

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

% *Date of decision : September 15, 2015*

+ LPA 590/2009

DHARAMBIR SINGH Appellant
Represented by: Mr.S.N.Bhardwaj and
Ms.Harsha Rani, Advocates.

versus

M/S HINDUSTAN UNILEVER LTD. AND ORS..... Respondents
Represented by: Mr.Sandeep Prabhakar and
Mr.Amit Kumar, Advocates for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Dharambir Singh while working as Fitter, Grade II with respondent No.2 management was transferred to Faridabad on October 17, 2002 due to exigencies of work and requirements of employees at Faridabad. Though Dharambir joined Faridabad Unit however he challenged the transfer before this Court by way of writ petition being WP(C) No.6771/2002 which was ultimately dismissed and the appeal against the same being LPA No.86/2005 was also dismissed vide order dated January 28, 2005. While working at Faridabad Unit, the work at Faridabad Unit ceased to exist and the Unit remained without production which was finally closed down on December 19, 2003. Hence Dharambir was removed from service vide letter dated December 19, 2003. Dharambir filed an application in WP(C) No. 6771/2002 which was pending at that time on which initially a stay was

granted however finally vide order dated November 24, 2004 the same was dismissed.

2. On a dispute being raised, an award dated September 05, 2008 was passed by the learned Labour Court in ID No. 226/06-05 directing reinstatement with consequential benefits and continuity of service with 40% back wages. The award was challenged by the management before this Court by way of writ petition being WP(C) No. 7050/2008 which was allowed by the impugned judgment dated July 14, 2009 primarily on the ground that the Labour Court at Delhi had no territorial jurisdiction to pass the award as the workman at the time of his termination was posted at Faridabad. The issue of jurisdiction was also raised before the learned Labour Court however the learned Labour Court referring to the appointment letter which was issued from Head Office at Delhi came to the conclusion that the Government of NCT of Delhi had jurisdiction to make a reference and it had jurisdiction to entertain the reference.

3. The view taken by learned Single Judge vide the impugned order is based on the decision of the Supreme Court in *V(2006) SLT 655Om Prakash Srivastava Vs. Union of India* followed by this Court in *143(2007) DLT 311Brahm Parkash Vs. Govt. of NCT of Delhi & Anr.*, *2004 LLR 445 G.S. Batra Vs. R.N. Mehrotra* and *2002 LLR 407M/s DLF Universal Ltd. Vs. Govt. of NCT of Delhi*.

4. Learned counsel for Dharambir referring to the decisions reported as *AIR 1962 SC 409 Indian Cable Co. Ltd. Vs. Its Workmen*, *AIR 1984 SC 286 Jai Bhagwan Vs. Management of Ambala Central Co-operation Bank Ltd.*, *2007 (5) SCC 591Bikash Bhushan Ghosh & Ors. Vs. Novartis India Ltd. & Anr.*, *1983 (4) SCC 156 Sadhu Ram Vs. DTC*, *2005 (10) SCC 675 M.P. State*

Textile Corporation Ltd. Vs. Mahendra & Ors. and AIR 1986 Gujarat 209 (FB) S.L. Mohammedbhikhan Vs. Manager Chanderbhanu Cinema contends that the Labour Court at Delhi had jurisdiction to entertain the reference validly made by Govt. of NCT of Delhi and hence the impugned judgment be set aside.

5. In M.P. State Textile Corporation Ltd. (supra) relied upon by learned counsel for Dharambir, the Supreme Court did not advert to the territorial jurisdiction and the only issue considered was that in the wake of employment by the Corporation therein, the unit having been closed, the services could not be terminated by the Unit but by the Corporation which had employed the workman.

6. Supreme Court in Bikash Bhushan Ghosh (supra) applying the principles laid under Section 20 CPC held that the State Government of the State where part of cause of action arose would also have jurisdiction to make a reference. The Supreme Court laid down the following principles to determine the jurisdiction:-

“The principles for determining jurisdiction are:

- (i) *Where does the order of the termination of service operate?*
- (ii) *Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?*
- (iii) *The well-known test of jurisdiction of a civil court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable.*

7. Supreme Court thus held that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the

Labour Court concerned. In the said case before the Supreme Court the termination orders which were served at Calcutta were not the only bone of contention but the transfer orders as well because the termination orders were passed for not obeying the transfer orders. It was held that if the transfer orders were set aside the appellants therein would be deemed to be posted in Calcutta. There being a direct nexus with the termination of their services at Calcutta it was held that State of West Bengal was the appropriate Government.

8. In the facts of the case, reliance of learned Counsel for Dharambir on Bikash Bhushan Ghosh (supra) is thus misconceived for the reason that in the said case after transfer, the workmen therein did not join at the transferred place and had challenged the transfer orders and the termination for non-complying with the orders of transfer. Thus, termination was a consequence of non-obeying the order of transfer.

9. In the present case the services of Dharambir were terminated much after he was transferred to Faridabad though he had challenged the transfer order and the said writ petition was pending, however the termination was not on account of non-obeying the transfer order or a consequence of transfer.

10. In 1984 Lab IC 1254 (Patna) (FB) Paritosh Kumar Pal Vs. State of Bihar the Full Bench of Patna High Court held-

“13. Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clear-cut principles or tests for determining jurisdiction emerge, therefrom. For clarity these may be first separately enumerated as under:

- (i) *Where does the order of the termination of services operate?*
- (ii) *Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?*
- (iii) *That the well-known test of jurisdiction of a civil Court including the residence of the parties and the subject matter of the dispute substantially arising therein would be applicable.”*

11. This Court in 2015 SCC OnLine Del 10218 VG Jagdishan Vs. M/s Indofos Industries Ltd. & Anr. following the decision in 2008 (3) SCC 456 Eastern Coalfields Ltd. & Ors. Vs. Kalyan Banerjee held that since the workman was posted at Ghaziabad and his services were terminated at Ghaziabad, the Labour Courts at Ghaziabad could only have jurisdiction to try the case and merely because the Corporate Office of management was at Delhi the same will not vest the Labour Court at Delhi with the territorial jurisdiction since substantial cause of action arose at Ghaziabad. It was noted-

“9. The issue in the present case is fully covered by the decision of the Supreme Court reported in Eastern Coalfields Ltd. (supra) wherein the workman was employed with Eastern Coalfields Limited in Mugma area in the district of Dhanbad, Jharkhand. His services were terminated at Mugma however, workman filed a writ petition before the Calcutta High Court. On a preliminary objection taken the Calcutta High Court held that since the workman was serving at Mugma area under the General Manager of the area which is the State of Jharkhand, the Calcutta High Court had no jurisdiction. The Supreme Court affirming the decision of the Calcutta High Court held that entire cause of action arose in Mugma area within the State of Jharkhand and only because the head office of the company was situated in the State of West Bengal, the same by itself will not confer

any jurisdiction upon the Calcutta High Court particularly when the head office had nothing to do with the order of punishment passed against the workman.”

12. In view of the legal position noted above, we find no infirmity in the impugned order.

13. Appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER , 2015
‘v mittal’