

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

+ Judgment delivered on: March 21, 2016

% **W.P.(C) No. 5325/2004**

KANHAYA LAL

..... Petitioner

Through: Mr. Sanjoy Ghose, Advocate with Ms.
Pratishtha Vij, Advocate.

versus

THE MANAGEMENT OF M/S SWANTANTRA BHARAT MILL

....Respondent

Through: Mr. Harvinder Singh, Advocate with
Ms. Laxmi Kumari, Advocate.

**CORAM:
HON'BLE MR. JUSTICE I.S. MEHTA**

JUDGMENT

I. S. MEHTA, J.

1. Instant is a Writ Petition under Article 226 and Article 227 of the Constitution of India, espoused by the Kapra Mazdoor Lal Jhanda Union for setting aside the impugned Award dated 06.11.2003 passed by the Presiding Officer, Industrial Tribunal-I, Delhi (*hereinafter*

referred to as the 'learned Labour Court/Industrial Adjudicator') in I.D. No. 167/1994.

2. The brief facts stated are that the petitioner-workman, i.e., Shri Kanhaya Lal, and two other employees, i.e., Shri Ram Sumer and Shri Babu Lal, were in the employment of the respondent-management on monthly wages of Rs. 1500/- per month. The petitioner-workman was deputed on winding machine and was working on the said section of the respondent-management for the last 19 years. As per the certified standing orders of the respondent-management, there are four categories of workmen, namely, permanent workman, temporary workman, badli workman and probationer. The petitioner-workman along with two other employees, i.e., Shri Ram Sumer and Shri Babu Lal, were working on the permanent post. However, the respondent-management who was indulging in unfair labour practice had shown them in the category of badli workers so that at any point of time they could be disengaged/assigned any further work by the respondent-workman.

3. Earlier there were 6000 employees working with the respondent-management. However, around 1200 employees were left

out, and the rest of the employees were permanently retired by the respondent-management after giving *ex-gratia* compensation only. The respondent-management who was indulging in unfair labour practice got transferred the petitioner-workman from winding department to the doubling-winding department without prior notice as required under Section 9A of Industrial Disputes Act, 1947 ignoring the different nature of work at the transferee post, i.e., doubling-winding department. The respondent-management further did not care to look into the records of the petitioner-workman who was not having the skill to work at the said department and the respondent-management did not provide any training to the petitioner-workman. The petitioner-workman intended to bring it to the notice of the respondent-management regarding requirement of skill/training but the respondent-management did not gave heed to this fact.

4. Consequently, the petitioner-workman brought this fact to the notice of the executive committee of the Kapra Mazdoor Lal Jhanda Union to which the petitioner-workman is a member for conciliation. The executive committee raised a demand from the respondent-management to cancel the transfer so made, but the respondent-

management did not agree, as a result the executive committee espoused the cause of the petitioner-workman, being member of the union, and raised an Industrial Dispute under Section 10 of the Industrial Disputes Act, 1947. The petitioner-workman is unemployed till date and the transfer order dated 02.11.1992 is an attempt to victimise the petitioner-workman by adopting unfair labour practice and change of service condition, which is illegal and unjustified and is liable to be set aside. The petitioner-workman be reinstated to the winding section along with full wages from the date of the transfer order.

5. The respondent-management filed its reply and stated that the petitioner-workman was in the employment of the respondent-management w.e.f. 05.03.1976 as substitute worker, i.e., badliwala worker, and not as a permanent workman. Therefore, he has no right to ask for a permanent work to be assigned to him with the respondent-management. The respondent-management had restructured the activities of the remaining workers and their services to be utilized in best manner as per exigencies and requirements of business of the Mill. Therefore, to avoid hardships, the workers were

directed to perform alternative work in doubling-winding section where they have to work over the similar types of machines, without effecting wages and other condition of services. However, it is the petitioner-workman who has refused to perform at the assigned place illegally and unjustifiably and the cause of the petitioner-workman has not been espoused by the executive committee, i.e., Kapra Mazdoor Lal Jhanda Union.

6. The petitioner-workman filed its replication wherein the petitioner-workman denied the allegation alleged in the reply by the respondent-management and reaffirmed the averments made in the statement of claim. After completing the pleadings, issues were framed and both the parties led their evidences on the respective issues and thereafter the learned Industrial Adjudicator passed the impugned Award dated 06.11.2003.

7. The learned counsel for the petitioner-workman has submitted that the petitioner-workman was engaged with the respondent-management for more than 19 years on the date when the industrial dispute was raised by the Kapra Mazdoor Lal Jhanda Union, i.e., 06.05.1994.

8. The learned counsel for the petitioner-workman has further submitted that the Mill, i.e., Swantantra Bharat Mill, in which the petitioner-workman was engaged, there were four types of workmen, i.e., permanent workman, temporary workman, badli workman and probationer, with the respondent-management who was indulging in unfair labour practice and had thrown out the petitioner-workman out of the Mill without any reasonable cause and did not pay *ex-gratia* compensation in favour of the petitioner-workman.
9. The learned counsel for the petitioner-workman has further submitted that on 02.11.1992, the respondent-management issued a transfer order to the petitioner-workman who was employed permanently in the winding section to the doubling-winding section without giving prior training to the petitioner-workman for such machine, i.e., doubling-winding machines, and a notice under Section 9A of the Industrial Disputes Act, 1947.
10. The learned counsel for the petitioner-workman has further submitted that junior employees, i.e., Shri Kashi Nath, Shri Sukh Ram, Shri Jai Nath, Shri Kapil Dev, etc. were retained by the respondent-management in the winding section and they are still working in the

same section, whereas the petitioner-workman was picked up by the respondent-management by adopting unfair labour practice and victimised him by transferring him to the doubling-winding section where he was inefficient to work for want of requisite training/skill. Therefore, the transfer order dated 02.11.1992 be stayed and the impugned Award dated 06.11.2003 be set aside. The learned counsel for the petitioner-workman has placed reliance on the following judgments, i.e, *Sudarshan Rajpoot vs. U.P. State Road Transport Corporation*, (2015) 2 SCC 317, *GSRTC vs. Workmen of S T Corporation*, (1999) (2) LLJ 1363 Guj, *Lokmat Newspapers Pvt. Ltd. vs. Shankar Prasad*, AIR 1999 SC 2423 and *State of U.P. vs. Charan Singh*, (2015) 8 SCC 150.

11. On the other hand, the learned counsel for the respondent-management has submitted that in both the sections of the Mill, i.e., winding section and doubling-winding section, they were having similar machines, had the petitioner-workman joined the place of transfer he would have come to know that the machines were the same. It is further pointed out, that, moreover, the petitioner-workman was a substitute worker and has no right to claim to work on a

particular machine by virtue of his job condition. He could be assigned duty on any post on any section depending upon the availability of work and other administrative considerations. Therefore, there was no requirement of issuing any notice under Section 9A of the Industrial Disputes Act, 1947. The learned counsel for the respondent-management has placed reliance upon the following judgments, i.e., *Syed Yakoob vs. K. S. Radhakrishanan and Others*, AIR 1964 SC 477, *Bombay Union of Journalist and Others vs. The "Hindu", Bombay and Another*, 1960 1 LLJ 110, *State of Punjab vs. The Gandhara Transport Company (P) Ltd. and Others*, (1975) 4 SCC 838, *Shri Kripa Printing Press vs. Labour Court and Another*, AIR 1960 AP 489, *Regional Manager, State Bank of India vs. Raja Ram*, (2004) 8 SCC 164, *Tirloki Nath (Shri) vs. Shri Dharam Paul Arora & Anr*, 2006 LLR 1043 and *Rajendra Roy vs. Union of India and Another*, (1993) 1 SCC 148.

12. The reference sent to the learned Industrial Adjudicator, vide notification No. F.24(77)/94-Lab./20897-902 dated 06.05.1994, is as under:-

“Whether the transfer of S/Shri Ram Sumer, Kanhaya Lal and Babu Lal from winding section to doubling

section is illegal and/or unjustified and if so, what directions are necessary in this respect?”

13. The transfer of an employee ordinarily means a change of place of employment within an organization which is arising out of administrative exigencies to meet the administrative reasons through bonafide action on behalf of the management/employer/organization.

Generally, the transfer so made of an employee by the management/employer/organization should not be interfered with unless the transferee/employee is subjected to victimisation in the hands of the management/employer/organization.

14. Instant is a case where the petitioner-workman has claimed that he was transferred on 02.11.1992 from winding section to the doubling-winding section of the respondent-management, i.e., Swantantra Bharat Mill, without any reasonable cause and the transfer so made by the respondent-management is nothing but victimisation to attain the goal of retrenchment of the petitioner-workman.

15. The contentions of the learned counsel for the petitioner-workman that the respondent-management was indulging in unfair labour practice by not making substitute worker to be a permanent worker even after working with the respondent-management for 19

years, which amounts to unfair labour practice, does not seem to be convincing as the dispute between the parties was “*Whether the transfer of S/Shri Ram Sumer, Kanhaya Lal and Babu Lal from winding section to doubling section is illegal and/or unjustified and if so, what directions are necessary in this respect?*” and it was not a matter incidental to the terms of reference.

16. The petitioner-workman during the cross examination has admitted that he was given the printed attendance card of badliwala and it is further admitted that the petitioner-workman neither made any complaint in writing nor raised any dispute regarding removal of designation as badliwala. Further, he did not raise any dispute with the respondent-management to make him permanent and also admitted that he was never refused duties and was given employment on all days as attended. It is further admitted that he had no knowledge that if there was any terms of service in writing that he would be given duty in only one particular department.

17. What was the dispute hinging around before the learned Industrial Adjudicator was whether the transfer so made *qua* against the petitioner-workman was the result of *malafide* action taken against

the petitioner-workman to victimise him to achieve the retrenchment goal of the respondent-management.

18. The aforesaid admission on part of the petitioner-workman leaves no doubt that the transfer so made by the respondent-management dated 02.11.1992 is not *malafide*.

The facts on record indicate that the respondent-management has never refused to give duty at any point of time during the course of employment to the petitioner-workman till the date of the alleged transfer.

19. The contention of the learned counsel for the petitioner-workman that the respondent-management changed the service condition of the petitioner-workman and subsequently issued the transfer order dated 02.11.1992 without giving notice under Section 9A of the Industrial Disputes Act, 1947, which is mandatory, and non compliance of the mandatory requirement makes the transfer order ineffective, too, does not seem to be correct as the petitioner-workman never joined the transferee place, i.e., the doubling-winding section, rather he refused to comply with the transfer order dated 02.11.1992.

20. The petitioner-workman has admitted that his attendance was recorded at the work place and he was given the printed attendance card in which he was shown to be a substitute worker, i.e., badliwala. Further, he has also admitted that he has not raised any dispute with the respondent-management to make him permanent and further he has also admitted that he was never refused duty and has been given employment on all the days when he attended and further it is a fact on record that he has not joined the transferee place, i.e., the doubling-winding section, which does not show that the respondent-management changed the services condition of the petitioner-workman. The said admissions are reproduced as under:

“...It is also correct that it was printed on such attendance card that the workman is “badliwala”...

...I was never refused duty and had been given employment on all days when I attended. It is correct that my attendance was marked in my attendance card. (Vold.) My attendance was also marked in attendance register...

...I have no knowledge if there were any terms of service in writing that I would be given work only in one particular deptt...

...I never went and/worked in doubling deptt. I cannot tell as to how many machines were there in that deptt. As I never visited that deptt...”

21. The aforesaid admissions of the petitioner-workman leads towards the fact that there is no individual victimisation *qua* against the petitioner-workman and the reference sent to the learned Industrial Adjudicator was pertaining to the transfer of the three employees, i.e., Shri Kanhaya Lal, Shri Ram Sumer and Shri Babu Lal, out of which two employees, i.e., Shri Ram Sumer and Shri Babu Lal, have already settled the matter with the respondent-management. So far as the case of the petitioner-workman is concerned, it is related to his transfer and not of his claims other than transfer is a matter in dispute. The claim of the petitioner-workman that the respondent-management was indulging in unfair labour practice by giving *ex-gratia* payment to outgoing employees and the respondent-management intended to retrench the petitioner-workman through transfer order is factually incorrect as the plea taken by the petitioner-workman is premature at this stage *qua* against the interest of the petitioner-workman. This allegation is nothing but the false plea taken by the petitioner-workman.

22. So far as the requirement of issuance of the notice under Section 9A of the Industrial Disputes Act, 1947 is concerned, it has to be seen whether such notice is required in the present case. Section 9A and Schedule IV of the Industrial Disputes Act, 1947 is reproduced as under:

*“9A. **Notice of change.**- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--*

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected;

(b) within twenty- one days of giving such notice:

Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any 1 settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

THE FOURTH SCHEDULE

(See Section 9-A)

CONDITIONS OF SERVICE FOR CHANGE OF
WHICH NOTICE IS TO BE GIVEN

1. Wages, including the period and mode of payment ;
 2. Contribution paid, or payable, by the employer to any provident fund or for the benefit of the workmen under any law for the time being in force ;
 3. Compensatory and other allowances ;
 4. Hours of work and rest intervals;
 5. Leave with wages and holidays ;
 6. Starting alteration or discontinuance of shift working otherwise than in accordance with standing orders;
 7. Classification by grades ;
 8. Withdrawal of any customary concession or privilege or change in usage;
 9. Introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders;
 10. Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;
- Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department of shift [not occasioned by circumstances over which the employer has no control]”*

23. As per Section 9A of the Industrial Disputes Act, 1947, a notice is only given to workmen/employees in the event of change of the service condition carried out by the management. But in the instant case, nothing came out to suggest that there was any change in the service condition of the petitioner-workman at the time when the

transfer order dated 02.11.1992 was issued to attract Schedule IV of the Industrial Disputes Act, 1947. Therefore, the notice in the present case is not required. As such, the judgments relied upon by the petitioner-workman, i.e., ***Lokmat Newspapers Pvt. Ltd. vs. Shankar Prasad (Supra)*** and ***State of U.P. vs. Charan Singh (Supra)*** loses its significance in the present context.

24. It is an admitted fact on record that petitioner-workman has not joined duty in the transferee place, i.e., the doubling-winding section. The petitioner-workman was transferred within the same complex of the Swantantra Bharat Mill. The petitioner-workman was expected to join the transferee place, i.e., the doubling-winding section. Without joining the transferee place and taking false plea of the change of the service condition *ipso facto* does not dispel his lawful duty towards the respondent-management.

25. The petitioner-workman is expected to join the transferee place, i.e., the doubling-winding section, unless he successfully proves that the transfer so made *qua* against him is malafide on the part of the respondent-management. Transfer is an incident of the service condition and it is available to be exercised by the employer to act

diligently and bonafidely. Reliance is place upon the judgment of the Apex Court in the case of *State of Rajasthan and Others vs. Anand Prakash Solanki*, AIR 2003 SC 3849.

26. In the instant case, there is nothing emerging from any corner that the transfer so made by the respondent-management was malafide or camouflaged to achieve something which is not expected from the respondent-management. Moreover, the issue in controversy is the transfer order dated 02.11.1992 issued by the respondent-management against the petitioner-workman and it is not the issue of unfair labour practice independently between the parties. The option of selecting the name of the transferee employee depending on the suitability of the transferee always rest with the employer. It cannot be presumed that whosoever is available in a particular section all are suitable to transferee place and management is under legal obligation to transfer the same set of employees to the transferee place. Therefore, selecting the name of the employee to be transferred from one group of employees to the other group of employees always vest with the employer unless there exist a specific cause to believe that the action taken was *malafide*. Therefore, the judgments relied upon by the

petitioner-workman, i.e., *Sudarshan Rajpoot vs. U.P. State Road Transport Corporation (Supra)* and *GSRTC vs. Workmen of S T Corporation (Supra)* loses its significance in the present context.

27. The present transfer order is arising from the due course of the service condition. Therefore, it does not require to be interfered with, for want of malafide action on part of the respondent-management and individual victimisation *qua* against the petitioner-workman. Reliance is placed upon the judgment of the Apex Court in the case of *State Bank of India vs. Anjan Sanyal and Others, AIR 2001 SC 1748*.

28. As discussed above, no merit is emerging from the present Writ Petition. Consequently, the same is dismissed. The Lower Court record be sent back with a copy of this Judgment. No order as to costs.

I.S.MEHTA, J

MARCH 21, 2016

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