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

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Decided on : 29.02.2024

Vinod Kumar

. . . Petitioner(s)

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court-II, Gurgaon and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Vineet Yadav, Advocate
for the petitioner(s).

Mr. Rajdeep Singh Cheema, Advocate
for respondents No.2 and 3.

SANJAY VASHISTH, J. (Oral)

1. Petitioner – Vinod Kumar, being workman has filed present writ petition for quashing of the award dated 15.03.2010 (Annexure P-1), passed by learned Industrial Tribunal-cum-Labour Court-II, Gurgaon (in short, ‘learned Tribunal’) whereby, Reference No.1309 of 2000, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, ‘ID Act’), has been answered against him.

2. Pleaded case of the petitioner before the learned Tribunal is that he was appointed to the post of Electrician on 21.12.1994 along with other individuals. However, no appointment letter etc. was issued to any of them. Later on, as a counteraction and with malicious intent, petitioner was transferred on 25.11.1998 to Lala Jagat Narain DAV Model School, Kabir Nagar, Jalandhar, from the present place of posting i.e. DAV College Academy, Kanina, District Mahendergarh.

3. Against the said transfer, petitioner – Vinod Kumar (workman)

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along with other workmen, raised an industrial dispute by issuing the demand notice. While answering the reference before it, learned Tribunal found that no relief can be extended to the petitioner, for the reason that DAV College Academy, Kanina, District Mahendergarh, is not functioning at present, as it had closed down way-back in March, 2000 (about 10 years back of the passing of the award). Learned Tribunal also observed that regarding the termination of the workman from the service, there is no reference before it, therefore, said dispute cannot be adjudicated.

4. Even otherwise also, the name of the respondent was changed without seeking any permission from the Court, and no evidence was led by the workman to discharge the onus to prove that issuing the transfer order was a vindictive action. The findings recorded by the learned Tribunal, in paragraphs No. 16 to 18, are reproduced here-under:-

“16. The present reference was raised by three workman, namely Vinod Kumar Dharampal and Phool Singh. However, during the pendency of the reference Dharampal had effected a settlement with the respondent. However, it is pointed out that all the three employees had raised the reference under section 2 (k) of the ID Act in their individual capacity and not in a representative capacity. Since, the workman had not challenged their termination to be wrong and illegal and accordingly it shows that this is no a reference under section 2-A of the ID Act.

PW-1 to PW-3 have admitted in their cross examination that about 150 employees were engaged by the employer at the relevant time. But the material placed on file shows that the demand notice was never espoused by substantial number of persons. Hence, in the absence of espousal of the dispute by the workers, the dispute can not have the character of an industrial dispute within the meaning of section 2 (k) of the ID Act. Therefore the reference is bad in law and accordingly not maintainable.

17. The statement of RW-1 as well as the admission of PW-1 to PW-3 also shows that the DAV Academy Kanina is not functioning at present as it was closed way back in March 2000. Accordingly now no relief can be granted against the Principal of DAV College Kanina. However it is pointed out that as per the reference the workman had claimed relief

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against respondent no.1 Principal DAV Academy Kanina District Mahendergarh and respondent No.2 Director DAV College Managing Committee Chitra Gupta Road, New Delhi. But during the pendency of the reference when amended title was filed on 5.2.2010 then the name of respondent was changed without any permission. Principal DAV College/Academy Kanina District Mahendergarh was made respondent no.1. The word College seems to have been intentionally included in order to create a right against the DAV College because of the workman were fully knowing that DAV Academy Kanina District Mahendergarh is no more in existence. In view of the matter no relief can be granted in favour of the workman.

18. The material placed on the file shows that the workmen have miserably failed to discharge the onus to prove the vindictive and biasness approach in effecting transfer of Vinod Kumar and Phool Singh. However due to financial exigencies they were transferred from Kanina to different stations because the Academy failed to bear the financial burden. This was done with a bonafide intention in order to save the employment of the workman. Furthermore, the transfer of Vinod Kumar was ordered vide order dated 25.11.1998 Ex.P-3 the transfer of Dharampal was ordered vide letter dated 24.11.1998 Ex.P-6 and the transfer of Phool Singh was ordered vide letter dated 22.12.1998 Ex.P-8. Soon thereafter in the month of March, 2000 the Academy was closed. However, there is contradiction in the claim statement and also be evidence brought on record because in the claim statement the transfer orders are challenged on the ground of biasness and vindictive approach on part of the respondent. This fact was asserted by PW-1 to PW-3 in their examination chief. But as mentioned above PW-1 to PW-3 had changed their stand in their cross examination and stated that they had accepted the transfer order and had gone to their place of transfer, but they were not allowed to join respective stations of posting. This shows that one the one hand the workmen are challenging their transfer order and no the other hand they are accepting the same and had gone to join at their respective places. The workmen had taken a somer sault. They are changing stands. But the material place on file shows that the transfer orders were passed with the bonafide intention. However, it is the workmen, who had not accepted the same and had not gone to join the respective place of their transfer. This shows that this is actually a case of abandonment. The workmen were not interested to join at the respective places of transfer. Hence they are not entitled to the relief claimed.”

5. Counsel for the petitioner – workman, could not point out any substantial reason to call for the interference in the findings given by the

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learned Tribunal. Moreover, DAV College Academy, Kanina, Distt. Mahindergarh, where, the petitioner – workman was posted, had closed down around 24 years back from now. Thus, it appears that no substantial cause survives to the petitioner as on day.

Accordingly, present writ petition is **dismissed**.

(SANJAY VASHISTH)
JUDGE

February 29, 2024
J.Ram

Whether speaking/reasoned: ✓ *Yes*/~~No~~
Whether Reportable: ~~Yes~~/*No* ✓