IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17222 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE MAUNA M. BHATT **sd/-**

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

==========

DAKSHIN GUJARAT VIJ COMPANY LTD & ANR.

Versus

VITTHALBHAI GOPALJI PATEL

==========

Appearance:
MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1,2
MR AK CLERK(235) for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

Date : 08/04/2024

ORAL JUDGMENT

1. Rule returnable forthwith. Learned advocate Mr. A. K. Clerk waives service of notice of Rule on behalf of respondent

– employee.

2. Employer – Company has filed this petition challenging the award of Industrial Court, Surat dated 20.11.2019, in Appeal (I.C) No. 38 of 2012, wherein the petitioner was directed to treat the service of respondent as continuous service until his date of retirement and further directed to pay 50% back wages with all consequential benefits.

3. The facts in brief as referred in the petition are as under: -

The respondent – employee was working as meter reader in the petitioner's establishment. A departmental inquiry was initiated against respondent vide chargesheet dated 23.05.1994. The said chargesheet was thereafter revised on 02.07.1996. The chargesheet refers to misconduct of respondent – employee while he was working at Udhana Rural Sub-Division. Pursuant to the issuance of chargesheet, appointment of inquiry officer was done and inquiry was concluded. It was case of the petitioner that the inquiry was conducted after following due procedure. The Inquiry Officer gave his report on 31.05.1996 wherein the charges leveled against the respondent – employee was held to be proved. Upon charges being proved, the respondent was served with second show-cause notice and after considering his explanation on the second show-cause notice,

order of termination dated 01.05.1997 was passed. Against the order of termination dated 01.05.1997, the respondent – employee preferred appeal before the appellate committee which came to be rejected. Against the order of termination dated 01.05.1997 and rejection of appeal, the respondent filed proceedings before the Labour Court, Surat under the Section 78 and 79 of the Bombay Industrial Relations Act, 1946 ('the BIR Act' for short). The said application was registered as BIR (T) Application No. 705 of 1997. In the BIR(T) Application No. 705 of 1997, the petitioner – Company appeared and filed its reply. In BIR (T) Application No. 705 of 1997, the inquiry proceedings were challenged and the Labour Court by interim order dated 17.12.2002, held the inquiry against the respondent as vitiated granting the opportunity to the petitioners to lead evidence before the Labour Court. Against the interim order dated 17.12.2002, holding the inquiry as vitiated, the petitioner – Company preferred revision application which came to be dismissed by order dated 05.05.2006. Against the order dated 17.12.2002 and 05.05.2006, a petition was preferred being Special Civil Application No. 23514 of 2006 which came to be rejected by order dated 16.01.2007 on the ground that the order dated 17.12.2002 is an interlocutory order. Subsequently, the petitioner lead documentary and oral evidences. Upon adjudication the Labour Court, rejected BIR (T)Application No.

705 of 1997 vide order dated 31.05.2012. Aggrieved by the order of Labour Court in BIR (T) Application No. 705 of 1997, the respondent – workman preferred appeal registered as Appeal (I.C.) No. 38 of 2012 before the Industrial Court, Surat. Upon adjudication, the Industrial Court, Surat held the termination of respondent – employee as illegal directing the petitioner to treat the service of respondent – employee as continuous service till the date of retirement. It was also further directed to pay 50% backwages and all consequential benefits, aggrieved by which present petition is filed.

4. Heard learned advocate Mr. Dipak Dave for the petitioner - Company and learned advocate Mr. A. K. Clerk for the respondent – employee.

5. Learned advocate Mr. Dipak Dave for the petitioner – Company submitted that the order of Industrial Court, Surat in Appeal (I.C.) No. 38 of 2012 is erroneous because of following reasons: -

5.1 The respondent – employee was served with a chargesheet dated 23.05.1994 which came to be revised by charge memorandum dated 02.07.1996. In the charge memorandum dated 02.07.1996, the charges leveled against respondent – employee was referred in the schedule attached

to the chargesheet. It was case of the petitioner – Company that while acting as meter reader, the respondent deliberately read less reading of meter, which resulted into loss to the Company. Pursuant to the chargesheet the inquiry was conducted and after full-fledged inquiry the charges were held to be proved. Since, the inquiry was conducted as per the due procedure under the provisions of the Act and standing orders no interference is called for.

5.2 The charge memorandum refers to the discrepancies particularly in relation to lesser reading of meter by the respondent employee. The figures referred in the chargesheet of meter reading were not disputed by the respondent employee. It was case of the petitioner in the charge memorandum that the respondent employee was working as a meter reader and when the checking squad checked the meter, lesser reading was found and therefore evidently since the respondent – employee was working as meter reader there was deliberate attempt to record the lesser reading which caused loss to the Company. Since the charges were proved, interference with regard to the punishment was not required.

5.3 Placing heavy reliance on Labour Court's finding in BIR T Application No. 705 of 1997 dated 31.05.2012, learned advocate submitted that the respondent – employee admitted

in the cross-examination that the meter reading shown to him was the original meter reading and the reading taken by the checking squad was of the same place. Since, no witnesses were examined or no documents in support of no discrepancy in the meter reading was established, the meter reading taken by the checking squad itself suggest the discrepancy and therefore no interference is called for. The Labour Court in BIR T Application No. 705 of 1997 recorded that since the meter read by respondent workman and the checking squad was of the same place and no fault can be found from the petitioner as the change in meter reading was evident.

5.4 Placing reliance on deposition of the management witness, of one Shri Ashokkumar Chottalal Panwala at Exh. 77; Learned advocate for the petitioner submitted that in his deposition the employer witness had recorded that there was difference in the meter reading recorded by the respondent workman and checking squad of the petitioner. Referring to the management witness learned advocate submitted that the checking report was exhibited and the same being proved no fault can be found from the meter reading taken by the checking squad. Even it was not a case of power theft or meter tampering and since the discrepancy in the meter reading being apparent and the charges leveled against the respondent – employee being proved the order dated

20.11.2019 of the Industrial Court, Surat is erroneous.

5.5 Referring to one more deposition of one Shri Lalitbhai Vasantbhai Patel learned advocate for the petitioner submitted that the Superintendent Engineer of the petitioner corporation confirms the discrepancy in the meter reading and therefore also the order of Labour Court dated 31.05.2012 is appropriate and the order of Industrial Court dated 28.11.2019, deserves to be quashed.

5.6 Placing reliance on the evidence of Shri Praful Chandra Natwarlal Upadhyay who was Executive Director at the relevant point of time working with the petitioner – Company and the cross-examination of one Shri Jethabhai Virabhai Prajapati, Chief Engineer and Superintend Engineer at the relevant time, learned advocate for the petitioner submitted that the depositions of the witnesses had proved beyond doubt that the entire matter is based on the meter reading taken by respondent – employee and the checking squad and therefore the order of termination is appropriate.

5.7 On the aspect of reading taken after 28 days delay, learned advocate submitted that delay occasioned in reading the meter is of no consequence because the inference drawn by the Inquiry Officer and from the deposition of the witnesses of the management it is evident that even if the consumption is

for 24 hours a day, then also the huge difference recorded by the checking squad would not be possible. Thus, upon holding the respondent guilty of serious misconduct, order of termination was passed. On account of discrepancy meted out with the present respondent – employee, learned advocate for the petitioner submitted that when the charges were proved on the basis of admission of the witnesses and when there was direct evidence in form of difference shown in the meter read by respondent – employee and the checking squad, the treatment given to other employee is of no consequences. Learned advocate for the petitioner reiterated that since the meter reading was not challenged and they were of same place no interference is required in the order of dismissal. He further submitted that the Labour Court vide order 31.05.2012 had appropriately considered the evidence on record and considering the deposition of witnesses had arrived at appropriate conclusion that the charges leveled against the respondent employee being proved the order of termination is legal and valid which the Industrial Court had erred and therefore the award of the Industrial Court dated 28.11.2019 deserves to be quashed and set aside.

5.8 Learned advocate strenuously submitted that the consideration made by the Industrial Court is erroneous because in case of departmental proceedings, the Inquiry is to

be conducted based on principles of preponderance of probabilities where strict proof of evidence isnot required. In this case, the documents on record, particularly the reading by respondent – employee and the reading done by checking squad along with the deposition of witnesses proved beyond doubt the charges leveled against the respondent. No strict proof of evidence is not required and therefore the interference of the Industrial Court in the order of punishment is erroneous.

5.9 In support of his submissions, learned advocate for the petitioner relied upon the following judgments.

In the case of **State of Rajasthan & Ors. V/s. Heem Singh** reported in **AIR 2020 SC 5455**

In the case of **Union of India V/s. Dalbir Singh** reported in **AIR 2021 SC 4504**

5.10 Learned advocate for the petitioner further submitted that while dealing with the Industrial matter the standard of proof required in criminal trials are not required to be proved. In the present case, the Industrial Court has traveled beyond its jurisdiction by examining the charge leveled against the respondent – employee and therefore no interference is called for. In support he relied upon decision of this Court in the case of **Lupin Ltd. Through General Manager V/s. Melsingh**

Bhagvansingh Parmar reported in **2023 1 GLR 499.** He thus submitted that the award of the Labour Court is beyond jurisdiction and the finding recorded being perverse and contrary to the documents on record deserves interference of this Court and thus he requested to quash and set aside the order of Industrial Court.

5.11 So far interference of the Court in the quantum of penalty, Learned Advocate relied upon following decisions:

> In the case of **Laxmiben Jerambhai** reported in **2018 (0) JX(GUJ) 658**
>
> **KKR India Financial Services Ltd. V/s. Axis Bank Ltd.** reported in **2021 (1) GLR 1**

5.12 Learned advocate also submitted that when there is no finding with regard to victimization or unfair labour practice backwages ought not to have awarded by the Industrial Court and he further requested to quash and set aside the same. In support he further relied upon decision in the case of **Depot Manager, Andhra Pradesh State Road Transport Corporation V/ s. Jayaram Reddy** reported in **2009 (2) SCC 681.** He thus submitted that the award of the Labour Court being without jurisdiction and beyond the facts and evidence on record deserves interference of this Court and deserves to be quashed and set aside.

6. Opposing the present petition, learned advocate Mr. A. K. Clerk for the respondent – employee submitted that the award of Industrial Court, Surat dated 28.11.2019 in Appeal (I.C.) No. 38 of 2012 is appropriate on the following grounds: -

6.1 The chargesheet referred to misconduct where it is stated that the respondent-employee red lesser reading of meter, which may have benefited the consumers. It also refers to carry forward of accumulated units. The said inquiry proceedings were subject matter of challenge before Labour Court in BIR T No.705 of 1997 and the Labour Court in BIR T Application No. 705 of 1997 held the inquiry as illegal. Against the order of 17.12.2002, holding the inquiry illegal, the petitioner – Company preferred revision which came to be rejected against which the petition was filed and the same was also rejected which clearly establishes that the inquiry initiated against the respondent – employer being illegal the merits as submitted by learned advocate for the petitioner is not required to be gone in to. So far accumulation of unit which is one of the charge, the Industrial Court in the impugned order dated 20.11.2019 held that the case in hand is of lesser reading of meter than read by the checking squad. It also refers to the bill prepared by the respondent employee of a lesser units. However, no case is made out of accumulation of

units and carrying it forward. Therefore, the case is only with regard to the discrepancy in a meter reading recorded by checking squad which was done after 28 days, from the meter read by respondent – employee. The Industrial Court has therefore correctly considered it. Referring to deposition of petitioner – Company's witness at Exh.77, learned advocate submitted that nothing could be established to show that the meter which was read by the respondent – employee was the wrong reading at the relevant point of time. Three witnesses of petitioner- Company were examined at Exh.77, Exh.104, Exh.121 and all three had stated that there is discrepancy was noticed by checking squad after 28 days delay. Further, there is nothing to prove that the meter which was read by respondent – employee was not the correct reading on that date. Therefore, order of Industrial Court being appropriate does not call for interference.

6.2 Further, bill book or document were not produced by the petitioner – Company and therefore the Industrial Court held that the misconduct was proved based on the presumption. With regard to the discrimination meted out to the respondent employee, learned advocate submitted that it is evident from the order dated 20.11.2019 that with similar misconduct the employees were punished with a lesser punishment of stoppage of increment whereas a present respondent – employee was

punished with order of dismissal which is contrary to the evidence on record and therefore the award of the Industrial Court quashing the inquiry proceedings is appropriate.

6.3 Learned advocate placing reliance on the deposition of Shri Ashokkumar Chottalal Panwala at Exh.77, Shri Lalitbhai Vasantji Patel at Exh.91 and Shri Prafulchandra Natwarlal Upadhya at Exh.104 submitted that all these evidences did not support the misconduct of the respondent – employee. On the contrary all had confirmed that they were not aware about the meter reading on 04.11.1992 when it was read by respondent – employee and no tampering of the meter was found. Learned advocate for the respondent – employee relying upon the decision in the case of **Indian Overseas Bank V/s. I. O. B. Staff Canteen Workers' Union and Anr.** reported in **(2000) 4 SCC 245** and decision in the case of **Harjinder Singh V/s. Punjab State Warehousing Corporation** reported in **2010 3 SCC 192** submitted that when the order of Industrial Court is based on evidence on record and within the jurisdiction not being perverse the scope of interference being very minimal, no interference is called for in the order dated 20.11.2019 of Industrial Court in Appeal (I.C.) No. 38 of 2012. He submitted that considering the fact that during pendency of proceedings since the workman had attained the age of superannuation, 50% of the backwages awarded is appropriate since for no

fault of the employee he was dismissed from service however since he had not worked with the petitioner – Company, 50% backwages awarded being appropriate no interference is called for. He thus submitted that the petition deserves to be rejected.

7. Considered the submissions and the decisions relied upon. Revisitation of following facts would be necessary.

7.1 The respondent – employee joined the service of petitioner on 12.06.1972. He was terminated first by an order dated 03.04.1993. The said order of termination dated 03.04.1983 was challenged and the respondent was reinstated on 28.02.1997. Once again, the respondent was terminated on 01.05.1997. The termination was challenged by the respondent by filing BIR T Application No. 705 of 1997. upon adjudication of the BIR T Application No. 705 of 1997 the order dated 31.05.2012 was passed rejecting the application of the respondent. Against the order of Labour Court, Surat in BIR T Application No. 705 of 1997 dated 31.05.2012, the respondent – employee preferred Appeal being Appeal (I.C) No. 38 of 2012 wherein the Industrial Trial, Surat directed the petitioner – Company to grant the respondent – employee continuity of service from his date of termination and thereafter to award 50% wages till the date of superannuation. The order of

continuity and grant of 50% wages was passed considering the fact that during pendency of the proceedings (Appeal I. C. No. 38 of 2013) the workman attained the age of superannuation. From the order dated 20.11.2019 in Appeal (I.C.) No. 38 of 2012 it is noticed that the initial challenge was made with regard to the Inquiry wherein by order dated 17.12.2002 the inquiry was held to be illegal. The order dated 17.12.2002 was challenged by petitioner – Company by filing Revision Application No. 02 of 2003 was also rejected. Against the order dated 17.12.2002 and order in Revision Application rejecting inquiry held to be illegal, Special Civil Application No. 23514 of 2006 was filed and the same was rejected by holding that the order is interlocutory. The Labour Court in the proceedings permitted the charges to be proved by leading evidence and thus the evidences were led by both the parties and the Labour Court in BIR T Application No. 705 of 1997 by order dated 31.05.2012 confirmed the order of termination. In the appeal filed challenging the order dated 31.05.2012 in BIR T Application No. 705 of 1997, the Industrial Court after taking into consideration the evidences of both the parties particularly the evidences laid at Exh.77 of one Shri Ashokkumar Chottalal Panwala at Exh.91, Shri Lalitbhai Vasantji Patel and Exh. 104 of Shri Praful Agarwal had recorded the findings that some of the consumers meter was read by respondent employee on 04.11.1992. The respondent

read meter of relevant consumer as on 04.11.1992 and accordingly the bill was issued. The checking squad in its inspection read the meter on 01/02.12.1992 which is admittedly after 28 to 29 days. No evidence was led by petitioner – Company to support the submission the reading recorded by the respondent was a wrong. It is case of petitioner that since the meter recording recorded on 04.11.1992 is not the same as on 01/02.12.1992, which was after 28 to 29 days reading recorded on 04.11.1992 was wrong and it was done deliberately. In the opinion of this Court, when nothing was placed on record to show that the meter read on 04.11.1992 by respondent - employee was wrong the allegation in the chargesheet was misconceived and based on presumption. Moreover, in the cross-examination, of the petitioner's witnesses had accepted that they are relying upon the sheet on which the reading was recorded and not aware about the actual reading read by respondent on 04.11.1992. Therefore, the contention of Learned Advocate of the respondent that the allegation that respondent read lesser reading is without proof merit acceptance.

7.2 With regard to monitory benefits caused to the consumers, no evidence was placed on record. On the contrary, all the witnesses of employer had stated that they had not noticed any tampering of the meter. No consumers

were called for examination to justify that they were benefited out of this. Moreover, for allegation of accumulation of unit nothing was placed on record to justify that the accumulated units favored the consumer.

7.3 Therefore, in the opinion of this Court, the finding recorded by the Industrial Court that the petitioner failed to prove charges leveled against the respondent, is appropriate when no documents were produced to justify that the meter read on 04.11.1992 by respondent was wrong. The loss caused to the petitioner – Company referred in the charge-sheet could not be proved and bill book were not produced to justify carry forward of accumulation. Therefore, also the finding recorded by the Industrial Court is appropriate. The Industrial Court, since the charges were not proved, held the punishment to be disproportionate to the misconduct. In the opinion of this Court when the charges were not proved the award of the Labour Court is appropriate more particularly on the ground that on similar charges, the other employee were given lesser punishment of stoppage of 5 increments. Thus, this being the case of discrimination, the dismissal order also deserves to be quashed and set aside.

8. On the decisions relied upon by learned advocate Mr. Dipak Dave for the petitioner – Company in the case of **Heem**

Singh [Supra] on the principles of preponderance of probability it is a settled law that the standard of proof in departmental proceedings and criminal prosecution is different. Strict proof of evidence is not required like criminal prosecution and the disciplinary proceedings are based on preponderance of probabilities. Moreover, in the decision in the case of **Melsingh Bhawarsingh Parmar [Supra]** of this Court, the same principles have been reiterated that strict proof of evidence is not necessary while concluding the departmental proceedings. This Court further held that the Court is not required to step into shoes of Inquiry Officer. It is true that the scope of Labour Court in inquiry proceedings is limited and the Labour Court is not required to sit in appeal however considering the fact that since the charges leveled are contrary to the evidence and record and when it is a clear case of discrimination, the interference by Industrial Court in the order dated 20.11.2019 in the opinion of this Court is appropriate.

8.1 In the decision of Hon'ble Supreme Court in the case of **Daleer Singh [Supra]**, the Hon'ble Supreme Court has reiterated the principles in a criminal trial which are distinct from departmental proceedings. In the present case, the facts are not similar and same would not be applicable in the facts of the case. In the decision of **Union of India V/s J Jason Joseph** reported in **2011 (15) SCC 162** on the aspect of backwages,

Hon'ble Supreme Court has held that when the charges are held to be proved the workman could not be entitled for backwages. In the present case, in the opinion of this Court, the quantum of punishment being too harsh when the charge were held to be illegal, the decision would not be applicable in the facts of this case. One more decision relied upon by learned advocate for the petitioner in the case of **P. Jayaram Reddy [Supra]**, the Hon'ble Supreme Court held that when the misconducts are serious in nature and the same are proved the backwages are not to be awarded. The same being not the fact in the present case, this decision would not be applicable. Further, this Court cannot ignore the limited jurisdiction to interfere with the order passed by the Industrial Court which is based on evidence on record. In the decision of Hon'ble Supreme Court in the case of **Indian Overseas Bank [Supra]** held as under:-

> **17.** The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re- appreciating 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 be 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 to find out the satisfaction or otherwise of 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.

8.2 Moreover, the Hon'ble Supreme Court in the case of **Harjinder Singh [Supra]** held as under:-

> 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 properly, 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 (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque 1955 (1) SCR 1104, Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh)

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; hut 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, or 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."

13. 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 there against 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."

9. In view of above, in the opinion of this Court, in this case, the charges being not proved, no interference is called for in the award of Industrial Court dated 20.11.2019. The award of the Industrial Court dated 20.11.2019, in Appeal (I.C)

No. 13 of 2012 is confirmed. The petitioners are directed to make the payment as directed, within a period of 12 weeks from the date of receipt of the order. No order as to costs. Rule is discharged.

sd/-

(MAUNA M. BHATT,J)

SHRIJIT PILLAI