

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

+ **Writ Petition (Civil) No.1533/2008**

% Date of Decision : February 26, 2008

Bisundhari Singh & Ors. Petitioners

Through : Mr. K.N. Jha,
Advocate

Versus

M/s. Dhillon Transport Agency Respondent

Through : Nemo

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J : *(Oral)*

1. The petitioners have assailed the impugned award dated 15.01.2008 passed by the learned Labour Court No.XII, Karkardooma Courts, Delhi in ID No.221/2006/2005 whereby it was held that the workmen are not entitled to any relief in terms of reference order at Delhi for want of jurisdiction; and that they are however entitled to raise the Industrial Dispute against the management after joining duty at their place of transfer, if they so desire. The petitioners have categorically prayed for the relief of reinstatement with continuity of service and full back wages

and other legal benefits.

2. The petitioners/workmen allege that they started working with the respondent on various dates between 1971-1998, but the management did not issue any appointment letters to them and had also given wrong dates of appointment in their ESI Cards. Since 2003, disputes arose between the petitioners and the respondent regarding non-payment of bonus, earned leave etc. Ultimately on 02.04.2005, petitioners/workmen were not allowed to carry out their jobs and were told by the management that they have been transferred, on which a complaint was sent to SHO, Sadar Bazaar on 04.04.2005. A demand notice dated 4.04.2005 was also issued by the petitioners/workmen to the management, but no reply was given by the management. On 07.04.2005, a complaint was sent to the Labour Commissioner, Rajpur Road, but no settlement could be arrived at between the parties. Consequently, the Secretary (Labour) Government of NCT, Delhi sent a reference on 28.11.2005 vide reference No.F.24 (1715)/2005-Lab/11596-600 with following terms :-

“Whether the services of workmen shown in Annexure A, have been terminated illegally and/or unjustifiably by the management under the garb of transfer and if so, to what sum of money as monetary relief alongwith other consequential benefits in terms of existing Govt. consequential benefits in terms of existing Govt. Laws/ Notification and what other relief are they entitled and what directions are necessary in this respect?”

3. Before the Labour Court it was contented by the petitioners/workmen that as they were residing in Delhi, the management business is in Delhi, jobs were also granted in Delhi and the complaints were also made to the Labour Commissioner, Rajpur Road, Delhi, therefore the Labour Court has territorial jurisdiction to entertain their claim. On merits it was submitted that they never refused to join the duties and that it was the management who did not allow them to join. In its written statement before the Labour Court, the management averred that the petitioners were on a transferable jobs and no discharge/ dismissed/ terminal/ retrenchment had been made and the petitioners/workmen were transferred to different branch offices of the management firm, situated in different States for administrative reasons but the petitioners did not join at their new postings. The management also averred that the transfers were made in view of the provisions contained in the Employment Rules and Regulations of their firm. It is also submitted that as the new place of postings of petitioners was not at New Delhi, territorial jurisdiction of the authorities constituted by the State Government of Delhi under the provisions of the Act does not arise at all. In their rejoinder the workmen denied the allegations made by the management. The Labour Court framed the following issues :

1. Whether the State Government had no territorial jurisdiction to refer the present industrial dispute as alleged in preliminary objections No.2 in the written

statement?

2. As per the terms of reference.

Since these were decided in favour of the management and against the workmen, the present Writ Petition has been preferred by the workmen.

4. On perusal of the impugned award, it has come to my notice that the Labour Court observed that the workmen in their statement of claim have alleged that they were transferred by the management, therefore the fact that their services were transferred stands established. Further, it was observed that the management proved the transfer of the workmen by transfer orders and in view of the plea of the workmen in their joint statement of claim, the workmen had knowledge of their transfers. Thus, the transfer orders were deemed to have been served upon the workmen despite their refusal to receive the same. The learned Labour Court then relied upon a number of authorities for the proposition that once an employee is transferred, the Labour Court having jurisdiction at the place where he is transferred is the competent Court to entertain any reference even if the workman refused to accept transfer orders and continued to stay at such place illegally; and that this amounts to absenting himself from attending duties at the new station. A workman cannot create an artificial cause of action to raise a dispute at a place wherefrom he has been transferred in violation of transfer orders by incidentally questioning the

orders of transfer. In **General Manager, N.E. Railway, Gorakhpur & Others Vs. Jamait Ram Khatnani & Others 1975 FLR 246 All**, the following observations were made by Allahabad High Court :

“.....Once an employee is transferred and posted to a particular place acceptance of the transfer order by that employee is immaterial. Even though he may not join his duties or physically may not go to the new place of posting he will continue to be posted there in the eye of law. His place of posting cannot be deemed to have changed merely because he disobeys the transfer order.....”.

Similarly, in **Siemens Limited Vs. Presiding Officer, Additional Industrial Tribunal-Cum-Additional Labour Court, Hyderabad & Another 2003 (96) FLR 819 AP** the following observations were made by the Andhra Pradesh High Court:

“40. the situs of employment would become paramount in raising the industrial dispute. Since the situs of the employment of the workman was at Manipal with effect from 3.10.1994 as indicated in the order of transfer dated 19.9.1994 and notice dated 6.10.1994 and the same was treated as misconduct, by the office at Bangalore.
41. In other words he ceases to be an employee of Hyderabad Office with effect from 3.10.1994 and supposed to have born at the new station at Manipal, within the jurisdiction of Bangalore Office..... At the most his stay at Hyderabad is only illegal and as right pointed, the same amounts to absenting himself from attending the duties at the new station.”

In **Lohla Starlinger Ltd. and Anr. Vs. Government of NCT of Delhi and Ors. 2006 LLR 905, Delhi**, a Single Bench of our

High Court has observed as follows :

“36. Mere continuation of stay at the place where the employee has been transferred does not create any legal right to adjudicate his grievance by his termination after the cessation of his employment at the office wherefrom he is transferred; his continuous stay at such place is illegal and amounts to absenting himself from attending duties at the new station. Stay at the place wherefrom an employee is transferred must be for valid reasons.

37. A workman cannot create an artificial cause of action to raise a dispute at a place wherefrom he/ she has been transferred by incidentally questioning the order of transfer

Similar observations have been made in ***Indian Express Newspaper (Bombay) Pvt. Ltd. and State of West Bengal and Others with Sampat B.G. Vs. Indian Express Newspaper (Bombay) Pvt. Ltd., 2005 (106) FLR 467 Cal., New Delhi General Mazdoor Union Vs. Government of Delhi and Others 2000 LLR 770.***

5. I have repeatedly tried to explain to learned counsel for the petitioner that if his case is that the petitioner's service has been terminated under the garb of a transfer; it can only mean that the management has stopped the petitioners from working and had no intention of taking their services even at the place to which they were transferred. If that were so, it would have been quite easy for the petitioners to put the ball in the management's court by reporting for work at that place, or at least expressing their willingness to do so. In this context, I

have repeatedly put it to counsel for the petitioners as to why his clients did not ever express their willingness to join the place of transfer for all these years that this dispute has been pending either before the Conciliation Office or before the Labour Court. At one stage, learned counsel said that they did say so, but my repeated requests to demonstrate this from the record have failed to elicit a straightforward reply. No document, letter or communication has been placed on the record to demonstrate the petitioner's willingness to join service at their place of posting. In that view of the matter, I do not find any infirmity in the order and finding of the Labour Court to the effect that it does not have the jurisdiction to examine this dispute. No authorities to support the case of petitioners with regard to the question of jurisdiction in the event of transfer of a workman, have been brought to my notice. In the face of the number of authorities that have been examined by the Labour Court for this proposition, I do not find any such infirmity in the decision of the learned Labour Court that would persuade me to interfere in the exercise of writ jurisdiction under Article 226 of the Constitution of India.

The writ petition is dismissed.

CM No.3008/2008

This is an application moved under Section 17-B of the Industrial Disputes Act for grant of subsistence allowance to the petitioner/workman. In view of the fact that the writ petition

itself has been dismissed, this application does not survive. Even otherwise on merits, this application is not well founded for the reason that these proceedings have been initiated by the workmen themselves against the impugned award which had dismissed their case. Consequently, it cannot be said that instant writ petition had been filed against any award that directing reinstatement of the workman, which is a sine qua non for maintaining such an application.

The application is dismissed.

Sudershan Kumar Misra, J

February 26, 2008
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