



2026:DHC:2378



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

% Date of Decision: 13.03.2026

+ **W.P.(C) 555/2019**

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATIONPetitioner

Through: Mr. Uday Seth, Advocate.

versus

NAGENDER KUMARRespondent

Through: Mr. Jai Bansal and Ms. Namrata
Kathurie, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present writ petition is directed against the award dated 16.10.2018 passed by the learned Presiding Officer, Labour Court, *Dwarka* Courts, whereby the claim application filed by the workman was allowed and the management was directed to reinstate the workman on the demoted post of "Helper" with 25% back wages, continuity of service and all consequential benefits.

2. Briefly stated, the claimant raised an industrial dispute in the context of disciplinary proceedings initiated against him which culminated in his dismissal from service on 25.07.2006. The workman claimed that he had been employed with the management since 21.03.1995 on the post of "Helper" and was lastly posted at *Raja Garden, IMFL Vend.* He was promoted to the post of "Salesman Junior" on 13.02.2002 and was placed on



probation for a period of one year. The management issued a memorandum dated 13.05.2003 alleging that the workman had remained absent from duty during the periods 19.12.2002 to 25.12.2002 and 18.02.2003 to 23.02.2003. The workman submitted a reply dated 22.05.2003 and also placed on record leave applications along with medical certificates. The same, however, were overlooked and a show cause notice came to be issued on 02.08.2004, asking him to explain why he should not be reverted to the post of “Helper”. Disciplinary proceedings were thereafter initiated. The workman alleged that the Inquiry Officer (IO) neither gave him an opportunity to nominate his defence assistant nor did he record the workman’s objections and protests. It was further alleged that the workman was subjected to double punishment, inasmuch as he was first reverted from the post of “Salesman Junior” to “Helper” and was thereafter also dismissed from service. The management contested the claim. It was contended that the performance of the workman during the probation period remained unsatisfactory and accordingly, *vide* order dated 29.09.2004, his probation period was extended till 31.12.2004.

3. The Labour Court framed the following issues for its consideration:

- “(1) Whether the enquiry as held was not fair and proper and not in accordance with law and principles of natural justice? OPW
(2) Relief.”*

4. Along with the claim application, the workman filed supporting documents including leave application and medical certificate. In his evidence, the workman denied that he was on probation at the time of his promotion to Salesman Junior. He also denied attending the inquiry proceedings.



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5. Interestingly, the management examined one Mrs. *Bhuvneshwari Arora* who, in her cross-examination, admitted that the workman had been granted promotion on account of his good conduct and hard work. She also admitted that the workman was on medical leave from 19.12.2002 to 25.12.2002, though she denied that the workman had intimated the management telephonically about the said medical leave w.e.f. that date. Pertinently, she admitted that no notice had been served upon the workman regarding his alleged unauthorized absence during December 2002, and she further admitted that the workman was permitted to resume duties on 26.12.2002.

Insofar as the alleged absence during the period from 18.02.2003 to 23.02.2003 is concerned, the management witness denied that medical leave had been granted by the management or that the workman had been permitted to resume duties on 24.03.2003. However, she admitted that the workman had applied for medical leave along with his applications on 16.01.2003 and 27.03.2003 for the aforesaid period.

6. The management also examined *Sh. V. K. Jatav*, who was appointed as the Inquiry Officer to inquire into the charges framed against the workman. The Tribunal recorded that the witness failed to disclose whether the workman had led his evidence in the inquiry, by stating that the inquiry was conducted around 12 years back.

7. Learned counsel for the petitioner assailed the impugned award, contending that the Tribunal failed to appreciate that adequate opportunity had been granted to the workman during the disciplinary proceedings. It was further contended that the case did not involve the imposition of double



punishment, and that the workman had been afforded sufficient opportunity to defend himself.

8. Learned counsel for the respondent, on the other hand, reiterated that the workman was punished twice for remaining absent from duties.

9. At this stage, this Court is reminded of the limited scope of its jurisdiction in the exercise of the powers conferred under Article 226 of the Constitution of *India*. The same is not in the nature of an appeal, but is confined to examining whether the order has been passed without jurisdiction, is perverse, or has been passed in violation of the principles of natural justice. A gainful reference can be made to the judgment of the Constitution Bench in *Syed Yakoob Vs. K.S. Radhakrishnan*¹, wherein the Supreme Court held as under:-

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 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 in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, 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 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

¹ 1963 SCC OnLine SC 24



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 Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. The 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 (1) [1955] 1 S.C.R. 1104. (2) [1958] S.C.R. 1240. (3) A.I.R. 1960 S.C. 1168. 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 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 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.”

10. It is well settled that the High Court does not sit in appeal over findings of fact recorded by the Tribunal. In this regard, reference may also be made to International Airport Authority of India Vs. International Air Cargo Workers Union², wherein the Supreme Court held as under:-

“47. It is true that in exercising the writ jurisdiction, the High Court cannot sit in appeal over the findings and award of the Industrial Tribunal and therefore, cannot reappreciate evidence. The findings of fact recorded by a fact-finding authority should ordinarily be considered as final. The findings of the Tribunal should not be interfered with in writ jurisdiction merely on the ground that the material on which the Tribunal had acted was insufficient or not credible.

48. It is also true that as long as the findings of fact are based on some materials which are relevant, findings may not be interfered with merely because another view is also possible. But where the Tribunal records findings on no evidence or irrelevant evidence, it is certainly open to the High Court to interfere with the award of the Industrial Tribunal.”

11. The Tribunal noted that the sphere of its jurisdiction over the report of the IO was only on the touchstone of the principles of natural justice, namely whether a fair opportunity was granted to the workman during the inquiry and disciplinary proceedings or whether the proceedings were perverse. The Tribunal, while passing the impugned order, took note of the fact that for the alleged unauthorized absence in the month of December 2002, no notice was ever served upon the workman, which would indicate that the absence was treated as authorized; the medical certificate furnished by the workman was also not doubted. It also took note of the fact that the peon book was not produced, which would have otherwise proved the signatures of the workman on the documents filed by the management. The Tribunal further observed that the workman was not provided any defence



assistant to defend his case. The workman was also not suspended prior to the initiation of the departmental inquiry.

12. A perusal of the record would show that for the aforesaid misconduct, i.e., the workman remaining absent from duties, an Office Order was issued asking the workman to respond and, upon consideration of the response from the workman, eventually, *vide* communication dated 09.03.2005, he was reverted back to the post of “Helper”. This occurred during the pendency of the departmental inquiry, which had also been initiated on the charge of absenteeism of the workman from duties for the aforesaid same period.

13. On the touchstone of the aforesaid legal position, this Court is of the view that the impugned award cannot be said to suffer from any jurisdictional error or perversity warranting interference in exercise of writ jurisdiction.

14. The challenge to the impugned award therefore fails and the award is upheld. The amount deposited by the petitioner shall be released to the workman.

15. The present petition is disposed of in the aforesaid terms.

MANOJ KUMAR OHRI, J

MARCH 13, 2026/pmc