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

% ***Reserved on : 05th May 2025***

Pronounced on : 19th May 2025

\+ **CM APPL.43351/2024, CM APPL.47928/2024 & CM APPL.47929/2024 in W.P.(C) 414/2009**

THE TAMIL NADU HANDLOOM WEAVER'S COOP. SOCIETY LTD. .....Petitioner

Through: Mr. Rajat Arora and Mr. Niraj Kumar, Mr. Saurabh Mahla & Mr. Om Prakash, Advs.

versus

SHRI KAPTAN SINGH .....Respondent

Through: Mr. Siddharth Sinha, Mr. Niranjan Marde, Mr. Nring Chamwibo Zeliang, Ms. Anu Priya Nisha Minz, Mr. Niranjan Marde and Ms. Jyoti Fartiyal, Advs.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

CM APPL.47928/2024 *(Restoration)* **& CM APPL.47929/2024** *(Delay)*

For the reasons stated in the application the delay of 161 days in filing the restoration application is condoned and the petition is restored to its original number.

W.P.(C) 414/2009

1. This petition has been filed for setting aside the *impugned Award* dated 29th July 2008 passed in *ID No.03/1998* passed by the Labour Court-II, Delhi and *impugned order* dated 29th August 2005 that set aside the enquiry by the petitioner in respect of charge-sheet issued to the respondent.

2. The petitioner is a *State Co-operative Society of Tamil Nadu* and marketing handloom products of handloom weavers. By the impugned Award, the Labour Court awarded compensate-on of *Rs. 3.60 lakhs with interest at 18% per annum* from the date of filing of the statement claim, as also cost of litigation of Rs.10,000/-. The Award was published *vide* notification dated 15th October 2008. By Award dated 29th August 2005, Labour Court held that the inquiry conducted against the respondent was not fair and in violation of principles of natural justice.

Factual Background

3. Brief facts are that respondent was working as *Assistant Salesman* with petitioner/*management* and was last posted at *Janakpuri Emporium, New Delhi*. He was issued a charge-sheet dated 3rd September 1993, alleging misconduct. At the relevant time, *Shri R. Karuppaiah* was Salesman-in-charge, and *Shri R. Maruthaveeran* was working as Salesman at the Emporium, along with the respondent. The allegation was that all three had been involved in the misappropriation of goods and money. After the charge-sheet having been filed, all three were awarded punishment for dismissal from service. The respondent was dismissed with effect from 10th September 1997.

4. Petitioner had joined Janakpuri Emporium on transfer and took over charge on *8th April 1991*. As per his joining report, he had taken charge and had verified goods, records, furniture etc. as per the stock list on 31st March 1991 and found it correct. It is the petitioner's case that employees who were posted at the Emporium are jointly and severally liable for goods, money, stocks, records etc. in respect of which, two agreements dated 1st July 1981 had been executed.

5. Subsequently, misappropriation of stocks and cash came to light and a memo dated 13th September 1991 was issued to all the three employees. Respondent appeared in the Regional Office and submitted a letter dated 16th September 1991 and admitted that there was misappropriation of cash but stated he was not responsible for the same. The allegation was that there was inflation of rates by changing the price-tags/stickers on the goods. Respondent however, stated that malpractices were going on before his joining and he was not involved in it. Subsequently, Show-Cause Notice was issued; respondent submitted his reply; an order of punishment dated 28th August 1997 was passed.

6. Respondent then raised an Industrial Dispute resulting in *Reference Order* dated 1st September 1998, the terms of reference being as under:

> "*Whether the dismissal from service of Shri Kaptan Singh is illegal and or unjustified, and if so to what relief is he entitled and what directions are necessary in this respect?*"

7. By order dated 29th August 2005, Labour Court held that the management, in order to prove charges as per memo of charge, did not

examine any witness during enquiry proceedings. Only the respondent was examined who was a delinquent and he was also not given any opportunity of cross-examination of witnesses of the management nor to produce witness in his defence. The charges were not explained to the respondent, nor any document/list of witnesses was supplied to him. Accordingly, enquiry proceedings were set aside as not being fair and proper. Consequently, management was allowed to lead fresh evidence before the Labour Court. Labour Court framed the following issues:

> *"1. Whether claimant is not a workman as defined u/s 2(s) of the Act?*
>
> *2. Whether the enquiry conducted by the management was fair and proper?*
>
> *3. To what relief, if any, is the workman entitled against the management in terms of reference?"*

8. The workman examined himself as '**WW-1**' i.e. '*Shri Kaptan Singh*'. The management examined its witness as '**MW-1**' i.e. '*Shri M.A. Lahori.*'

9. On issue No.1, the Labour Court held that respondent was well covered within the definition of '*workman*' as given in *Section 2(s)* of *Industrial Disputes Act, 1947* ('**IDA**').

10. On issue No.3, the impugned Award exonerated the worker on the basis that ***firstly***, respondent had himself reported the matter to the seniors and the management waited for two years before initiating any action against the workman; ***secondly***, no document was tendered in evidence to establish that he had indulged in misconduct of removing the

price-tags and affixing false price-tags; and ***thirdly***, the allegation was on the staff at Janakpuri Emporium in general and not on any particular workman.

11. Accordingly, the impugned Award of compensation of Rs. 3.60 lakhs with interest @ 18 % per annum from the date of filing of the suit till realization, besides litigation expenses of Rs.10,000/- was passed.

Submissions on behalf of Petitioner

12. Counsel for petitioner/*management* drew attention to the evidence led by the respondent as '**WW-1**'. In his cross-examination, respondent stated that it was only in 1991 September that he came to know about the change of prices on stickers fixed on various goods such as *sarees, dhotis*, blankets, etc. He denied the suggestion that he was jointly responsible with *Shri R. Karuppaiah* and *Shri R. Maruthaveeran*. He admitted that he was called to the Regional Office by letter dated 13th September 1991, which was received on 15th September 1991. He also admitted that he had first written a letter dated 16th September 1991 informing the management about malpractices, change of rates, price stickers, inflating rates to the Regional Office. He denied that he committed any malpractice. He stated that he had already informed the Regional Head Office about the malpractices earlier. He stated that he had worked at the *Yamuna Emporium at Bank Street, Karol Bagh* for about 5-6 years previously.

13. Petitioner's counsel also relied on the affidavit of the management witness '**MW-1**' (*Shri M.A. Lahori*) who *inter alia* stated that the respondent along with *Shri R. Karuppaiah* and *Shri R. Maruthaveeran*

misappropriated goods of the society and were proceeded departmentally and all three were jointly and severally responsible. The dismissals of *Shri R. Karuppaiah* and *Shri R. Maruthaveeran* have remained valid and were are not challenged by them.

14. Petitioner's counsel further stressed on the testimony of the management's witness (*Shri M.A. Lahori*) that respondent never informed the Senior Sales In-charge of the Delhi office about the doubts he had about working of *Shri R. Karuppaiah* as alleged in the claim statement. It was only after summoning the respondent, along with the other two employees, to the Regional Office *vide* memo dated 13th September 1991, that the claimant sent a letter dated 16th September 1991.

15. The affidavit of management witness/*Shri Alok Babeley* was also relied upon, who was the marketing manager of the Co-Optex Regional Office at Mumbai. He stated in his evidence that the Senior Sales Manager visited the Janakpuri Emporium on 17th September 1991, verified the stock and found an inflated rate on the stock, which was done by replacing the price stickers on the goods and removal of the original price stickers. He stated that the verification of the account for the period of 1988-1989 to 1991-1992 till 3rd October 1991 was done by the Internal Audit Wing and it was found that the claimant along with the other two employees misappropriated the stock and cash by misusing the discount/commission, inflating prices, wrong posting of entire ledgers/records and caused losses.

16. The verification report dated 30th December 1991 had the signature of the Quality Controller Supervisor, whose signature was

identified. *Shri Alok Babeley* stated that employees posted in the Emporium are held jointly and severally liable and responsible for the stocks, goods, furniture, cash etc.

17. In the cross-examination, however, he confirmed he was not present at the time of the inquiry nor was connected with the liquidation of stocks, nor knew the facts of the inquiry, but was deposing on the basis of records. He stated that the prices were fixed at warehouses for cotton varieties at New Delhi and for silk varieties at the warehouses situated in Tamil Nadu. The prices were checked by regional officers as and when required, and also by the Internal Audit Committee.

Submissions on behalf of the respondent

18. In support of the findings in the impugned order, observations made initially when the inquiry proceeding was set aside, were relied on. Respondent/*Workman* was not given any opportunity of cross-examination of the witnesses of the management or to produce his defence evidence. Instead of awarding the respondent for actually whistle blowing on the issues which were taking place in the showroom, he was subjected to an unnecessary inquiry, which was in any case invalidated and had to be redone.

19. Respondent had joined the Janakpuri showroom on *8th of April 1991*, only 6 months prior to the alleged discovery of the discrepancy in the tags. He had initially already been engaged with the petitioner for a long period, since *1st July 1981* and there had been no complaints against him in that regard.

20. He relied on his cross-examination, where he had stated that only in September 1991 he came to know about the change in price of stickers on various goods, such as *saris, dhotis*, blankets, etc. and therefore, had communicated about the malpractices on 16th September 1991. In fact, he stated that he had orally informed the Regional Head Office about the malpractices, and then had communicated it as part of the letter of 16th September 1991 as well.

21. Respondent had consistently denied that he was involved in the malpractices and denied that he ought to be jointly and severally held liable. It was further stated that there was nothing on record to state that he, in particular, or specifically out of the three, was involved in the manipulation. On a general assumption that all the three would be involved, since it was a matter of the stock, he was also considered liable.

<u>Analysis</u>

22. After perusing the documents and hearing the submissions of the counsels and on appreciation of the facts and circumstances, this Court does not see any reason to interfere with the impugned Award.

23. ***Firstly***, the respondent had already been working with the management since *1st July 1981* and had only joined the Janakpuri showroom in April 1991. Therefore, it was not as if there had been some consistent complaint against the respondent.

24. ***Secondly***, after he had been summoned to the petitioner's office on 13th September 1991, he placed on record letter dated 16th September

1991, stating categorically that these malpractices were being indulged in by *Shri R. Karuppaiah*. The Court has perused the contents of letter of 16th September 1991. This letter is critical for assessment of the matter. No doubt the letter was issued only when respondent had been summoned but the contents of the letter are detailed, specific and provide all contextual facts and circumstances, which were relevant for the management to understand and investigate the issue. The said letter is extracted as under:

Date:16-09-1991

To

The Senior Sales Manager I/C
TNHWCS Ltd.
16/706, Faiz Road
Karol Bagh,
New Delhi-5

Sir,

I joined duty on 8-4-91 at Janakpuri shop. Then I observed the conditions prevailing. The Incharge of the shop Mr. Karuppaiah after 6.30p.m. use to drinks alcohol in the shop. I am in the shop till 7.15p.m. because my home is far off. I use to tell the incharge that it is time to close the shop. When I used to close, the inchage, Karuppaiah used to tell me to leave keys and go. The shop will not be closed. I should trusting him. I use to trusting him and handover the keys and leave.

On 8-4-91 when I joined duty there were two dailywagers, namely Murgesan and Sarwan Kumar. The Office was asked to do away with the services of daily wagers. Mr. Karuppaiah did not shunt them out. When I asked Karupaiah to shunt them out, he told me that no one can perform better than these two. As long he (Karupaiah) is in the showroom, he will not shunt them out. They did whatever they wanted to do after I used to leave the shop. I do not know what time the shop was closed by Mr. R. Karuppaiah and these two daily wagers. And some time the daily wagers also taken the keys.

When I asked Karuppaiah about the goods, he tells me not to worry. He says he will take care whatever happens. You two need not be scared. If there is any deficit he will make it good. You both need not be scared. During 15 years of my service no deficit has occurred and it will not occur. You both need not ask me any doubt.

At the time stock verification, he himself with two dailywagers have kept the stock before them and all three have made the stock list. After making the stock list he told me to sign and there is nothing to be scared. He does not do any wrong things. He told me that I have made good deficit in Yamuna. It will not happen here. He took work from me by taking nicely. Always scolds me after having drinks.

R. Karuppaiah told me that my job is to clean and placed Sarees/ bed sheets on the counter. I do not know the sales. Sales will be done by these two daily wagers.

I do not know about the fraud taken place at the shop. Everything has been done by the Incharge, R. Karuppaiah. Whatever is to be done or asked is known to R. Karuppaiah. He does not tell me any thing related to shop. The day when I asked him whether bill had been made for the sale, he told me that I need not asked. I should be doing my work.

Sales Manager will come to shop and asked about the goods and leave in ten minutes saying that goods be taken from godown. They never use to stay for more time.

I am taking all this in the enquiry of 16-09-1991. It appears that rates have been increase on the goods. I have very little knowledge about the accounts. I am new in the Emporium. Meaning almost five months have passed.

Yours faithfully
Sd/-
Kaptan Singh
ASM
16-09-1991
Janakpuri Emporium.

25. The impugned Award has rightly relied upon the above letter and also observed that it shows that the respondent was quite alert and vigilant about malpractices being indulged in by the person in-charge and has given such details.

26. ***Thirdly***, in this context, it is noted that the management had suspended *Shri R. Karuppaiah* for misconduct and in fact, charge-sheet had been filed against him as well. He was also awarded punishment from dismissal of service, which he did not challenge. It was only the respondent who insisted on pursuing the case; he stated that he felt slighted about the fact that he was roped in jointly and severally, despite having been watchful and having reported the details of the happenings at the Janakpuri showroom to the management. Further, as per letter dated 16th September 1991, respondent was intimidated by *Shri R. Karuppaiah*; this aspect was never considered.

27. ***Fourthly***, and most importantly, impugned Award correctly notes that the management was amiss in explaining as to why it waited 2 years in issuing charge-sheet. The allegation is of September 1991 and the action was taken two years later in September 1993. Even as per the management, the verification of stock was done on 17th September 1991.

28. ***Fifthly***, charge-sheet had been issued to all the staff at Janakpuri Emporium. The impugned Award correctly notes that management has got nothing to show as to why such action had been taken against the entire staff, without specifying as to who actually was responsible for these acts. There was no specific evidence against respondent to show that he was involved in a particular manner with respect to alleged

incidents. On the basis of generic allegations, inquiries were held and respondent was dismissed from service.

29. The impugned Award correctly notes that charge-sheet '**Ex. MW-1/A1**' also refers to "*staff*". In this regard, the management's evidence also did not bear out that they had any specific information regarding the alleged misconduct. Both the management witnesses have deposed on the basis of the record. The very fact that the verification of stocks had resulted in the conclusion that there was manipulation, would not necessarily implicate the respondent in particular.

30. ***Sixthly***, it is underscored that the Court in an adjudication under Article 226 of the Constitution of India 1950, should not be interfering with the findings of the Labour Court, unless it finds them to be perverse.

31. It would be apposite to advert to the decision of a Division Bench of this Court in ***Dinesh Kumar v. Central Public Works Department*** 2023 SCC OnLine Del 6518 wherein the 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 226-227 of the Constitution of India, 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:*
>
> > *"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.

…

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

<u>226, unless it could be shown to be wholly unsupported by evidence.</u>

<u>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.</u>

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. <u>This</u>*

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)

32. These decisions by the Supreme Court and this Court are determinative of scope of powers of a Court in its Article 226 jurisdiction, and need not be paraphrased or restated. Suffice it to state that petitioner's plea and contentions invite the Court to do exactly what is not permitted i.e. reappreciation of evidence and findings of fact. There is no error of law apparent, which could persuade this Court to intercede, nor is the award perverse. In any event, as analyzed above, the Court has considered the facts and circumstances holistically and then arrived at its conclusion.

33. In light of the above facts and circumstances, this petition stands dismissed.

<u>CM APPL.43351/2024</u> *<u>(Release of amount o/b R)</u>*

34. It is however, directed that the compensation which has been awarded to respondent/workman by the impugned Award, be released to him, within the next two months.

35. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MAY 19, 2025/SM/NA