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

+ LPA 136/2015

RAJWATI

..... Appellant

Represented by: Mr.R.P.Sharma, Advocate

versus

M/S UPDATER SERVICES (P) LTD & ANR

..... Respondents

Represented by: None

AND

+ LPA 137/2015

GEETA DEVI

..... Appellant

Represented by: Mr.R.P.Sharma, Advocate

versus

M/S UPDATER SERVICES (P) LTD & ANR

..... Respondents

Represented by: None

AND

+ LPA 139/2015

RAKESH BENIWAL

..... Appellant

Represented by: Mr.R.P.Sharma, Advocate

versus

M/S UPDATER SERVICES (P) LTD & ANR

..... Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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09.03.2015

CM No.4168/2015 in LPA 136/2015

CM No.4234/2015 in LPA 137/2015

CM No.4248/2015 in LPA 139/2015

Allowed.

LPA Nos.136/2015, 137/2015 & 139/2015

1. The three appeals have to be allowed and the impugned order(s) dated January 28, 2015 dismissing, in limine, W.P.(C)789/2015 filed by Ms.Rajwati, W.P.(C)790/2015 filed by Ms.Geeta Devi and W.P.(C)777/2015 filed by Mr.Rakesh Beniwal have to be set aside requiring the writ petitions to be heard on merits after calling for the record of the learned labour Court.
2. Our reasons for so held.
3. The three appellants were admittedly the employees of the first respondent which was given a contract for housekeeping by the IGI Airport Authorities. The grievance of the appellants was that their services were terminated by the first respondent without paying them any retrenchment compensation envisaged by Section 25F of I.D.Act, 1947.
4. As per the appellants they were denied a right to perform their duties on March 01, 2012.
5. The appellants raised an industrial dispute concerning their services being terminated by an oral order in the form of the appellants not being allowed to perform their duties.
6. A reference was made to the Labour Court-I.
7. Replying to the statement of claim filed by the appellants, the management pleaded as under:-

"That the respondent submits that the workman is appointed as a House Keeping Staff/Attendant and appointed at International Airport and she will perform the job at International Airport, but the workmen/petitioner himself not doing her job with punctuality due to which the authorities of the International airport make a repetitive

complaint against the workmen/petitioner. Therefore when the management applied for her new entry pass from the airport authority they refuse to issue the pass of the five employees. That being a contract labour if the work of the contract labour is not satisfactory then the management can remove that contract labour. As the work of the workmen/petitioner is not satisfactory and even after giving a repetitive warning and reasonable opportunity she was not improved and complaints were regularly coming from the authorities regarding the working of the workmen/petitioner and ultimately when the airport authority refuse to issues the passes of these employees then the management has no other option than to remove her from the airport site and appoint some other place." (Underline emphasized)

8. It needs to be highlighted that the stand taken by the respondents is vague, in that, the place where the appellants were directed to work when the management of the IGI Airport desired appellants not to be deputed by the respondent to perform the assigned works has not been stated.

9. Pronouncing an award against the appellants the learned labour Court has held in paragraph 17 & 18 of the award as under:-

"17. Claimant projects that her services were abruptly dispensed with on 01.03.2012. Contra to it, Shri Rakesh Kumar deposed in bold words that services of the claimant were transferred to some other site in Delhi, where she opted not to join her duties. He declares that as on date, claimant is on the rolls of the contractor. Out of facts unfolded by Shri Rakesh Kumar, it emerged that services of the claimant has neither been discharged, dismissed, terminated nor otherwise retrenched. When she still remains on rolls of her employer, it is not a case relating to discharge, dismissal, retrenchment or otherwise termination of her services by her employer. As emerged out of record, dispute relates to transfer of the claimant from one station to another. Her employer wants her to comply transfer order but she is adamant in joining her duties at Terminal 3, Indira Gandhi International Airport, New Delhi. Whether this dispute will fall within the ambit of Section 2A of the Act, so that the claimant may avail provisions of sub-section (2) of the said section and seek adjudication of the dispute from the Tribunal, without it being referred for adjudication by the appropriate Government under section 10(1)(d) of

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the Act? Answer is plain and simple. Her dispute does not fall within the purview of section 2A of the Act, since she continues to be on rolls of her employer. Machinery, provided under section 2A of the Act for resolution of disputes, relating to discharge, dismissal, retrenchment or otherwise termination of service of an employee, will not come to her rescue.

18. When the contractor had not terminated her services at all, it is not a case wherein relief of reinstatement in service may be granted in favour of the claimant. Under these circumstances, it is evident that no cause of action accrued in favour of the claimant to invoke provisions of sub-section (2) of section 2A of the Act, to seek adjudication of the dispute. It is concluded that the dispute is not maintainable as such. Issue is, therefore, answered in favour of the contractor and against the claimant.” (Underline emphasized)

10. Suffice it to state that even the learned Labour Court has simply held that since claimants were transferred to some other site in Delhi where they opted not to join duty it would not be a case of termination, but what was that other place where appellants were transferred has not been stated.

11. The grievance of the appellants in the writ petition before the learned Single Judge was that the onus was on the management of the first respondent to prove that an order, whether in writing or oral, conveyed to the appellants the place where they would require to proceed under the first respondent and perform their duties.

12. The learned Single Judge was thus obliged to see whether the award is premised on some evidence or is the result of gullibly accepting the plea taken by the first respondent.

13. The problem with the impugned order is this that the learned Single Judge has also proceeded to dismiss the writ petition observing that a workman cannot insist upon the employer to assign a particular duty at a particular place. It was expected of the learned Single Judge to find out

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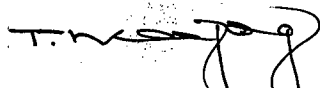
whether the management has established having informed the appellants that they were to perform duties at another place. Prima facie, the award throws no light on the said 'other place'.

14. The appeals are allowed and the impugned order(s) dated January 28, 2015 dismissing W.P.(C)Nos.789/2015, 790/2015 and 777/2015 are set aside.

15. W.P.(C)Nos.789/2015, 790/2015 and 777/2015 are restored for adjudication on merits with a direction to the learned Single Judge to call for the record of the learned labour Court and simultaneously issue notice to the respondents and thereafter decide the controversy on the issue: Whether the management has discharged the onus of making good the plea that the appellants were directed to report for duty at some other place in Delhi? The 'some other' place has to be definite and ascertained.

16. Writ petitions shall be listed before the learned Single Judge for directions on March 16, 2015.

17. No costs.


PRADEEP NANDRAJOG, J.


PRATIBHA RANI, J.

MARCH 09, 2015/pg