

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

**OWP No. 2191/2015**

IA No.01/2015

CM No. 937/2023

CM No. 5200/2024

**Reserved on: 30.04.2026**

**Pronounced on: 08.05.2026**

**Uploaded on: 11.05.2026**

**Whether the operative part or full  
judgment is pronounced: Full**

**Managing Director,  
Hotel Grand Mumtaz, Srinagar  
Through Mir Ab. Rashid  
S/O Kh. Gh. Mohiuddin  
R/O Soura Srinagar.**

...Petitioner(s)

Through: Adv. Nisar Ahmad Bhat.

**Vs.**

**1. Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Srinagar.**

**2. Fayaz Ahmad Shah  
S/O Mohammad Ashraf Shah  
R/O Gupkar Nishat Srinagar.**

...Respondent(s)

Through: Adv. Ateeb Kanth, for R-2.

**CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE**

**JUDGMENT**

1. The petitioner-management has invoked the writ jurisdiction of this Court to challenge the impugned ex-parte Award dated 05.05.2015 passed by the Industrial Tribunal-cum-Labour Court, J&K, Srinagar ('Tribunal' in short), in terms whereof, the Tribunal

directed the petitioner to reinstate the respondent No. 2-Fayaz Ahmad Shah forthwith and also awarded 50% back wages from the date of his alleged termination in May, 2005 passed in a Claim Petition titled *Fayaz Ahmad Shah Vs. Managing Director Hotel Grand Mumtaz Srinagar*, received as Reference under Section 10 of ID Act.

2. Impugned Award has been assailed by the petitioner-management on the grounds that the Claim Petition submitted by the respondent No.2-Fayaz Ahmad Shah before the Government in terms of Industrial Dispute Act, 1947 and the proceedings initiated thereon were not maintainable for the reason that respondent No.2-Claim petitioner was not a “workman” within its definition under Section 2(s)(iv) of the Act; that on receiving the Reconciliation Order, the State Government of J&K vide Notification dated 20.03.2006, referred the matter to the Tribunal in terms of Section 10(1) of the Act for its adjudication on the questions framed by the Reconciliation Officer, wrongly; that the services of the respondent No.2-Claim petitioner were never terminated rather he himself, after being involved in grave misconduct, abandoned his service; that the Tribunal had misdirected itself to order back wages which could be awarded to a ‘workman’, who would have remained idle, whereas respondent No.2 was working as a **Pharmacist** having his own medical shop.
3. The brief facts leading to file present petition, as pleaded in this writ petition, are that the respondent No. 2 was initially appointed as a Sales Representative by M/S Mushtaq Trading Corporation

(erstwhile partnership concern of the petitioner) in April, 1996. The respondent No.2 was later discharging his duties in a supervisory capacity specifically as a **Works Supervisor** and subsequently as Housekeeping In-charge, drawing a monthly salary of ₹4,500/-. The petitioner-management contends that the respondent No. 2 was involved in grave misconduct i.e., theft of guest's trousers, following which he voluntarily abandoned his services on 23.05.2005 to avoid disciplinary action.

4. *Per contra*, the respondent No.2 raised an industrial dispute claiming that he was verbally and arbitrarily terminated from service without notice, inquiry, or compliance with Section 25-F of the Industrial Disputes Act, 1947. A failure report was submitted by the Conciliation Officer, and the Government vide SRO 96 dated 20.03.2006, referred the dispute to the Labour Court for adjudication.
5. Heard learned counsel for the parties and perused the record of the Tribunal.
6. Mr. Nisar Ahmad Bhat, learned counsel for the petitioner, while reiterating the grounds urged in the petition, argued that the respondent No.2 right from his engagement was working as a 'Works Supervisor' to supervise the constructional work being carried out by the petitioner-management; that the nature of the engagement of the respondent No.2 was on monthly basis, but he did not choose to extend his services beyond 23.05.2005 because of grave misconduct committed by him. It is being argued that the respondent No.2 voluntarily abandoned his services to avoid disciplinary action. Learned counsel also

argued that the respondent No.2 was not holding any post on regular basis and was working as Supervisor which does not come within the ambit of the definition of 'workman' in terms of the Act of 1947, which fact was not considered by the Tribunal while passing the Award impugned. It is finally prayed that the reference made by the Government to the respondent No.1-Tribunal, in relation to the claim of the respondent No.2, be dismissed and the impugned Award be quashed.

7. Mr. Ateeb Kanth, learned counsel for respondent No.2, *ex adverso*, contends that the case of respondent No. 2 is that the nature of duties performed by him was clerical and mere designation or salary is not determinative of "workman" status. It is contended that the respondent No. 2 was verbally and arbitrarily terminated from service without notice, inquiry, or compliance with Section 25-F of the Industrial Disputes Act, 1947, and this action on the part of the petitioner was illegal, as such, the learned counsel supported the impugned Award passed by the Tribunal, in accordance with law which does not warrant any interference by this Court.
8. Mr. Kanth, further argued that the Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction and that the Court will not review findings of fact reached by the inferior court or Tribunal, even if they be erroneous. In this regard, learned counsel has relied upon the verdict reported as **AIR 1955 SC 233** in case titled '**Hari Vishnu Kamath Vs. Syed Ahmad Ishaque & Ors.**'

9. Next contention of learned counsel for the respondent No.2 is that the petitioner could have challenged the Reference as and when it has been made to the Tribunal, but he did not choose to challenge the same, instead participated in the proceedings before the Tribunal, as such, it cannot challenge the Reference after passing of the Award. Finally, it is prayed that the Award being a reasoned one requires no interference from this Court, same be upheld and the writ petition be dismissed.
10. Mr. Nisar Ahmad Bhat petitioner's counsel, while rebutting the contentions of Mr. Kanth, submitted that if the finding of a Tribunal is perverse, same is liable to be set aside in exercise of jurisdiction under Article 226, and in this regard has relied upon the judgment reported as **(2019) 13 SCC 82** titled '**Bharat Heavy Electricals Ltd. vs. Mahendra Prasad Jakhmola & Ors.**'. Further rebutting the contention of learned counsel for respondent No.2 with regard to challenge of Reference made to the Tribunal, he submits that the petitioner does not need to challenge the Reference as forming an opinion as to whether an industrial dispute exists or not, is not the same thing as to adjudicate the dispute itself on its merits. In this regard reliance is placed on law laid down by the Apex Court in a case reported as **AIR 1989 SC 1565** titled '**Telco Convoy Drivers Mazdoor Sangh & Anr. Vs. State of Bihar & Ors.**'
11. The present petition raises fundamental questions regarding the jurisdiction of the Industrial Tribunal and the substantive application of labour laws. The primary issues are:

- i) Whether respondent No. 2 falls within the definition of a "workman" under Section 2(s) of the Industrial Disputes Act, 1947, thereby conferring jurisdiction upon the Tribunal?
- ii) Whether the Tribunal erred in law by retrospectively applying the 2010 amendment of the Industrial Disputes Act to a cause of action that arose in the year 2005?
- iii) Whether the termination of service amounted to illegal retrenchment under Section 25-F or voluntary abandonment?

**12.** It is an admitted fact on record that respondent No. 2 was working as a Housekeeping In-charge/Works Supervisor and was drawing a salary of ₹4,500/- per month at the time of the termination of his service in May, 2005. Respondent No.2 while raising an industrial dispute against the petitioner, pleaded that initially he was engaged as 'Marketing Representative' for fertilizer in the year 1996 by M/S Mushtaq Trading Corporation under the proprietorship of Mr. Mushtaq Ahmad Chaya, and in the year 1998 he was deployed in Hotel Regina, Srinagar, owned by the same proprietor as 'Works Supervisor', and finally as 'House Keeping Incharge' at Hotel Grand Mumtaz, Srinagar, from where he claimed to have been retrenched on a false accusation of misconduct on 27.05.2005, allegedly without following the provisions of Industrial Dispute Act, 1947.

13. The foundation of the petitioner's challenge is that the Tribunal inherently lacked jurisdiction because the respondent No. 2 was employed in a supervisory capacity and drew wages exceeding the statutory threshold, thereby excluding him from the definition of a "workman".
14. Under Section 2(s) of the Industrial Disputes Act, 1947, a "workman" is defined to include any person employed to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work. However, the exclusionary clause in Section 2(s)(iv) states that the definition does not include any such person: "*who, being employed in a supervisory capacity, draws wages exceeding the specified amount per mensem...*"
15. At the relevant time in 2005, when the cause of action arose and the dispute was referred (in the year 2006), the statutory wage ceiling for exclusion under Section 2(s)(iv) was ₹1,600/- per month, which was substituted and enhanced to ₹10,000/- per month by the Industrial Disputes (Amendment) Act, 2010 with effect from September 15, 2010.
16. A three-Judge Bench of the Supreme Court in "**Management of May & Baker (India) Ltd. vs. Their Workmen**" reported as **AIR 1967 SC 678** had dealt with an identical case and observed as follows:-

*"...the undisputed nature of the duties of the employee and found that his main work was that of canvassing sales. Any clerical or manual work that he had to do was incidental to the said main work, and could not take more than a small fraction of the time for which he had to work. In*

*the circumstances, the Court held that the Tribunal's conclusion that the employee was a workman under the ID Act, was incorrect. The Court also observed that the Tribunal in that case seemed to have been led away by the fact that the employee had no supervisory duties and had to work under the direction of his superior officers. The Court further held that would not necessarily mean that the employee's duties were mainly manual or clerical. The Court held that from what the Tribunal itself had found, it was clear that the employee's duties were mainly neither clerical nor manual and, therefore, he was not a workman. Hence the Court set aside the Tribunal's direction for reinstating the employee..."*

17. The Apex Court in a case titled '**Lenin Kumar Ray Vs. M/S Express Publications (Madurai) Ltd.**' reported as **2024 INSC 802** held in paragraph No.15 that "*the law is well settled that the determination factor for 'workman' covered under section 2(s) of the ID Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post and that the onus of proving the nature of employment rests on the person claiming to be a 'workman' within the definition of Section 2(s) of the ID Act.*"
18. It is the fundamental principle of statutory interpretation that substantive laws, particularly those determining the jurisdiction of a forum, operate prospectively unless expressly stated otherwise by the legislature. The learned Tribunal, in its Award impugned herein, noted that there was no evidence showing the petitioner was drawing wages exceeding ₹10,000/-. This demonstrates a patent

error of law apparent on the face of the record. The Tribunal applied 2010 amended threshold to a 2005 dispute, retrospectively.

- 19.** Applying the correct, un-amended law of 2005, the respondent No. 2, earning ₹4,500/- per month in a supervisory capacity, was explicitly excluded from the purview of a "workman". Consequently, the Industrial Tribunal lacked the threshold jurisdiction to entertain the claim, rendering the impugned Award a nullity, in the eyes of the law.
- 20.** The Tribunal held that the management failed to issue a notice, frame a charge-sheet or conduct an inquiry, thereby violating Section 25-F of the Act. However, the mandate of Section 25-F, which outlines conditions precedent to retrenchment, applies exclusively to a "workman." Since this Court has already held that the respondent No. 2 did not qualify as a 'workman' under the 1947 Act at the relevant time, the statutory protections of Section 25-F are inapplicable.
- 21.** Furthermore, the petitioner-management consistently pleaded that the respondent No.2 abandoned his services voluntarily on being involved in the theft of a customer's belongings. If an employee voluntarily abandons service to avoid disciplinary proceedings, it does not constitute "retrenchment" under Section 2(oo) of the Act. The Tribunal failed to appreciate this defense and respondent No.2 also failed to produce any order before the Tribunal which indicates that respondent No.2 was retrenched or he was not allowed to work by written order. As such, the plea that order of retrenchment was made verbally does not suffice

unless supported by material evidence. Thus, the Tribunal proceeded under the erroneous assumption that the cessation of work was an active termination by the employer requiring Section 25-F compliance.

22. The conferment of jurisdiction is a legislative act and cannot be assumed by a Tribunal beyond the strict contours of the governing statute. Because the respondent No. 2 was employed in a supervisory capacity drawing ₹4,500/- per month in 2005, he fell squarely within the exclusionary clause of Section 2(s)(iv) of the un-amended Industrial Disputes Act, 1947. The Tribunal's reliance on 2010 amendment was legally flawed and vitiates the entire proceedings. Therefore, Tribunal was not having jurisdiction to entertain an industrial dispute related to employee who was not a 'workman' under the Act. Under these circumstances this Court, under the writ jurisdiction is empowered to interfere with the Award passed by the Tribunal.
23. The limits of jurisdiction of High Courts in issuing a writ of certiorari under [Article 226](#) of the Constitution has been frequently considered by the Hon'ble Supreme 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.
24. In '[Syed Yakoob vs. K.S.Radhakrishan & Ors.](#)', reported as **AIR 1964 SC 477**, the Apex Court delineated the scope of writ of certiorari in the following manner:-

***"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 improperly, as for instance, it decides a question without giving an opportunity of being 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.”*

25. Similarly in a case ‘**B.S.N.L Vs. Bhurumal**’ reported as (2014) 7 SCC 177, the Supreme Court observed that:-

*“...It is apparent that the aforesaid findings are findings of fact. Such findings are not to be interfered with by the High Court under [Article 226](#) of the Constitution or by this Court under [Article 136](#) of the Constitution. Interference is permissible only in case these findings are totally perverse or based on no evidence. Insufficiency of evidence cannot be a ground to interdict*

***these findings as it is not the function of this court to re-appreciate the evidence. It was because of this reason that learned counsel for the appellant made frontal attack on the findings of the courts below endeavoured to demonstrate that there was perversity in the fact finding by the CGIT which was glossed over by the High Court as well...”***

26. In the aforesaid factual background, supported by the witnesses examined before the Tribunal-cum-Labour court that the petitioner was working with the management on a monthly consolidated wages @ ₹4500/-, as such, he was not a ‘workman’ entitled to seek an industrial reference as his salary was much beyond the monthly statutory salary @ ₹1600/- to qualify as a ‘workman’ to seek Reference by the Government to the Industrial Tribunal-cum-Labour court or any adjudication by it. The Industrial Tribunal-cum-Labour court, while passing the impugned Award, seems to have lost sight of this aspect of the case.
27. Viewed thus, the impugned Award passed by Industrial Tribunal-cum-Labour court, in favour of respondent No.2/claimant, for the reason that he did not qualify to be a ‘workman’, so as to be entitled to what has been granted, seems to have been passed arbitrarily in a mechanical manner, regardless of the fact that respondent No.2 was not a ‘workman’ as defined in terms of the provisions of Industrial Disputes Act, 1947.

- 28.** For the reasons discussed hereinabove, the writ petition is allowed. The impugned Award dated **05.05.2015** passed by the J&K Industrial Tribunal-cum-Labour Court Srinagar, in a Claim Petition titled '*Fayaz Ahmad Shah vs. Managing Director Hotel Grand Mumtaz*', , is hereby quashed and set aside. It is further directed that any amounts deposited by the petitioner-management in the Registry of this Court pursuant to the interim direction passed on 07.12.2015 and not released in favour of the respondent No.2, shall be refunded, to the petitioner-management forthwith. A copy of this order be sent down, along-with record for information and record.
- 29.** The Writ Petition is, thus, disposed of as **allowed**, along-with connected applications.

**(M. A. CHOWDHARY)**  
**JUDGE**

Srinagar  
08.05.2026  
*Muzammil. Q*

***Whether the order is reportable:      Yes / No***