2024:DHC:8540

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

% *Judgment reserved on: 25.10.2024*
Judgment pronounced on: 06.11.2024

\+ **W.P.(C) 15094/2024**

RAVINDER MANDAL .....Petitioner

Through: Mr. Pulkit Prakash and Mr. Arjun Mohan, Advocates

versus

M/S D.L.F. UNIVERSAL LTD. .....Respondent

Through: Mr. Varun Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

GIRISH KATHPALIA, J.:

1. This writ action brought under Articles 226 read with 227 of the Constitution of India assails the Labour Court Award dated 24.04.2024, whereby after full dress trial the learned Labour Court answered the Labour Court Reference against the petitioner workman, holding that his services were not terminated by the respondent management under the garb of transfer order dated 18.01.20217. On the basis of advance intimation the respondent management entered appearance through counsel, who accepted notice. At request of both sides, I heard final arguments at initial stage itself

as copies of complete relevant record have already been filed by the petitioner with this petition.

2. Succinctly stated, circumstances leading to the present case are as follows.

2.1 Upon receiving the notice of the Labour Court Reference, the petitioner workman appeared before the Labour Court and filed his Statement of Claim, pleading that he worked as Senior Foreman with the respondent management from 25.09.2007 till 21.01.2017 continuously, but thereafter he was not allowed to join duty and was never paid salary; that after demonetization policy announcement of the government, in the month of December, 2016 senior officers of the respondent management asked him to give his identity card for getting some currency notes exchanged and since he refused to oblige, the officers got annoyed and told him that his services would be terminated in March, 2017; that in the month of January, 2017 he was asked to resign from his job, but he refused to do so; that on 18.01.2017 the respondent management passed an order thereby transferring him from Delhi to Chennai, which transfer order was tried to be served on him on 20.01.2017 but he refused to accept the same; that on 21.01.2017 on reporting for duty, he found an endorsement in the attendance record to the effect that he had been transferred to Chennai; that on 23.01.2017 he submitted a written request that his transfer be deferred till March, 2017, so that his children's studies do not suffer and that he should be given all

facilities related to transfer as per the HR Manual of the respondent; that he was stopped from continuing his duty at the Delhi site and was directed to immediately report at Chennai.

2.2 In response before the Labour Court, the respondent management filed their written statement, denying the pleadings of the petitioner workman. In written statement the respondent management claimed that the petitioner was not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, as he was a Senior Foreman; and further explained that services of the petitioner workman had never been terminated though he had been transferred to Chennai due to administrative exigencies, as he was on transferable job, but despite repeated reminders he did not join duty at the transferee place of posting.

2.3 The petitioner workman filed a rejoinder, thereby denying the pleadings of the respondent management and reaffirmed the claim contents.

2.4 On the basis of above rival pleadings, the Labour Court framed the following issues:

> *(i) Whether the claimant had worked with the management w.e.f 25.09.2007 and his services have been illegally and unjustifiably terminated under the garb of transfer from Capital Green Project, Delhi to IT Park Project, Chennai vide transfer order dated 18.01.2017? OPW*
> *(ii) Whether the claimant is workman within the meaning of Section 2(S) of the Industrial Dispute Act? OPW*
> *(iii) Whether the claimant has caused professional damages to the reputation of th management? OPM*

(iv) Relief

2.5 After conducting trial on the above issues and hearing both sides, the learned Labour Court passed the impugned Award, thereby holding that the respondent management had failed to prove the nature of duties assigned to the petitioner to be of managerial tone, so it cannot be denied that he was a "workman" within the meaning of Section 2(s) of the Act; and that the evidence on record establishes that the respondent management had not terminated services of the petitioner workman and had only transferred him to Chennai due to administrative exigencies in terms of his appointment, but he opted not to join there.

3. Hence, the present petition.

4. During arguments, learned counsel for petitioner took me through above mentioned rival pleadings as well as evidence and contended that the impugned Award is not sustainable in the eyes of law. Learned counsel for petitioner contended that the order of transfer of petitioner to Chennai was vindictive as he had refused to help the respondent management in conversion of currency upon demonetization and shifting to Chennai in January month would have harmed studies of his children. It was further argued that the respondent management did not pay the shifting expenses to the petitioner, so he could not be held guilty of having not complied with the transfer order.

5. On the other hand, learned counsel for respondent management supported the impugned Award and contended that the petition is completely devoid of merits. Learned counsel for respondent management argued that there is no material on record to establish that services of the petitioner workman were terminated by the respondent and rather the material on record establishes that it is the petitioner workman who willfully defied the transfer order by not joining the Chennai office.

6. Evidently, the respondent management has opted not to pursue their claim of the petitioner not being a "workman" within the meaning under Section 2(s) of the Act, because there is no material to show that nature of duties assigned to the petitioner were managerial and mere nomenclature "Senior Foreman" cannot take him outside the ambit of "workman". It is also clear that there is no material on record to show termination of petitioner's services by the respondent management. Further, it is clear that the petitioner did not comply with the transfer order and did not report at the Chennai office of the respondent management. The core issue in this writ action is as to whether the transfer order passed against the petitioner by the respondent management was punitive or suffered from any vice of malafides, thereby illegal.

7. The learned Labour Court by way of elaborate discussion of rival pleadings and evidence arrived at the findings that there was no malafide on

the part of the respondent management in passing the transfer order and also that the transfer order was not a punitive one.

8. The scope and ambit of interference by the High Court under Article 226 of the Constitution of India while dealing with matters of transfers and postings of employees is extremely narrow and limited. Transfer of an employee being an incident of service, is purely in the domain of the employer based on administrative exigencies related to work profile, qualification and experience of the employee so that they could be best utilized. It is trite that no employee has a legal or vested right to be posted at any specific place, except where the employee is able to establish a compassionate ground or proves malafide. The assessment of worth of an employee must be left to the bonafide decisions of the employer and their honest assessment has to be accepted as a part of service discipline; and transfer of an employee in a transferable service is a necessary incident of the service career, so unless the transfer decision is vitiated by malafides, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management.

9. In the present case, it would be apposite to note that Clause 4 of the Appointment Letter Ex. WW1/1 (*pdf page 150*) issued to the petitioner workman clearly stipulated that his place of posting would be in the National Capital Region and that the management in its discretion could transfer him to any of the offices, divisions, departments, sections etc.,

across the country. By way of order dated 18.01.2017 Ex. WW1/3 (*pdf page 189*), the petitioner workman was transferred from Capital Green Project, Delhi to IT Park, Chennai with immediate effect and was relieved from his duties and was also informed the specific official at Chennai to whom he had to report. The petitioner himself pleaded that efforts were done by the respondent management to serve the said transfer order on him on 20.01.2017 but he refused to accept the same. That, in itself would be a serious misconduct on his part. Admittedly, the petitioner did not comply with the said transfer order and did not report at Chennai office.

10. The petitioner workman alleges that his transfer from Delhi to Chennai was basically tool of terminating his services illegally, because he refused to oblige the respondent management in the conversion of currency after demonetization. But in his representation dated 23.01.2017 Ex. MW1/6 (*pdf page 190*), the petitioner did not make even a whisper of this allegation. The learned Labour Court rightly found the said allegation not believable.

11. In his representation dated 23.01.2017 Ex. MW1/6, the petitioner workman mainly expressed his difficulties in complying with the transfer order, which representation was rejected by the respondent management vide letter dated 27.01.2017 Ex. WW1/5 (*pdf page 194*), informing him of his eligibility for his travel facility to which he and his family are entitled. The petitioner workman ought to have reported at Chennai office forthwith and ought to have sought reimbursement of his expenses. Not only this,

according to the HR Manual (*pdf page 182*), copy whereof was filed by the petitioner workman, it was his duty to prepare an estimate of shifting expenses and to get the same approved from the authorized officer of the management, but he did not do so.

12. As regards the difficulties qua education of petitioner's children, learned Labour Court in the impugned order correctly recorded that children of the petitioner being aged 6 and 4 years, no academic damage would have been caused to their career had the petitioner complied with the transfer order. The petitioner workman having consciously joined a job that was transferable across the country could not have refused to comply with the transfer order.

13. I find no infirmity in the impugned award, so the same is upheld and the present petition is dismissed.

GIRISH KATHPALIA
(JUDGE)

NOVEMBER 06, 2024/*ry*