

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CWP No.22133 of 2014 (O&M)

Date of Decision:30.03.2015

Sachin Sharma

...Petitioner

Versus

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Padamkant Dwivedi, Advocate
for the petitioner.
Ms. Manisha Garg, Advocate
for respondent No.1-UI.

Mr. K.K. Gupta, Advocate
for respondents No.4 & 5.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest?

DEEPAK SIBAL, J.

Through the present petition, the petitioner has challenged the order dated 21.10.2014 (Annexure P-6) through which he has been ordered to be repatriated from the Chandigarh Building and other Construction Workers Welfare Board (hereinafter referred to as “the Board”) to the Indian Red Cross Society Chandigarh, Union Territory Chandigarh Branch (hereinafter referred to as the “Society”).

A few facts may be noticed.

Through order dated 29.5.2006, the petitioner had been appointed by the respondent-Society as a Project Co-ordinator, on contract basis. Thereafter through order dated 21.7.2009, on creation of a post of Project Manager, the petitioner was appointed against the same by way of transfer. Vide order dated 10.7.2013, the petitioner was transferred to the respondent-Board with immediate effect “alongwith his lien” and in

pursuance to the above order, he joined his services with the respondent-Board on 11.7.2013.

On 29.10.2013, in a meeting of the respondent-Board held under the Chairmanship of Labour Commissioner Chandigarh Administration, the proposal for taking the services of the petitioner as Assistant in the respondent-Board was approved and in pursuance thereof through order dated 23.12.2013, the petitioner was posted as an Assistant with the respondent-Board in the regular pay scale as admissible to Assistants working with the Chandigarh Administration. While the petitioner was discharging his duties as an Assistant, through order dated 21.10.2014 (Annexure P-6), he was ordered to be repatriated to the respondent-society. Laying a challenge to this order, the petitioner has approached this Court through the present writ petition.

I have heard learned counsel for the parties and gone through the record of the case with their able assistance.

Learned senior counsel appearing on behalf of the petitioner has submitted that through order dated 21.7.2009, a post of Project Manager had been created by the respondent-Society against which the petitioner was appointed. Thus, while serving the respondent-Society as a Project Manager, the petitioner was working on a duly sanctioned post which was substantive in nature. Thereafter vide order dated 10.7.2013, his services were transferred to the respondent-Board “alongwith his lien” and from this fact the only thing that could be deciphered was that on such transfer, the petitioner permanently lost his association with the respondent-Society. It is further submitted that thereafter in the meeting of the respondent-Board held on 29.10.2013, the petitioner was absorbed as an employee of the

respondent-Board and resultantly posted as an Assistant in a regular pay scale. Thus, it was argued that there was no question of repatriation of the petitioner to the respondent-Society.

On the other hand, learned counsel appearing on behalf of respondents No.4 and 5 has argued that the petitioner was working in the respondent-Society on contract basis and that being so, there was no question of his having a lien on any post in the respondent-Society. He further submitted that the minutes of the meeting of the respondent-Board dated 29.10.2013 only approved the “taking” of the services of the petitioner. According to him, there being no specific order of absorption, the petitioner could not be considered to be a permanent employee of the respondent-Board. He further submitted that there was no consent of either of the employers with regard to sending and receiving of the petitioner and on this ground also, the petitioner had rightly been repatriated to the respondent-Society which according to the learned counsel continued to be the employer of the petitioner. In support of his submissions, learned counsel has relied upon the following judgments: **Triveni Shankar Saxena v. State of U.P.**; 1992 (Sup1) SCC 524; **Haribans Misra and others v. Railway Board and others**; 1989(2) SCC 84; **Fertilizer Corporation of India Ltd. v. Union of India and others**; 1996 (2) RSJ 115 and **Sughar Singh Verma v. Secretary/Mahaprabandhak Farrukhabad Distt. Co-op. Bank Ltd. and others**; 1996(3) SLR 291.

Before I proceed further with the matter, it would be useful to refer to the contents of the order dated 21.7.2009 passed by the respondent-Society through which a post of Project Manager was created and the petitioner was appointed against the same. Order dated 21.7.2009 reads as

thus:

“In accordance with the provisions contained in the Article 18 of the Constitution of Red Cross Society, Chandigarh Branch, the Chairman is pleased to accord approval for the creation of post of Project Manager in the pay scale of Rs.4550-7220 with immediate effect to look after the medical projects, advocating the policies of Indian Red Cross Society, U.T. Branch, Chandigarh and to generate donations/funds of the Society.

The Chairman is further pleased to appoint Shri Sachin Sharma, Project Co-ordinator, Community Care Centre, Khuda Alisher as Project Manager on transfer basis in the pay scale of Rs.4550-7220 plus usual allowances with immediate effect.

He will be governed by the service rules and regulations as applicable to other regular employees of the Society.”

From the perusal of the above reproduced order, it is clear that on the implementation of the above order, the petitioner was serving the respondent-Society on a duly sanctioned post which was substantive in nature. He, thus, had lien over the same.

The next order which deserves reference is the order dated 10.7.2013 passed by the respondent-society transferring the petitioner alongwith his lien to the respondent-board. The said order reads as under:

“The services of Sh. Sachin Sharma, Project Manager, Office of U.T. Chandigarh Red Cross Society is hereby transferred to Chandigarh Building and other Construction Workers Welfare Board with immediate effect alongwith his lien as per terms and conditions of Chandigarh Building and other Construction Workers Welfare Board. The salary will be paid to him from the cess of Chandigarh Building and other Constructions Workers Welfare Board. Hence, he is hereby relieved with immediate effect and he will report to Assistant, Labour Commissioner (ALC) U.T. Chandigarh.”

The above reproduced order leaves no manner of doubt in my mind that since the petitioner had been transferred alongwith his lien, on the

implementation of the order, he severed all ties with the respondent-society.

On the basis of the above order, the petitioner was made to join by the respondent-Board and from this fact the only thing that I decipher is that the respondent-Board accepted the petitioner knowing fully well that he has severed all his ties with the respondent-Society. The subsequent resolution of the respondent-Board dated 29.10.2013 and the specific order passed thereafter formally appointing the petitioner as an Assistant in the respondent-Board further convince me that the petitioner was taken by the respondent-Board as their employee. The relevant portion of the resolution dated 29.10.2013 and the order dated 23.12.2013 passed in pursuance thereof is reproduced below for ready reference:

“MINUTES OF THE 6th MEETING OF CHANDIGARH BUILDING & OTHER CONSTRUCTION WORKERS WELFARE BOARD HELD ON 29.10.2013 AT 11.45 A.M UNDER THE CHAIRMANSHIP OF LABOUR SECRETARY CHANDIGARH ADMINISTRATION, IN THE COMMITTEE ROOM IN THE UNION TERRITORY SECTREAIAT SECTOR 9 CHANDIGARH

1	Sh. V.K. Singh, IAS, Finance Cum Labour Secretary Chandigarh Administration
2	Sh. M. Shayin, I.A.S, Deputy Commissioner cum Labour Commissioner Union Territory Chandigarh
3	Sh. Tanvi Garg, IAS, Additional Labour Commissioner, U.T. Chandigarh
4	Sh. Sandeep Hans, Joint Secretary Labour U.T. Chandigarh
5	Sh. S.K. Chadha, Chief Engineer Union Territory Chandigarh
6	Sh. Anup SinghBhatia, Representative of the Chandigarh Housing Board U.T. Chandigarh on behalf of the Chief Engineer Chandigarh
7	Smt. Mohinder Kaur, Assistant Labour Commissioner Union Territory Chandigarh
8	S.Gurdev Singh, Project Manager, CCCT, Constructing Building At Punjab University, House No.201, Tribune Colony, Zzirakpur.
9	Sh. Hukam Singh, General Secretary BMS Chandigarh, Dera Bassi, Disst. Mohali.
10	Sh. Mohinder Pal Dhiman, General Secretary, Private Contractor Labour, Construction Union # 2330 Sector 44-C, Chandigarh
11	Shiv Murti Yadav, General Secretary, Chandigarh Nirman Workers, Union, # 594, Ram Darbar, Phase II Chandigarh
12	Sh. Brij Pal, General Secretary, Construction Workers Labour, Union, Labour Chowk, Sector 44, Chandigarh.

At the outset Worthy Chairman welcomed all the members of the

newly constituted Board. This was followed by a brief introduction session amongst the Board members. Labour Commissioner informed the members that a sum of Rs.11,61,31,124/- has been collected by the Board as labour Cess from various agencies which was appreciated by the members. Thereafter the agenda item were discussed at seriatim.

Sr. No.	Agenda	Decision of the Board
1	X X X	X X X
2	X X X	X X X
3	X X X	X X X
4	X X X	X X X
5	X X X	X X X
6	X X X	X X X
7	X X X	X X X
8	To approve the proposal taking the services of Sh. Sachin Sharma of Red Cross Society UT, Chandigarh as Assistant and he will be paid the salary and other allowances in grade of Assistant as fixed/adopted by the Chandigarh Administration admissible from time to time	Approval was granted
9	X X X	X X X
10	X X X	X X X
11	X X X	X X X
12	X X X	X X X

The Chairman desired that the Director Social Welfare U.T. Chandigarh and a representative of the Finance Department U.T. Chandigarh be invited as a special invitee in the forth coming meeting of the Board to guide upon the beneficiary schemes and financial aspect respectively.

The meeting concluded with a vote of thanks to the Chair.

Order Dated 23/12/2013

Chandigarh Building & Other Construction Workers Welfare Board, U.T. Chandigarh

Labour Welfare Centre Building, Sector-30B, Chandigarh

Memo No.BOCW/Est./2286-88

Dated:23/12/13

OFFICE ORDERS

Consequent upon the approval, by the Board in its meeting held on 29th October, 2013, Sh. Sachin Sharma is hereby posted on the post of Assistant in the pay scale Rs.10300-34800/- grade pay Rs.4400/-

along with all the allowances, leave and other benefits admissible to the employees of Chandigarh Administration from time to time.

Dated:19.-12-2013

Sd/-

Secretary

Chandigarh Building & Other

Construction Workers Welfare Board,

U.T. Chandigarh

Endst. No. A (BOCW)/2013/2286

Dated Chandigarh

the 23/12/13

The copy of forwarded to Sh. Sachin Sharma, Assistant of Board for information.

Sd/-

Assistant Labour Commissioner,

For Secretary

Chandigarh Building & Other

Construction Workers Welfare Board,

U.T. Chandigarh”

A perusal of the above orders leave no room for doubt that the appointment of the petitioner with the respondent-Board was by way of transfer which is a recognized mode of appointment. Nothing has been brought on record by the respondents to show that the petitioner was not eligible to hold the post against which he had been transferred and absorbed. The transfer of the petitioner from the respondent-Society to the respondent-Board “alongwith his lien” was enough indication of the intention of the respondent-Society that he was being transferred on a permanent basis. Thus, by any length of imagination, it cannot be held that the petitioner still continues to be an employee of the respondent-Society, to which, through the impugned order, he has been repatriated.

It is unfortunate that the petitioner has been used as a shuttlecock between the respondent-Board and the respondent-society and such action on the part of both respondents No.4 and 5 is unappreciable.

So far as the judgments cited by the learned counsel for the respondents are concerned, I find that they have no application to the facts of the case in hand.

In *Triveni Shankar Saxena's case* (supra) and *Haribans Misra's case* (supra), the Apex Court has held that lien on a post can only be if a person is appointed against a substantive and sanctioned post. As observed earlier, at the time of transfer of the services of the petitioner, he was serving the respondent-society against a duly created and sanctioned post which was substantive in nature.

That being so, these judgments would be of no help to the case of the respondents in any manner whatsoever.

In case of *Fertilizer Corporation of India Ltd* (supra), the Apex Court has held that for permanent absorption, there has to be a specific order. In this regard, the resolution of the respondent-Board dated 29.10.2013 and the subsequent order dated 23.12.2013 absorbing and posting the petitioner respectively as an Assistant in a regular pay scale and before that the respondent-Board accepting the services of the petitioner being fully aware of the fact that he has severed all his ties with the respondent-Society are reasons enough for me to hold that the judgment of the Apex Court in case of *Fertilizer Corporation of India Ltd* (supra) would not come to any rescue of the respondents.

The judgment in the case of *Sughar Singh Verma* (supra) only provides that both the employers i.e. the employer who is sending the employee on permanent basis and the employer who is absorbing the employee on permanent basis should give their respect consent before such absorption could be held valid. As observed above, I found such consent to

be present in the actions of both the employers in the case in hand.

In view of the above, the impugned order dated 21.10.2014 (Annexure P-6) is quashed after holding the petitioner to be an employee of the respondent-Board.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

30.03.2015
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