

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

**CWP No.10032 of 2010 (O&M)
Date of decision: 22.04.2015**

Krishan Chand

... Petitioner

Vs.

Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. A.K.Sharma, Advocate
for the petitioner.

Mr. S.S.Saini, Advocate
for respondents No.2 and 3.

AMIT RAWAL J.

This order of mine shall dispose of six writ petitions bearing Nos.10032, 13365, 13390 of 2010, 4272 and 4275 of 2011, as issue and question raised in the aforementioned writ petitions is the same.

For the sake of convenience, the facts are being taken from CWP No.10032 of 2010.

The workmen have approached this Court by challenging the Award passed by the Labour Court, Gurgaon, whereby, the reference qua their alleged termination has been decided against them.

Mr. A.K.Sharma, learned counsel appearing on behalf of the petitioners submitted that the Award of the Labour Court suffers from illegality and perversity, inasmuch as that termination of the petitioners is against settled proposition of law and without appreciating the facts proved on file. He further submitted that all the petitioners were appointed as Fitter in the year 1995 on consolidated salary of ₹ 2470/- and their services were allegedly terminated on 14.06.1997 and thereafter, demand notice was served in the month of June, 1997. It has further been submitted that the employer changed the name of the company and by taking the advantage of the same, services of the petitioners and similarly situated persons have been terminated. Though the promoters of the company, much less, working of the company are same and accordingly, after failure of conciliation proceedings, the matter was referred to the Labour Court. He also submitted that the petitioners are entitled to be reinstated into service along with continuity and full back wages as the respondent-Company has given appointment to some employees with back wages and continuity of service, but the petitioners have not been offered any employment as per agreement dated 12.6.1997, Ex.R-3 and supplementary agreement dated 12.06.1997, Ex.R-4.

Mr. S.S.Saini, learned counsel appearing on behalf of respondents No.2 and 3 submitted that the workmen in Inalsa Limited entered into agreement with Flexonics Private Limited (IFPL)

and as a result, ownership and management of the Flexitubes Division of Inalsa to IFPL and IFPL. As per the agreement, the workmen of Flexitubes Division of Inalsa Limited except those workmen/employees against whom any disciplinary action/enquiry proceedings of any kind were pending, on the terms and conditions which were not less favourable than those applicable to them, shall remain as employees/workmen of IFPL. He further submitted that in this regard, individual notices were sent giving intimation, offer of appointment to the employees of Flexitubes Division with indication that the change in the employment shall be without any interruption of service of employees/workmen and for the calculation of length of service, the period of their appointment with Inalsa Limited would be taken into consideration and all the workmen including the petitioners were required to collect their appointment letters from IFPL on or before 17.06.1997. Since the petitioners did not take their appointment letters, accordingly, vide notice dated 28.6.1997, their services were terminated with effect from the close of their business on 5.7.1997 and one months notice salary along with compensation equivalent of 15 days was sent by a cheque which was refused by the petitioners, therefore, the petitioners cannot be permitted to agitate in violation of provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'I.D.Act') The petitioners were also required to send Form 19 and after filling, the same was to be sent to Inalsa Employees Provident Fund Trust for

transfer/withdrawal of their PF accumulation. He further submitted that the Award of the Labour Court is just, fair and legal as the workmen have failed to prove the unfair labour practice and lastly prayed that writ petitions be dismissed.

I have heard learned counsel for the parties and appraised the paper book and as well as impugned Award.

Before adverting to the respective aforementioned arguments, it would be apt to mention as per supplementary agreement dated 12.6.1997 Ex. R-4, the relevant clause governing the terms and conditions of the employees worthwhile with the transferee company is extracted herein below:-

“WHEREAS in terms of Clause 3.5.1 of the ATTU it has been agreed as follows:

Clause 3.5.1 “Beginning on the Completion Date, COMPANY shall offer to employ all of the Employees on the same terms and conditions of employment taken as a whole as those in effect with INALSA immediately prior to the Completion Date. Their services with INALSA prior to such transfer or offer of employment shall, not be treated or deemed to have been broken or interrupted. Such service shall be reckoned as commencing from the date of employment of the respective employees with INALSA. The COMPANY undertakes to offer employment to the Employees as aforesaid on and with effect from the

Completion Date and fulfill all duties and liabilities in respect thereof to the extent permissible by law.”

WHEREAS it has now been agreed between INALSA and IFPL that the above said clause 3.5.1 of the Agreement to Transfer Undertaking be amended to read as follows:

AMENDED CLAUSE 3.5.1

“Beginning on the Completion Date, COMPANY shall offer to employ all of the Employees on the same terms and conditions of employment taken as whole as those in effect with INALSA immediately prior to the Completion Date. Their services with treated or deemed to have broken or interrupted. Such service shall be reckoned as commencing from the date of employment of the respective employees with INALSA. The COMPANY undertakes to offer employment to the Employees as aforesaid on and with effect from the Completion Date and fulfill all duties and liabilities in respect thereof to the extent permissible by law. Provided however, the Company shall not offer any employment to such employees against whom disciplinary action/enquiry proceeding is pending or contemplated. Such employees shall continue to remain in the employment of INALSA and the work to be assigned to them and the terms of their service shall be dealt with by INALSA in accordance

with provisions of law after the conclusion of the inquiry proceedings.”

This Supplementary Agreement shall be an integral part of the Agreement to Transfer Undertaking dated June 12, 1997 and for the sake of brevity the contents of the said Agreement are not repeated herein.”

In lieu of the aforementioned agreement, notice dated 28.06.1997 placed on notice board and individual notice was also sent to the employees including the petitioners which have not been disputed. The notice dated 28.06.1997, Annexure R2/5, is extracted herein below:-

“ Mr. Krishan Chand S/o Sh. Jai Singh C/o Sh. Subhash Near Public School Vill. Rajokri N.Delhi	INALSA LIMITED 988, JYOTI PARK GURGAON-122 001	INALSA June 28, 1997 Ex.WW1/3
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This is with reference to Notice dated 13.06.1997 (NOTICE) signed jointly by us and Inalsa Flexonics Private Limited (IFPL). The NOTICE had been put up on the Notice Board at 394, Udyog Vihar, Phase-III, Gurgaon (FACTORY) on 13.06.1997, pasted outside the FACTORY gate and circulated to all the Departments at the FACTORY and was also sent to you by registered post. The contents of the NOTICE were also explained to all the employees/workers during the course of meeting

held at the FACTORY on June 13, 1997 from from 2.20 p.m to 3.00 p.m and was addressed by Mr. Deepak Singh on behalf of Inalsa Ltd. and Mr. R.A.Vaswani and Mr. Arun Gupta on behalf of IFPL. The contents of NOTICR were also discussed in detail and explained to the employees present in the Office of the Labour cum Conciliation Officer at Gurgaon on 17.06.1997.

In terms of the NOTICE, consequent to the transfer of the ownership and management of the Flexitubes Division of Inalsa Limited to IFPL, IFPL had agreed to take in their employment existing employees/workmen of the Flexitubes Division of Inalsa Ltd., except workmen/employees against whom any disciplinary action/enquiry proceedings of any kind were pending, on terms and conditions which were not less favourable than those applicable to them as employees/workmen of Inalsa Ltd. It was also offered by IFPL that the change in employment to IFPL shall be without any interruption of service of the employees/workmen and for the calculation of the length of service, the period of employment with Inalsa Ltd. would be taken into consideration.

In order to accept the offer to take up employment with IFPL you were required to collect your appointment letters from IFPL on or before 1700 hours on June 17,

1997. Despite all the communication made to you verbally, in writing and through the Office of the Labour cum Conciliation Officer you have not exercised the option of taking up employment of IFPL as you have not collected the appointment letter/joined the service of IFPL within the stipulated period.

At para 7 of the NOTICE we had mentioned that employees/workmen who were not interested in taking up employment with IFPL should contact our Officer Incharge at 988, Jyoti Park, Gurgaon-122 001 after June 17'1997 but before 1700 hours on June 27'1997 to collect their terminal benefits. Whereas some employees/workers have done this, you have neither joined IFPL nor collected your terminal benefits.

Contd.....2

INALSA LIMITED

988, JYOTI PARK

GURGAON-122 001

INALSA

In view of the aforesaid, we wish to inform you that your services with us shall stand terminated with effect from the close of business hours on July 05'1997. Under the circumstances, although we are under no obligation to comply with the provisions of Section 25-F of the

Industrial Disputes Act, 1947 and give benefits mentioned therein, we are however, by way of gesture of goodwill on our part giving you the said benefits and making you the following payments:-

A. One months notice salary :Rs.2420-00

B. Compensation equivalent of 15 days
Average pay for every completed
year of continuous service or
may part thereof in excess of six
months :Rs.2793-00

C. Other dues (details give at
Annexure-I) :Rs.3362-00

TOTAL :Rs.8575-00

In case there is any difference in the calculation of dues payable to you, the same may be pointed out to us to enable any justified rectification.

The Bonus payable to you upto July 05, 1997 shall be sent to you, as and when the same is announced by the Company, to your existing address or any other changed address as may be intimated to us in writing.

Please also find enclosed herewith Form 19 to enable you to fill up the same and send to the Inalsa Employees Provident Fund Trust for transfer/withdrawal of your PF accumulations as may be desired by you.

You are requested to acknowledge the receipt of this letter and the above payment.

Please note that your services with the company would stand terminated at the close of the working hours on July 05,1997.

*Thanking you,
Yours faithfully,
for Inalsa Limited*

P.S.DADHWAL

COMPANY SECRETARY

Encl: 1 Cheque No.918595 dated 28.6.97 drawn on Punjab National Bank Gurgaon for Rs.8575-00.

2. Annexure-I.

3. Form 19.”

The Labour Court on the basis of the aforementioned evidence as well as on the basis of the admission of the workmen, who, unequivocally admitted that they had received a cheque along with letter as well as calculation sheet, but was returned to Inalsa Limited, found that the workmen did not opt for the appointment with the transferee company. The Labour Court also found that it was proved that the INALSA and IFPL are the separate and legal entity and the Flexitubes Division of INALSA had been taken over by IFPL in legal manner. Since the workmen failed to opt for the employment vide which the services rendered by them in Flexitube Division was to be counted and considered and thus, the Management had complied

with the provisions of Section 25F of the I.D.Act by sending a cheque and accordingly, dismissed the reference petitions. The contents of the address written on the notice have not been denied by the workmen and therefore, it cannot be believed that workmen did not receive the notices, whereby, they have been given offer of employment being existing employees of Flexitubes Division of Inalsa Limited. The workmen failed to exercise the aforementioned option and much less, even did not accept the compensation amount and instead chose to raise industrial dispute by sending the demand notice.

From the cumulative reading of the aforementioned notice including admission of the workmen, this Court arrives at conclusion that the services of workmen were not illegally terminated or the Management had adopted the unfair labour practice rather the Management has followed the process of law by offering the employment and since the workmen/petitioners did not opt for the employment, they accordingly sent cheque thus, it cannot be said that the services of the petitioners were illegally terminated.

In view of what has been observed above, Award of the Labour Court is upheld and accordingly, the writ petitions are dismissed.

(AMIT RAWAL)
JUDGE

April 22, 2015
savita