

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

Date of decision: 27.02.2017

CWP No.3691 of 2017

M/s Holy Faith International Pvt. Ltd.

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Jalandhar & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.R.Dhawan, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

This is a labour dispute. The 2nd respondent - Sunil Kumar was appointed in the establishment of the petitioning Management as a Cutter (Probationer) w.e.f. 25.08.1997 by an order spelling out 12 terms & conditions of service. The Management does business in Jalandhar. This is important because the *lis* arises out of a transfer order to Bhopal with bag and baggage.

On 03.02.2011, Sunil Kumar was transferred to Bhopal and he was asked to report to the Branch Manager at the address given in the transfer order. Sunil Kumar refused to accept the transfer, which fact is recorded in the letter of the Manager dated 03.02.2011 addressed to the Chief Administrator of the petitioner. Condition 4 of the letter of appointment deals with 'place of posting' and prescribes that it will be 'presently' at Jalandhar, but the employee is liable to be transferred to another branch, post or place of sister concern; whether in existence or may come into existence hereinafter. Upon transfer, the rules and regulations of

service applicable to such post at the place of transfer will become applicable. On refusal to accept transfer to far flung Bhopal by a low-paid employee, the Management proceeded to issue a Press Note dated 18.03.2011 terminating the services of Sunil Kumar without notice, without charge-sheet, without inquiry and without payment of retrenchment compensation. His salary for the month of February, 2011 was also not paid and Sunil Kumar made a request for payment by way of a complaint to the Labour Inspector. This led to the industrial dispute between the parties. The demand notice under Section 2-A of the Industrial Disputes Act, 1947 was served. The conciliation proceedings failed before the Conciliation Officer. However, the demand notice was served inadvertently upon M/s M.B.D. Enterprises. The workman represented through the Union had made a mistake in serving the wrong company and withdrew his case from the Tribunal on 23.05.2012, which he could directly approach in view of the amendment inserting Sub Section (2) & (3) to Section 2A of the ID Act, 1947 reserving his right to claim relief against M/s Holy Faith International, the present petitioner. The fresh demand notice was issued on the next day i.e. 24.05.2012. M/s M.B.D. Enterprises had come into the picture as Sunil Kumar was a member of the M.B.D. Group of Industries Workers' Union, Jalandhar.

The Management disputed the existence of the Workers' Union before the Labour Court and pleaded that the demand notice had been rendered illegal and infructuous. However, they filed a reply on merits. They admitted sending two banker cheques dated 22.06.2011 representing bonus and leave encashment amounting to ₹8769/- and ₹3153/- respectively. They pleaded that the workman had lost his rights to employment, when he did not join at the new place of posting in spite of repeated reminders. No

other alternative was left with the Management but to get the notice published in the newspaper. The publication was made in 'Rajana Nawana Jamana', Jalandhar on 11.03.2011 allowing another opportunity to workman to join his duties at Bhopal within 7 days from the date of publication failing which it will be presumed that he is not interested to continue in employment. The defence of the Management was that the worker had abandoned services by a presumption.

The workman explained that the demand notice was delivered in the name of M/s M.B.D. Enterprises Pvt. Ltd. And in the conciliation proceedings held, the company did not disclose that the demand notice had been delivered in the name of some other company or that it was not the employer. The connection between M/s M.B.D. Enterprises and Holy Faith lies in a grey area. But it remains a fact on record that Holy Faith filed reply and accepted the workman as its employee. There is no doubt that both M/s M.B.D. Enterprises and M/s Holy Faith International Pvt. Ltd. do the same business of publishers and printers of books. They are potentially related Companies as per information gathered from Internet. But this fact which is not on record will not affect the result.

To sum up the factual position on record I would say that there is ample proof that there was employer-employee relationship between the parties; termination took place through publication; the procedure under Section 25-F of the Act was not followed in serving notice, giving one month's pay in lieu of notice and making over retrenchment compensation at the time of termination and assigning the reasons for termination. The last pay drawn was ₹5911/- per month. The Management admitted that salary for the month of February, 2011 was deposited in the account of the workman maintained in the PNB, Old Railway Road, Jalandhar. The fact also remains

that the petitioner has a Branch Office at Bhopal, but no manufacturing facility there. Transfer was a condition of service incorporated in the letter of appointment and, therefore, the Management was within its right to transfer the workman from Jalandhar to Bhopal and if he failed to join, then it will be abandonment of employment and, therefore, there is no need to comply with Sections 25-F and 25-G of the Act, or so the Management pleaded.

Seized of Reference No.138 of 2012, the learned Presiding Officer, Industrial Tribunal, Jalandhar held the trial, let the parties put in their evidence by permitting them to cross-examine each others' witnesses and on perusing evidence set the case down for hearing and answered the reference by making the impugned award.

The basic issue which arose before the Labour Court was whether the workman will be presumed to have abandoned his job on refusal to comply with the transfer order. The admitted facts are that the 2nd respondent – Sunil Kumar had put in 14 years of service as a Cutter serving in Jalandhar. The Labour Court found that the workman had not made any averments in his affidavit by way of examination-in-chief that he was not served with transfer orders. The Management was able to prove that the workman was aware of his transfer in view of the oral and documentary evidence of the Management regarding the issuance of transfer order and of events in its wake leading up to publication of notice. Accepting this premise as correct, the Labour Court reasoned that once the Management passed the transfer order and reached the conclusion that the workman has failed to join duty at the place of transfer, there were only two remedies before the Management either to conduct domestic enquiry regarding misconduct or to pass termination order after complying with the provisions of Section 25-F

of the Act. But in the case in hand, no domestic enquiry was conducted regarding misconduct though in the Press Note Ex.M-9, it was clearly stipulated that the act of the workman by absenting from duty w.e.f. 03.02.2011 FN amounts to grave misconduct on his part. The second publication came on 18.03.2011 (Ex.M-10), which is the termination order in the eyes of the public and the reason for its passing has been mentioned as non-compliance of the transfer order, is grave misconduct leading to voluntary abandonment of service.

Here was the trap the Management has created for itself. If there was misconduct, then it should have been followed by an enquiry. If there was no misconduct, then Section 25-F of the Act had to be complied with. When both these two procedures were not resorted to, the action of the Management was an act of hara-kiri and no fact can redeem that. The Labour Court concluded that there was no evidence on record of voluntary abandonment of job. So far as the intention for abandonment is concerned, it must be of long evasion to inevitably suggest that the man is no longer interested in working with the Management. Every temporary absence is not misconduct. The workman had a right to protest against a transfer order which had the effect of termination when not accepted. This was no ordinary routine transfer from place to place in service law. In the present case, there was mere absence of 50 days, which cannot be defined as abandonment of service. After all, the workman was smarting under the transfer order and for good and justified reasons in view of distance involved for a small employee to shift with his family at destination unknown to reconstruct his life without adequate means.

It is one of the conditions precedent in Section 25-F of the Act that no workman shall be retrenched until he is given one month's notice in

writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages in lieu thereof the workman has been paid retrenchment compensation, which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. These are mandatory conditions and the directory part is in Section 25-F(c) permitting notice in the prescribed manner to be served upon appropriate Government *ex post facto* by way of information. The Management failed to act in qualifying the triple tests in Section 25-F of the Act. During cross-examination, MW-Vinod Sharma admitted that before terminating the services of the workman, the three conditions were not fulfilled.

Having reached the conclusion that the termination was illegal, the Labour Court proceeded to consider relief. The Court formed opinion that instead of reinstatement and full back-wages, the workman would be entitled to compensation for the following reasons:

- “(1) The workman failed to comply with the transfer orders by not joining the place of new posting.
- (2) There is gap of approximately more than one year between the date of termination and demand notice. The order of termination is dated 18.03.2011, whereas the demand notice is dated 24.05.2012.
- (3) The workman has not made any request to the Court that he is ready to join the service at the place of transfer.
- (4) The workman has accepted the payment of gratuity, leave encashment and bonus. During cross-examination, the workman has deposed that he has received the gratuity amounting to ₹47,743/-, bonus amounting to ₹8769/- and leave encashment amounting to ₹3153/-. These amounts were deposited in his account.”

As a result, the workman was held entitled to lump sum payment of ₹75,000/- only in lieu of reinstatement. The payment was

ordered to be paid within 8 weeks from 03.10.2016 i.e. from the date of award, failing which the workman would be entitled to interest at the rate of 8% per annum from the date of award till actual realization.

I find absolutely no reason to interfere in the well reasoned award and the relief granted and would dismiss the petition as devoid of merit.

On the other hand I find it rather strange that the forensic battle in this Court at the hands of the Management has been for only penny pinching for a meager ₹75000/-, which is a pittance. Therefore, the award has been examined only on the point of view of Management, but not from the point of view of the 2nd respondent in absence of challenge to the Award in a cross-petition. The dismissal of this petition will not be an expression of opinion on the case which the workman might wish to bring. If he does, then there is no gainsaying that it will be decided in accordance with law without any reference to this order. The reasoning of the Labour Court will remain subject to any future litigation and the same has been examined from the narrow angle of breach of procedure in Section 25-F of the Act and its effect.

I make no comment in this order, as to whether the transfer from Jalandhar to Bhopal was by way of unfair labour practice falling in Entry 7 of The Fifth Schedule read with Section 2(ra) of the Act.

27.02.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*