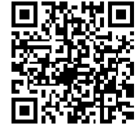


*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12th SEPTEMBER, 2025

IN THE MATTER OF:

\+   **LPA 521/2024, CM APPL. 36000/2024**

SHRI MOOL CHAND KHAIRATI RAM HOSPITAL AYURVEDIC RESEARCH INSTITUTES .....Appellant

Through: Dr. M.Y. Khan, Advocate

versus

SARDARAM BHATI .....Respondent

Through: Mr. Jawahar Raja, Ms. Meghna De & Mr. Ritwik Raj, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The Appellant has filed the present Appeal assailing the Judgment dated 28.03.2024, passed by the Learned Single Judge of this Court by which the Court has upheld three Impugned Orders passed by the Learned Industrial Tribunal, Delhi in O.P. No. 2466/2016 (Old O.P. No. 16/2010), Order dated 03.02.2011, by which, the domestic enquiry was vitiated, Order dated 06.09.2017, by which, the right of Appellant to lead evidence on misconduct was closed, and Order dated 06.12.2017, by which, the Approval Application of the Appellant was dismissed.

2. Shorn of unnecessary details, facts leading to the filing of the present Appeal is as under:

i. The Appellant is a private hospital which was established by the Mool Chand Khairati Ram Trust.

ii. The Respondent was appointed as a ward boy *vide* appointment letter dated 08.07.1985.

iii. As per the Counsel for the Appellant, the Respondent was engaged in instances of misconduct. A chargesheet dated 07.04.2004 was issued to him. Reply was filed by the Respondent refuting the allegations. A domestic enquiry was initiated against the Respondent wherein he was held guilty of the charges of misconduct. The charges of misconduct against the Respondent were as follows:

A. Refusal to perform duties as per instructions of superior

B. Neglect of duties

C. Indecent and insolent behavior towards superior

D. Disorderly behavior within hospital premises

E. Act subversive of discipline

iv. On 11.04.2006, a Show Cause Notice along with an enquiry report was served upon the Respondent calling upon him to explain his stance. Pursuant to the same, in line with the conclusions drawn by the Enquiry Officer, the Respondent/Management proceeded to terminate the services of the Respondent *vide* a dismissal order dated 06.09.2006.

v. The Management filed an Approval Application bearing no. 2466/2016 (Old No. 16/2010) on 06.09.2006, pursuant to which notices were duly served upon the Respondent. In response, the Respondent submitted his written statement, followed by the Appellant filing a rejoinder.

vi. On 12.03.2007, the learned Tribunal framed the following issues:

(1) Whether the applicant/Management filed a proper and valid enquiry?

(2) Whether the respondent/workman has committed the alleged misconduct?

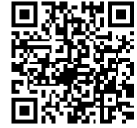
(3) Whether the application/Management has complied with the provision of Section 33(2)(b) of the Industrial Dispute Act?

(4) Relief

vii. The Appellant and the Authorized Representative of the Respondent led their evidence.

viii. *Vide* Order dated 03.02.2011, the Learned Industrial Tribunal came to the conclusion that the Respondent herein had not been given full opportunity to defend himself and, therefore, the domestic inquiry conducted by the Appellant herein against the Respondent is not a valid and proper inquiry.

ix. The Appellant preferred a Review Application on 26.05.2011. *Vide* Order dated 22.05.2012, the Learned Industrial Tribunal allowed the review application filed by the Appellant seeking to recall the



Interim Award dated 03.02.2011, on the grounds that the same is non-existent and *void ab initio*. Consequently, the matter was relisted for fresh arguments on the preliminary issue pertaining to the validity of the domestic enquiry.

x. The said Order dated 22.05.2012 was challenged by the Respondent in Writ Petition bearing No. 5725/2012 before this Court. This Court *vide* Order dated 30.11.2015, disposed of the Writ Petition and set aside the Order dated 22.05.2012 to the extent of treating the Order dated 03.02.2011 as *non est* and directed the Learned Tribunal to decide the issue afresh. It was further held that the Order dated 03.02.2011 shall be considered as an Interim Order instead of an Interim Award.

xi. Pursuant to the said Order, the Learned Tribunal listed the matter for leading of evidence by the Appellant. *Vide* Order dated 06.09.2017, the Learned Tribunal closed the Appellant's right to lead evidence and fixed the matter for final arguments.

xii. The Learned Tribunal, *vide* Order dated 06.12.2017, dismissed the Approval Application filed by the Appellant, holding that in the absence of any evidence led by the Appellant on Issue no. 2 and 3, i.e. Whether the respondent/workman has committed the alleged misconduct and Whether the application/Management has complied with the provision of Section 33(2)(b) of the Industrial Dispute Act, pertaining to commission of misconduct by the Respondent warranting his dismissal from service, the Appellant

has failed to make out a case for approval of its action of dismissal of the Respondent.

xiii. Aggrieved by the Order dated 06.12.2017, the Appellant invoked Rule 11 of the Industrial Disputes Act, 1947, and filed an application seeking to adduce additional evidence. The said application was dismissed by the Learned Tribunal for non-prosecution *vide* Order dated 06.03.2018.

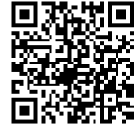
xiv. Aggrieved by the aforementioned Orders dated 03.02.2011, Order dated 06.09.2017, and Order dated 06.12.2017, the Appellant preferred a Writ Petition No. 852/2019 before the Learned Single Judge of this Court.

xv. The said Writ Petition was dismissed by the learned Single Judge *vide* Judgment dated 28.03.2024, upholding the Orders dated 03.02.2011, Order dated 06.09.2017, and Order dated 06.12.2017.

xvi. Hence, the Appellant has filed the present Appeal against this Judgment of the learned Single Judge.

3. The Counsel for the Appellant submits that the learned Tribunal wrongly framed Issue No. 2 in the Approval Application No. 2466/2016, as, such issue arises only when the enquiry is found fair, valid, and proper. The framing of such issue was not in line with the legal procedure under Section 33(2)(b) of the Act.

4. The Counsel for the Appellant tenders Cholan Roadways Limited v. G Thirugnanasambandam, **(2005) 3 SCC 241**, Delhi Transport Corporation v. Sardar Singh, **2001 SCC Online Del 350**; and DTC v. Rajbir Singh, **2010**



SCC OnLine Del 1371, to substantiate his arguments on the limited jurisdiction of an Industrial Tribunal under Section 33(2)(b) of the Act which cannot equate with Section 10 of the Act.

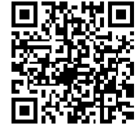
5. The Counsel for the Appellant states that the Appellant is a private hospital upon which Industrial Employment Standing Orders were not applicable and therefore the Domestic Enquiry was conducted following the principles of natural justice as no rule of the hospital provides the procedure of holding domestic enquiry.

6. The Counsel for the Appellant tenders the Judgments passed by the Apex Court in U.P. State Road Transport Corporation v. Musai Ram, (**1999) 3 SCC 372;** Bank of India v. Degala Suryanarayana, **(1995) 5 SCC 762;** Bharat Petrol Corporation Limited v. Maharashtra General Kamgar Union, (**1999) 1 SCC 626;** North West Karnataka Road Transport Corporation v. S. J. Fernandes, **2000 SCC OnLine Kar 782**; and H.M.T., Limited v. Chaya Srivatsa, **2003 SCC OnLine Kar 325;** to substantiate its submissions.

7. The Counsel for the Appellant submits that the Management could not trace any employee who was working at the hospital during 2004 when the instances of misconduct took place, which resulted in delay on part of the Appellant to lead evidence. Hence, Tribunal was arbitrary in closing the right to lead evidence of the Appellant.

8. *Per Contra,* the Counsel for the Respondent contends that the Tribunal *vide* Order dated 03.02.2011 has rightly held that the Respondent was not provided with a full opportunity to defend himself during the process of enquiry, therefore, the enquiry conducted by the Appellant is not valid as well as proper enquiry.

9. The Counsel for the Respondent submits that several opportunities were granted to the Appellant for adducing evidence, and in spite of that, the



Appellant did not present evidence on record. Consequentially, the learned Tribunal had to close the Appellant's evidence. Thus, the Appellant failed to prove misconduct by the Respondent, thereby there exists no reason by which the Approval Application would have been allowed.

10. The Counsel for the Respondent further states that the learned Single Judge *vide* Order dated 28.03.2024 rightly held that there was no cogent reason to grant the reliefs as prayed by the Appellant since there was no force in its propositions put forth before the Court. The Appellant were not able to make out any case to invite interference of the learned Single Judge under the extraordinary Writ jurisdiction. Hence, the present appeal is liable to be dismissed.

11. The Counsel for the Respondent also states that there is a delay of 25 days in filing the present appeal and there is no cogent ground for condoning the delay. The present Appeal deserves to be dismissed on this ground alone.

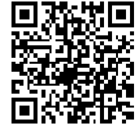
12. Heard the Counsels for the parties and perused the material on record.

13. The question that arises for the consideration of this Court is if the Learned Single Judge was correct in holding the validity of the Impugned Orders dated 03.02.2011, 06.09.2017, 06.12.2017, as passed by the Learned Tribunal in the Approval Application.

14. The Learned Tribunal in its Order dated 03.02.2011, held that the Appellant/Management did not give the Respondent a proper chance to represent its case before the Tribunal as the Respondent requested for Mr. Vijender Singh, the General Secretary of Mool Chand Kharaiti Ram Hospital Karamchari Union, to represent him before the enquiry. The Management did not accede to this request stating that Mr. Vijender Singh was not an employee of the Hospital. Further the Respondent was not provided with the set of service rules for the said enquiry which was

concluded to be a fault of the Management. The relevant extract of the Order dated 03.02.2011 is as follows:-

> *"10. Findings on Issue No. 1*
>
> *Issue no.1 is 1 is "Whether the applicant/management held a proper and valid enquiry?"*
>
> *11. The main allegation against the respondent/workman is that he told a Staff Nurse "tu men khopdi math kha". The grievance of the workman is that during enquiry proceedings, he was not allowed to bring Sh. Vijender Singh, General Secretary of MCKRH Karamchar Union as his defence assistant, on the ground that he was not an employee of the applicant/management. This fact is duly admitted in the cross examination of MW-1.*
>
> *12. I see no justification in declining this demand of the workman. No rule has been produced by the management under which the outsider is debarred to appear as defence assistance in a domestic enquiry held against any employee. It is worth noting that said Sh. Vijender Singh is a General Secretary of the Union of workmen. In my considered opinion, management should have allowed him to appear as defence assistant from the side of respondent/workman. It has been deposed by the workman that during the course of inquiry, witnesses used to say one thing and inquiry officer after consultations with the management representative, used to record something else despite his strong protest. This controversy could have been avoided if the workman was allowed to be represented by Sh. Vijender Singh, as demanded by him. It is also the grievance of the the workman that he was not supplied complete set of service rules and rules regarding conducting the enquiry. This is another fault pointed out in the enquiry.*



13. In view of above discussion, I am of the view that workman was not given full opportunity to defend himself. Hence, it is held that the domestic enquiry conducted by the applicant/ management against the respondent/ workman is not a valid and proper enquiry. Accordingly, issue no.1 is decided in favour of respondent/ workman and against the applicant/ management.

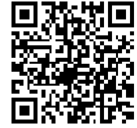
14. Hon'ble Apex Court in The Management Hotel Imperial, New Delhi and others vs. Hotel Workers' Union, reported in AIR 1959 SC 1342, has held that:-

> *It is also open to the Tribunal to make an award about some of the matters referred to it whilst some others still remain to be decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by section 17.*

15. In view of above judgment of Hon'ble Apex court, copy of this interim award be sent to GNCT of Delhi for publication."

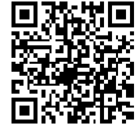
15. This Court also finds it necessary to consider the cross examination of the Respondent dated 24.09.2007. The relevant extract of the cross examination is as follows:-

"It is correct that the daily enquiry proceedings conducted by the Enquiry Officer bears my signatures at point A. It is correct that I had signed the proceedings after reading the same. Vol.- What I said was not written by the Enquiry Officer. I had written a letter to the management in this regard. This letter is not in the Court file. However, I can produce the same, if directed. The Enquiry Officer had explained to me the procedure of enquiry on the first date of hearing. The Enquiry Officer had also allowed me to bring any of my co-employee as my defence assistant in the



enquiry. Vol.- I had brought Vijender Singh as my defence assistant in the enquiry but the Enquiry Officer refused to entertain him as my defence assistant. It is correct that Vijender Singh at that time was dismissed employee of the management. Vol.- Other workers who were working with the management did not come due to fear. It is incorrect to suggest that any worker was disallowed to appear to the enquiry by the management. It is correct that in the enquiry, the Enquiry Officer took on record all the documents filed by me and the management. It is correct that I had cross examined the management' s witness. It is correct that I had signed on 13.10.04 in the enquiry after reading the enquiry proceedings. Vol.-But the Enquiry Officer wrote the proceedings of enquiry of his own. It is correct that I had brought Sh. M. D. Yadav as my witness in the enquiry proceedings. It is correct that despite several opportunities, I was unable produce Sh. M. D. Yadav for cross examination. It is correct that I examined myself as a defence witness. It is correct that I had received the report of the enquiry officer dated 25.01.06. It is further correct that I had replied to the Show Cause Notice vide my replies dated 18.04.06 & 19.04.06.It is incorrect to suggest that I was given full opportunity to defend myself. It is incorrect to suggest that I was not given the copy of rules and regulations. It is incorrect to suggest that I am deposing falsely."

16. Even if this Court considers the argument of the Appellant that there exist no service rules which could have been provided to the Respondent at the time of enquiry, we still find merit in the Order of the Learned Tribunal holding the enquiry as arbitrary as the Respondent was not afforded a chance to be represented the Union Representative as his defence assistant in absence of any such rule or regulation. The request was unreasonably denied and therefore we are of the opinion that the domestic enquiry as held by the Appellant for the alleged misconduct was not proper.



17. Thus, the Impugned Order dated 03.02.2011 does not suffer from any error apparent on the face of it.

18. The Learned Tribunal in its Order dated 06.09.2017, closed the right of the Appellant to lead evidence observing that the Appellant has been provided with several opportunities to lead evidence but has failed to do so. The relevant extract of the Order dated 06.09.2017 is as follows:-

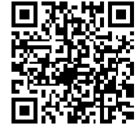
> *"It is seen from the record that case is fixed for management evidence by way of a final opportunity for today. However, no affidavit by way of evidence of any MW has been filed in management evidence, on record, nor any MW is present in management evidence today. It is further seen from the record that case is fixed for management evidence for last several dates of hearing fixed in this regard, on record, on which dates no affidavit by way of evidence of any MW has been filed in management evidence nor any MW has been present in management evidence, on record. In view of the same, management evidence is closed.*
>
> *Now to come up for final arguments on 06.12.17, on which date, written submissions alongwith citations, if any, relied upon by the parties be filed, on record. "*

19. The Appellant Management failed to adduce evidence by way of affidavit, more so, none was present on behalf of the Appellant to lead evidence before the Learned Tribunal on 06.09.2017.

20. The learned Single Judge rightly upheld the Order dated 06.09.2017 which categorically held that the Management failed to lead evidence despite several opportunities granted to them. Hence, this Court does not find any infirmity with the Impugned Order dated 06.09.2017 as well.

21. The Learned Tribunal in its Order dated 06.12.2017 dismissed the Approval Application filed by the Appellant after holding that the Appellant failed to prove the alleged misconducts committed by the Respondent. The relevant extract of Impugned Order dated 06.12.2017 are as follows:-

> *"It is seen from the record that consequent to decision vide order dated 03.02.2011 of this tribunal in favour of the workman and against the management, upheld vide judgment dated 30.11.2015 of Hon'ble High Court of Delhi passed in W.P (C) No.5725/2012 and CM No.11720/2012 between the parties, on issue no.1 viz "Whether the applicant/ management held a proper and valid enquiry?" as framed alongwith other issues vide order dated 12.03.2007, on record, which had been treated as preliminary issue, no evidence has been led on behalf of the management on the remaining issues nos. 2 and 3, as also framed vide order dated 12.03.2007, on record, as follows:-*
>
> > *"2. Whether the respondent/ workman has committed the alleged misconduct?*
> >
> > *3. Whether the applicant/ management has complied with the provisions of Section 33 (2) (b) of the Industrial Disputes Act?"*
>
> *despite several opportunities granted to the applicant/management in this regard, on record, w.e.f. 22.03.2016 i.e. on various dates of hearing fixed in this regard on 15.11.2016, 23.03.2017 and 06.09.2017 when the management evidence has been closed, on record and the case fixed for hearing of final arguments. Needless to state that the respondent/workman would have been called upon to lead evidence in rebuttal only in case evidence had been led on behalf of the management on merits i.e. on the remaining issue nos.2 and 3, as above mentioned, which is not the case presently.*



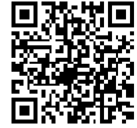
> *The management has thus not been able to prove the remaining issue nos. 2 and 3, as above mentioned, by leading of any management evidence on the same, on record, despite several opportunities granted to it in this regard, on record, as abovesaid, onus of proving of which was upon the applicant/ management.*
>
> *In view of the management having not led any evidence to prove remaining issue nos.2 and 3, as above mentioned i.e. commission of alleged misconduct on the part of the respondent workman necessitating the dismissal of the respondent/workman from his services with the management vide the relevant order of the management in this regard, as also compliance of the mandatory provisions of Section 33 (2) (b) of the Industrial Disputes Act, 1947 (as amended upto date) on the part of the applicant/ management qua the dismissal of the workman from his services with the management, approval of which action has been sought vide the instant application u/s 33 (2) (b) of the Industrial Disputes Act, 1947 (as amended upto date) moved on behalf of the applicant/ management, I find that the applicant/ management has not made out a case for approval of its action of dismissal of the respondent/ workman from his services with the management vide order dated 06.09.2006 of the applicant/management in this regard, as prayed, therein.*
>
> *In view of my above observations, the instant approval application having not been proved on the part of the applicant/management, as abovesaid, is hereby, accordingly, dismissed. File be consigned to the Record Room."*

22. The Learned Tribunal observed that the Appellant failed to lead evidence to the alleged charges of misconduct against the Respondent as entailed in Issues No. 2 and 3, framed *vide* Order dated 12.03.2007.

23. Despite several opportunities granted to the Appellant to lead evidence, the Appellant, time and again, failed to do so. Therefore, the Learned Tribunal in the fitness of things, closed the right of the Appellant to lead evidence. Without any evidence, the Appellant consequently failed to prove the charges against the Respondent and consequentially Issues No. 2 and 3 were decided against the Appellant and in favour of the Respondent.

24. The parameters of interference under Article 226 of the Constitution of India while dealing with a Writ of Certiorari were settled way back in the year 1964 by a Bench of five Judges of the Supreme Court in Syed Yakoob v. K.S. Radhakrishnan, **(1964) 5 SCR 64**, wherein the Apex Court has observed 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 result of the appreciation of evidence*

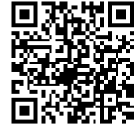


cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it 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]

***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; hut 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 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."

25. A perusal of the abovementioned Judgment indicates that writs are issued, where, in exercise of jurisdiction conferred on it the Court or Tribunal acts illegally or properly, i.e. without following the principles of natural justice. The jurisdiction to issue a writ of certiorari is supervisory in nature which means that the findings of fact reached by the Tribunal as



result of the appreciation of evidence cannot be reopened or questioned in writ proceedings unless the said finding is based on nill evidence or by ignoring material evidence or by relying on material not adduced before the Tribunal. In the opinion of this Court, the Tribunal and the learned Single Judge have meticulously appreciated the material before them and there is no reason for this Court while exercising its powers under the letters patent to interfere with the concurrent findings on fact arrived at by the Tribunal and as upheld by the learned Single Judge while exercising jurisdiction under Article 226 of the Constitution of India.

26. The Learned Single Judge has rightly upheld the Order dated 06.12.2017. This Court does not deem it necessary to interfere with the findings of the Learned Single Judge.

27. Accordingly, after careful perusal of the Impugned Judgment dated 28.03.2024, this Court is not inclined to interfere with the decision of the Learned Single Judge whereby this Court dismissed the Writ Petition filed by the Appellant.

28. The present Appeal is, therefore, dismissed. Pending applications, if any, is also disposed of.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

SEPTEMBER 12, 2025
hsk/mt