

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP No.12469 of 2019 (O&M)
Date of decision: 30.05.2019

Rachna Sharma

...Petitioner

versus

The Presiding Officer, Industrial Tribunal & Labour Court,
Union territory, Chandigarh and others

...Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Manjit Singh, Advocate for the petitioner.

B.S. Walia, J.,

CM Nos.8482-83-CWP of 2019

Allowed, as prayed for.

CWP No.12469 of 2019

[1] Prayer in the writ petition is for quashing Order (Annexure P-15) dated 04.04.2019, passed by respondent No.1, dismissing the application filed by the petitioner under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act') read with Rule 59 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as 'the Rules').

[2] Grievance of the petitioner is that on account of her seeking adjudication of dispute qua introduction of the Majithia Wage Board recommendations, her annual appraisal for the year 2017-2018 was not done, instead by way of revenge, she was transferred from Chandigarh to Panipat vide Order (Annexure P-8) dated 01.10.2018 and relieved w.e.f. 03.10.2018

under the garb of providing a promotion whereas wages being drawn by her at Chandigarh stood reduced and her representation for cancelling her transfer from Chandigarh and grant of leave upto 22.10.2018 sent via e-mail (Annexure P-9) dated 03.10.2018 and 06.10.2018 evinced no response.

[3] Brief background of the case leading to the filing of the writ petition is that vide Annexure P/1, the petitioner was appointed as Computer Operator in the office of respondent No.2 on 01.05.2000 on initial salary of Rs.2500/- without mention of any terms and conditions of the post being transferable. Subsequently, the petitioner was promoted, as Executive (Office) on 01.06.2004 and posted in Chandigarh, as Incharge- Marketing (Back Office) to report to the Assistant Manager, MIS Marketing, Chandigarh vide order (Annexure P-2) dated 01.06.2004/14.07.2007,. as Senior Executive AD-Sales (Govt.) w.e.f. 01.06.2004 to report to DGM AD-Sales (Govt.) vide Order (Annexure P-3), dated 28.06.2014, as Senior Management Associate vide order (Annexure P-4) dated 29.07.2015 on appraisal of the petitioner for the year 2014-2015, was rated as "Exceed Expectations" vide order (Annexure P-5) dated 31.05.2016 on appraisal of the work of the petitioner during the year 2015-2016 and was continued as Senior Management Associate AD-Sales, Chandigarh. Thereafter, vide Order (Annexure P-6), on appraisal of work of the year 2016-2017 the petitioner on 25.08.2017 was again appreciated with revision of annual compensation w.e.f. 01.04.2017 with other terms & conditions remaining the same. Vide Order (Annexure P-7) dated 27.12.2017, w.e.f. 02.01.2018 the petitioner was transferred from the Branch to Chandigarh Unit in the AD-Sales Department. On 29.06.2018, the petitioner sought introduction and approval of the Majithia Wage Board by moving an application before the appropriate

Government. Thereupon, the Labour Commissioner, UT, Chandigarh, referred the matter for adjudication whereafter the petitioner's annual appraisal for the year 2017-2018 was not done.

[4] In the circumstances, the petitioner filed a complaint under Section 33-A of the Act vide Annexure P-10 dated 17.10.2018. During the pendency of the complaint before respondent No.1, respondent No.4 issued a charge sheet (Annexure P-11) dated 22.11.2018 alleging abandonment of job by the petitioner.

[5] Objections to the complaint filed by the petitioner under Section 33-A of the Act were filed by respondent No.2 whereas the petitioner filed reply to said objections and during pendency of the complaint before respondent No.1, respondent No.4 issued final show cause notice (Annexure P-13) to the petitioner for termination of her services. Reply to the show cause notice was filed by the petitioner vide (Annexure P-14) but nothing was heard. In the meantime complaint filed by the petitioner under Section 33-A of the Act was dismissed vide Order (Annexure P-15) dated 04.04.2019.

[6] Learned counsel contended that it was settled law that the terms & conditions of service especially pertaining to posting could not be changed during the pendency of a dispute, therefore in view of pendency of the dispute raised by the petitioner for implementing the recommendations of the Majithia Wage Board, made under Section 17(1) of the Working Journalists and other Newspaper Employees (Conditions and Service) & Miscellaneous Provisions Act, 1955, dismissal of the application under Section 33-A of the Industrial Disputes, Act, 1947 read with Rule 59 of the Industrial Disputes (Central) Rules, 1957, was legally unsustainable.

[7] In nutshell plea on behalf of the petitioner is that the petitioner's composite promotion and posting order is in violation of the provisions of Section 33-A of the Act and is by way of retaliation to the application moved by the petitioner for seeking implementation of the recommendations of the Majithia Wage Board. Thus, the main point to be seen is whether service conditions of the petitioner were changed during the pendency of the dispute, seeking implementation of the recommendations of the Majithia Wage Board.

[8] No doubt, the petitioner was recruited as Computer Operator in the Chandigarh Office of respondent No.2 and the appointment letter does not contain any condition that she could be transferred out of Chandigarh, however, the petitioner was promoted vide Order (Annexure P-2) dated 01.06.2004 to the post of Executive (Office) and thereafter vide Annexure P-3 dated 28.06.2014, the petitioner was transferred from the post of Executive Assistant AD-Sales, Chandigarh to the post of Senior Executive AD-Sales (Govt.), Chandigarh w.e.f. 01.07.2014. Thereafter, the petitioner was promoted from the post of Senior Executive to Incharge-Marketing (Back Office), Grade (EI) vide Order (Annexure P-3) dated 14.07.2007 and vide Order (Annexure P-4) dated 29.07.2015 as Senior Management Associate in M-6 Grade, while mentioning in said order that employment terms & conditions commensurate to her current Grade i.e. M-6 would be applicable as per company's policies. Thereafter, vide Order (Annexure P-5) dated 31.05.2016, while rating the petitioner as "Exceed Expectations" on review of her performance for the period 01.04.2015 to 31.03.2016, the petitioner's compensation package was revised to Rs. 2,43,168/- while indicating that her services would be governed by the terms of employment applicable to Grade M6 as per Company's Policies.

[9] A perusal of the terms & conditions attached to Annexure P-5 reveal that the services of the petitioner could be transferred to any office/branch of the Company located anywhere in India or abroad, whether in existence at the time of her appointment or set out at a later date at the sole discretion of the management and that she was expected to promote and to expand the business of the company etc. Further, that the petitioner's services could be terminated or the petitioner could resign by either party giving 30 days' notice in writing. Relevant extract of the aforementioned terms & conditions as contained in Order (Annexure P-5) dated 31.05.2016 are reproduced as under :-

- *“You are expected to promote and expand the business of the company and not directly or indirectly and either solely or jointly be engaged in any service or other business or profession whether during or after the hours of employment without written sanction from the Company.*
- *Yours services can be transferred to any of the offices/branches of the Company located anywhere in India or abroad, whether in existence at the time of your appointment or set at a later date at the sole discretion of the Management.*
- *Your services can be terminated in the form of Resignation or otherwise by either party by giving 30 days' notice in writing or 30 days' Basic salary in lieu thereof.”*

[10] Likewise, vide Order (Annexure P-6) dated 31.08.2016 while rating the petitioner's performance as “Meet Expectation” on annual appraisal for the FY 2016-2017 her compensation package was revised from Rs. 2,43,168/- to Rs.2,52,706/-, and the terms & conditions as reproduced

above, extracted from Annexure P-5 were reiterated in Order Annexure P-6. Thereafter, vide order (Annexure P-7) dated 27.12.2017, the petitioner was transferred to Chandigarh Unit in AD-Sales Department w.e.f. 02.01.2018, while mentioning that all other terms & conditions of her appointment remained unaltered. Thereafter, vide order (Annexure P-8), dated 01.10.2018, the petitioner, who was working against an annual package of Rs.2,52,706/- in terms of order (Annexure P-6) dated 31.08.2016 was promoted as Assistant Manager-AD Sales Department against a package of Rs.3,00,133/- and posted at Panipat w.e.f. 03.10.2018. It was also mentioned in Order (Annexure P-8) that the petitioner would make the best use of the opportunity offered to her and to contribute substantially to her, as well as the organization's success and that she would be entitled to receive Relocation Settling allowance as per policy on submission of bills, beside the existing transfer policy would be applicable to her and she could seek reimbursement of travel expenses on reaching the new location and that all other terms & conditions of her appointment remained unaltered. However, the petitioner despite being given the promotion cum transfer order did not acknowledge the same, instead vide e-mail (Annexure P-9) dated 03.10.2018 represented against her transfer to Panipat while alleging that she was being harassed due to her demand for implementation of the Majithia Wage Board Award and that since she had some urgent work, she be granted leave from 03rd to 6th October, 2018. Thereafter, vide undated Communication (Annexure P-9), the petitioner wrote representation, addressing it only as 'Dear Sir', without mentioning as to whom it had been addressed, informing that she could not move to Panipat on account of her family residing in Chandigarh, her old father in law staying with her besides her mother living alone and instead of Panipat, she could join

at either Panchkula, Mohali and Zirakpur in the Tricity, that her wages were not according to the Majithia Wage Board recommendations and claim in respect thereto was pending adjudication before the Labour Court at Chandigarh and package of Rs.3,00,100/- per annum for the position was not as per the Majithia Wage Board, therefore, the same be revised as per the Majithia Wage Board. Further that she could not join office till 22nd October, therefore, her leave be extended till 22nd October.

[11] The position as noted above reveals that as per the terms & conditions of her annual appraisal orders (Annexures P-5 & P-6), services of the petitioner could be transferred to any office/branch of the company located anywhere in India or abroad whether any existence at the time of her appointment or set out at a later date at the sole discretion of the management. Pendency of the dispute qua implementation of the recommendations of the Majithia Wage Board under Section 17(1) of the Working Journalists and other Newspaper Employees (Conditions of Service) & Miscellaneous Provisions Act, 1955 does not affect the composite promotion cum posting/transfer order. As per Section 3 of the 1955 Act, the provisions of the Industrial Disputes Act, 1947 are applicable and Section 9-A of the Industrial Disputes, Act, 1947 provides for notice in case of change in conditions of service applicable to the workman and in case of default during the pendency of any reference, a complaint could be filed under Section 33-A of the Industrial Disputes, Act, 1947 where the employer contravenes the provisions of Section 33 during the pendency of the proceedings before the learned Tribunal. The sole grievance of the petitioner is of her service conditions having been changed by the respondent-Management by issuance her promotion/posting/ transfer letter in violation of the appointment letter dated

01.05.2000. As has been noted above, Orders of annual appraisal (Annexure's P-5 & P-6), which the petitioner accepted without demur clearly lay down that services of the petitioner could be transferred to any location in India or abroad whether in existence at the time of her appointment or set out at a later date at the sole discretion of the management. The petitioner cannot accept part of the terms and conditions applicable as are favourable to her and reject the part of the terms and conditions applicable which according to her are not in her interest. In the light of the position noted above, there is no change in the conditions of service of the petitioner. Accordingly, finding no merit in the writ petition, the same is *dismissed in limine*.

30.05.2019
'Rajneesh'

(B.S. Walia)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No