

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25325 of 2015

Date of Decision: 04.12.2015

M/s Talbros Pvt. Limited

... Petitioner

Versus

The Presiding Officer Industrial Tribunal-
cum-Labour Court-III Faridabad and
another

... Respondents

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

Present: Ms. Abha Rathore, Advocate,
for the petitioner.

Mr. Deepak Sonak, Advocate,
for the caveator.

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

RAJIV NARAIN RAINA, J.

1. Heard Ms. Abha Rathore for the management and Mr. Deepak Sonak appearing for the caveator-respondent No.2.

2. Having heard the learned counsel, this Court is of the considered view that the impugned award cannot be maintained either in law or in the facts available on record. Ref. No.R/234 of 2009 was made to the Labour Court-III, Faridabad to test the validity of the termination of the services of the claimant-workman and whether his transfer was illegal or not. The Labour Court has answered the reference in favour of the claimant holding that the order of transfer was vitiated by colourable exercise of employer's right to transfer the employee and has thus awarded

reinstatement to service with continuity and full back wages. Costs of Rs.5100/- has been assessed by the impugned award dated August 31, 2015.

3. A few of the relevant facts may be noticed in order to appreciate the work of the learned Labour Court and whether its conclusions are in order and in accordance with law. The claimant was appointed vide letter dated April 06, 1985. He was transferred from Faridabad plant to Chennai office of the petitioner management by transfer letter dated April 20, 2004. The transfer order was disobeyed. The charge of disobedience was laid against the workman for disobeying lawful orders of transfer from Faridabad to Chennai to work in the Sales Department at Chennai. The original appointment of the workman was as an Accounts Assistant on a consolidated salary of Rs.650/- per month. It was alleged by the workman that he was asked to resign and when he refused to do so he was transferred to Chennai. The dispute was with respect to transfer but the appropriate Government referred the dispute as to the legality of the termination from service. The claimant pleaded in his statement of claim that this was a mistake in the reference itself. If it was a mistake he would have to apply to the appropriate government for correction of the reference order. He raised this issue through his union which wrote a letter to the Labour-cum-Conciliation Officer, Circle-2, Faridabad for rectification of the mistake. The appropriate Government accepted the contention and a fresh reference was made on November 28, 2009 which was received in the Labour Court-2, Faridabad for adjudication and thereafter the file was transferred to the Labour Court-III, Faridabad on a request made by the respondent-management before the Labour Court.

4. It was during the pendency of the litigation that the management charge-sheeted the claimant for disobedience of the transfer order. An inquiry was conducted into the misconduct which resulted in the dismissal order dated April 24, 2006. Thus two parallel references ran being Ref. No.R/234 of 2009 and Ref. No.R/03/09 which both have been answered by a common award by treating Ref. No.R/234 of 2009 as the pilot reference. It is stated that the management did not take permission before dismissing the workman since reference regarding validity of transfer was pending.

5. On notice, the management filed written statement raising the preliminary objections that reference under section 2-A of the Industrial Disputes Act, 1947 (for brevity “the Act”) would be maintainable only if the claimant was a “workman” as defined under section 2 (s) of the Act for which issue No.2 was framed by the Labour Court. It was submitted that the petitioner was an officer of the company and worked in an executive capacity primarily discharging duties of a supervisory nature. His salary drawn at the time of the dispute was Rs.8770/- per month. The claimant supervised, guided and controlled the subordinate staff working under his control. On the other hand, it was the case of the claimant that he was appointed as an Accounts Assistant and then as an Accountant and thereafter Assistant Personnel-cum-Administrative Supervisor. Thereafter, he worked as Personnel and Administrative Officer and was ultimately promoted as an Assistant Accounts Officer w.e.f. April 01, 2002. He, however, stated that he had no power to appoint any workman/official and no person was working under his control and supervision. No power was

given to the claimant to issue warning memo to any workman. He was performing work only of a Clerk in the management. The nature of duties discharged was purely of a clerical nature when claimant deposed he signed papers and documents which came to him in routine, as a Clerk.

6. On the other hand, the management has relied on documents duly exhibited which show that the claimant was a person responsible for deduction of tax on behalf of the company as a Assistant Accounts Officer. Management laments that the effect of these crucial documents has not been considered or dealt with by the Labour Court in a proper manner duly supported by reasons which are vital to breathe life in the award so that the findings can be reviewed by the High Court on a challenge maintained by the aggrieved party.

7. The learned counsel for the petitioner maintains that these documents on record accompanied by the oral depositions of the management witnesses were vital clues to unfold the true nature of the employment relationship and conclude whether the respondent was a workman or to the contrary fell on the side of the management. There are other pieces of evidence on record as well exhibited which have not been considered by the Labour Court to meet the jurisdictional issue whether the claimant fell on the side of the management or on the side of labour.

8. There can be no doubt that apart from general observations and statements made in the award there has been no examination or appreciation of the materials on record on the issues with respect to respondent being conclusively a workman. Nor is there any meaningful discussion in the award on the question whether the inquiry conducted by the management

was fair and proper. There are no firm findings of fact recorded in the award with respect to the core of the *lis* which can be judicially reviewed by this Court under Article 226 of the Constitution of India since the award is replete with generalizations made on notions of evidence and not on appreciation of the oral and documentary evidence produced by the parties. The labour court appears to be mostly drifting away in the award from the facts, muddling up and not taking stock of them locking horns with them to make a fuller landscape of the materials on record to determine which way their compass points. Besides, unwarranted reliance has been placed on several judgments planted in the award, which are beside the point and bear no relevance to the case in hand. These include cases in **The Management of Travancore Titanium Products Ltd. v. Their Workmen**, 1970 (1) LLJ 1 (SC) [*failure to give three days clear notice of the intending inquiry was regarded as an infirmity being contrary to standing order: Question is not involved in this case*]; **Harjinder Singh v. Punjab State Warehousing Corporation**, (2010) 3 SCC 192; **State of Mysore vs. The Workers of Gold Mines**, AIR 1958 SC 923; **Y.A. Mamarde and others vs. Authority under the Minimum Wages Act (Small Causes Court), Nagpur and another**, (1972) 2 SCC 108; **Ramon Services (P) Limited v. Subhash Kapoor**, 2001 (1) RCR (Civil) 324; (2001) 1 SCC 118 [*Should a litigant suffer penalty for his advocate boycotting the court pursuant to a strike call made by the association of which the advocate was a member? The question arose after the suit was decreed ex parte by the trial court in consequence of the non-appearance of the counsel on a day fixed for hearing, on the premise of the strike call: Question is not involved in this*

case]; **LIC of India v. Consumer Education and Research Centre and others**, 1995 (4) SCT 678: (1995) 5 SCC 482 [*the case dealt with actuarial principles of life insurance policies whether offending Articles 14, 19 and 21 of the Constitution of India. The passage quoted in the award is in passing: These questions are not involved in this case.*] and **Glaxo Laboratories (India) Limited v. Presiding Officer**, (1984) 1 SCC 1 : AIR 1984 SC 505 [(i) *Standing orders providing for imposition of penalty on proof of 'misconduct' should be construed strictly like penal statutes, (ii) "committed within the premises of the establishment or in the vicinity thereof can qualify only the expression 'any act subversive of discipline and efficiency and any act involving moral turpitude': Question is not involved in this case*]. These precedents are wide off the mark in the case in hand and have been carelessly and fallaciously introduced in the reasoning to burden the award with irrelevant consideration.

9. So far as the transfer issue is concerned, it may be that the Court may pierce the veil to find the truth and the motive and foundation of the transfer order but the finding can only come after a close examination of facts on record, which the award lacks in appreciating. The Labour Court appears to focus more on case law than on facts while it is its duty to do so as the last court of fact. As I have read the award with the assistance of the learned counsel, I have hardly any doubt in my mind that clear and categorical findings either way have not been returned on the issues involved and, therefore, any serious attempt to judicially review the award is not possible at this stage since any such effort may amount to re-appreciating the evidence which is not permissible in the supervisory

jurisdiction provided by Articles 226 & 227 of the Constitution as it would amount to re-writing the award and not reviewing it judicially. Moreover, any worthwhile judicial review based on the existing work of the Labour Court would by itself be a dilemma succumbing to generalizations and not on the probative value of the evidence collected on file. The lackluster manner in which the Labour Court has rambled on and on has to be floodlit by a fresh reasoned award and nothing short of it would do to repair the patent defects in the award.

10. I am, therefore, inclined to agree with Ms. Abha Rathore that this is a fit case to remand to the Labour Court for returning clear findings of fact on each of the issues respecting transfer, termination and the question whether the claimant-respondent is a workman or not.

11. As a result of the above discussion, the petition is allowed and the impugned award dated August 31, 2015 cannot be maintained and is set aside as it is inadequate and therefore the case is remanded to the Labour Court to pass a fresh award on all the aspects of the case after dealing with the evidence threadbare on each of the issues and only thereafter will be possible for this Court to review the work.

12. The case is remitted for passing a fresh award without being influenced by anything said or observed in this order. In making the final order, the Labour Court may also consider the effect of the following decisions cited by the management to advance its cause before this Court which work is left to the labour court:- (i) **Bombay Union of Journalists and others v. The “Hindu,” Bombay and another**, AIR 1963 SC 318; (ii)

Workmen of Dharampal Premchand (Saughandhi) v. Dharampal

Premchand (Saughandhi), AIR 1966 SC 182; (iii) **Motor and Machinery Manufacturers, Ltd. v. Industrial Tribunal, Delhi and others**, 1963 (1) LLJ 222; (iv) **Shri Gopal Paper Mills Ltd., Yamunanagar v. Industrial Tribunal, Punjab and others**, 1962 PLR 615.

13. However, nothing said in this order would influence the Labour Court in making the final award since no opinion is expressed on the merits of the issues arising in the case. Facts have been noticed only to support reasons for remand proceedings. The Labour Court would independently come to its fresh conclusions, one way or the other, but the findings must bear clarity and logic based on the evidence on record. The case law cited and relied on must be discussed in relation to the ratio of the precedents applied to the facts of the present case. A mere blind reliance on judgments would be of no moment either to the making of the award and for this Court to re-examine the matter afresh whenever the challenge is brought again. Reference to case law must be to the context and the closer the court remains alive to the relevant facts of the case, the less can go wrong. Courts including labour courts ought always to remain guided by the words famously said by Lord Denning:-

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."..."Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself

lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

14. The parties are directed to appear before the Labour Court-III, Faridabad on 14.01.2016.

(RAJIV NARAIN RAINA)
JUDGE

04.12.2015
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