Form J(2) **IN THE HIGH COURT AT CALCUTTA**

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 8312 of 2020
with
IA No: CAN/1/2020
Central Bank of India
Vs.
Sanjay Sutradhar & Ors.

For the petitioner : Mr. Bishwambher Jha

For respondent No.1 : Mr. Nayan Rakshit

Heard on : 22.11.2023

Judgement on : 22.11.2023

Raja Basu Chowdhury, J.

1. The present writ petition has been filed challenging the award dated 11th November, 2019 passed by the learned Central Government Industrial Tribunal, Kolkata.
2. Records would reveal that a conciliation proceeding was initiated in connection with refusal of employment of the respondent No.1 and his claim for reinstatement. It had been the contention of the respondent No.1 that despite having rendered 22 years of service with the Central Bank, the petitioner herein, with effect from 1st January, 1986, all on a sudden on the basis of a verbal order of the

Chief Manager of the petitioner, the respondent no.1's service was terminated. It is in this connection that the conciliation proceeding was initiated. The petitioner had participated on the said conciliation proceeding. The conciliation having failed the appropriate Government by an order dated 24th September, 2010 was, *inter alia,* pleased to refer the dispute between the parties for adjudication to the Central Government Industrial Tribunal–cum-Labour Court, Kolkata, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act (in short the said Act) by framing of following issues:-

<u>The Schedule</u>

"Whether employer-employee relationship existed between Shri Sanjay Sutradhar and the Central Bank of India in relation to Hill Cart Road Branch, Siliguri? If yes, whether the termination of Shri Sanjay Sutradhar from the service w.e.f. 31st December, 2007 is justified and legal? What relief the workman is entitled for?"

3. Pursuant to the aforesaid, both the petitioner and also the respondent No.1 and the concerned Union participated in the reference. A claim petition was filed by the petitioner before the learned Central Government Industrial Tribunal (hereinafter refer to as the Tribunal). The petitioner had also filed a written statement, *inter alia*, claiming that the respondent No.1 was engaged for

providing service as an outside service provider and that he was collecting his money (commission), in lieu of such service provided to the customers and was also paid nominal charges for cleaning the PC's and intercom of the Branch. According to the petitioner, the respondent No.1 was not appointed as a bank staff by following the procedure for appointment of a staff nor was he ever appointed as, or worked as a casual worker.

4. On contest, the learned Tribunal was, *inter alia*, pleased to pass an order on 11th November, 2019 thereby, holding the respondent No.1 to be in continuous service and had actually worked for more than 240 days during the period of 12 calendar months preceding the date of reference. Having regard to the same, the learned Tribunal was of the view that the respondent No.1 could not be denied the protection under Section 25F of the said Act. Further since, it was established that the respondent No.1 had been terminated by the petitioner without complying with the provision of Section 25F of the said Act, the termination was held illegal and, as such, the respondent No.1 was deemed to be in continuous service and, accordingly, entitled to reinstatement with 50 per cent back wages as may be found due. The aforesaid award was published by the appropriate Government by an order dated 12th December, 2019.

5. Challenging the aforesaid award the present writ petition has been filed. Consequent upon institution of the present proceeding, the respondent No.1 had filed an application under Section 17B of the said Act. By an order dated 4th March, 2021, a Co-ordinate Bench of this Court was, *inter alia*, pleased to dispose of the said application by directing the petitioner to make payment of fifty per cent of the last wages drawn by the respondent no.1, to be disbursed in his favour from the month of April, 2021 till the disposal of the writ petition, within the 7th day of every month.
6. Mr. Jha, learned Advocate representing the writ petitioner at the very outset submits that the petitioner in compliance of the direction passed by the Co-ordinate Bench on 4th March, 2021, is regularly making payment of 50 percent of the last drawn wages, as directed. He submits that the learned Tribunal committed jurisdictional error in deciding the reference in favour of the respondent No.1, notwithstanding there being no employer-employee relationship between the parties. It is submitted that the respondent No.1 was employed by an outside agency. Initially he was maintaining the two wheelers, which were parked outside the branch, by the customers who visited the branch. Subsequently, having approached the petitioner, he was assigned certain work in the nature of cleaning and dusting. He had no specific duty and

visited the branch occasionally for an hour a day. The status of the respondent No.1 is neither temporary nor casual. The respondent No.1 even could not produce the appointment letter. According to Mr. Jha no employer-employee relationship subsists between the parties. The Tribunal, however, by completely overlooking the aforesaid aspects had erred in arrival at a finding that the respondent No.1 had continuously worked with the petitioner for more than 240 days in the last 12 months preceding the reference. The aforesaid finding rendered by the Tribunal is based on no evidence and as such, this Court should set aside the award passed by the Tribunal. In support of his contention that no benefit should be afforded in favour of a person claiming appointment/reinstatement, who had not been appointed following regular procedure, he has placed reliance on a judgment delivered by the Hon'ble Supreme Court of India in the case of ***Secretary, State of Karnataka and Others Vs. Uma Devi (3) and Others*** reported in **(2006) 4 SCC 1**.

7. *Per contra* Mr. Rakshit, learned Advocate representing the respondent No.1 submits that respondent No.1 had worked with the petitioner for over 22 years prior to refusal of his employment by the petitioner. By drawing attention of this Court to the statements made in the claim petition filed on behalf of respondent

No.1 before the learned Tribunal, in particular to those made in Paragraphs 2, 3, 5 and 16, he submits that not only the respondent No.1 had pleaded to be engaged with the petitioner but had also received wages from the bank. By placing before this Court the written statement filed on behalf of the petitioner he submits that there is no denial as regards the respondent No.1 working for more than 240 days within a block period of 12 calendar months for several years since, 1986 to December, 2007. There is also no denial as regards payment of wages by the petitioner to the respondent no.1. The learned Tribunal on the basis of documents on record and upon analysing the evidence, had concluded that the respondent No.1 was engaged with the petitioner bank between 1986 and 2007 and the factum of payment of wages had also been proved through credit vouchers issued to the Savings Banks Account of the respondent No.1. The oral testimony of the respondent No.1, *inter alia,* including payment of wages by the petitioner had also remained uncontroverted. It is submitted that the Tribunal having arrived at a factual finding on the basis of the materials on record, this Court in exercising of extraordinary writ jurisdiction is not called upon to dislodge the same. In support of his aforesaid contention reliance has been placed on a Constitutional Bench judgment delivered by the Hon’ble Supreme

Court in the case of ***Syed Yakoob Vs. K.S. Radhakrishnan and Others,*** reported in **AIR 1964 SCC 477*.***

8. He further submits that no case for interference has been made out, the writ petition should be dismissed.

9. Heard the learned Advocates appearing for the respective parties and considered the materials on record. It is noticed that on the basis of failure of a conciliation proceeding, the appropriate Government by an order dated 24th September, 2010 was, *inter alia*, pleased to refer the disputes as noted therein, to the Central Government Industrial Tribunal-cum-Labour Court, Kolkata for adjudication. Subsequently, by an addendum dated 7th March, 2011, the appropriate Government was, *inter alia*, pleased to amend the said reference insofar as the name and address of the workman was concerned by noting the following:

> ***"ADDENDUM***
>
> *In this Ministry's Order of even number dated 24/9/2010 pertaining to Industrial Dispute between the Central Bank of India and Shri Sanjay Sutradhar, in the endorsement, below Serial No.3, the following name and address of workman may be treated as added at new Serial No.3A:*
>
> *"Shri Sanjay Sutradhar,*
> *Rathkhola, P.O. Rabindra Sarani,*
> *Siliguri-734006(W.B.)"*

10. Pursuant to the aforesaid, the learned Tribunal by an order dated 28th March, 2011 had directed the parties to file their respective statements and other relevant documents.

11. It is in pursuance of the aforesaid direction that not only the respondent No.1 but the petitioner also filed its pleadings. Although, Mr. Jha, learned Advocate has strenuously argued that there is no employer-employee relationship between the petitioner and the respondent No.1 by referring to Paragraph 5 of his written statement wherein, it has been stated that the respondent No.1 was engaged for providing service as an outside service provider, Mr.Jha, however, could not identify from the aforesaid written statement or from the records the name of any agency through which the respondent No.1 was engaged. In the case at hand and on the basis of materials on record it appears that the Tribunal had returned the following finding by observing as under:

> *"8. In oral evidence the workman concerned has stated that he was engaged by the bank during the period 1986 to 2007 as casual sub-staff for which he was paid ranging from Rs.800-= per month to Rs.2000/-till 2005 and thereafter Rs.2500/- with effect from January, 2006. His duty was to upkeep the cycle, scooters etc. of the staff members and car of the Branch Manager in garage. The payments were made through credit vouchers to his Savings Bank Account No.30637. No oral evidence has been given by the bank to controvert*

the statement of the workman concerned. Hence there is no reason to disbelieve the claim of the workman concerned that there existed relationship of employer and employee.

9. ....

10. Thus where the workman has been in continuous service in not less than one year, the employer has to follow certain procedure as given in Section 25F before retrenching the workman. The words "continuous service" has been defined in Section 25B of the Act of 1947 according to which a workman is in continuous service for a period one year, if during a period of 12 calendar months preceeding the date of reference he has actually worked for not less than 240 days. The case of the workman concerned is that he had worked for 240 days during the preceding 12 months. Therefore, he cannot be denied the protection given under Section 25F of the Act of 1947. As it has been seen above, the claim of the workman concerned that he had worked from 1986 to 2007 continuously has not been denied by the bank, except saying that he had been engaged merely as an outside service provider for which no evidence is adduced by the bank. Therefore, in view of uncontroverted evidence of the workman concerned there is no reason to disbelieve that he had worked for more than 240 days during a period of 12 calendar months preceding the date of reference. The bank had also issued a circular dated 12th March, 1991 with regard to absorption of temporary employees who have put in 240 days of service. This circular is Ext.W-04 which is also filed by the management."

12. I have scanned the pleadings filed by the parties and the evidence led. Admittedly there is no denial on the part of the petitioner as regards, the engagement of the respondent No.1 and as regards the respondent No.1 having worked for more than 240 days within a block period of 12 calendar months for several years since, 1986 to December, 2007. There are sufficient materials based on which the factual finding as aforesaid has been rendered by the learned Tribunal. Admittedly, it is not a case where the Tribunal returning the aforesaid findings without there being any basis therefor. The pleadings were not only exchanged but documents were duly exhibited. I find that the Hon'ble Supreme Court in the case of ***Syed Yakoob*** (supra) in Paragraph 7 thereof, has been, *inter alia*, pleased to record as follows:

> ***"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 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 [AIR 1960 SC 1168]"*

13. Having regard to the aforesaid and since, it is not a case of the learned Tribunal returning a finding based on no evidence, I am of the view that this Court cannot be called upon to dislodge the factual findings already returned by the learned Tribunal. The reference was not in relation to absorption of casual employee or for permanent employment of the respondent No.1. The judgment relied on by the petitioner in the case of ***Uma Devi (3) and Others*** (supra), I am afraid, is not applicable in the facts of the present case.

14. In my view no case for interference has been made out by the petitioner. There appears to be no jurisdictional error committed by the learned Tribunal. The writ petition thus fails and is accordingly dismissed.

15. In view of dismissal of the writ petition, I am of the view no further order is required to be passed in this application being CAN 1 of 2020, the same is accordingly disposed of .

16. There shall be no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)