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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 9th February, 2022*

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W.P.(C) 904/2022 & CM APPL.2563/2022**KAPSONS WORLDWIDE**

..... Petitioner

Through: Mr. Anil Kumar Hajelay, Ms. Anjani Choudhary and Mr. Anant Kumar Hajelay, Advocates. (M:9810134489 & 9910985431)

versus

JOINT LABOUR COMMISSIONER & ANR. Respondents

Through: Mr. Anjum Javed, ASC, GNCTD with Mr. Devendra Kumar, Advocate. (M:9999596970)

Mr. Mahesh Srivastava, Advocate for R-2.

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the impugned order dated 1st October, 2019 in *No.F.24(152)/Ref/SWD/19/Lab/12111-13* by which the terms of reference have been framed by the Joint Labour Commissioner, and the matter has been referred for adjudication.
3. The grievance of the Petitioner/Management in the present case was that the Management was facing severe harassment at the hands of the concerned Joint Labour Commissioner, and the representatives of the Management were being ill-treated. The stand of Management is that the manner in which the terms of reference have been framed is not proper. There are certain factual conclusions that the terms of reference itself



contains, which ought to have been left open for adjudication before the concerned Labour Court. The existence of a factory, establishment and office at the place or the address of transfer has already been pre-decided in the terms of reference and the manner in which the same has been worded.

4. Mr. Hajelay, Id. Counsel appearing for the Management submits that the concerned Joint Labour Commissioner would make the representatives appearing on behalf of the Management wait for long durations from 10:30 a.m. to 5:30 p.m. Further, proper accommodation for filing of reply was also not being given and intemperate language was being used against the representatives of the Management. Thus, the overall grievance of the Management in this case is that the proceedings were held in a very unpleasant atmosphere.

5. On the other hand, Mr. Mahesh Srivastava, Id. Counsel appearing for the Workmen submits that all the issues would have to be adjudicated by the concerned Labour Court after leading evidence in the matter, and there is no pre-concluded issue in the terms of reference which was framed.

6. A perusal of the list of dates of the petition shows that the employees are stated to have been transferred from Delhi to Noida, vide letter dated 20th April, 2019, with a direction to them to report on duty on 22nd April, 2019. The Labour Inspector issued notice dated 22nd April, 2019, and the complaint was made to the Joint Labour Commissioner. The hearing was fixed on 25th April, 2019. Reply was to be filed by the Management within one day, and the matter was adjourned to 26th April 2019. Reply was filed by the Management on 26th April 2019. On 26th April, 2019, after a lengthy hearing, the Labour Officer has found the reply to be vague and notice for appearance in-person was issued on the same date, directing the



Management to file a response by 30th April, 2019. On 29th April, 2019, a response was sent by the Management. A second show cause notice was again issued to the Management on 2nd May, 2019. On 6th May, 2019, the Management is stated to have sent its HR Manager to seek time for submitting explanation to the second show cause notice. However, according to the Management, he was unfairly treated and intemperate language was used by the Joint Labour Commissioner. The Management's written explanation was then submitted on 28th May, 2019, and show cause notice was again served on 5th July, 2019. The officials and representatives of the Management continued to appear before the Joint Labour Commissioner, but the proprietor's personal appearance was insisted upon. Ld. Counsel for the Petitioner raises questions in view of the manner in which the proceedings were being conducted.

7. On the last date i.e., 14th January, 2022, considering the submissions made on behalf of the Management, Mr. Anjum Javed, Id. ASC for GNCTD was requested to accept notice, and to seek instructions in the matter. A direction was also issued on the said date to the concerned Joint Labour Commissioner- M.K. Gaur to join the proceedings virtually.

8. Today, Mr. Javed, Id. Counsel has informed the Court that Mr. M.K. Gaur has superannuated, with effect from 20th September, 2021. He, further, submits that he has taken note of the matter, and has sensitised the new Labour Commissioner in respect of the treatment meted out to parties and their representatives/advocates.

9. On merits, as recorded above, the basic grievance of the Workmen is that they were transferred from Mayapuri, Delhi to the Noida establishment of the Management. The conciliation proceedings have failed post which the



terms of reference which have been framed are as under:

“Whether the alleged termination/ denial of duties without giving proper notice to the workmen Sh. Uma Shankar Bhagat (Age-48) S/o Dinanath Bhagat & 59 Other workmen (As per enclosed annexure ‘A’) under the garb of order/ notice of transfer from C-74 A, Mayapuri Industrial Area, Phase-III, Delhi to D-33, Sector 63, Noida (U.P.) by the Management of M/s Kapsons Worldwide, especially when there exit no factory/ establishment/ office of this management at the place/address of transfer, is legal and justified and if so, to what relief an individual workman in this dispute are entitled and what directions are necessary in this regard?”

10. A perusal of the terms of reference framed in this matter shows that the same is not very happily worded. This Court is of the opinion that the question as to whether any factory, establishment or office of the Management exists at a particular address or not is a factual issue that would have to be determined after evidence is led before the Labour Court. The terms of reference seek to suggest as though the non-existence of the factory or office is an admitted fact, when it is not.

11. Accordingly, on all the issues in respect of the challenge to the transfer/termination, the Labour Court shall frame the issues for adjudication. The Management and the Workmen shall be given adequate opportunity to file their respective pleadings and lead proper evidence in the matter. After the evidence is led by the parties, the Labour Court would adjudicate the issues which arise in the reference. The wording of the reference would not, in any manner, bind the Labour Court or conclude any issue which may arise for adjudication, and the same shall be independently



adjudicated by the Labour Court.

12. Needless to add, in conciliation or other proceedings under the Industrial Disputes Act, 1947 or any other enactments which are for the purpose of safeguarding the interests of the Workmen, the concerned officials are expected to maintain a cordial atmosphere between the Workmen and the Management, and not to mete out any ill-treatment to their representatives, so as to ensure that such allegations do not arise in future.

13. Let Mr. Javed, Id. ASC communicate the present order to the concerned Conciliation Officers and the Labour Commissioners under the GNCTD.

14. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 9, 2022

dj/ad