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

Date of Decision: 16th December, 2021

+ **W.P.(C) 2886/2019**

NARESH KUMAR Petitioner

Through: Mr. Tathagat Mewara, Advocate.

versus

SCHOLASTIC INDIA PVT LTD Respondent

Through: Mr. Vishesh Issar, Advocate.
(M:9810470557)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present petition has been filed challenging the impugned Award dated 23rd October, 2017, passed by the Presiding Officer, Labour Court XIX, Karkardooma Courts, Delhi in **LIR No. 6050/2016**, by which the claim of the Workman challenging the termination, in respect of his transfer from Delhi to Gurgaon, was dismissed by the Labour Court.
3. The brief background is that the Petitioner-Workman was appointed on the post of - Book Fair Assistant with the Respondent, which is a book publisher. He was appointed vide appointment letter dated 16th July 2004. On 18th September 2013, the Petitioner was suspended from duties, and on 19th September 2013, a show cause notice was issued against him, upon the allegation of misuse of company's funds. The Petitioner replied to the said show cause notice on 20th September 2013, categorically denying the

charges against him. Thereafter, the Petitioner also filed a complaint before the Labour Department on 14th November 2013, post which the Labour Inspector is stated to have visited the premises of the Respondent. The Petitioner has averred in his writ petition that for this period of suspension, no suspension allowance was paid to him. On 19th November 2013, the Respondent withdrew the suspension of the Petitioner, as also the show cause notice. Vide letter dated 3rd December, 2013, however, the Petitioner was transferred from the Delhi office, located in Kapashera, to the Gurgaon office of the Respondent. Upon receiving the notice of transfer, the Petitioner sent a request letter to the Respondent for reconsideration of the said transfer, however the same was not considered. The Petitioner, then filed his statement of claim before the Conciliation Officer on 12th December 2013, which was then referred to the Labour Court vide the reference order dated 13th May, 2014. The following question was framed in the terms of reference:

"Whether the transfer of Sh. Naresh Kumar S/o Late Sh. Salook Chand from Delhi to Gurgaon, by the management is illegal and/ or unjustified, if so to what relief is he entitled and what directions are necessary in this respect?"

4. Before the Labour Court, the Petitioner filed his statement of claim on 28th July 2014 and a written statement was filed by the Respondent on 3rd November 2014. After completion of pleadings, vide order dated 2nd January 2015, the following issues were framed by the Labour Court:

"(i) Whether the claimant is a workman within its definition under Section 2(s) of the ID Act? OPW

(ii) As per terms of reference (Whether the transfer of Sh. Naresh Kumar S/o Late Sh. Salook Chand

from Delhi to Gurgaon by the management, is illegal and/or unjustified, if so to what relief is he entitled and what directions are necessary in this respect?)

(iii) Relief”

5. Evidence was thereafter led in the matter and the matter was fixed for final hearing on 28th July 2017. Arguments were heard before the Labour Court on 6th October 2017. Vide the impugned order dated 23rd October 2017, the claim of the Workman was rejected by the Labour Court in the following terms:

*“9.The workman did not put on file any agreement between him and the management showing that after his promotion he could not have been transferred out of Delhi. In case titled as **Pearlite Liners Pvt. Ltd. v. Manorma Sirsl 2004 AIR (SC) 1373**, it was held by the apex court that in absence of term prohibiting transfer of the employee, prima facie the transfer order cannot be called in question. The plaintiff has not complied with the transfer order as she never reported for work at the place where she was transferred.*

There is no denial that the workman did not join his duties when he was transferred by the management at its Gurgaon office. All this shows that the workman left the job on his own and his services were not terminated by the management.

The issue is therefore, decided against the workman and in favour of the management.

Issue No. III (Relief)

10. Considering the aforesaid facts, claim of the workman is dismissed.

Award is passed accordingly. Reference stands answered.

Let copies of the award be sent for publication. Case

file be consigned to record room.”

6. Hence the present writ petition has been filed challenging the said dismissal by the Labour Court.

7. Mr. Tathagat Mewara, Id. Counsel appearing for the Petitioner raises two issues. Firstly, he submits that the appointment letter dated 16th July, 2004 did not have a clause permitting the Management to transfer the Petitioner-Workman. Hence, in his submission the Respondent-Management could not have transferred him without his consent. Secondly, he submits that when the Petitioner was terminated, no disciplinary enquiry was conducted by the Respondent prior to the said termination. He submits that these two issues have not been considered by the Labour Court, in the impugned Award, which has simply held the transfer to be legal and has, thus, dismissed the claim of the Petitioner.

8. Mr. Mewara has further relied upon the letter withdrawing the suspension of the Workman dated 19th November, 2013, as also the notice of transfer dated 3rd December 2013, to submit that the only reason why the Petitioner was transferred was because he challenged the suspension before the Assistant Labour Commissioner.

9. Mr. Mewara relies upon the judgment of the Id. Division Bench of High Court of Jharkhand in *Usha Worker's Union v. Usha Martin Industries and Anr., (2003) SCC Online Jhar 17*, to argue that - cases of public and private employment are separate, and in private employment, it cannot be presumed that the Workman can be transferred, unless and until it is expressly permitted in the appointment letter. He also relies upon the judgment of a Id. Single Judge of this Court in *Tobu Enterprises Ltd. v. Presiding Officer, Industrial Tribunal & Ors., (2009) 160 DLT 125*, on the

same proposition. He further submits that the reliance of the impugned Award on the judgment of the Supreme Court in *M/s. Pearlite Liners Pvt. Ltd. v. Manorama Sirsi, AIR (2004) SCC 1373*, would not be appropriate as the fact situation in the said case is completely at a different footing as compared to the present dispute.

10. Mr. Mewara then relies upon the letter dated 28th November, 2013 to argue that the Workman was not permitted to resume services at Kapashera and the same was revengeful attitude of the Management as he had filed a claim against his suspension. He further submits that the office at Gurgaon was quite far away from his residence, i.e., almost 60 kilometres.

11. Finally, Mr. Mewara submits, relying upon the cross examination of the Respondent before the Labour Court, that the suspension allowances of the Petitioner were not paid by the Respondent. This is, however, disputed by Id. Counsel for the Respondent.

12. On behalf of the Respondent, Mr. Issar, Id. Counsel, submits that this case is not one of illegal termination, and the challenge/ claim filed by the Petitioner before the Labour Court was merely due to his transfer from the Kapashera-Delhi to the Gurgaon branch of the Respondent, which is clear to the issues which have been raised. He submits that the Workman has admitted in his cross-examination before the Labour Court that he was last working in the Kapashera Branch of the Management, and was then transferred to Gurgaon in 2013. This is also reiterated in the impugned Award at paragraph 9 and the Labour Court has clearly observed that the transfer within the NCR region cannot be objected to and there is no allegation that the same was *malafide*. He submits that there is hardly any distance between Kapashera and Gurgaon and the transfer would have, in no

manner, been inconvenient for the Petitioner.

13. Moreover, he submits that the Management always has a discretion to decide as to which employee is to be transferred and who is not to be. He submits that this discretion is absolute and cannot be interfered with by the Court unless and until there is any *mala fide* which is alleged by the Workman.

14. Mr. Issar relies upon the following two judgments to canvass the said submissions:

- ***IDBI Bank Limited & Anr. v. Shri Roshan Lal Gupta, 2014 (143) DRJ 666***
- ***Rekha Chandra v. National Bank for Agriculture & Rural Development, 2013 (1) AD (Delhi) 764***

15. Finally, he relies upon the order of the Supreme Court in ***Namrata Verma v. State of U.P (SLP (C) No. 36717/2017, decided on 6th September 2021***), where the Supreme Court has observed that the employee has no discretion to insist on transfer to a particular place or to insist that he not be transferred. He submits that the discretion of the employer has been recognised by the Supreme Court in the said order.

16. It is further argued that there are no allegations of *malafide* on the part of the Respondent in the present case and no person from the Respondent- Management. He submits that there are no pleadings to this effect.

17. It is also submitted by Mr. Issar that the Respondent has offices all over India, however, the Workman was moved to Gurgaon, which is completely unobjectionable. He relies upon the judgment of this Court in ***Municipal Corporation of Delhi v. Maman Chand, 2007 (7) SLR 136*** to

argue that the scope of interference in the writ petition would be very limited.

18. Finally, Mr. Issar submits that the entire suspension allowances have been paid by the Respondent.

19. Heard Id. Counsels for the parties and perused the record.

20. The first and the foremost issue that arises in this petition is whether the suspension allowance was paid or not. From a perusal of the records of the lower court as well as the order dated 12th January, 2017, passed by the Presiding Officer, it is clearly recorded that the suspension allowance has been paid and accepted by the Petitioner- Workman. The said order reads as under:

“ Matter is fixed for cross examination of MW1 who is stated to be not available due to some personal exigency. Adjournment sought. Not opposed.

Management has handed over a cheque of Rs. 22,764/- to the workman being suspension allowance w.e.f 20.09.2013 to 19.11.2013 which has been accepted by the workman without prejudice to his rights.”

21. Thus, there is no issue to be considered in respect of payment of suspension allowance. The same has clearly been paid.

22. Insofar as the transfer itself is concerned, this Court has perused the judgments, which are relied upon by the parties. The distinction between public and private employment, which is highlighted by Id. counsel for the Petitioner, as considered in the judgment of the Jharkhand High Court in ***Usha Martin Industries (supra)*** may be true.

23. However, in the present case, on facts, it is clear from a reading of the cross-examination that the Workman was working in Kapashera. The same

is extracted hereinbelow:

“I do not know if the registered office of management after Jasola, Delhi was shifted to Kapashera. It is correct that I last worked at the office of the management at Kapashera. I do not know if this office of management was the registered office or not.

It is correct that there was also a warehouse at Kapashera office of the management. It is wrong to suggest that in May 2013, I was transferred from Gurgaon office of management to its Delhi office in Kapashera. (Vol. Actually, in May 2013, the management shifted its office from Gurgaon to Kapashera.)”

24. The nature of the Delhi NCR region is such that commuting between various locations within the NCR region is no longer considered as an outstation transfer, in the sense as has been projected by the Petitioner-Workman. Clearly, there appears to have been some misunderstanding between the Management and the Workman, which may have resulted in the said transfer. However, there is no *malafide* that has been alleged, or proven before the Labour Court in the present case. Further, as recorded in the impugned Award, the Workman has served at various offices of the Management from time to time including in Delhi, Gurgaon and other locations.

25. Moreover, the Court has also considered the matter and it appears that though initially the Workman was suspended due to certain allegations, and show cause notice was issued against him, the same was withdrawn by the Management on 19th November, 2013. The transfer notice came a few days later i.e. on 3rd December, 2013. The said transfer letter does not raise any allegations against the Workman and states clearly that the Workman has

been reinstated but has been transferred. There are no decipherable reasons as to why this Court should not consider the same as an administrative exigency of the employer.

26. Over and above, the freedom of the Management to transfer a particular employee, until and unless the same is due to stigma or in a *malafide* manner, ought not to be usually interfered with by the Court, especially in the case of private employment.

27. Thus, it cannot be held that the Management would not even have the freedom to transfer a person from its Kapashera branch to its Gurgaon branch, and the same ought to be considered as a *malafide* action.

28. In *Namrata Verma (supra)*, the Supreme Court has clearly held as under:

“Heard Mr. Parvez Bashista, learned counsel appearing for the petitioner and Mr. Sanjay Kumar Tyagi, learned counsel appearing for the respondent-State of U.P.

It is not for the employee to insist to transfer him/her and/or not to transfer him/her at a particular place. It is for the employer to transfer an employee considering the requirement.”

29. Even in *IDBI Bank Limited & Anr*, a similar view has been taken by a Id. Single Judge of this Court in the case of a bank employee who was to be transferred. In the said case, it was held:

“13. No employer can function if employees behave in a recalcitrant manner and refuse to join the place of posting. Employees cannot choose their place of posting because the employer knows where and how best the services of the employee are to be utilized. If employees are allowed to defy the

*employer's order of transfer, no organization would be able to function. Therefore, I find no illegality in the order dated 12.7.1991 passed by the appellants/employer in view of the judgments of the Supreme Court in the cases of **Viveka Nand Sethi (supra)** and **Sakattar Singh (supra)** taken with the specific fact that even the appellant no.1 is a public sector bank as was in the cases of **Viveka Nand Sethi (supra)** and **Sakattar Singh (supra)**."*

30. In **Rekha Chandra (supra)** as well, a Id. Single Judge of this Court held as under:

"11. Finally, I must add at the cost of repetition that transfer is an incident of service. Orders of transfer are ordinarily not interfered by the court save in grave exceptions or in ex facie violations of the rules or policies of an organization. If courts would start interfering in transfer orders, no organization will be able to function effectively. In the facts of the present case, I do not find any merit in any of the grounds which are urged on behalf of the petitioner. The respondent no.1/employer wanted to act reasonably by putting the transfer order in effect after a period of five years from posting in New Delhi but as the first paragraph of this judgment shows that the petitioner wants to keep on delaying her transfer from New Delhi, and quite clearly therefore the unacceptable agenda of the petitioner cannot be sustained by this court."

31. Following the said judgments, it is clear that the freedom of the employer to transfer the Workman ought not to be interfered with in every case. Recently, the Supreme Court in **Caparo Engineering India Ltd. v. Ummed Singh Lodhi and Anr. (Civil Appeal No. 5829-5830 of 2021, decided on 26th October 2021)** has held that it is not merely the transfer, but

the consequence of the transfer which has to be seen by the Court. The Supreme Court held:

“7.8. Now, so far as the submission on behalf of the appellant that so far as the transfer is concerned, it is part of the service conditions and therefore Section 9A shall not be applicable is concerned, the same has no substance. The question is not about the transfer only, the question is about the consequences of transfer. In the present case, the nature of work/service conditions would be changed and the consequences of transfer would result in the change of service conditions and the reduction of employees at Dewas factory, for which the Fourth Schedule and Section 9A shall be attracted.”

32. In the present case, the cross examination of the Petitioner clearly shows that there was no change in service conditions in spite of the transfer, and the transfer was only from Kapashera to Gurgaon. The said portion of the cross examination reads as under:

“In spite of issuing the transfer letter dated 03.12.2013, there was no decrease in my salary. The transfer letter also did not affect my designation.”

33. Under such circumstances, considering the scope of judicial review under Article 227 of the Constitution of India, this Court is of the opinion that there are no grounds calling interference.

34. Accordingly, this Court does not find any merits in the petition and the same is dismissed.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 16, 2021/dk/Ak