

**CWP-17142-2014 & 16 connected petitions**

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Judgement Reserved on: May 06, 2024

Judgement Pronounced on: May 14, 2024

Sr. No.	Case No.	Case Title		Arising out of Reference No.	Date of award passed by Industrial Tribunal-cum-Labour Court, Panipat
		Petitioner	Respondents		
01.	CWP-17142-2014 (O&M)	Pappu Giri s/o Sewa Giri	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	266 of 2008	14.05.2013
02.	CWP-17145-2014	Ram Ji s/o Ramdhar	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	298 of 2008	14.05.2013
03.	CWP-17149-2014	Raj Kumar Gautam s/o Ram Sarup Gautam	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	296 of 2008	14.05.2013
04.	CWP-17150-2014 (O&M)	Maman Ram s/o Hukam Chand	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	261 of 2008	14.05.2013

**CWP-17142-2014 & 16 connected petitions**

2

			another		
05.	CWP-17151-2014	Karambir Saini s/o Ram Saini	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	262 of 2008	14.05.2013
06.	CWP-17160-2014	Shiv Paul s/o Ram Phere	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	267 of 2008	14.05.2013
07.	CWP-17161-2014	Krishan Sharma s/o Mangar Ram	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	290 of 2008	14.05.2013
08.	CWP-17162-2014	Charan Singh Yadav s/o Gotam Singh Yadav	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	288 of 2008	14.05.2013
09.	CWP-17163-2014	Rajiv Kumar s/o Krishan Lal	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	289 of 2008	14.05.2013
10.	CWP-17164-2014	Raj Kumar s/o Sadhu Ram	Presiding Officer, Industrial Tribunal-cum-	295 of 2008	14.05.2013

**CWP-17142-2014 & 16 connected petitions**

3

			Labour Court, Panipat, and another		
11.	CWP- 17165- 2014	Jai Singh s/o Mange Ram	Presiding Officer, Industrial Tribunal-cum- Labour Court, Panipat, and another	292 of 2008	14.05.2013
12.	CWP- 17179- 2014	Revati Ram s/o Ayodha Parsad	Presiding Officer, Industrial Tribunal-cum- Labour Court, Panipat, and another	302 of 2008	14.05.2013
13.	CWP- 17180- 2014	Manohar Lal s/o Hukam Chand	Presiding Officer, Industrial Tribunal-cum- Labour Court, Panipat, and another	291 of 2008	14.05.2013
14.	CWP- 17182- 2014	Munna Singh s/o Lal Ji Parsad Singh	Presiding Officer, Industrial Tribunal-cum- Labour Court, Panipat, and another	285 of 2008	14.05.2013
15.	CWP- 17184- 2014	Girish Chand s/o Ramm	Presiding Officer, Industrial Tribunal-cum- Labour Court, Panipat, and another	268 of 2008	14.05.2013
16.	CWP- 17188-	Ram Niwas Nirwal s/o Khem Chand	Presiding Officer,	287 of	14.05.2013

**CWP-17142-2014 & 16 connected petitions****4**

	2014	Nirwal	Industrial Tribunal-cum-Labour Court, Panipat, and another	2008	
17.	CWP-17235-2014	Shiv Kumar s/o Banwari Lal	Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, and another	288 of 2008	14.05.2013

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**ARGUED BY:**

**For the petitioner/
Workman(s) : Mr. Rajesh Bansal, in all cases.
Advocate.**

**For Respondent No. 2 – : Mr. Ashwani Talwar, in all cases.
Management (Faze Advocate.
Three Limited, Jatal
Road, Panipat**

SANJAY VASHISTH, J.

1. This common judgement shall decide the fate of aforementioned 17 writ petitions, since the facts and law involved in all the writ petitions are similar.

2. All the total 17 petitions have been filed by the petitioner(s)/workmen, challenging the award(s) passed by the Industrial Tribunal-cum-Labour Court, Panipat (here-after referred to as the 'Labour Court'), while answering 17 references, vide order dated 14.05.2013 (as depicted in the above table).



CWP-17142-2014 & 16 connected petitions

5

After adjudicating the industrial dispute, the Labour Court answered the same against the workman(s), by holding that there is no termination caused by the respondent-Management.

3. Since the facts of the aforesaid writ petitions are identical, to avoid repetition and for the sake of brevity, the same are being referred in the subsequent paras of this judgement, from **CWP No. 17142 of 2014**, which has arisen out of Reference No. 266 of 2008, by treating the same as lead case.

4. The Government of Haryana referred the Industrial Dispute for its adjudication to the Labour Court by framing a question that:

“ Whether the termination of services of workman Sh. Pappu Giri is legal and justified or not? If not so, to what relief he is entitled? ”

5. The pleaded case of the workman was that he was working as ‘Clipper’ with the respondent at wages of Rs.3,640/- per month and he worked from 01.12.2004 to 14.03.2008. Though, the working hours of petitioner-workman were of eight hours, but Management used to take the services from him for ten hours. On raising the issue of over time payment, workman alongwith 28 workers were transferred, whereas, there was no such mentioning in the appointment letter regarding the transfer of workman. Thereafter, on not joining at the transferred place, petitioner-workman was not allowed to continue at the earlier working place i.e Panipat. Workman issue the demand notice on 07.04.2008, wherein he pleaded that despite completion of 240 working days in the preceding one year of his termination, not allowing him to join the services amounts to

**CWP-17142-2014 & 16 connected petitions****6**

termination, in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, the Act of 1947’).

6. In the written statement filed by the respondent-Management, it was pleaded that as per the appointment letter, workman was appointed in semi skilled category and the terms and conditions of appointment letter refer to the applicability of duly Certified Standing Order of the company. It was also pleaded that the transfer is one of the conditions of service duly incorporated in Certified Standing Order and the workman is bound to obey any such transfer order. It was also pleaded that under Clause No. 37 (v) of the Certified Standing Order, Management is empowered to transfer the employee provided that wages, pay grade, continuity of service, condition of service are not adversely affected in any manner. It was further pleaded that even the salary to the tune of Rs.500/- was enhanced in case the workman joined the services at transferred place and workman was also offered an advance amount of Rs.1,000/- qua travelling/journey expenses. Workman did not join the duty at the place of his transfer, whereas the transfer order was for some administrative reasons. In no manner, the transfer order can be termed as an order of termination as projected by the workman. Neither there is any charge-sheet; nor termination order, so question of retrenchment does not arise.

7. On the basis of the pleadings of the parties, learned Labour Court, vide its order dated 28.04.2019, framed following four issues:

“1. Whether the termination of services of workman Shri Pappu Giri is legal and valid. If not so, to what relief, the workman is entitled?OPW.

**CWP-17142-2014 & 16 connected petitions**

7

2. *Whether present reference is not maintainable in view of preliminary/legal objections in the written statement? OPM*

3. *Whether the workman has failed to report for duty at the place of his transfer as alleged. If so, its effect? OPM.*

4. *Relief.”*

8. During the course of evidence, workman appeared as WW1 and deposed that once, there is no condition in the appointment letter regarding transfer, any transfer would amount to removal from services. Therefore, workman termed his removal/termination with effect from 14.03.2008 to be without notice, charge-sheet or inquiry. Thus, in the case in hand, the working of 240 days in the preceding one year of termination, which is the primary requirement to proceed further for examination of the issue is not under dispute.

9. On the other hand, Sh. Rajan Dutta, Manager, appeared as MW-1 and through his affidavit Ex. MW-1/A, deposed that the condition of employment are governed by Certified Standing Order, which was duly certified on 02.01.2002. As per Clause 37 (v) [Ex.MW1/1], Management is competent to transfer the workman to any factory, anywhere in India, subject to the protection of wages, grade, continuity of service and condition of service and same is not affected adversely in any manner. Further deposed that workman was well aware of the situation that his services would be covered by the Certified Standing Order and thus, can be transferred any time. In no manner, the transfer order can be termed as unfair labour practice.

10. During the course of proceedings before the Labour Court and more importantly while recording statement of workman, he categorically

**CWP-17142-2014 & 16 connected petitions**

8

admitted that, *he has no proof of working for ten hours and also that no termination order was given to him.* However, he stated that he has been transferred with ill-will and thus, claimed that he has been terminated illegally from service with effect from 14.03.2008.

11. Thus, Labour Court concluded that there is no victimization of the workman especially, when there is no termination order. Relevant findings recorded in paragraph No. 18 of the award is reproduced herebelow:

“18. In view of the afore-discussed facts and circumstances, it is held that there is no such evidence except his own bald statement. The transfer has declared is incident of service. This lawful order cannot be subject matter of challenge and the present reference is only on the point of alleged termination, when in fact there was no termination. It is established on record that workman did not join duty till date at the place of his transfer and as such issue No.3 be decided holding the workman is not interested to join and remained absent from the place of his posting after 14.03.2008 till date. It is also established that respondent did not terminate his services.”

12. During the course of hearing before this Court, Mr. Ashwani Talwar, Advocate representing the respondent-Management, referred to the findings recorded in paragraph No.12 for projecting that even as per the observations recorded by Labour Court, industrial dispute cannot be raised on the basis of the termination of the service. Therefore, provisions of Section 25-F read with Section 25-B of the Act of 1947 are not required to be followed.

Mr. Ashwani Talwar, Advocate representing the Management relied upon the judgment of Hon'ble Supreme Court, titled as, **Hindustan Lever Ltd. Vs. The Workmen', 1974-I-LLJ-94'** and strengthened his

**CWP-17142-2014 & 16 connected petitions**

9

argument by saying that any transfer as per Standing Order is at the discretion of the Management and same cannot be termed as victimization.

Mr. Ashwani Talwar, Advocate, also relied upon the Judgment of Hon'ble Supreme Court, titled as '**Pearlite Liners (P) Ltd Vs. Manorama Sirsi**', **2004 SCC (L&S) 453**, wherein it has been held that "***unless there is a term to the contrary in the contract of service, a transfer order is a normal incident of service. Further it is to be considered that if the plaintiff does not comply with the transfer order, it may ultimately lead to termination of service. Therefore, a declaration that the transfer order is illegal and void, in fact amounts to imposing the plaintiff on the defendant in spite of the fact that the plaintiff allegedly does not obey order of her superiors in the management of the defendant company. Such relief cannot be granted***"

Mr. Ashwani Talwar, Advocate also relied upon the judgment of this Court (Punjab and Haryana High Court), titled as, '**Vijay Kumar Wadhwa Vs. Life Insurance Corporation and others**', **2012 LLR 1038**, saying that "***Transfer is condition of service. The petitioner has been transferred from Branch Officer, Ferozepur to Satellite Office. Mere distance does not matter***".

13. During the course of hearing before this Court, the efforts for amicable settlement were also made. Even, counsel for the Management offered the lump sum amount of compensation of Rs.50,000/- to each of the workman for settling the dispute and further offered to allow the workman to continue in service, with all the additional facilities, subject to their accepting of joining at the transferred place i.e. Dadra and Nagar Haveli.

**CWP-17142-2014 & 16 connected petitions**

10

14. Despite granting adequate time to think over the proposal, workman(s) refused to accept the proposal. In furtherance of the submissions, counsel for the workman(s) submitted a fact that admittedly, the factory/establishment at Dadra and Nagar Haveli (place of transfer) was started subsequent to the appointment of the workman(s). Therefore, the transfer order on account of the establishment of a new unit/Factory in the year 2007/2008 is an eventuality, which was neither disclosed to the petitioner-workman(s) through the Certified Standing Order; nor in the appointment letter or any subsequent contract between the Management and the Workman. Therefore, the findings recorded by the Delhi High Court, in case, titled as, '**Tobu Enterprises Limited Vs. Presiding Officer', Industrial Tribunal and others, 2008 (18) S.C.T. 605, Law Finder Doc Id # 185628,** which is based upon one of the judgment of the Hon'ble Apex Court, titled as, '**Kundan Sugar Mills Vs. Ziyauddin, AIR 1960 Supreme Court 650,** is applicable in the case at hand. In the said judgment, it has been categorically held that the employer is not possessed with the absolute right to transfer the workman outside the unit where he/she has been originally employed.

The relevant paragraphs No. 7 and 8 of ***Tobu Enterprises case (supra)***, are reproduced herebelow:

"7. I find considerable force in the submissions made on behalf of the workmen. In the present case it is seen that (a) there was no unit outside Delhi when the workmen were appointed, (b) there was no stipulation in the appointment letters that the workmen could be transferred outside Delhi and (c) the management closed down its unit in Delhi in violation of the relevant provisions of the ID Act. It is, therefore, seen that although the certified Standing Orders of the management

**CWP-17142-2014 & 16 connected petitions**

11

*provided that the workmen could be transferred from one job to another or from one department/section to another or from one unit to another, as observed by the Single Judge in Civil Writ No. 3861 of 2000, the appointment letter did not give any indication that the workmen could be transferred outside Delhi, and that, therefore, in terms of the decision of the Supreme Court in **Kundan Sugar Mills v. Ziyauddin and others (supra)**, which clearly holds that **there was no inherent right in an employer to transfer his employee to another place where he chooses to start a business subsequent to the date of employment in the absence of an express term in this behalf in the contract of service, the workmen employed with the management in the instant case could not be transferred to some other independent concern started by the same management at Bhiwadi (Alwar) at a stage subsequent to the date of the employment.** Also, insofar as, the contention of the management in respect of the workmen not being entitled to any relief on account of having refused to carry out the transfer orders is concerned, it is seen that under the provision of Rule 14(3)(a) of the Industrial Employment (Standing Orders) Central Rules, 1946, a willful disobedience amounts to misconduct only if workman disobeys a lawful and reasonable order of his superior, which order in the present case has been held by the Industrial Adjudicator to be neither legal nor justified.*

8. *Significantly, it is seen that the Industrial Adjudicator after considering the conduct of the management, whereby transfer orders were enforced only against the workmen concerned, because they were active members of the union, whereas the management withdrew the transfer orders in respect of other employees, justifiably came to a conclusion that the action of the management was malafide, and that the termination of the services was in violation of the provisions of the Industrial Disputes Act and consequently illegal. The view taken by the Industrial Adjudicator, in my opinion, is a possible view and is certainly not perverse. It is not possible for this Court to substitute its opinion for that taken by the Industrial Adjudicator. Lastly, I come to the submission made by counsel for the management that since the workmen had been transferred to Bhiwadi the Industrial Adjudicator in Delhi had no territorial jurisdiction over the dispute that, therefore, the reference itself was bad on this account. This*



CWP-17142-2014 & 16 connected petitions

12

submission made on behalf of the management, does not hold water, in view of the decision of the Supreme Court in Bikash Bhushan Ghosh & Ors. v. Novartis India Limited & Anr.; JT 2007 (6) SC 432, where it has been held that if the order of transfer is illegal and the services of the workman were terminated for not complying therewith, the legality of the orders of transfer would have a direct nexus with the order of termination, and would constitute cause of action according jurisdiction to the Industrial Adjudicator where termination was effected, as observed unequivocally by the Supreme Court in Om Parkash Srivastava v. Union of India and Another; JT 2006 (7) SC 35. In the present case it is not disputed that the termination was effective in Delhi.”

On the same analogy, Mr. Rajesh Bansal, Advocate relied upon the judgment of Gauhati High Court, titled as, **‘Workman of Bijlibari Tea Estate Vs. Managemen ot Bijlibari Tea Estate’, 2010 (5) S.C.T. 418**, and refers to **paragraph No. 23**, which says as under:

*“23. The Apex Court in M/s Kundan Sugar Mills (supra) while considering almost the similar facts involved in the case in hand, has **held that the employer has no inherent right to transfer his employee to another place where he chooses to start a business subsequent to the date of the employment, when there was no condition of service of employment of the employee either express of implied that the employer has the right to transfer to such new venture started or proposed to be started subsequent to the date of his employment.** The Apex Court in that case has uphold the judgment of the labour Appellate Tribunal holding that the management had no right to transfer the workman to new factory and hence, the order dismissing him from service was illegal, based on the fact that such workman employed in a factory owned by the management was sought to be transferred to a new venture. The Single Bench decision of this Court in Kakodanga Tea Estate (P.) Ltd (supra), on which the learned senior Counsel for the management places reliance, cannot be applied in the case in hand, in view of the aforesaid discussion and as in that case, the concerned workman was transferred from a post in the tea garden to the Head Quarter of the Tea Company.”*

**CWP-17142-2014 & 16 connected petitions****13**

15. By citing the ratio of law laid down by Hon'ble Apex Court and followed by Delhi High Court and Gauhati High Court, Counsel for the workman(s) argues that undoubtedly, as per the Certified Standing Order, workman can be transferred by the Employer at a new place where already an establishment exists at the time of appointment of workman, but Management has failed to cite any provision of law, Clause from the Certified Standing Order or the appointment letter issued to the workman(s) or through any contract, that in the eventuality of development of any new factory by the Management in some outside area, the workman can be transferred to such factory/unit. Thus, he is not bound to comply with such transfer order, because no such expressed or implied condition was mentioned in the Certified Standing Order or the appointment letter and claims that the action of the respondent-Management is against the law.

16. This Court has deeply examined the petition, the impugned award and the reproduced Certified Standing Order and finds that no such eventuality, in expressed or implied terms is mentioned therein. Even, no material has been cited by the counsel for the Management to show that prior to the issuance of transfer order from Panipat to Dadra and Nagar Haveli, any decision was taken by the Management at Panipat, by passing a resolution about the need of the transfer for a particular purpose in that transferred area.

Not only this, even there is no evidence led by the Management that any requisition was received by the Management at Panipat from the officials/Management or any subordinate Committee regarding the required

**CWP-17142-2014 & 16 connected petitions****14**

services from the workman(s). In the absence of any material in the shape of affidavit, showing the need of the transfer of the workman from Panipat to Dadra and Nagar Haveli, it cannot be termed that the decision taken by the Management is fair one and beyond any doubt. The argument addressed by the counsel for the Management would not be applicable in the facts and circumstances of the present case, because of the absence of any such Clause in implied or expressive terms that in the eventuality of the starting of a new unit/Factory at a different place, the workman from this Unit may be transferred. Thus, the arguments developed on the basis of the Certified Standing Order or The Industrial Employment (Standing Orders) Act, 1946 would not be attracted for its applicability to the facts and circumstances of the present case.

17. Accordingly, all the aforesaid 17 writ petition(s) filed by the workmen are allowed and resultantly, Management would allow the workmen to continue their service at the place where they were initially appointed.

In alternative, it would be open for the Management to pay a lump sum amount of compensation of Rs.3,00,000/- (Rupees Three Lacs Only) to the workmen (in all the aforesaid 17 writ petitions), who were transferred from Panipat to Dadra and Nagar Haveli, within a period of three months from today i.e. **14.08.2024**.

18. However, it is clarified that petitioner-workman in CWP-17150 of 2014 has died on 19.10.2021. The death certificate dated 08.11.2021 of the said petitioner has already been taken on record. Since, reinstatement of

**CWP-17142-2014 & 16 connected petitions**

15

the deceased-workman in CWP-17150 of 2014 is not possible, the Management is directed to pay a lump sum amount of compensation of Rs.3,00,000/- (Rupees Three Lacs) to the legal representatives of the deceased, who have already been made party to CWP-17150 of 2014.

If any such decision is to be taken, the workmen shall be duly informed regarding the decision taken by the Management with respect to the lump sum Compensation within a period of 15 days from the said decision. Once the intimation is sent, uptill the maximum date fixed for payment i.e. 14.08.2024, no interest would be charged. However, in case the payment is not made within stipulated period, same would fetch interest @ 6 % per annum from the date of passing of this order.

19. Pending miscellaneous applications therein, if any, are also **disposed of** accordingly.

(SANJAY VASHISTH)
JUDGE

May 14, 2024
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Whether speaking/reasoned? ✓ Yes/No
Whether reportable? ✓ Yes/No