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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3877 of 2016

Date of decision: February 26, 2016

Maruti Suzuki India Limited

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 06.08.2015 (Annexure P-1).

Learned counsel for the petitioner has submitted that the transfer order had been passed without affording any opportunity of hearing to the petitioner. The case has been transferred from Industrial Tribunal-cum-Labour Court-I, Gurgaon to Industrial Tribunal-cum-Labour Court-II, Gurgaon without any valid reasons. In support of his arguments, learned counsel has placed reliance on *Pushpa Devi Saraf versus Jai Narain Parasrampuria*, 1992 AIR (SC) 1133, wherein, it was held as under:-

“When a transfer petition is filed making such or similar allegations, the report if and when called for, should normally be confined to the allegations made against the impartiality or fairness of the Judge and not with respect to the correctness or otherwise of the orders passed by him. We are saying this because it appears that on the transfer petition being filed, the learned District Judge appears to have called-for a report from the Presiding Officer. In his report, the Presiding Officer not only denies the imputations made against him but also

explains and justifies the orders passed by him. This he did evidently because in the transfer petition, the correctness of some of his orders was questioned. In our opinion, a Presiding Officer of a court should not be put to such an explanation, barring exceptional circumstances.”

Learned counsel has also placed reliance on *Management of M/s M.S. Nenally Bharat Engg. Co. Ltd. versus State of Bihar and others*, 1990(2) SCC 48, wherein, it was held as under:-

“In the present case, the State has withdrawn the pending reference from the Labour Court, Dhanbad and transferred it to another Labour Court at the distant District of Patna, on the representation of the workman, without getting it verified from the management. The State in fairness ought to have got it verified by giving an opportunity to the management which is a party to the pending reference. Denial of that opportunity is a fatal flaw to the decision of the Government.

The management need not establish particular prejudice for want of such opportunity. In *S.L. Kapoor v. Jagnohan*, [1981] 1 SCR 746 at 765 Chinnappa Reddy, J., after referring to the observation of Donaldson, J., in *Altco Ltd. v. Sutherland*, [1971] 2 Lloyd's Rep. 515 said that the concept that justice must not only be done but be seen to be done is basic to our system and it is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. It was emphasized that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary.”

Section 33B of the Act reads as under:-

“33B. Power to transfer certain proceedings- (1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding

under this Act pending before a Labour Court, Tribunal, or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred:

Provided that where a proceeding under Section 33 or Section 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court.

(2) Without prejudice to the provisions of sub-section (1), any Tribunal or National Tribunal, if so authorized by the appropriate Government, may transfer any proceeding under Section 33 or Section 33A pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette and the Labour Court to which the proceeding is so transferred shall dispose of the same.”

Thus, as per the above provision, the appropriate Government may withdraw any proceeding under this Act pending before the Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal.

Respondent No.2 had raised an Industrial dispute challenging his termination. The said dispute was referred for adjudication to Industrial Tribunal-cum-Labour Court-I, Gurgaon. During the pendency of the reference, respondent No.2 moved an application under Section 33B of the Act for transfer of reference from Industrial Tribunal-cum-Labour Court-I, Gurgaon to any other Labour Court. The Presiding Officer submitted his comments (Annexure P-3). A perusal of the comments submitted

by the Presiding Officer reveals that the officer had also requested that the reference be transferred from his Court to Industrial Tribunal-cum-Labour Court-II, Gurgaon. In the present case, keeping in view the application moved by respondent No.2 and the comments submitted by the Presiding Officer, the appropriate Government vide Annexure P-1 transferred the reference from Industrial Tribunal-cum-Labour Court-I, Gurgaon to Industrial Tribunal-cum-Labour Court-II, Gurgaon for adjudication. Thus, the reference has been transferred from one Court to another Court in Gurgaon itself. Apparently, petitioner has not suffered any prejudice or injustice as the reference is to be decided by another Court in Gurgaon itself. The judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner as they are based on different facts.

In the facts and circumstances of the present case, no ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India, is made out.

Dismissed.

**(SABINA)
JUDGE**

February 26, 2016
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