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

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Date of Decision: 25.05.2017

% **LPA No. 137/2017 & C.M. No. 7548/2017**

KANHAYA LAL

..... Appellant

Through: Mr. Ashish Jha, Advocate.

versus

THE MANAGEMENT OF
M/S SWANTANTRA BHARAT MILL

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE VINOD GOEL

VIPIN SANGHI, J. (ORAL)

1. The appellant has preferred the present Letters Patent Appeal (LPA) to assail the judgment dated 21.03.2016 passed by the learned Single Judge in W.P.(C.) No. 5325/2004, whereby the appellant's writ petition to assail the award dated 06.11.2003 passed by the learned Presiding Officer, Industrial Tribunal-I, Delhi, has been dismissed.

2. The appellant has filed the aforesaid application being C.M. No.7548/2017 to seek condonation of 238 days delay in filing the present LPA. Since we have heard learned counsel for the appellant and we are not inclined to issue notice in the LPA, no purpose would be served in issuing notice in the said application.

3. The appellant and two other employees – Shri Ram Sumer and Shri Babu Lal were in employment of respondent management on a monthly wage of Rs.1,500/-. The appellant was deputed to work on a winding machine. The appellant claimed that he had been working on the said machine for the last 19 years. He claimed that he had been shown as a Badli workman, even though he was a permanent workman.

4. The appellant claimed that the respondent management, without complying with the requirement of Section 9 A of the Industrial Disputes Act, transferred the appellant to work in the Double Winding Department. The appellant, admittedly, did not report for work even for a single day in the Double Winding Department and did not even see the nature of work and how it was a different work. He was earlier carrying on work in the Winding Department. The cause of the appellant was espoused by the Kapada Mazdoor Lal Jhanda Union and the reference made by the Competent Government to the learned Industrial Adjudicator vide notification dated 06.05.1994 reads as follows:

“Whether the transfer of S/Shri Ram Sumer, Kanhaya Lal and Babu Lal from winding section to doubling section is illegal and/or unjustified and if so, what directions are necessary in this respect?”

5. The Industrial Tribunal answered the said reference against the appellant workman after recording evidence. Pertinently, no reference was sought or made in relation to the appellant’s claim that he was wrongly treated as a Badli worker.

6. So far as the appellant’s claim that his transfer from Winding

Department to Double Winding Department is concerned, the Tribunal found that there was no evidence led by the appellant to the effect that the nature of work involved was materially different. Consequently, the reference was answered against the appellant.

7. Before the learned Single Judge, the appellant contended non-compliance of Section 9A of the Industrial Disputes Act. The learned Single Judge has rejected the said submission in paragraphs 22 and 23 by observing as follows:

“22. So far as the requirement of issuance of the notice under Section 9A of the Industrial Disputes Act, 1947 is concerned, it has to be seen whether such notice is required in the present case. Section 9A and Schedule IV of the Industrial Disputes Act, 1947 is reproduced as under:

“9A. Notice of change.- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; (b) within twenty- one days of giving such notice: Provided that no notice shall be required for effecting any such change— (a) where the change is effected in pursuance of any 1 settlement or award]; or (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and

Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

THE FOURTH SCHEDULE

(See Section 9-A)

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

- 1. Wages, including the period and mode of payment;*
- 2. Contribution paid, or payable, by the employer to any provident fund or for the benefit of the workmen under any law for the time being in force;*
- 3. Compensatory and other allowances;*
- 4. Hours of work and rest intervals;*
- 5. Leave with wages and holidays;*
- 6. Starting alteration or discontinuance of shift working otherwise than in accordance with standing orders;*
- 7. Classification by grades;*
- 8. Withdrawal of any customary concession or privilege or change in usage;*
- 9. Introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders;*
- 10. Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen; Any increase*

or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department of shift [not occasioned by circumstances over which the employer has no control]”

23. As per Section 9A of the Industrial Disputes Act, 1947, a notice is only given to workmen/employees in the event of change of the service condition carried out by the management. But in the instant case, nothing came out to suggest that there was any change in the service condition of the petitioner-workman at the time when the transfer order dated 02.11.1992 was issued to attract Schedule IV of the Industrial Disputes Act, 1947. Therefore, the notice in the present case is not required. As such, the judgments relied upon by the petitioner-workman, i.e., Lokmat Newspapers Pvt. Ltd. vs. Shankar Prasad (Supra) and State of U.P. vs. Charan Singh (Supra) loses its significance in the present context.”

8. So far as the appellant's claim that the nature of his duties was very different in the Double Winding Department is concerned, learned Single Judge has observed and, in our view, rightly so, that not having even reported for a single day in the Double Winding Department, there was no basis for the appellant to claim that the nature of work required of him in the Double Winding Department was drastically different and he did not have the skill to perform the said function.

9. Learned counsel for the appellant now seeks to produce material before this Court with regard to the difference in the nature of work in the Winding Department and Double Winding Department. However, we are not inclined to permit him to do so at this belated stage. The fact finding body was the Industrial Tribunal. It was for the appellant to lead all such evidence before the Industrial Tribunal and it was for the said Tribunal to

appreciate the same. In judicial review, the said exercise cannot be undertaken for the first time.

10. In these circumstances, we do not find any merit in the present appeal and the same is dismissed.

VIPIN SANGHI, J.

VINOD GOEL, J

MAY 25, 2017

B.S. Rohella

