$~52

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

\+ W.P.(C) 4543/2025, CM APPL. 21023/2025 & CM APPL. 21024/2025

IC 78817Y MAJ. MITENDER YADAV .....Petitioner

Through: Mr. Shree Prakash Sinha, Mr. Anand Kumar, Mr. Gurdeep Dass and Mr. Rishabh Kumar, Advs.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Vivek Goyal, CGSPC with Mr. Gokul Sharma, GP

Major Anish Muralidhar, Army

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER (ORAL)

% **09.04.2025**

C. HARI SHANKAR, J.

1. This writ petition has been filed in apparent oblivion of the parameters of *certiorari* jurisdiction, which we exercise while dealing with orders passed by the Armed Forces Tribunal[1].

2. In order to remind the parties of the scope of *certiorari* jurisdiction, we may reproduce the following paragraphs from the judgment of the Supreme Court in ***Syed Yakoob v K.S.***

[1] "AFT" hereinafter

Radhakrishnan[2]:

> "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 in properly, as for instance, it decides a question without giving an opportunity to 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 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.*

[2] **AIR 1964 SC 477**

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; 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 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 misconducted or contravened*."

(Emphasis supplied)

3. We do not exercise appellate jurisdiction over the AFT. Nor are we a supervisory court over the said Tribunal.

4. The order under challenge in this writ petition has been passed on 10 March 2025, and reads thus:

"Learned Sr. CGSC for the respondents prays for and is granted further four weeks' time to file counter affidavit. Rejoinder, if any,

may be filed within two weeks thereafter.

2. List again on 14.05.2025."

5. We are completely aghast at writ petitions being filed before this Court against innocuous adjournment orders.

6. Nonetheless, we may reproduce the prayer clause in this writ petition, which reads as under:

> "In the facts and circumstances of the case it is therefore, most respectfully prayed that Your Lordship may graciously be pleased to:-
>
> I. Quash the impugned interim order dated 10/03/2025 (Annx-P/1) to the extent of non-consideration of prayer for interim relief in O.A. No. 2397/2024 (Annx-P/13), and/or
>
> II. Pass such other or further order/orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

7. We could have understood the filing of this petition, if there was even an indication in the impugned order that the prayer for interim relief was pressed before the AFT, despite which the AFT declined to take it into consideration. The impugned order was apparently passed in open Court. There is nothing to indicate that the prayer for interim relief was pressed on the said date and that the AFT declined to take it into account.

8. This is a case of litigative adventurism. The petitioner is merely taking a chance. We deprecate this practice. Such petitions clog our Board and make it difficult for us to deal with meritorious cases.

9. We would have been inclined to award punitive costs in this matter. However, as we are dismissing this petition in *limine* on the very first day, we refrain from doing so.

10. The writ petition is dismissed.

C.HARI SHANKAR, J

AJAY DIGPAUL, J

APRIL 9, 2025
ar

Click here to check corrigendum, if any