

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.953 of 2013 (O&M)

Date of Decision:30.11.2016

M/s Whirlpool of India Limited

... Petitioner

Vs.

Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad and

others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. M.L. Sarin, Sr. Advocate with
Mr. Nitin Sarin, Advocate for the petitioner.

Mr. Anil Mehta, D.A.G. Haryana.

Mr. Rohiteshwar Singh, Advocate for respondent No.2.

P.B. BAJANTHRI J.

In the instant writ petition, the petitioner has prayed for following reliefs:

“A. Issue writ, order or direction in the nature of Certiorari calling for the records relating to the Order of reference dated 6.2.2008 (Annexure P-15) and the impugned award dated 19.12.2012 (Annexure P-23) in Ref No.R/91/2008 and after going through the legality and validity of the same, to quash the said order of reference and the impugned award.

B. Issue a Writ, order or direction in the nature of mandamus thereby directing the respondents not to take any steps in furtherance to the impugned award dated 19.12.2012 (Annexure p-23) in Ref No.R/91/2008

C. Issue a Writ, order or direction in the nature of prohibition restraining the respondents from implementation or to take any steps in furtherance or compliance of the impugned award dated 19.12.2012 (Annexure P-23) in Ref No.R/91/2008

D. Issue such other further directions and orders, as this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the present case

E. Dispense with the filing of certified copies of Annexures P-1 to P-23 and also dispense with the serving of advance notice of motion upon the respondents

F. Dispense with the filing of typed copies with larger font and allow the filing of typed copies with small font/less spacing/less margin

G. Award costs of the Petition to the Petitioner:”

Respondent No.2 was initially appointed as a Fitter in the Kelvinator Company. The said company was taken over by the petitioner-M/s Whirlpool of India Limited. Respondent No.2 services were transferred on 12.12.2005 from Faridabad to Pondicherry in terms of the conditions imposed in the order of appointment vide para-6. Respondent No.2 failed to report in the transfer post and place at Pondicherry despite lapse of about one year. His services were terminated on 24.12.2006. Respondent No.2 invoked trial and appellate court jurisdiction in which he has failed to get interim relief. Thereafter, he sought a reference from the State of Haryana raising industrial dispute. Reference order was passed on 5.3.2008 (6.2.2008) Annexure P-15. An extract of order of reference reads as under:

“Whether the termination of Shri Mamchand Gautam is justified or not? If not, what relief is he entitled to?”

The Labour Court while passing the award dated 19.12.2012 framed the following issues:

“1. As per reference?

2. Whether the claimant has no cause of action and labour court at Faridabad has no jurisdiction to try the present case.

3. Whether the reference is bad in law.

4. Relief”

The Labour Court while considering the arguments advanced by both the parties while referring to number of decisions concluded the

award. Extract of the award reads as under:

“Keeping in view the aforesaid judgments cited by both the parties, I am of the opinion that in the present case the transfer of workman was not done on administrative ground rather the transfer of claimant was done in order to victimize the claimant. Hence issue No.1 is decided in favour of claimant and against the respondent. Issue No.2 and 3.

Since the claimant was at Faridabad and he was asked to joint at Pondichery which he did not comply hence cause of action is at Faridabad and not at Pondichery. Accordingly, both these issues are also decided in favour of claimant and against the respondent.

RELIEF:

In view of my aforesaid discussions while deciding the aforesaid issues the claim succeeds and the reference is answered in favour of workman and against the respondent holding that he workman is entitled to be reinstated in service with continuity of service and with full backwages. Costs are assessed to be Rs.5000/-. Copies of award be sent to the authorities concerned and the file be consigned to records.”

Having regard to the fact that order of reference is whether termination of Shri Mamchand Gautam is justified or not, the Labour Court proceeded to decide as if transfer order is under challenge or transfer matter is the subject matter of reference. Even though Labour Court while framing issues, It is recorded that **“1. As per reference?”** whereas decided reference is as if the Government has issued reference in respect of transfer issue is concerned. The Labour Court held that respondent No.2 is entitled to be reinstated in service with continuity of service and with full backwages etc. Thus, the Labour Court has committed error in considering the reference dated 5.3.2008 (6.2.2008). Therefore, the award passed by the Labour

Court dated 19.12.2012 (Annexure P-23) is arbitrary and contrary to

reference and issue No.1 framed by the Labour Court itself. Hence, award is set aside. The matter is remanded to the Labour Court to be decided afresh within a period of six months from today. If the Registry received the LCR, the same shall be returned to the Labour Court. Both the parties are directed to appear before the Labour Court on 13.2.2017.

30.11.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**