

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

Date of decision: 07.02.2017

CWP No.1410 of 2014

Harjit Singh

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal, Patiala & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Lalit Gupta, Advocate, for the petitioner(s).

Mr. Amit Rao, Advocate, for

Mr. Anurag Goyal, Advocate, for respondents No.2 & 3.

RAJIV NARAIN RAINA, J.

This order will dispose of the abovementioned writ petition as well as other connected writ petitions* tabulated at the foot of the order, as common questions of law and fact are involved in them, which can conveniently be decided by a common order. However, for the facility of reference, the facts are taken from CWP No.1410 of 2014.

This Court issued notice of motion on 01.05.2014 by crystallizing the issue involved in the *lis* as follows:

“Contentends that the transfer order was passed and the petitioner and other co-workmen were asked to report at New Delhi office of the Management which was non functional and not in a position to adjust such a large number of workmen and remained closed most of the time and thus, action of the management amounted to retrenchment of the workman without following the mandatory provisions.”

I have heard the learned counsel for the parties at some length and perused the record.

The Management is respondent M/s Bhagwanpura Sugar Mills, Dhuri. They have an Award in their favour dated 07.10.2013 passed by the Industrial Tribunal, Patiala declining the reference. The workers have challenged the Award. The workers have set up a case of cheating and fraud played by the Management upon the workmen only to oust them from employment by illegal means. The petitioners were transferred by the Management from Dhuri to a place in New Delhi, where a dummy signboard of the Management was hung outside the alleged office, which remained always locked. No business was conducted there. The workers obeyed the transfer orders passed by the Management and went to Delhi in search of their new place of posting, but found nothing except the signboard. There was no office behind closed doors. The transfer orders were an eye-wash. The Management kept its ploy by issuing vacant letters to the workers to join the said office, which did sadly not exist. This was cheating.

The transfer order(s) became subject matter of disputes as to retrenchment raised in the demand notice for justice served on the Management. Conciliation failed, which led to the reference of the dispute regarding termination to the Industrial Tribunal, Patiala. The transfer orders amounted to termination orders in effect and in reality to destination unknown. The workers have placed on record photographs clicked while standing in front door of the closed door above which was the signboard 'Cosmos Industries Limited, Registered Office, 202 Thapar Arcade, 47 Kalu Sarai, Hauz Khas, New Delhi – 110016' under scored on the bill-board by the name of the respondent Company i.e. Bhagwanpura Sugar Mills. The transfer order was issued on 28.02.2005 and is placed by way of sample addressed to Harjit Singh Dhillon, Peon, one of the petitioners, transferring him from Dhuri Mills to the address as above i.e. 202 Thapar Arcade, 47

Kalu Sarai, Hauz Khas, New Delhi. They were guaranteed in the transfer letters reimbursement of travelling expenses as per rules for joining duty. They were asked to report to one Sh. Shivjit Singh Majithia, Joint Chief Executive Officer for further duties and assignments. A copy was addressed to Shri Majithia and others including the Assistant Labour Commissioner and a copy of the letter was pinned on the Notice Board of the company at Dhuri. The evidence led by the workers before the Tribunal included the registered AD letters addressed to the Hauz Khas address which bear the postal remarks confirming that 'the office remained closed by going there and even after giving information again[st] and again'. The postal date is stamped '02.04.2005'. There is similar evidence in all the cases.

The Management responded to the demand notice dated 15.03.2005 with a registered AD letter dated 01.04.2005 stating that the demand is vague and false. The letter has been addressed to the counsel at Dhuri of the petitioner Harjit Singh Dhillon. The Advocate was informed that his client had not explained the correct position to him and that as per the Management's record and due to financial crisis and shortage of work, the petitioner was transferred vide order dated 28.02.2005 and subsequent reminders dated 12.03.2005 and 23.03.2005 were sent from Dhuri to their registered office in New Delhi, but the workman did not report there as per information received from the Delhi office. Accordingly, no termination order was passed and the workman is accused of willfully absenting himself and not reporting for duty after transfer. The Management replied that considering the service period, it was giving yet another chance through this reply to the demand notice, asking the workman to join duty at 'Our New Delhi office' and report to Shri Shivjit Singh Majithia within seven days from the receipt of the reply failing which it shall be presumed that the

worker/s is/are intentionally not joining duty and “is abandoned from his work”. A copy of the letter was forwarded to the Assistant Labour Commissioner, Sangrur for information.

The petitioner responded to the reply to the demand notice stating that the office at New Delhi was non-functional and there was no one present to accept their joining. This is how the worker returned to Dhuri to report back to his parent Organization. On return, he was informed that his services have been terminated on 14.03.2005, but no orders were given despite request.

If the worker(s) obeyed the transfer order and arrived at destination in New Delhi to offer their services only to be met with the *cul-de-sac* then I fail to see a case of abandonment. If these facts are taken true, then the transfer order was a trick deceitfully practiced on the workers and a fraud committed on their industrial rights. The transfer order was menacingly a termination of services and, therefore, qualifies as retrenchment within the meaning of Section 2 (oo) of the Act for which procedure prescribed under Section 25-F will be deemed to apply and any non-compliance of the mandatory provision would lead to nullification of the deemed termination and declaration of deemed continuance in service with all attendant rights flowing as a natural consequence.

This Court is called upon to examine the work of the Presiding Officer, Industrial Tribunal, Patiala and to see if it stands the test of reasoning. This is best understood if the ludicrous excerpts are culled out from the Award and reproduced to form part of this order which would disclose the strange process of reasoning adopted in the Tribunal to give relief to the Management anyhow. The same are as follows:

“(a) Ex.M2/Ex.W6 is another document i.e. letter sent to the workman informing him that he was transferred from

Dhuri Mills to Registered Office Delhi vide office order No.539 dated 28.02.2005, but he did not report at Delhi Office.....

(b) Then, there is another letter Ex.M4/Ex.W7 again asking the workman to join his duty at Delhi Office immediately on receipt of the letter, failing which his name was said to be struck off from the rolls of the respondent company and photocopy of the postal receipt of Ex.M4/Ex.W7 is Ex.M5, which is dated 29.03.2005.

(c) The workman in his cross-examination categorically stated that he has no proof with him in writing to prove that he had gone to Delhi for joining the duty. He further stated that after receiving Ex.W5, Ex.W6 and Ex.W7 reply was given by him to the respondent for non-joining of duty at Delhi.”

The expressions ‘struck off from the rolls’ is not mentioned in the letter under reference. See Annex P-6 which is the letter dated 15.04.2005 written by the workman in response to the Management’s reply to the demand notice where it is categorically recorded that he approached the registered office in New Delhi and “nobody allowed or assigned duty”. He did not say by way of an explanation the reason for non-joining of duty at Delhi as over-read by the labour court. This is a gross misreading of the letter dated 15.04.2005. Then again the labour court records:-

“(d) ...There is also nothing on record to prove that the workman filed reply to letters Ex.W5, Ex.W6, Ex.W7 of the respondents. Thus, it cannot be accepted that workman filed the alleged reply to these letters. Thus, had the workman joined his duty consequent to the transfer order, he would have submitted reply to Ex.W5, Ex.W6 and Ex.W7 that he went to join his duty at Delhi Office of the respondent, but he was not allowed to join duty. Thus, no such comments were submitted, nor reply was filed and, therefore, the only conclusion that can be drawn is that workman did not join the place of transfer, where he was transferred, in compliance of transfer order Ex.M1/Ex.M5 dated 28.02.2005”

The question of joining duty at New Delhi would arise only if there was an office running. The onus and the burden was on the Management to prove that it had a functional office at New Delhi with doors open welcoming the transferred workers, but they miserably failed to discharge the onus. Then again:

“(e) Workman knew well that his services were not terminated because he in his cross examination admitted as correct that in the reply to his Demand Notice, the Management mentioned clearly that his services were not terminated till 01.04.2005. He also admitted as correct that no termination order is served by the respondent.”

Very obviously there was no termination order. If there was, then where was the question of denying this in cross-examination as the labour court queerly imagined? Workman’s admission that no termination order was served was neither here nor there, especially when a case of abandonment was set up by the Management. Abandonment had to be proved by the Management and not by the workers since the plea was in defence with workers arguing that the transfer order was in fact a termination order in disguise. Accordingly, the Tribunal reached this facile conclusion holding:

“Documents on record and statement of the workman reveals that it is not a case of termination of service, but case of abandonment of service and it was not case for making reference.”

This is a sadly a gross misreading and non-reading or selective reading of evidence and shows a pre-determined mind inclined towards the Management because the Tribunal went to the extent of recording that it was not a case for making a reference at all. From where this has been derived from is unfathomable. The Management did not challenge the reference order in a superior Court. The Tribunal had to return findings as to whether

it was a case of termination or abandonment upon the evidence, upon the intention and upon the ground situation existing on the spot at the closed door of the Management in “its registered office” at New Delhi. Even no evidence was placed by the Management that its registered office was at the place stated at Hauz Khas, New Delhi in the records of Mills.

Even a cursory look at the website of the Mills discloses that it was a public limited non-government company registered with the Registrar of Companies, Chandigarh. Though the Company status is recorded as ‘strike off’ but it stand before the court is running business. Though I have searched the Net but my order is not based on this information, but have only referred to it since the Management itself said that its registered office is at New Delhi, then it was for the Management to disclose full particulars and the status of that office with documentary and evidentiary proof beyond a reasonable doubt before the plea of abandonment can be entered.

To come to the peculiar conclusion that even reference of the dispute was illegal, the Tribunal relied on a Delhi High Court judgment in Gian Chand Vs. Secretary (Labour), Delhi Administration, 1995 (70) FLR 880-881. This is a case where the appropriate Government had refused to accept the prayer of the workman and held it was not a case of termination, but abandonment. The Delhi High Court upheld the order of the appropriate Government and held that it was not a case for making reference. I am at a loss to understand as to how this judgment could have been used even remotely as an argument against the workmen, when the reference order was not challenged by the Management. The reasoning is terribly forced, twisted, convoluted and beyond the terms of reference and cannot be accepted as legal reasoning supporting an ouster of the rights of the petitioners. The Tribunal was obsessed that workman was informed about the transfer and he

had admitted so in his cross-examination. The admission meant only that there was no order of termination in writing. The Tribunal's reason that because the workman was transferred and he had not joined the place where he was transferred, then it is clearly a case of abandonment is childlike reasoning and not expected of a senior judicial officer. This sort of reasoning is incoherent and not substantiated by evidence.

Abandonment is an intention to leave service and waive rights spelled over a long period of time establishing by inference disinterest in work. The sequence of facts from the transfer order to the correspondence between the parties resting on a last reminder will not make out a case of abandonment when the destination of the transfer order is not a running office. It is so simple to understand that I have serious doubt that this could not have occurred in the mind of the labour court just as it would have to a layman and it is this which raises doubt as to the integrity of the award.

Even assuming that the workman had not sent a reply to the letters and reminders issued would that lead to the conclusion of an act of misconduct of the workman in not making effort to join the place of posting after transfer order was served in the face of the reply of the respondent to the demand notice or would that make it a case of abandonment. The Tribunal has shut out its mind completely to the fulcrum of the case, the destination point of the transfer order, which has to be a place of existing business. Where was the question of transferring Mill workers involved in production to a business office in Hauz Khas, New Delhi of what use would they be out there. That would be seen as an absurdity. There is nothing on record produced by the Management as to what work the Mill workers [petitioners] were required to perform in a non-factory setting where there is no production of sugar. Where would low paid workers live in a metropolis

as big as New Delhi/Delhi. This is a case of fraud committed by the Management on the workers and fraud vitiates everything. This is a case of unfair labour practice for which no evidence is required as the facts speak for themselves. And yet the labour court threw out the claim by an ex facie perverse award. No equity flows in favour of a deceitful Management. The transfer order was an apparent resort to malpractice engineered clumsily in abuse of authority and in colourable exercise of power in tearing the thread of employment after the workers had put in years of service at the Dhuri Mills of the respondent

The Tribunal startlingly even goes to the extent of saying that the workers were “guilty of abandonment of service” after transfers and, therefore, they are not liable to get relief. The conclusion of abandonment by the Tribunal in the Award dated 07.10.2013 is an unfortunate instance of an Industrial Tribunal doing injustice without due application of mind. I wish I could have quoted the entire text of the award in this order for everyone to read. No reasonable person would have come to the conclusions that the Tribunal has while deciding the fate of the petitioners in this bunch of petitions. Look at the damage done by careless work with livelihoods lost all these years, their families’ untold suffering. The Presiding Officer has unfortunately refused to apply the mind or lift the veil and has misread and misconstrued the evidence beyond recognition in the award. The findings in the award do not match the evidence and this is a material irregularity in dealing with the evidence in a fair and proper manner. Thus, I would allow these petitions and quash the award of the Tribunal with a copy to the Judicial Officer for her record. The Award is dubious and leaves a bad taste in the mouth. Relief will follow automatically to the hilt in this batch of cases because the respondent Management ex facie committed fraud in

dealing with the petitioners and set up a false case of abandonment of service. The transfer orders are found to be a camouflage for de facto termination. There is non-compliance of Section 25F of the Act in all the cases. Unfortunately, the labour court did not go thus far when it happily accepted the plea of abandonment and allowed itself to be played into the hands of the Management. The labour court ought to have read Entry 7 of the Fifth Schedule of the Act which reads: “To transfer a workman mala fide from one place to another, under the guise of following management policy” as one of the enumerated Unfair Labour Practices. The documents and facts available on record supported proof of this vice.

As a result of the above discussion, the petitions are allowed. The impugned awards are quashed as illegal, arbitrary and perverse. The reference is answered in favour of the petitioners and against the respondent Management. The petitioners are reinstated to service with continuity and full back wages. The monetary value of the award replaced by this order will carry interest @ 9% from date of termination till realization. In addition, these petitions are allowed with ₹25,000/- as litigation costs throughout in each of the cases to be paid to the workmen by the Management.

Copy of this order be placed on the service file of the judicial officer by the Registrar General. The same shall remain subject to appeal and in the administrative discretion of Hon’ble the Chief Justice.

07.02.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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Sr.No.	Case No.	Parties Name
1.	CWP No.1411 of 2014	Sugriv Parshad Vs. Presiding Officer, Industrial Tribunal, Patiala & others
2.	CWP No.1413 of 2014	Suraj Parkash Vs. Presiding Officer, Industrial Tribunal, Patiala & others
3.	CWP No.1420 of 2014	Sukhdev Singh Vs. Presiding Officer, Industrial Tribunal, Patiala & others

4.	CWP No.1422 of 2014	Barinder Kaur Vs. Presiding Officer, Industrial Tribunal, Patiala & others
5.	CWP No.1425 of 2014	Ravi Kiran Sharma Vs. Presiding Officer, Industrial Tribunal, Patiala & others
6.	CWP No.1426 of 2014	Surinder Singh Vs. Presiding Officer, Industrial Tribunal, Patiala & others
7.	CWP No.1427 of 2014	Rajiv Seth Vs. Presiding Officer, Industrial Tribunal, Patiala & others
8.	CWP No.1430 of 2014	Surinder Kumar Vs. Presiding Officer, Industrial Tribunal, Patiala & others
9.	CWP No.1474 of 2014	Gurjit Singh Vs. Presiding Officer, Industrial Tribunal, Patiala & others

[RAJIV NARAIN RAINA]
JUDGE