



**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**CWP No. 6544 of 2021**  
**Reserved on: 12.09.2023**  
**Decided on: 29.09.2023.**

The Director, Doordarshan Kendra and another  
 ..Petitioners

**Versus**

Jai Chand and others  
 ...Respondents

**Coram**

**The Hon'ble Mr. Justice Satyen Vaidya, Judge**

<sup>1</sup> *Whether approved for reporting? Yes*

For the petitioners : Mr. Balram Sharma, Deputy  
 Solicitor General of India, with  
 Mr. Rajinder Thakur, Central  
 Government Standing  
 Counsel.

For the respondents : Mr. Sanjeev Bhushan, Senior  
 Advocate, with Mr. Rajesh  
 Kumar, Advocate.

**Satyen Vaidya, Judge**

By way of instant petition, petitioners have taken exception to the award dated 02.02.2021 passed by learned Presiding Officer, Central Government Industrial Tribunal –cum- Labour Court, II, Chandigarh (for short, “Tribunal”) in ID No. 24/2015.

2. The Doordarshan Casual and Contract Employees Association, Shimla submitted its demand

<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

notice dated 18.07.2014 to the Deputy Director, Doordarshan Kendra, Shimla. Their demands were as under:

- (i) *The services of casual and contract employees, who have been rendering services since 1995, in different departments of Doordarshan Kendra, Shimla should be regularized.*
- (ii) *The casual and contract employees, who have been rendering their services to Doordarshan Kendra, Shimla since 1995 should be brought under some contractual policy as in the case of Prasar Bharti by taking into consideration their educational qualifications and experience.*
- (iii) *Till the formulation of contractual policy and its implementation, the wages should be paid by declaring different sections.*
- (iv) *An Attendance Register should be maintained in the Doordarshan Kendra, Shimla for marking the attendance of casual and contractual employees.*
- (v) *Office order, tour order, I-Card should be issued for all types of external programmes.*

- (vi) *T.A./D.A., Over Time, Gate Pass, I-Card, P.F., Medical Insurance should be provided.*
- (vii) *Weekly holiday, National holiday, Festival holiday, Earned leave, Casual leave and Maternity leave should also be provided.*
- (viii) *The facility of pick up and dropping should be provided before and after the regular working hours.*

3. The conciliation proceedings were held and on its failure, the appropriate Government referred the dispute between the management of Doordarshan Kendra Shimla and the workmen in following terms:

*“Whether the action of the management of Doordarshan Kendra, Shimla for not complying the basic labour laws and not framing any policy for casual workers who are giving services since 1995 to Doordarshan is legal and justified? If not what relief the workmen is entitled to and from which date?”*

4. The workmen (19 in number) submitted their claim petition before learned Tribunal and prayed for the following reliefs:

- i) *Casual Workers of Doordarshan Kendra, Shimla may kindly be treated as eligible*

*for regularization, in the present claim petition casual workers are working in the Doordarshan Kendra, regularly for last 10 to 20 years without break.*

*ii) For the purpose of regularization, the upper age limit has to be relaxed to the extent of service rendered by the casual workers.*

*iii) It is humbly prayed that till all the casual workers who have been engaged by the respondents, the respondents may not resort to fresh recruitment of such casual workers through employment exchange or otherwise.*

*iv) Till the casual workers are regularized, the wages to be paid to them should be in accordance with the scale of pay of the post held by a regular employee in an identical post, in the interest of justice.*

*v) That Supreme Court judgment be complied by the respondents and they be regularized in a short interval of time keeping their length of service and any harm to the service of casual workers may not be caused by the respondents, in the interest of justice, equity and fair play.”*

5. The management contested the claim on the grounds that the Doordarshan Kendra, Shimla was not

an industrial establishment. No relationship of employer and employee existed inter se the parties. It was submitted that the workmen were being offered the specific work on piecemeal basis and by allowing a particular work to them, they will not automatically become the workman/employee of the management. It was further submitted that the workmen were not entitled to the benefit of Casual Labour (Grant of Temporary Status and Regularization) Scheme, 1993 of Government of India as such Scheme was applicable only to those workmen, who were in engagement on or before 10.09.1993 and had worked for 120 days in a year upto said date. It was one-time Scheme. Since the workmen in the instant case were engaged by Doordarshan Kendra in 1995, the Scheme would not be applicable to them.

6. The learned Tribunal vide impugned award has held as under:

*“28. The following propositions would emerge upon analyzing the above legal decisions and factual evidence on record:*

- (1) *The action of the management Doordarshan Kendra Shimla for not complying the basic labour laws and not framing any policy for regularization of these casual assignees who are giving services since 1995 and afterwards to Doordarshan, Shimla is illegal and unjustified.*
- (2) *The management of Doordarshan Kendra, Shimla is under legal obligation to regularize the services of the claimants/workmen against substantive vacancies as and when such vacancies became available giving relaxation in qualification and age on the basis of their experience and dedicated service.*
- (3) *Till their services are not regularized the Shimla Doordarshan shall continue to give casual assignments on regular basis to the workmen/claimants without adopting any pick and choose policy upto their superannuation unless serious misconducts or lapses are proved against workmen.*
- (4) *The claimants/workmen are entitled corresponding lowest grade of the permanent employee rendering their services in Shimla Doordarshan Kendra*

*along with other financial benefits legally payable under the Act.”*

7. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

8. Learned counsel appearing for the petitioners has submitted that the impugned award is required to be set-aside as learned Tribunal had exceeded the jurisdiction vested in it. The direction issued by learned Tribunal to frame a policy for regularization of the workmen was beyond its domain. It has also been submitted that the impugned award was even beyond the terms of reference issued to learned Tribunal.

Further, the grounds that the Doordarshan Kendra was not an industry and there existed no relationship inter se the parties have also been reiterated.

9. Before delving on the objections raised on behalf of the management by way of instant petition, it will be relevant to remind about the jurisdiction held by this Court under Article 226 of the Constitution of India against the award or decision of the statutory Tribunals,

more particularly, the Labour Court and Industrial Tribunal under the Act.

10. In **PGI of Medical Education and Research, Chandigarh vs. Raj Kumar (2001) 2 SCC 54**, the Hon'ble Supreme Court has observed as under:

*“9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though however perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yakoob Vs. K.S. Radhakrishna (AIR 1964 SC 477).”*

High

11. In **Management of Madurantakam Coop. Sugar Mills Ltd. vs. S. Viswanathan (2005) 3 SCC 193**, the enunciation of law has been made by the Hon'ble Supreme Court as under:

*“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the*

High

*Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.*

**13.** *The Division Bench too in appeal, in our opinion, has committed the same error. May be, there was some justification, since if it had to allow the appeal, then it had to consider the points on facts decided by the learned Single Judge. In that process it also took up for consideration every bit of evidence that was considered by the Labour Court as well as by the learned Single Judge and disagreed with the finding of the learned Single Judge.”*

12. In **Harjinder Singh vs. Punjab State Warehousing Corporation (2010) 3 SCC 192**, the exposition of law has been rendered as under:

“12. *In Syed Yakoob vs. K.S. Radhakrishnan AIR 1964 SC 477, this Court delineated the scope of the writ of certiorari in the following words: (AIR pp. 479-80, paras 7-8)*

“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

High Court

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; 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 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."*

13. In ***Iswarlal Mohanlal Thakkar*** vs. ***Paschim Gujarat Vij Company Limited and another*** (2014) 6 SCC 434, similar reiteration has been made in following terms:

**“15.** *We find the judgment and award of the labour court well-reasoned and based on facts*

*and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its Award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well-reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the Award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.”*

14. Thus, the contours of the powers of this Court to interfere with the awards or orders passed by the Labour Court or Industrial Tribunal under the Act, are well-defined. This Court will neither sit in appeal over the award nor will enter into the arena to re-appreciate or re-assess the evidence/material relied

upon by learned Tribunal except for analysing the indulgence of illegality or perversity, if any.

15. Even otherwise, on facts, there is not much dispute. The workmen have been admitted to be working for Doordarshan Kendra continuously since 1995. The only issue raised by the management is that the workmen are not employees of Kendra and in fact were being engaged, from time to time, as piecemeal workers. Learned Tribunal has also found on facts that the workmen were being provided seven assignments per month each of such assignment extending upto three days. It is in above said background that learned Tribunal has proceeded to answer the reference as noticed above.

16. In light of above facts, the findings returned by learned Tribunal to the effect that the claimants were the workmen and were entitled to raise industrial dispute needs to be examined.

17. Section 2 (s) of the Act defines workman and includes all persons employed in any industry to do any manual, unskilled, skilled, technical, operational,

clerical or supervisory work for hire or reward, whether the terms of employment be express or implied. Evidently, the aforesaid provision does not make a distinction between the persons on the basis of the period of engagement. In other words, the definition of workman is job intensive rather than having dependence on period of employment.

18. Once on facts, it was found that for the last many years the workmen were being granted upto seven assignments in a month with each assignment extending upto three days, learned Tribunal was well justified in holding the management guilty of unfair labour practice by making reference to clause 10 of 5<sup>th</sup> schedule of the Act.

19. The objection of the management that the Doordarshan was not an industry has also been negated by learned Tribunal by analyzing the nature of work undertaken by the Doordarshan Kendra. Undeniably, the Doordarshan Kendra is engaged in distribution of services with a view to satisfy human wants or wishes. The nature of job performed by Doordarshan Kendra

also does not fall within any of the accepted clauses under Section 2(j) of the Act. Further, it cannot be said that the services provided by the Doordarshan Kendra Shimla are going to be short lived. The denial on part of management in respect of requirement of permanent staff is nothing but specious.

20. I am of the considered view that the findings recorded by learned Tribunal to the effect that the claimants were the workmen and Doordarshan Kendra was an industry cannot be faulted with. Even assumption of jurisdiction to decide the issues inter se the parties as industrial dispute is perfectly in terms of the jurisdiction vested in the Tribunal under the Act. There also is no fault in holding that the workmen in the instant proceedings were victims of unfair trade practice at the hands of the management.

21. The next question that arises is regarding the jurisdiction of the Tribunal to pass directions as have been passed in the instant case.

22. Recently in ***Oil and Natural Gas Corporation vs. Krishan Gopal and others***, reported

in **2020 SCC Online SC 150**, Hon'ble Supreme Court , after examining the view taken by two Judges Bench of the same court in **Oil and Natural Gas Corporation Limited vs. Petroleum Coal Labour Union and Others, (PCLU) (2015) 6 SCC 494** as against the earlier view of the equal strength Benches of Hon'ble Supreme Court in **Mahatma Phule Agricultural University and others vs. Nasik Zilla Sheth Kamgar Union and others (2001) 7 SCC 346**, **Regional Manager, State Bank of India vs. Raja Ram (2004) 8 SCC 164**, **Regional Manager, SBI vs Rakesh Kumar Tewari (2006) 1 SCC 530** and **Oil and Natural Gas Corporation Ltd. vs. Engg. Mazdoor Sangh (2007) 1 SCC 250** has observed as under:

**“34.** *The following propositions would emerge upon analyzing the above decisions:*

- (i) *Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularization, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;*

- (ii) *The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;*
- (iii) *The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularization would be impermissible merely on the basis of the number of years of service;*
- (iv) *Where an employer has regularized similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularized to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and*
- (v) *In order to constitute an unfair labour practice under Section 2 (ra) read with Item 10 of the Vth Schedule of the ID Act, the*

*employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.”*

23. Having observed as above, the Hon'ble Supreme Court has expressed the need to revisit the decision in **PCLU** (supra) to set the position in law in conformity with the principles emerging from the earlier line of precedent and for such purpose, it has been observed as under:

**“35.** *The decision in PCLU needs to be revisited in order to set the position in law which it adopts in conformity with the principles emerging from the earlier line of precedent.*

*More specifically, the areas on which PCLU needs reconsideration are:*

- (i) *The interpretation placed on the provisions of clause 2(ii) of the Certified Standing Orders;*
- (ii) *The meaning and content of an unfair labour practice under Section 2 (ra) read with Item 10 of the Vth Schedule of the ID Act; and*
- (iii) *The limitations, if any, on the power of the Labour and Industrial Courts to order regularisation in the absence of sanctioned posts. The decision in PCLU would, in our view, require reconsideration in view of the*

*above decisions of this Court and for the reasons which we have noted above.*

**36.** *We accordingly request the Registry to place the proceedings before the Hon“ble Chief Justice of India so as to enable His Lordship to consider placing this batch of appeals before an appropriate Bench.”*

24. In **Oil and Natural Gas Corporation Limited vs. Petroleum Coal Labour Union and Others, (2015) 6 SCC 494**, it was concluded that workmen were entitled to regularization in services and the Labour Court and Industrial Tribunal had jurisdiction to order the same. However, the earlier view in **Mahatma Phule Agricultural University, Raja Ram, Rakeh Kumar Tewari and Engg. Mazdoor Sangh (supra)**, was to the contrary. The observations in **Krishan Gopal (supra)** also points towards the leaning on the view prevailing earlier to the judgment in **PCLU**.

25. Keeping in view the above said exposition, the impugned award requires intervention to the limited extent in so far as it holds the management liable to regularise the services of the workmen as it touches upon the jurisdiction of the Labour Court and Industrial

Tribunal. Accordingly, Clause 2 of paragraph 28 of the impugned award is quashed and set-aside being beyond the jurisdiction vested in the learned Tribunal. Similarly, Clause 3 of para 28 to the extent it refers to the period until the regularization of the workmen, is also quashed. Rest of the award is upheld.

26. The petition is accordingly disposed of in the aforesaid terms, so also the pending application(s), if any.

**(Satyen Vaidya)**  
**Judge**

**29<sup>th</sup> September, 2023**

*(GR)*

High Court of MP