

2024:PHHC:170472



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-215-CWP-2024
CM-2138-CWP-2024
RA-CW-6-2024
in
CWP-20184-2017 (O&M)
Date of Decision: 20.12.2024

BHARAT ELECTRONICS LIMITED

...Review Applicant-Petitioner

Versus

THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-2,
HARYANA PRESS BUILDING, SECTOR 18/A, CHANDIGARH AND
ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Pawan Kumar Mutneja, Senior Advocate assisted by
Ms. Suverna Mutneja, Advocate
Mr. Vishesh Bhatia, Advocate
for the review applicant-petitioner.

Mr. Vikas Mohan Gupta, Advocate
for non-applicant/respondent No.2.

HARSH BUNGER, J.

CM-2138-2024

This is an application for placing on record the judgment dated
09.11.2023 passed by this Court in the main case i.e. *CWP-20184-2017*, as
Annexure A-1.

For the reasons recorded in the application, the same is allowed
and Annexure A-1 is taken on record, subject to all just exceptions.

Civil Misc. Application is accordingly disposed of.

CM-215-2024

This is an application filed under Section 5 of the Limitation Act, for condonation of delay of 11 days in filing the review application (***RA-CW-6-2024***).

For the reasons recorded in the application, delay of 11 days in filing the review application (***RA-CW-6-2024***) is condoned.

Civil Misc. Application is, accordingly, disposed of.

RA-CW-6-2024

1. The present application has been filed under Order 47 Rule 1 of the Code of Civil Procedure, seeking review of order dated 09.11.2023 passed by this Court in ***CWP-20184-2017***.

2. At the outset, I deem appropriate to refer to a judgment in ***Sanjay Kumar Agarwal v. State Tax Officer (1), 2023 AIR (Supreme Court) 5636***; wherein, Hon'ble Supreme Court has considered the scope of a review petition and has observed as under:-

“16. The gist of the afore-stated decisions is that: -

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."

(v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

(vi) Under the guise of review, the petitioner cannot be permitted to re-agitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review..."

3. Keeping in view the afore-said observations made in ***Sanjay Kumar Agarwal's*** case (supra), when the review application is juxtaposed with the writ petition, it is revealed that the review-applicant has primarily raised similar grounds as mentioned in the writ petition.

4. Be that as it may, at the time of hearing of the review application, learned senior counsel has mainly stressed on the following grounds :

- (i) *that transfer is an incidence of service and it is for the employer to see where to post the employee as per the exigencies of service, therefore, the order of transfer cannot be reviewed by the Courts;*
- (ii) *that Clause 1.3.4 of the Settlement (Annexure P-2 of the writ petition) provided for the re-deployment and re-training of the workman wherever required; therefore, the Union could not have*

preferred the reference and the Labour Court could not have decided it;

(iii) that 11 out of 15 transferred employees had accepted the transfer and joined their respective postings without any protest.

5. Per contra, learned counsel representing respondent No.2-Union has opposed the submissions made on behalf of the review applicant/petitioner by submitting that all the main aspects raised by the review applicant/petitioner have already been considered by this Court, while dismissing the main petition vide order dated 09.11.2023 and in the garb of review application, the review-applicant cannot be permitted to re-agitate and reargue the matter. It is further submitted that the review applicant is adopting a revengeful attitude towards the workmen and has not complied with the Award passed by the Labour Court and also the order passed by this Court. Accordingly, prayer for dismissal of the review application has been made.

6. Heard.

7. At the outset, it is required to be noticed that during the pendency of the present review application, learned counsel representing respondent No.2-Union had orally submitted that all the transferred workmen were willing to join at Ghaziabad; however, the said proposal was not accepted by the review applicant/petitioner.

8. Be that as it may, as regards the contention that transfer is an incidence of service, there is no dispute with regard to the said proposition. Though, an order of transfer is an administrative order as an incidence of service, however, if the same is passed with *malafides* or because of malice in law, the same can be interfered. It is well established that each case has to be decided on its own facts and merits.

9. In the present case, the learned Labour Court, upon consideration of the relevant material/evidence available on record, returned a finding that sufficient workforce was already available at Chennai, Ghaziabad, Machlipatnam and Navi Mumbai and there was no requirement of posting of any more person/s of the particular trade as neither the transferred employees nor respective units sent any requisition to the head office asking for deploying more persons there, having the qualifications and the experience of the present workmen. It was, accordingly, held that the transfer of the workmen to the respective places was not required at all. The learned Labour Court has further held that there was nothing on the file to suggest that there was surplus workforce at Panchkula unit, which required immediate need of the transfer of 15 workmen. It was also held by the learned Labour Court that there was an established practice of the company to obtain consent of the workmen, who are to be transferred and it was not made out as to how the 15 workers were transferred without obtaining their willingness or by any internal advertisement. It was, thus, concluded that the transfers were not made due to exigencies of work or as per the admitted practice of obtaining consent of the employees to be transferred. Consequently, the transfer of the workmen to different places from Panchkula unit, was held to be an un-fair labour practice. That apart, in the peculiar facts and circumstances of this case, the transfer of the workmen from Panchkula unit to far off places, especially to Chennai, Machlipatnam and Navi Mumbai, appears to be harsh. Although, the Union had offered that the transferred workmen may be adjusted at Ghaziabad; however, the said request has not found favour with the review applicant/petitioner, which apparently shows the vindictive/adamant attitude of the employer.

9.1 Once the transfer of workmen has been held to be an un-fair labour practice, this Court cannot shut its eyes and permit such transfers to be sustained only on the ground that the transfer being an incidence of service, cannot be interfered with by the Courts.

10. As regards the reliance upon Clause 1.3.4 of the Settlement (Annexure P-2 of the writ petition), it is observed that the said clause is only an objective towards which the management and the workmen agreed to work together. The said clause provides for improving the utilization of existing manpower by re-deployment and re-training of workman, wherever required. The learned Labour Court below upon considering the relevant material/evidence on record, has already held that there was no requirement of transfer of the workmen from Panchkula unit to different units and the said transfers have been held to be an un-fair labour practice.

11. As regards the contention that 11 out of 15 transferred employees had accepted the transfer and joined their respective postings without any protest, it is observed that in case, the 11 workmen, out of 15 transferred employees have accepted their transfers and joined their respective postings then the review-applicant cannot possibly have any grievance in that regard. In case, the transferred workmen have joined their places of posting/s, without any demur, then they may continue at the said places and the order under review shall have no effect as regards their transfers are concerned.

11.1 However, as regards the remaining four workmen qua whom the Hon'ble Supreme Court vide its order dated 29.08.2016 passed in Special Leave to Appeal (C No.24606/2016), had ordered *status quo* with regard to the place of their working, the review applicant/petitioner is

directed to allow them to join their postings at Panchkula unit, within a period of two months from today.

12. In view of the above discussion, I do not find any merit in the instant review application and the same is dismissed with the observations made here-in-above.

December 20, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No