

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

+ **W.P.(C) 5014/2008**

% Judgment reserved on: 25.03.2015
Judgement pronounced on: 07.04.2015

M/S.PHOENIX INDUSTRIES LTD.& ANR. Petitioner
Through: Mr.Anil Mittal, Advocate.

versus

SH.RAM SINGH BHANDARIRespondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the petitioner/the employer has challenged the order of the Labour Court dated 29th November, 2007 in I.D. No. 32/99.

2. In the present writ petition, the notice of the petition was sent to the respondents. The respondent was served by way of publication but despite the publication, none had appeared on behalf of the respondents. The court had proceeded further and heard the arguments on behalf of the petitioner. Along with the petition, the petitioner has also filed the copy of the Claim, the written statement which had been filed before the Labour Court by the respondent and the petitioner respectively.

3. In this case a reference was made to the Labour Court of the following nature:-

“Whether the services of Sh.Ram Singh Bhandari have been terminated illegally and/or unjustifiably by the management, if so, to what is the entitled and what directions are necessary in this respect?”

4. Both the parties filed their pleadings in the form of Statement of Claim and the written statement and the rejoinder. The Claim of the workman/respondent was that he had been employed as a temporary hand by management of M/s. Phoenix Industries Ltd., 4th Floor, Gopala Tower, 25, Rajender Place, New Delhi w.e.f. 04/04/93 and since number of other units were functioning concurrently in the name of M/s. Phoenix Industries Pvt.Ltd. at H-23, Udyog Nagar, Delhi-41, M/s. Madam Phoenix Pvt. Ltd., at 52, Furniture Block, Kirti Nagar, New Delhi-110015, he was assigned the work of telephone operator of all the establishments during the period w.e.f. 4th April, 1993 to 31st December, 1994. His services were regularized by the management of M/s. Phoenix Industries Ltd., 4th Floor, Gopala Tower, 25, Rajender Place, New Delhi w.e.f. 02.01.95 and the appointment letter was issued. As per the appointment letter, he was required to complete six months of probation which he successfully

completed. His services were also terminable by one month notice. On completion of his probation, he was sent to work in an establishment at D-18, Sector-II, Noida, Ghaziabad, UP by an oral order. He served at Noida till 2nd April, 1998. The management stopped assigning any work to him and also stopped recording his attendance and this continued till 30th June, 1998, on which date he was asked to report at M/s, Phoenix Overseas Ltd., 3rd Floor, Gopala Tower, 25, Rajender Place, New Delhi without any letter of transfer.

5. The period from 2nd April, 1998 till 30th June, 1998, he was not assigned any work by the management branch at Noida. He reported at Delhi on 1st July, 1998 at Rajinder Place office of M/s. Phoenix Industries Ltd., where he was asked to report at M/s Phoenix Overseas in the same building. He accordingly reported at M/s Phoenix Overseas where he was advised to report on every Monday, so that he could be absorbed. He therefore reported on 6th July, 1998, 13th July, 1998, 20th July, 1998 and 27th July, 1998 but he was not assigned any work and he was told that management had no place to accommodate him and insisted upon him to tender his resignation. He sent a demand notice vide registered AD post to both the managements on 05-06th August, 1998 but of no avail. Thereafter,

he raised the dispute before the Labour Commissioner at Delhi. He has contended that the management had violated and contravened the agreed terms and conditions of service and kept him out of job since 2nd April, 1998.

6. The petitioners contested the claim of the respondent/workman. They had raised the preliminary objections that Delhi administration had no jurisdiction to refer the dispute since no cause of action has arisen within the territory of Delhi as the workman/respondent was working at Noida. On merit, it was contended that the workman was appointed by the management of M/s. Phoenix Industries Ltd., 4th Floor, Gopala Tower Tower, 25, Rajender Place, New Delhi w.e.f. 2nd January, 1995 and after his appointment, he was deputed to work at their factory in Noida and that he had never worked in Delhi. He left his job at the management factory at Noida w.e.f. 01.04.98 without any information, application or permission of the management and that the services of the workman/respondent were never terminated, either on 2nd April, 1998 or thereafter. The petitioner has also denied that the workman was kept idle w.e.f. 2nd April, 1998 till 30th June, 1998 or that he was transferred verbally to report at Delhi. It was contended that story of the workman was concocted and after-thought.

7. On these pleadings, the Labour Court vide its award dated 29th November, 2007 has reached to the conclusion that the Delhi court had the jurisdiction and that the services of the workman were illegally terminated and the act of the management was violative as per Section 25 F & G of I.D Act,1947 and awarded the sum of Rs. 3,50,000/- as compensation to the workman in lieu of reinstatement and continuity in service.

8. The said order has been challenged on the grounds that the findings of the Labour Court are illegal since violative of the law laid down by the Supreme Court regarding the territorial jurisdiction. It is argued that the findings are not based on facts on the record. It is argued that the Labour Court had presumed certain facts and has given its findings. The Labour Court has presumed the fact that workman was posted at Delhi on the premise that as per Clause 7 of the appointment letter, the job of the workman was transferable but since the appointment letter was silent about the first place of posting, the presumption was raised that the workman was posted at Delhi itself. It is argued that the workman has himself admitted that he was working at Noida till 2nd January, 1995, when he says he was not assigned any work w.e.f. 02.01.1995 and thus the findings are against the facts on record. Reliance has been placed on:-

“1. 163 (2009) DLT 794 : MANU/DE/1513/2009, *Shri. Harsaran Singh Vs. The Managing Director, Modern Food Industries.*

2. 162 (2009) DLT 246 : MANU/DE/1510/2009, *Hindustan Unilever Ltd. Vs. Union of India & Ors.*

3. 2008 (2) SLJ 96 (Delhi) : MANU/DE/8424/2007, *Braham Prakash Vs. Govt. of NCT of Delhi & anr.*

4. 96 (2002) DLT 825 : MANU/DE/0386/2002, *D.L.F. Universal Ltd. Vs. Govt. of NCT of Delhi & Ors.*”

9. I have given due consideration to the arguments addressed by the learned counsel for the petitioner and the case laws relied upon by him.

10. The jurisdiction of this court under Article 226 and 227 of the Constitution of India is not absolute but is guided by certain principles.

11. In the case of ***Devinder Singh vs. Municipal Council, Sanaur (2011)***

6 Supreme Court Cases 584, the Supreme Court has held as under:-

“22. In the second judgment, ***Sawarn Singh Vs. State of Punjab***, (1976) 2 SCC 868, this Court reiterated the limitations of certiorari jurisdiction indicated in ***Syed Yakoob vs. K.S. Radhakrishnan***, AIR 1964 SC 477 and observed: (*Sawaran Singh Case*, SCC p.872, para 13)

“13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in

recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunal in excess of their jurisdiction causing grave miscarriage of justice.”

12. Thus it is required to be seen if the findings of the Labour Court relating to its having territorial jurisdiction are based on facts and evidences on record or are perverse based on some presumption or assumptions.

13. It is apparent from the statement of Claim that the case of workman itself was that he had worked in the management/establishment at Noida till 2nd April, 1998 and then his services were orally transferred to Delhi but when he reported to Delhi he was not given any work. Admittedly, therefore, he had worked with the management only at its establishment in Noida till 01.04.1998. The question before the Labour Court was whether services of the workman were terminated. In his claim, the workman has contended that he was kept out of job w.e.f. 02.04.1998 and was not assigned any work w.e.f. 02.04.1995. He, therefore, had alleged his termination w.e.f. 02.04.1998. It is the admitted case of the workman that he had worked in the factory of management at Noida till 01.04.1998.

14. The Labour Court has totally ignored these admitted facts and

proceeding to decide the issue of territorial jurisdiction in the following terms:-

*“But even so going by the documents on record, i.e. the original appointment letter Ex.WW1/A which has been tendered by the workman in his evidence and has also been relied upon by the management in their evidence which was issued to the workman on 02.01.1995 that is initial appointment; this letter is on the letter head of M/s. Phoenix Industries Ltd. having its Marketing Head Office at 4th Floor, Gopala Tower, 25, Rajindra Place, New Delhi-110008. Its registered office is shown at Calcutta and its Works at Noida, Distt. Ghaziabad (U.P.). This appointment letter is having 13 clauses but neither of them is stating that workman is to be posted at Noida on his first posting although it states vide clause 7 that the job is transferable within India and that the workman can be transferred to any of the offices of the company within India. The letter being silent about the first place of posting, **it is presumed that workman was posted at Delhi itself.** In view of the above discussion, issue no.1 decided in favour of the workman and against the management.”*

15. In view of the above, it is apparent that the findings of the Labour Court on the issue of territorial jurisdiction is based on the presumptions of certain facts which were contrary to the contentions of the parties. Since the situs of the dispute was Noida, the appropriate Government of NCT of Delhi, had no jurisdiction to refer the dispute and also the Labour Court had no territorial jurisdiction in this case.

16. In view of the above, therefore, it is apparent that the judgment of the labour court is not only based on conjectures and presumptions but is based

on non-existing facts in utter disregard to the admitted facts. There is violation of rules of procedures. The tribunal has also acted in violation of the principles of natural justice and had acted in a manner not permissible under the law. The error is so pertinent that it is self-evident. The findings of Labour Court that the territorial jurisdiction lies in Delhi, cannot be sustained. In this case, the territorial jurisdiction lies at Noida where the workman was posted and had worked till the alleged termination w.e.f. 02.04.1998.

17. The award dated 29th November, 2007 is hereby set aside being without jurisdiction.

18. In view of the above, the present writ petition stands disposed of with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

APRIL 07, 2015

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