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

% ***Reserved on: 24th April, 2025.***

Pronounced on: 02nd May, 2025.

\+ **W.P.(C) 9433/2018**

SHRI SUBE SINGH .....Petitioner

Through: Mr. N.S. Dalal, Ms. Nidhi Dalal, Mr. Alok Kumar, Ms. Rachna Dalal, Advs.

versus

DELHI TRANSPORT CORPORATION .....Respondent

Through: Ms. Aditi Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This petition has been filed seeking quashing of the impugned Order dated 28th April 2018 passed by the Presiding Officer, Dwarka Courts in ***ID No.79/2016***.

2. The petitioner/workman had raised an industrial dispute which had been referred to the Tribunal by the Government of National Capital Terriotory of Delhi ('**GNCTD**') on the issue that, whether the demand of the petitioner for promotion to the post of *Blacksmith* w.e.f. 7th July 1984, was legal/ justified, and if so, what relief was he entitled to.

3. The workman was appointed as *Assistant Blacksmith* with the Delhi Tranport Corporation ('**DTC**'), in 1980.

4. Post his selection he had been working with the Management since November 1980. As per the petitioner, he was entititled to promotion to the next post i.e. *Blacksmith*, from 7th July 1984, but instead, persons junior to him were promoted, since a punishment of stoppage of two incrments had been imposed upon the petitioner, by letter dated 18th November 1983.

5. Petitioner had raised an industrial dispute being ***ID No.135/2000***; Industrial Tribunal, Karkardooma passed an award dated 6th September 2002, setting aside the punishment imposed upon him, basis the alleged charge of misconduct, not being proved.

6. Petitioner's counsel stated that conclusive part of the Award dated 6th September 2002 held that the salary of the workman was to be re-fixed and arrears, if any, were to be paid within one month, along with, interest at the rate of 9% per annum from the date of publication of the award.

7. Mr. N.S. Dalal, counsel for petitioner states in the rejoinder that the consequences would have to automatically follow on the ground that ***firstly***, the basis on which the increments were stopped, was removed; and ***secondly***, that he had to be put in the same position as he was in 1983, and therefore, notwithstanding the decision in ***Mahabir Prasad*** (*infra*), which is distinguishable on the facts of the case, he should be entitled to consequential benefits.

8. Petitioner's counsel, therefore, pointed out that the impugned award was passed on the basis that there was no vacancy at the post of *Blacksmith*, and therefore, he could not have been promoted.

9. Petitioner is seeking benefit of promotion, notwithstanding that there was no vacancy or post of *Blacksmith* after the year 1984, on the basis that he had been denied promotion by virtue of punishment dated 18th November 1983 (*which was later set aside, by award dated 6th September 2002*).

10. Respondent's counsel, however, contended that the conclusive portion of the Award dated 6th September 2002 was quite clear, in that, it directed a refixation of the salary and arrears to be paid along with interest, if in default.

11. There were no consequential benefits which had been granted, and if not specified, the petitioner could not be entitled to promotion. She relied upon the decision in ***Mahabir Prasad v. Delhi Transport Corporation*** 2014 SCC OnLine Del 3757, where the Division Bench of this Court, held as under:

> "*21. Consequently, it is held that the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have to be in accordance with the rules. ACP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity, and contributions to provident fund etc. This Court directs the DTC to issue an order extending these benefits to the petitioner for the 15 year*

> *period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs.*"
>
> (emphasis added)

12. It was thus submitted that the promotion could not be granted; the petitioner had however been granted three Assured Career Progression ('**ACP**') benefits, on 12th August 2002, 28th November 2004 and 28th November 2010, after completing thirty years of service and the petitioner retired with superannuation on 21st October 2011.

13. Counsel for DTC further stated that neither had the petitioner raised a claim of consequential benefits in ***ID No.135/2000***, nor had he raised the claim immediately thereafter. They, in fact, waited for two years and then raised the claim in 2004, which finally resulted in the impugned Judgment.

14. Respondent's contention effectively was that all benefits, which they were legally due to, were granted, in complete consonance with the Award dated 6th September 2002.

15. On the basis of that Award, the petitioner was not entitled to the promotion. Respondent's counsel also pointed to evidence filed by the Management, where it was specifically stated that no post of *Blacksmith* was created or available in the Department after 1984 and the three ACPs, were, therefore, given after completing thirty years of service.

Analysis

16. The Court has perused the pleadings, documents and assessed the contentions of the respective counsel.

17. In the opinion of the Court the direction in the Award dated 6th September 2002 was clear and categorical, in that, it did not grant any consequential benefits. The said directions read as under:

> "*14. In view of the above discussion, the reference is answered in favour of the workman and it is held that the punishment imposed upon the workman vide order dt. 18-11-83 is set aside. The salary of the workman be re-fixed and the arrears, if any, be paid within one month of the date of the publication of the award ortherwiise the management shall be liable to pay interest @ 9% p.a. Award is passed accordingly.*"
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> (emphasis added)

18. The case of the petitioner in ***ID No. 135/2000*** was that the charges against him were manipulated and inquiry conducted against him was not in accordance with the principles of natural justice.

19. The issue revolved around the order of punishment dated 18th November 1983, imposed upon the petitioner by the Management, and whether it was legal and/or justified and which reliefs was he entitled to.

20. By the Award dated 6th September 2002, the position of the workman was essentially reverted in terms of his salary, directed to be re-fixed and arrears (*if any*) to be paid.

21. It is pertinent to refer to the observations made by the Tribunal in judgment dated 28th April 2018, ***firstly***, workman tendered no evidence to support his contention that there was any vacancy in the post of *Blacksmith*, the management, existing w.e.f. 7th July 1984, or in relation to the assertion that persons junior to him in the post of *Assistant Blacksmith* had been promoted by

the management to the post of *Blacksmith* w.e.f. 7th July 1984, and ***secondly***, Mr. P.R. Singh, Depot Manager of the management, deposed by way of affidavit that the petitioner was not granted promotion basis an adverse entry of stoppage of increment in his service record, further, the management witness also deposed that post the punishment being set aside, the difference in pay was paid to the workman and his pay was fixed from Rs. 260/- to Rs. 278/-. The management witness stated that there was no post of Blacksmith created/vacant, after 1984, and in view of the same, three ACPs were granted to the petitioner. It is imperative to note that the workman chose not to cross-examine the management witness, despite having been given the opportunity for the same.

22. In view of said findings, the Tribunal concluded that the petitioner failed to discharge the onus cast upon him.

23. As per ***Mahabir Prasad*** (*supra*), it is quite clear that if no directions were given for consequential benefits, the workman could not claim promotion as a matter of right, and the same would be subject to the relevant rules.

24. This aspect has been further noticed, endorsed and applied by Co-ordinate Bench of this Court, in ***Garrison Engineer (Central), Delhi Cantt. v. M.J. Prasad*** 2022 SCC OnLine Del 766, while adverting to the decision in ***Mahabir Prasad*** (*supra*) and traversing the law on the issue, as under:

> "*23. As for other decisions concerning discretion in grant of reliefs when reinstatement is granted, it is important to refer to the Supreme Court decision in Rajasthan State Road Transport Corporation v. Phool Chand (Dead) through L.Rs., 2018 LLR 1169. The Supreme Court again held*

that grant of back wages would not be a natural consequence upon a direction of the reinstatement, and the same is based on judicial discretion. The observation of the Supreme Court is as under:

> *"12. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, M.P. State Electricity Board v. Jarina Bee (Smt.) (2003) 6 SCC 141, G.M. Haryana Roadways v. Rudhan Singh (2005) 5 SCC 591, U.P. State Brassware Corporation v. Uday Narain Pandey (2006) 1 SCC 479, J.K. Synthetics Ltd. v. K.P. Agrawal (2007) 2 SCC 433, Metropolitan Transport Corporation v. V. Venkatesan (2009) 9 SCC 601, Jagbir Singh v. Haryana State Agriculture Marketing Board (2009) 15 SCC 327) and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) (2013) 10 SCC 324.*
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> *13. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.*
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> *14. Coming now to the facts of the case at hand, we find that neither the Labour Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the*

proceedings either pleaded or adduced any evidence to prove the material facts required for award of the back wages enabling the Court to award the back wages."

24. In Om Pal Singh v. Disciplinary Authority, (2020) 3 SCC 103, a two Judge Bench of the Supreme Court again considered J.K. Synthetics (supra) and applied the same holding that consequential benefits and continuity of service as also grant of back wages is not a natural consequence of reinstatement. Thus, in Om Pal Singh (supra), J.K. Synthetics (supra) was again followed and applied. Notably, this was a case where the workman's punishment had been reduced from dismissal to reduction in time scale of pay. The Court also cited the portion of J.K. Synthetics (supra) that wherever reinstatement is granted, judicial mind should be applied to the facts to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed.

25. Recently in Abhishek Kumar Singh v. G. Pattanaik, (2021) 7 SCC 613, the facts of the case were such that the recruitment process of the U.P. Jal Nigam had been annulled, thereby terminating the services of the petitioners therein. The High Court had set aside the said order and had directed the management to provide an opportunity of hearing to the petitioners. Meanwhile, the High Court also directed the management to permit the petitioners to "work and be paid monthly regular salary". In this background, the Supreme Court, in an SLP filed by the management, observed that the judgment in Deepali Gundu (supra) was a case of wrongful termination where relief of back wages was granted. In J.K. Synthetic (supra), it was held that award of back wages was not an automatic or natural consequence of reinstatement. However, both these

decisions were not considered applicable in the facts of Abhishek Kumar (supra) and ultimately not applied.

26. An analysis of the above decisions would show that J.K. Synthetics (supra) was dealing with a case where reinstatement was directed after holding that the punishment of dismissal is to be replaced with a lesser punishment. Even in such a case, the Supreme Court directed that grant of back wages and continuity of service is not automatic. In Deepali Gundu (supra), the Supreme Court was dealing with a case where the termination was quashed and full back wages was directed to be paid. The manner in which Deepali Gundu (supra) has been applied by the Division Bench of this Court in Mahabir Prasad (supra) would show that it is only when there is a direction to give 'continuity of service' ACP benefits should be given. In fact, in Mahabir Prasad (supra), the Division Bench even notes that without a specific direction for 'consequential benefits', promotions cannot be claimed as a right, even though continuity of service was directed. Therefore, it recognizes a clear difference between continuity of service and consequential benefits, neither of which have been awarded in the present case. In Jagdish Chander (supra), the facts were different, as DTC had assured the Court that it would provide 'continuity of service' and then resiled. In Om Prakash (supra), a ld. Single Judge was considering a case where reinstatement was directed with immediate effect and whether in such a case regularisation ought to be given to the workman. In such a case the Court held that 'continuity of service' ought to be read into the relief of reinstatement and directed regularisation in accordance with the policy of the Management."

(emphasis added)

25. It is pertinent to note that an LPA was filed against the decision in ***Garrison Engineer (Central), Delhi Cantt.*** (*supra*), which was dismissed by the judgment in ***MJ Prasad v. Garrison Engineer Central***, 2023 SCC OnLine Del 2809.

26. In ***Dinesh Kumar v. Central Public Works Department***, 2023 SCC OnLine Del 6518, a Division Bench of this Court referred to various decisions of the Apex Court to demarcate the jurisdiction/ scope of interference by this Court, in its exercise of powers under Articles 226 of the Constitution of India, 1950, against an award passed by an Industrial Tribunal. In this regard, the Court observed as under:

> "*11. The Hon'ble Supreme Court in paragraph 17 of the judgment in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union, (2000) 4 SCC 245, has held as under:*
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> > *"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based*

upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken… … 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 reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."

12. The Hon'ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.

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14. In Dharangadhara Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152, the Supreme Court, once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

15. In Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan, (2005) 3 SCC 193, the Apex Court, held that the Labour Courts/Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But

before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.

16. In a Constitution Bench judgment of the Supreme Court in Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477, the Apex Court has inter alia held as under:

> *"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 a 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 Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, 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 manliest 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 rounded 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."

17. The Hon'ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference by this Court does not arise.

18. The Hon'ble Supreme Court in State of Haryana v. Devi Dutt, (2006) 13 SCC 32, has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant facts; or the Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations."

(emphasis added)

27. The Court also notes that the petitioner was granted three ACP benefits, in recognition of his continued years of service, and therefore, had not been left disentitled.

28. The interpretation given by the petitioner's counsel, to the Award dated 6th September 2002, in that, it would impliedly grant him the consequential benefits is a flawed one.

29. In view of the aforesaid position of law and the circumstances of the case, in light of absence of an express direction, in award dated 6th September 2002, for consequential benefits, as also, three ACP benefits having been given to the petitioner, in accordance with the ratio in ***Mahabir Prasad*** (*supra*), and

the narrow scope of intereference by this Court under Article 226 of the Consitution, the relief as prayed for by the petitioner, cannot be granted.

30. Accordingly, the petition is dismissed. Pending applications, if any, be rendered infructuous.

31. The Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MAY 2, 2025/ak/kp