

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

CWP No.20318 of 2019

Date of decision: 24.09.2019

Sewa Nand .

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and
another

... Respondents

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

Present: Mr. Sushil Jain, Advocate for the petitioner.

B.S. Walia, J.,

1. Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing award Annexure P/6 dated 12.03.2019, passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as 'the Tribunal') whereby the claim of the petitioner for reinstatement etc. was rejected.

2. Brief facts of the case leading to the filing of the writ petition are that the services of the petitioner are claimed to have been terminated on 23.04.2013 without any notice, assigning any reason, payment of salary in lieu of notice period or retrenchment compensation etc by not allowing the petitioner to enter the premises of respondent No.2, that with a view to harass the petitioner, respondent No.2, transferred the petitioner from the plant at Sonapat to Plant No.U-16-17, Industrial Area, Mallanpur, District Bhind, Gawalior, Madhya Pradesh, vide transfer order Annexure P/1 dated 22.04.2013, sent through speed post and received by the petitioner on

27.04.2013. It is further claimed that initially the petitioner requested the

management for cancellation of his transfer order but subsequently he went to Mallanpur Plant for joining duty but the Company officials at Mallanpur Plant, Madhya Pradesh did not allow him to join duty and subsequently took up the stand that he could not be given job in the said plant. On refusal by the Company officials at Mallanpur, Madhya Pradesh, to allow the petitioner to join duty the petitioner realised that the basic object of the management was to terminate his services. Consequentially, he raised an industrial dispute and submitted a demand notice dated 29.10.2013 U/s 2(a) of the Industrial Disputes Act, 1947 (for brevity 'the Act').

3. That in response to the claim statement, the respondent-management filed a written statement mentioning that the petitioner-workman's services were not terminated, instead he was transferred but did not join duty at his new place of posting. A perusal of the written statement Annexure P/4 reveals respondent No.2/management's stand that it never terminated the services of the petitioner, instead the petitioner-workman refused to comply with the order of transfer and in fact a sum of Rs.5,000/- had been deposited in saving bank account No.0434001300001923 of the petitioner in Punjab National Bank, for facilitating expenditure to be incurred by the petitioner to join duty at Mallanpur, Madhya Pradesh, besides the salary of the petitioner was increased by way of special allowance to the extent of Rs.750/- per month. However, the petitioner did not join duty at the new place of posting. It is also the stand of the management in paragraph No.8 of its written statement that pursuant to transfer, the petitioner was to report for duty at the new place of posting and not in the factory at Sonipat, where he was earlier working. In paragraph No.9 of the written statement, it has been mentioned that on transfer, the petitioner had no right to claim retrenchment benefit besides the transfer was

not an illegal act but as per the conditions of service / certified standing orders. It was further contended that since it was not a case of termination but of transfer, the matter could not be raised in proceedings U/s 2-A of the Act.

4. That on the basis of pleadings of the parties, the following issues were framed:-

1. Whether the termination of the services of the workman Shri Sewa Nand is legal and valid. If not so, to what relief, the workman is entitled/OPW
2. Whether the workman has not joined duty and has lost lien by his own conduct, if so, its effect?OPM
3. Relief.

5. That in the proceedings before the Tribunal, the respondent-management was proceeded ex parte vide order dated 06.11.2018. However, the Tribunal rejected the reference on the ground that the workman had failed to prove continuous employment of 240 days preceding the date of termination of his services besides the workman had failed to produce his appointment letter or any ESI card or any wage slip to prove relationship with the respondent-management and that pleadings could not take the place of proof, besides it was settled law that onus to prove that the workman performed duty with the respondent/management continuously for a period of 240 days in the twelve months preceding the date of his termination was upon the workman and no adverse inference could be drawn against the management, if it did not produce any witness or any record and it was for the workman to summon the muster roll or other record to prove continuous service of 240 days in one calendar year preceding the date of termination of his services. The Tribunal took into account the decision of Hon'ble the

Supreme Court in **Municipal Corporation Faridabad vs Siri Niwas 2004 (8) SCC 195**, wherein it was held that the burden to prove continuous employment for 240 days preceding the date of termination of services is on the workman. Likewise, in **Rajasthan State Ganganagar S.Mills Ltd. Versus State of Rajasthan etc. 2004 (8) SCC 161**, Hon'ble the Supreme Court observed as under :

“It was the case of the workman that he had worked for more than 240 days in the year concerned. The claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked upto 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in **Range Forest Officer vs. S.T. Hadimani 2002 (3) SCC 25**. No proof of receipt of salary or wages for 240 days or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed.”

6. That on the basis of evidence, issue No.1 “whether termination of services of the workman was legal and valid” was decided against the petitioner-workman and second issue ‘whether the workman has not joined duty and had lost lien by his own conduct’ was decided against the management and in favour of the petitioner and as a consequence thereof, the reference was rejected, dismissing demand notice dated 11.09.2015.

7. Learned counsel contended that the Tribunal failed to take into account that on the one hand, the respondent-management did not permit the

petitioner to join duty at Mallanpur, Madhya Pradesh and on the other hand, terminated his services without giving notice, assigning any reason, paying salary in lieu of notice period and retrenchment compensation etc and that in the circumstances the impugned award was unsustainable and liable to be set aside and the reference answered in favour of the petitioner .

8. I have considered the submissions of learned Counsel. As evident from Annexure P/1, the petitioner was transferred from the plant at Sonapat to the plant at Mallanpur in Madhya Pradesh. Although it is the stand of the petitioner that his services were terminated on 23.04.2013, however, the same stands negated from Annexure P/1 as also representation Annexure P/2 dated 12.05.2013, in which, it has been mentioned that the company officials in order to teach a lesson to the petitioner ordered his transfer which was a misuse of the process of law besides an unfair labour practice and that in fact his services were terminated by transferring him. In paragraph No.8 of the writ petition, it has been mentioned that when no action was taken on the petitioners representation for cancelling his transfer order, he went to the new place of posting i.e. Mallanpur Plant, Madhya Pradesh, but was not allowed to join duty there. Thereupon, the petitioner realised that the basic object of the management was to terminate his services. In case the petitioner was refused joining duty at Mallanpur, Madhya Pradesh then in that situation, the grievance by way of raising a demand notice was to be made before the authorities at Madhya Pradesh and not in Haryana. In any case, the petitioner failed to lead any evidence whatsoever of his having been in continuous service of the respondent/management for a period of 240 days preceding the date of his termination. In the absence of any such evidence led by the petitioner, rejection of reference by dismissal of the demand notice by the Tribunal, does not warrant any interference. Besides,

the second issue namely ‘whether the workman has not joined duty and had lost lien by his own conduct’ was decided in favour of the petitioner/workman, therefore, it is open to the petitioner/workman to pursue his remedy for joining at his new place of posting i.e. Mallanpur, Madhya Pradesh, in accordance with law.

9. In the light of the position as noted above, I do not find any infirmity with the impugned award. The writ petition is bereft of merit and is accordingly dismissed. However, there shall be no order as to costs.

(B.S. Walia)
Judge

24.09.2019

rajesh.k.khurana

1. Whether speaking/reasoned: Yes/No.
2. Whether reportable : Yes/No.