned counsel for the workman contended that when the findings rendered by the Labour Court are contrary to the material evidence on record, it shall amount to perversity and the writ Court is fully justified in interfering with the same. On going through the entire materials, the Division Bench accepted the stand of the workman and confirmed the order passed by the learned single Judge.

7) Similar contentions as raised before the single Judge and the Division Bench of the High Court were raised before us by both the parties.

8) Before considering the merits of the claim of both the parties, it is useful to refer the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. After adverting to earlier decisions, this Court in Surya Dev Rai vs. Ram Chander Rai & Ors., (2003) 6 SCC 675 summarized various circumstances under which the High Court can exercise its jurisdiction under Articles 226 and 227 of the Constitution which are as under:

> "38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:
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> (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.
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> (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.
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> (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.
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> (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.
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> (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." In the light of the above principles, while reiterating the same, we have to consider whether the High Court has exceeded its power as claimed by the learned counsel for the appellant?

9) It is relevant to note that in order to find out the correctness of the order passed by the learned single Judge, the Division Bench summoned all the records of the Labour Court and perused the same. In the written claim before the Labour Court, the workman has specifically alleged that on 01.10.1992, he sent a

notice-cum-application to the Management and a news item to this effect was duly published in a vernacular local daily. This factual aspect and version, particularly the receipt of notice-cum-

application dated 01.10.1992 from the workman, has not been denied in the written statement filed by the Management. The main emphasis in the written statement of the Management was that the workman had voluntarily tendered his resignation on 01.10.1992. It is brought to our notice that the Labour-cum-Conciliation Officer has not disputed the important fact that the workman protested in writing on the very next day of the incident. Whether the complaint sent by the workman on 07.10.1992 and the resignation tendered by him on 01.10.1992 was voluntary or not have not been adverted to by the Labour Court. According to us, these are the real issues in this case. As rightly observed by the Division Bench, we also noticed contradictory findings by the Labour Court with regard to the claim of the workman that he was tortured by the Management on 30.09.1992 and was made to write the resignation letter on 01.10.1992. Again, it was rightly observed by the Division Bench that certain relevant facts such as workman had been in service since 1977 and in such circumstance whether there is any need to resign without any acceptable reason that too without any monetary incentive and complaint on the same day to the Management and higher authorities including the Chief Minister, were not at all considered by the Labour Court and merely accepted that the workman tendered the resignation in his own writing.

10) Even the claim of theft in the year 1988 by the workman has not been specifically raised in the written statement before the Labour Court and raised for the first time only before the writ Court.

11) We are satisfied that the learned single Judge thoroughly analysed all the aspects and arrived at a correct conclusion. It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and the writ Court would be fully justified in interfering with the said conclusion. We are conscious of the fact that the High Court exercising writ of certiorari would not permit to assume the role of the appellate Court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ Court would be justified in exercising its remedy. In other words, 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.

12) On going through the entire reasoning of the Labour Court, materials placed and stand taken by the workman and the Management, we are satisfied that the learned single Judge was fully justified in interfering with the conclusion arrived at by the Labour Court which has been rightly affirmed by the Division Bench. Consequently, the appeal of the Management fails and the same is dismissed with costs quantified at Rs.10,000/-.

.....J. (P. SATHASIVAM) .....J. (JAGDISH SINGH KHEHAR) NEW DELHI;

JANUARY 24, 2013.

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