

\$~

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

+ *Date of Decision: October 10, 2019*

% **W.P.(C) 3985/2018**

INDERJEET SINGH SIDHU Petitioner

Through: Mr. S.N. Kaul and Mr. Vinod
Zutshi, Advocates.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Dev P. Bhardwaj, CGSC
for UOI with Mr. Jatin Teotia,
Advocate.

Mr. Aabhas Kshetarpal and
Ms. Gunjan Mathur, Advocates
for R-2 & R-3.

**CORAM:
HON'BLE MR. JUSTICE A.K. CHAWLA**

J U D G M E N T

A.K. CHAWLA, J.

By the instant writ petition, the petitioner, in effect, seeks quashing of the order dated 08.02.2018, whereby, the representation made by the petitioner, who was employed with Fertilizers and Chemical Travancore Limited in short 'FCTL' as Chief Operating

Officer in short 'COO' was disposed of and as a consequence thereof, he was required to pay three months' salary in lieu of notice pay.

2. Concisely, the facts are that the respondents had issued an advertisement/notification no.GM-HR&ADMN-COO 2015 dated 28.12.2015 inviting applications for appointment to the post of COO, New Delhi for its Division-FACT Engineering & Design Organisation (FEDO). The petitioner, who, at that time was employed with EdCil, applied for and was appointed to the post of COO (FEDO) vide appointment letter dated 07.05.2016. As per the terms and conditions of his such appointment, he was to be headquartered at New Delhi and be on probation for a period of six months from the date of his joining, which he did on 20.06.2016. On 26.12.2016, the respondents issued an order and thereby, he was posted/transferred to FEDO, Udhyogamandal, Kochi, with headquarters to be Udhyogamandal. On the receipt of such communication, the petitioner made representation through e-mail dated 28.12.2016 to be allowed to continue in the present posting at Delhi on account of his personal exigency as his daughter was to appear for the forthcoming Class-XII Board exams. The request so made by the petitioner was rejected on 30.12.2016 through e-mail and he was asked to join Udhyogamandal not later than 06.01.2017. Thereafter also, the petitioner made representations seeking extensions of time *inter alia* on account of the impending Board exams of his daughter. As per the last extension granted, he was required to join FEDO Udhyogamandal latest by 01.04.2017. The petitioner however made another representation

dated 03.03.2017 on account of his own sickness and sought to continue at Delhi till the exams of her daughter get over, the last of which was scheduled for 24.04.2017. On 24.03.2017, the respondents extended the probation of the petitioner by six months. On 29.03.2017, the petitioner sought to be relieved from the services. Vide its communication dated 31.03.2017, the respondents communicated that his resignation was accepted and in doing so, the petitioner was stated to be liable to pay three months' salary in lieu of notice pay as per the rules of the company. Through another e-mail communication of even date, the petitioner was forwarded the letter of acceptance CGM-HR-CO-086 dated 31.03.2017. Petitioner immediately responded to it through e-mail and conveyed to the respondents that he was not in a position to pay three months' salary in lieu of notice period and that his notice period may be set off against his privileged leave (PL) and for the balance period, he sought waiver. Alternatively, he also requested that he may be allowed to complete the notice period. Nothing emerges from the record nor has it come to be pointed out during the course of hearing that it was ever responded to. On 03.04.2017, the petitioner reiterated waiver of the notice *inter alia* pointing out that he was willing to serve notice period as per rules and that his request for being relieved at the earliest did not imply any admission on his part to pay the notice period. He also pointed out that he had brought such facts to the notice of CGM (HR) on 30.03.2017. On 24.06.2017, the respondents asked the petitioner to remit a sum of Rs.3,89,351/- while giving details of settlement of his claims. Finding

no positive response, the petitioner got a notice of demand dated 31.08.2017 issued through his Advocate demanding *inter alia* to release his pending dues. It met with a response dated 07.11.2017 through the respondent's Advocate, and, thereby, the respondents reiterated its stand. It resulted into filing of W.P.(C) 11049 of 2017 '*Inderjeet Singh Sidhu vs. Union of India & Ors.*'. This came to be disposed of vide order dated 13.12.2017 with a direction to the second respondent therein to decide the representation of the petitioner by a speaking order. This resulted into passing of the impugned order dated 08.02.2018. Aggrieved thereof, the instant petition has come to be filed.

3. Vide advertisement/notification No. GM-HR&ADMN-COO 2015 dated 28.12.2015, the respondents had invited the applications for appointment of Chief Operating Officer (COO), New Delhi and the said notification, relevant to the subject, as regards the job content, provided as follows:

"Job Content: The Chief Operating Officer of FEDO shall be in overall charge of the Division, which will be functioning as an independent Profit Centre of The Fertilisers and Chemicals Travancore Ltd., with autonomy in functioning. The COO shall have the required operational and service functions in FEDO under his/her control. The COO shall be responsible for signing MOUs, Collaboration agreements etc. with firms for bidding for jobs including back

to back agreements. The COO shall be responsible for Planning, Organising, Controlling and Executing all operations of the Division, to ensure generation of profits. The COO (FEDO) reports to the Chairman and managing Director, FACT. COO (FEDO) will be headquartered at New Delhi office of FEDO."

(emphasis supplied)

The combined reading of the post required to be filled and the job content provided there-under, leaves no doubt that the invitation was for a post, the headquarters whereof were at New Delhi. In other words, the person appointed to the said post was to operate from the office of FEDO at New Delhi and report to Chairman and Managing Director, FACT. Relevant to the context, the offer of appointment dated 07.05.2016, reads, as under:

"You shall be headquartered in Delhi. however, the appointment carries with it your liability to serve the Company anywhere in India or abroad including liability, when directed by FACT, to serve in any other Public Sector undertaking on the former's behalf.

You will be governed by all rules and regulations applicable to managerial employees of FACT at the level of Chief General Manager in VIII E8 grade, unless specifically excepted.

You will be on probation for a period of six months from the date of your joining. During the probationary period your services are liable to be terminated by the Company without notice and without assigning any reason whatsoever. if you wish to leave the Company (FACT) during the probation period, you shall give three months' notice as per rules."

4. The stipulations of the offer of appointment and the job content leave no doubt that the petitioner was to be headquartered at New Delhi, though, he could be required to serve the company anywhere in India or abroad. In the face of such clear factual stipulations of his appointment to the post of COO, New Delhi, could he be asked to be headquartered at Udhyogmandal, Kochi, is the outright question, which attracts consideration. The other pertinent question inviting consideration would be as to whether the letter dated 29.03.2017, whereby, the petitioner sought to be relieved from the service of FEDO-FACT, was in fact a resignation simplicitor and offered voluntarily. It reads as under:

"As you are aware, I had joined FEDO-FACT as Chief Operating Officer (COO) on 20-06-2016. I had joined, keeping in view the exciting & challenging Job Profile of this position, as advertised by FACT and also mentioning that COO is to be headquartered at Delhi.

Immediately on joining, I started in right earnest by kick starting the dormant projects of KVS, Delhi and sorting out the longstanding issues connected to mega project of NIT-Nagaland, besides streamlining the systems & procedures for implementation of such projects.

A special emphasis was given to marketing efforts and thereby generating Business Proposals from Hindustan Zinc Ltd, Udaipur (Raj.) and Gujarat Narmada Fertilizer Corporation, Bharuch (Guj.) for implementation of big ticket projects. During the sustained marketing endeavors more Business leads were picked up. Such Business proposals were generated on the premise that FEDO Office is in Delhi

and COO-FEDO is stationed in Delhi for easy accessibility.

Due to the uncertainty in continuation of FEDO's Delhi Office, business leads could not be materialized and in the process Business Proposals/Leads also fizzled out.

Notwithstanding, that adequate infrastructure in terms of office space and manpower was not available to me to operate, I still continued to operate with all austerity, dedication and sincerity.

Sir, I sincerely respect the Management's decision to relocate COO-FEDO to Kochi. However, due to my unexpected personal circumstances prevailing now, I am unable to relocate to Kochi.

Keeping in view the above, I have no option but to resign from the services of FEDO-FACT. I may please be relieved at the earliest."

5. A bare perusal of the foregoing communication would show that though it is titled 'resignation', the petitioner, thereby, only sought to be relieved of his services at the earliest for the facts and the circumstances detailed there-under. Pertinently, he pointed out that as per his appointment, he was to be headquartered at Delhi. There is no denying the fact that as per the post advertised and to which he came to be appointed, he was to be headquartered at Delhi. Even the appointment letter dated 07.05.2016 speaks to that effect only. In the given undisputed factual conspectus, the petitioner being asked to be headquartered at Udhyogamandal, Kochi cannot be said to be in consonance with the terms and conditions of his appointment even though, his appointment carried with it a stipulation to serve the company anywhere in India or abroad. Thereby, it cannot be

construed that his headquarters could be shifted from New Delhi/Delhi to Udyogamandal, Kochi. In the event such job profile is to be taken to transfer him permanently from New Delhi to Kochi, the very stipulation in the specific offer of appointment to be headquartered at New Delhi and the appointment so made, would be rendered redundant and meaningless. Such construction of the terms of appointment, the Court has no hesitation to say, would be wholly impermissible.

6. Assuming, the petitioner acquiesced for being headquartered at Udyogamandal, Kochi inasmuch as he sought certain extensions of time to join there, the facts and circumstances of the case leave no doubt that his such gesture was not voluntary. One cannot ignore the fact that prior to his opting for the subject post, he was already employed and the post advertised and the offer of appointment to him categorically states that he was to be headquartered at New Delhi. He joined the said post at the age of 54 years plus and from the repeated representations he made seeking extensions of time to even join at Udyogamandal, Kochi, which were duly entertained, it can be safely deduced that the petitioner quit his earlier employment in view of the fact that he was to be headquartered at New Delhi. Such factual aspect cannot be ignored lightly inasmuch as it goes to show that subject communication of the petitioner for being relieved from the services, was not voluntary.

7. Let us now proceed to consider as to whether the subject communication dated 29.03.2017 was, in fact, tendering of the resignation but for being titled 'resignation' *simplicitor*. A perusal of the given communication but for being titled 'resignation' does not even remotely suggest that immediately on its submission, the petitioner left or abandoned his services. In the subject communication, he did not even specify any date, when his resignation was to take effect. The tone and the tenor of the said communication by itself is indicative of the fact that his such action was not free from any external pressure but for the prevailing facts and circumstances, to tide over the crisis.

8. Within two days of the submission of the subject communication dated 29.03.2017, the respondents vide impugned communication dated 31.03.2017 conveyed to the petitioner that his resignation has been accepted by the management. The relevant portion of the said communication reads as under:

"This is to inform you that your resignation has been accepted by the management and you shall stand separated from the Company with effect from closing of working hours of 1.4.2017.

Please note that you are liable to pay 3 months' salary in lieu of notice pay as per the rules of the Company....."

To justify such decision/action, the respondents advert to Rule

36-A of the FACT Rules, which reads as under:

"36A. TERMINATION OF EMPLOYMENT

The employment of any employee may be terminated by 3 months' notice or by payment of 3 months' salary in lieu of notice. So also, any employee who is desirous of leaving the Company's service shall give 3 months' written notice of his intention to resign from the Company's service or alternately, if the Company agrees, pay 3 months' salary to the Company in lieu of the notice. however, Management has the right not to accept such a resignation if in the opinion of the management, the circumstances so warrant, like inability of the Company to relieve as the individual is in charge of an important work, the pendency of disciplinary proceedings, vigilance enquiry, etc."

9. On a perusal of the foregoing Rule 36-A, relevant to the context, it cannot be said that acceptance of any resignation by the management invites unilateral imposition of liability of three months' salary in lieu of the notice. Here, I may only hasten to add that this observation proceeds on the premise that Rule 36-A is not only applicable to a regular employee, who may be entitled to retiral and other pensionary benefits, if any, but, also to the employees on probation or temporary or ad-hoc. This Rule 36-A, on its plain reading, shows that while the employer has the right to terminate the employment of an employee by three months' notice or by payment of three months' salary in lieu thereof, an employee is equally on the similar footing to the effect that if he desires to leave the company's service, he is required to give three months' written notice of his intention to resign or pay three months' salary to the company in lieu

of the notice. The Rule as laid, is only to the effect that either side seeking to sever the relationship of the employer and the employee, is required to give three months' notice in advance and in the alternative three months' salary. This Rule nowhere lays down that the employer—the respondents, on unilateral acceptance of resignation without even seeking the option of the employee to either give three months' notice or to pay three months' salary, can demand three months' salary. Giving an intent of the kind would be in contravention of the basic concept of bilateral acceptance of resignation. Suffice to say, the subject communication by no stretch of imagination can be said to be a unilateral act of resignation by the petitioner inasmuch as by the subject communication dated 29.03.2017, the petitioner only sought to be relieved of his services at the earliest, without even specifying any date, when his resignation, if at all, it was to be construed so, was to take effect. More so, the respondents treated such communication to be resignation and sought to give effect to it only w.e.f. 01.04.2017. When the respondents so accepted the resignation and the Rule 36-A does not stipulate that on such bilateral acceptance of resignation, an employee was required to be visited with any liability, the imposition of the liability of three months' salary upon the petitioner cannot be said to be in consonance with the FACT Rules.

10. For the foregoing reasons, the writ petition is allowed and quashing the communication no.CMD-CO-D2-008 dated 08.02.2018 by way of a Writ of Certiorari, a Writ of Mandamus is simultaneously

issued to the respondents to release the outstanding dues of the petitioner without insisting for any three months' notice pay in lieu of any notice period. Such outstanding dues shall be paid to the petitioner within four weeks from today, failing which, it shall carry interest @ 9% p.a. w.e.f 01.04.2017 till payment. Writ petition stands disposed off accordingly. No order as to costs.

A.K. CHAWLA, J

OCTOBER 10, 2019

nn

