

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

LPA-1966-2019

Date of decision : 02.12.2019

Rachna Sharma

.... Appellant

Versus

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

..... Respondents

CORAM :- HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA

Present: Mr. Manjit Singh, Advocate, and
Mr. Atul Kaushik, Advocate,
for the appellant.

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RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

1. This appeal has been filed by the appellant – petitioner being aggrieved by the order dated 30.05.2019 passed by the learned Single Judge in CWP No. 12469 of 2019 (O&M) dismissing the petition filed by her against the order dated 04.04.2019 passed by the Presiding Officer, Industrial Tribunal and Labour Court, Union Territory, Chandigarh.

2. The grievance of the appellant – petitioner, briefly stated, was that she had filed an application seeking implementation of the Majithia Wage Board recommendations. Thereafter, the appellant – petitioner was transferred from Chandigarh to Panipat. Aggrieved by her transfer, the appellant – petitioner filed an application under Section 33-A of the

Industrial Disputes Act, 1947 (for short, 'the Act of 1947'). The Labour

Court, after hearing the appellant – petitioner, dismissed the application filed by her under Section 33-A of the Act of 1947, vide order dated 04.04.2019, which was subject matter of challenge in the writ petition.

3. Learned counsel for the appellant – petitioner submits that during the pendency of the proceedings before the Labour Court, the appellant – petitioner was transferred on promotion as Senior Management Associate from Chandigarh to Panipat. Learned counsel for the appellant – petitioner submits that though the learned Single Judge has dismissed the writ petition upholding the order passed by the Labour Court dismissing the application under Section 33-A of the Act of 1947, but the learned Single Judge has failed to address the issue raised by the appellant – petitioner regarding the unfair labour practice adopted by the Management by transferring the appellant – petitioner from Chandigarh to Panipat during the pendency of the proceedings before the Labour Court. Learned counsel for the appellant – petitioner, while placing reliance on the definition of 'unfair labour practice', as contained in Section 2 (ra) and the Fifth Schedule to the Act of 1947, submits that a malafide transfer is unfair labour practice. Learned counsel for the appellant – petitioner submits that transfer of the appellant – petitioner from Chandigarh to Panipat during the pendency of the proceedings before the Labour Court was malafide and had been made only to punish the appellant – petitioner for raising the issue of grant of higher pay package. It is submitted that the learned Single Judge has not considered the aforesaid aspect of the matter raised by the appellant – petitioner. Hence, the impugned order passed by the learned Single Judge suffers from illegality and perversity and is liable to be set aside.

4. We have heard learned counsel for the appellant – petitioner at length.

5. It is not a disputed fact that at the time, when the appellant – petitioner approached the Labour Court, she was working on the post of Senior Management Associate and as per Annexures P-5 and P-6, there were conditions in the orders of appointment/engagement of the appellant – petitioner, which provided for a clause relating to transfer 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 on the sole discretion of the Management. The learned Single Judge, taking note of the aforesaid clause, which has been re-produced in paragraph 9 of the impugned order, has held that condition of transfer was known to the appellant – petitioner and was in fact accepted and was never challenged by her. The learned Single Judge, on the basis of the aforesaid condition in the appointment order of the appellant – petitioner, has held that the appellant – petitioner could be transferred from Chandigarh to Panipat, and accordingly dismissed the writ petition.

6. Apparently and admittedly, no proceedings have been or were initiated by the appellant – petitioner at any point of time alleging unfair labour practice against the authorities. The only proceeding initiated by her was an application under Section 33-A of the Act of 1947, which relates to change of service conditions. In the instant case, as stated above, clause of transfer to any place or branch in the country or abroad was a condition of service of the appellant – petitioner and, therefore, no fault can be found in the order either passed by the Labour Court or by the learned Single Judge,

holding that transfer being service condition of the appellant – petitioner, the question of any change in her service conditions by introducing transfer does not arise. As the issue of unfair labour practice was never raised by the appellant – petitioner before the Labour Court nor were any proceedings initiated by her in that regard, therefore, the learned Single Judge has rightly not adverted to the same. In these circumstances, we do not find any illegality or perversity in the order passed by the learned Single Judge warranting interference.

7. The appeal filed by the appellant – petitioner being meritless is, accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

December 02, 2019
ndj

(RAJIV SHARMA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No