

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

CWP No.21954 of 2015

Date of Decision: 14.10.2015

M/s Crystal Phosphates Limited & anr.

... Petitioners

Versus

Presiding Officer, Industrial Tribunal,
Amritsar & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Arun Chandra, Advocate,
for the petitioners.

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

RAJIV NARAIN RAINA, J.(Oral)

I find no infirmity in the award of the Tribunal holding the termination to be illegal after the management had called for an explanation from the worker on disobeying the transfer order, in which case the matter has to be viewed from the angle of disciplinary action and issues arising therefrom. Undisputedly, no inquiry was held against respondent No.2-workman to search out the truth arising out of the oral transfer order by the management. While the workman was serving as a driver at Amritsar, he was told by the Controlling Officer and Director Marketing Ludhiana that he should report either to Bathinda or to Ludhiana. When the current salary for the month was not paid to respondent-workman he claimed his unpaid salary he was told off to report at either to the two places by citing the recital in the appointment letter issued as to the "Place of Posting" as within the ambit of the management and its power to transfer an employee.

The Labour Court found that the petitioner had served the management from October 16, 2002 (vide appointment letter Ex.M-1) till 2007 as a Driver i.e. for a period short of 5 years. The Labour Court noticed the letter Ex. M-3 written to the management by the workman requesting that he be retained at Amritsar office as he has to support his family which consists of his wife, two children (daughter aged 3 years and son 4 months old) and an aged mother. It is pleaded that it is very difficult for him to support two establishments on a meager salary of Rs.4000/-, in case the transfer order was compelled upon him. It is asserted that there is no other male member in the family at Amritsar to look after the family. He had also pleaded in his request application in response to the registered letter dated May 30, 2007 asking for his explanation, that he was also suffering from cervical pain for a while and the doctor advised him complete bed rest.

Mr. Arun Chandra appearing for the management submits that there are two contradictory stands in the reply to the explanation call letter, which have been taken by the workman.

I do not see any contradiction in the two, as displacement overheads and hardship caused by transfer can be taken judicial notice of and requires no special evidence to understand. This is so much true of all transfers and posting which entail undue hardship especially for low salaried persons, besides the terrible prospect of hunting for a room on rent in the place of transfer and shouldering costs of running two establishments that might break the workman's financial backbone. The labour court has found on the evidence on record that there was sufficient room in the management for retention of a Driver at Amritsar. The

transfer to Bhatinda or Ludhiana which both far away destinations from Amritsar and that too without specifying either of which stations to report to, was quite clearly a case of victimization and the transfer itself is in colourable exercise of employer's rights. This appears to be the drift and quintessence of the impugned award passed on August 3, 2015 by the Presiding Officer, Industrial Tribunal, Amritsar, granting reinstatement and 50% of the arrears of back wages.

However, it appears that the learned Tribunal overlooked the ordinary rule that continuity of service normally follows reinstatement on declaration of illegal termination unless the right is taken away by express words in the award containing reasons for denial. There are no such reasons recorded in the award and I see this as a case of omission and oversight. Therefore, the award deserves a bit of fine tuning by a minor interference to make it read as one conferring continuity of service as well when such an order ought to have been made in the first instance while drawing the award. And it is thus to avoid any miscarriage of justice and chances of a multiplicity of litigation that the award deserves to be so read henceforth that the reinstatement will bring with it continuity of service, putting the workman to the original position he left and as though the termination had not taken place.

Entry 7 in the Fifth Schedule to the Industrial Disputes Act, 1947 declares transfer of a workman *mala fide* from one place to another, under the guise of following management policy to be an unfair labour practice. The right to choose the place of posting in the appointment letter may be management's right but the condition cannot be used arbitrarily since all rights must be exercised reasonably. Reasonableness is part of

the apparatus in Article 14 which protects public and private employment without any distinction. Appointment letter in private employment are usually one sided and it is the business of the labour courts and Tribunals to set the balance right.

Moreover, the Labour Court has applied the law in **D.K. Yadav v. J.M.A. Industries Ltd.**, 1993 SCR (3) 930: (1993) 3 SCC 259 in which ruling the Supreme Court while dealing with the labour law in its disciplinary field held that when the private management imputes misconduct and the termination takes place without inquiry, it violates the principles of natural justice and rights which are fundamental to man of a fair hearing and an order is necessary containing recorded reasons for the termination. The Supreme Court also held that termination of service results in deprivation of right to livelihood, it is to be effected in accordance with just, fair and reasonable procedure. In *D.K.Yadav* case the Supreme Court applied both standards of Article 14 and 21 of the Constitution to employment in the private sector. Article 21 became a password in cases of removal and dismissal in private administrative law in disciplinary action and punishments imposed without inquiries into misconduct even in cases where resort was had to certified standing orders. The *D.K.Yadav* case has become a major reference point in administration of labour law in its disciplinary field.

The present termination virtually amounts to removal or dismissal from service in the guise of power to transfer and if the position is not corrected and set right it would seriously jeopardize the workman's chances of seeking employment elsewhere as he will continue to be hounded by the explanation call letter touching upon his conduct when

the next employer asks him what happened in his previous employment that drove him out. The workman/respondent did not in his reply to the explanation letter do anything more than to ventilate his genuine grievance which any reasonable person might have accepted to avoid bringing a financially weak family to the brink of disaster. The management failed to pay regard to its social obligation and responsibility towards its menial employee who has been kept out of service long enough to destroy him and his family and aged mother. The workman had not committed any misconduct in asking for cancellation of his oral transfer by another oral order.

I find no cogent or valid reason to interfere with the award of the Labour Court in supervisory jurisdiction provided in Article 226 or 227 of the Constitution only to substitute opinion one for the other and take a different view of the evidence. There is no fundamental flaw in reasoning adopted by the Labour Court and there exists no error apparent on the face of the record which has the propensity of vitiating the award. The parameters of interference by the Supreme Court and the High Courts in work of Tribunals are indicated in the Constitution Bench authority in **Syed Yakoob v. K.S.Radhakrishnan**, AIR 1964 SC 477. The guidelines forbid me to upset the award which in any case is made on sound law and proper appreciation of evidence, both documentary and oral.

For these many reasons, the petition is dismissed and the opinion of the learned labour court is held to be fair and proper dispensation of justice.

The respondent be reinstated forthwith and compliance

report be submitted by the petitioning management within 6 weeks of certified copy served and be placed on the record of this case for the perusal of the Court.

(RAJIV NARAIN RAINA)
JUDGE

14.10.2015
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