
(2009) 01 DEL CK 0076
In the Delhi High Court
Case No : LPA No. 2031 of 2006

Deepak Kumar Bali

APPELLANT

Vs

HMT Limited

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Citation : (2009) 121 FLR 742 : (2009) 3 LLJ 27 : (2009) 7 SLR 437

Hon'ble Judges : Sudershan Kumar Misra, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; Sudhir Nandrajog, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The appellant joined the services of the respondent in September 1978 as a Service Mechanic and his terms of appointment entitled the respondent to transfer the appellant as an incidence of service. The appellant worked at various locations and was serving in the Delhi Marketing & Service Office when on 17.9.1987 he was transferred to Pinjore and was required to report for duty. The appellant was relieved from his service at Delhi on 30.9.1987. The appellant, however, did not join at Pinjore. It is the case of the respondent that the appellant refused to accept the transfer order and submitted representations dated 2.10.1987 & 21.10.1987 against the transfer. The representation dated 2.10.1987 is by way of telegram while the second one dated 21.10.1987 is in the form of a letter and read as under:

Dt. 2.10.87

Hindtools

Chandigarh

GMG Delhi HMTL officials harassed me to receive reliving orders when joined 30.9.87 after sick leave (.) issued relived orders (.) sitting at home (.) not joining

pinjore () request send adhoc and September salary my residence is regards.

....

Dt. 21.10.1987

Dear Sir

I refer to your letter No. PD/18.10./6295 dt. 14.10.1987. In this regard I would like to inform you that I already informed to General Manager, Pinjore on dt. 2.10.1987 and 6.10.1987 by Telegraphically that I am not joining Pinjore, the reason of not joining I enclosed the photocopy of my letter, which is addressed to Dy. General Manager Marketing, Chandigarh for your information and clarification. In my both telegraphs I also requested to G.M. since I am not joining, Pinjore kindly arrange to send my September 87 salary and Adhoc payment to my residence as Delhi office refused to pay the same payments, but till today I did not receive the same. I request you again kindly the above mentioned payments to my residence as earlier as possible.

2. The appellant stated that he did not join duties for personal reasons while the stand of the respondent Management was that the transfer to Pinjore was a consequence of the appellant himself wanting duty at a place where frequent journeys were not required to be done by the appellant. The appellant was served with letters dated 14.10.1987 & 11.11.1987 to report for duty at Pinjore as per specified dates but to no avail. This resulted in charge sheets being issued to the appellant dated 29.12.1987 & 5.1.1988. Departmental inquiries were initiated thereafter and on inquiry it was found that the charge of unauthorized absence from duty and disobedience was proved against the appellant. The appellant, possibly apprehending an action, tendered his resignation on 4.4.1988. This resignation was accepted vide letter dated 10.5.1988. The appellant accepted the same and vide legal notice dated 9.7.1988 sought settlement of his dues on account of his resignation. The dues of the appellant were settled and the details informed vide letter dated 15.11.1988. The resignation thus induced the respondent to drop the disciplinary proceedings.

3. The appellant seems to have had a second thought when on 21.2.1989 a complaint was made by him to the Conciliation Officer stating that the resignation letter was not voluntary but was on account of compulsion and pressure put on him by his superior Shri J.P. Saxena.

4. The dispute raised by the appellant as a workman was referred to the Labour Court u/s 10 of the Industrial Disputes Act 1947 (hereinafter referred to as the said Act). The terms of reference required the Labour Court to examine whether the appellant resigned from his services under duress or his services have been terminated wrongfully or unjustifiably and in case the same was answered in the affirmative as to what relief the appellant would be entitled to. The Presiding Officer of the Labour Court considered the evidence and examined the principal contention of the resignation being under duress. He noted that in order to

constitute a resignation it must be unconditional with intent to operate as such. The Tribunal held that the termination on the basis of resignation letter was illegal and unjustified but did not find it appropriate to direct re-instatement. Instead u/s 11A of the said Act, compensation of Rs. 3.00 lakh in lieu of re-instatement, back wages and all other legal benefits was granted.

5. The appellant and the respondent were both aggrieved by the said order and filed two separate writ petitions. These writ petitions have been dealt with in the elaborate impugned order dated 23.8.2006. The learned single Judge has allowed the writ petition of the respondent Management and held that the resignation was not under any duress or pressure and consequently there was no question of grant of any damages to the appellant.

6. We have heard the appellant in person and learned Counsel for the respondent.

7. We consider it appropriate to first note the very basis of the conclusion of the Labour Court. The conclusion is contained in just one paragraph, which reads as under:

23. Now applying this principle laid down by the Supreme Court in abovesaid cases, in the present case. It is admitted case of the parties that workman was transferred from Delhi to Pinjore on 17.9.1987, he never joined at Pinjore. It is further admitted case of the parties that at the time of transfer the workman was residing at the flat in Janakpuri which belongs to uncle of MW2, Shri J.P. Saxena. The workman in the statement of claim in so many paras alleged the role of Shri J.P. Saxena in respect of his transfer from Delhi. In the written statement there is no specific denial of the allegations against Shri J.P. Saxena. In the cross examination, allegation against Shri J.P. Saxena when appeared in the witness box admitted that as per advice of the Chief these were not denied but mentioned in the affidavit. In my opinion, in the circumstances, where the workman is residing in a flat rented by such a higher official of the management and who is in authority to get job transferred of the workman, then in my opinion, the higher official can create such circumstances which lead to eviction of the rented accommodation as well as in other circumstances which may result in failing the wishes of the superiors. In my considered opinion, in the backdrop of the circumstances as admitted on record that Shri J.P. Saxena was having such powers that he was able to get transferred the workman from Delhi to Pinjore and ultimately the workman had to give resignation letter on 4.7.1988. It is further admitted on record that the workman was ill at the time/relevant period. In my opinion, the cumulative effect of the exercise of power by Shri J.P. Saxena was such that workman had no other option but to resign from the job. In my considered opinion, the resignation letter although, it was after six months of the transfer order but it was a heat which diminished the intention or voluntary intention or expression of resignation of the workman. In my considered opinion, the law stated by AR for the workman especially the judgement of Dr. Prabha Atri (supra) in the present facts and circumstances also established that the circumstances participated against the workman resulted in

tendering resignation.

On the basis of the above observations and discussion, the issue is decided in favour of the workman and again the management.

8. In our considered view, the Labour Court completely misconstrued the legal position in the given facts of the case. Insofar as the aspect of the resignation being under duress or pressure is concerned we fail to appreciate as to what is the relevance of the residence of the appellant in a flat of a higher officer of the management. It was for the appellant to make arrangement for his residence and he took the rented accommodation, which was owned by Shri J.P. Saxena. It can hardly be said that because the appellant was residing in such a residence, it has to be presumed that Shri J.P. Saxena has power to influence his decision about the resignation.

9. The Labour Court has relied upon the judgement of the Supreme Court in Dr. Prabha Atri Vs. The State of U.P. and Others, . In the facts of that case the concerned employee in a letter stated as under:

Your letter is uncalled for and should be withdrawn. I have been working in this hospital since 10.5.1978 and have always worked in the best interest of the patients. It is tragic, instead of taking a lenient view of my sickness you have opted to punish me.

10. It is in view thereof that the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent Management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the Management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure.

11. We are in full agreement with the view of the learned single Judge contained in para 29 of the impugned order as under:

29. From the facts noticed above, it is not possible to hold that the workman was compelled or the resignation letter was not of the volition of the petitioner. Even if the petitioner felt uncomfortable and therefore tendered the resignation, he

had sufficient opportunity to ponder over his actions and their consequences before the resignation was accepted. The petitioner opted to stand by his resignation letter. In this view of the matter, I have no hesitation in holding that respondent/workman, in the instant case, had sought to bring his employment to an end by his letter dated 4th April, 1988 and sought payment pursuant thereto. The workman thereafter has deliberated and demanded payments from his employer. When ordered, he has voluntarily accepted the payments made by the petitioner and consequently cannot assail the same on purported grounds of the resignation letter being involuntary or having been given in duress. The allegations of the petitioner do not inspire any confidence.

12. We may note that a second aspect dealt with both by the Labour Court and the learned single Judge has arisen from an objection raised by the respondent Management to the territorial jurisdiction as it is the case of the respondent that the appellant having been transferred to Pinjore, the appellant being the aggrieved employee could have only invoked the jurisdiction of the concerned administration for reference of disputes to the Labour Court at Pinjore.

13. The Labour Court was of the view that the grievance of the appellant workman arose at Delhi when he was aggrieved by the transfer order and secondly when he resigned. The appellant had worked lastly at Delhi.

14. The respondent Management, however, contended that the appellant was relieved from Delhi but failed to join at Pinjore and the consequent disciplinary proceedings were conducted at Pinjore. The resignation letter was also accepted at Pinjore where the order terminating the services of the appellant pursuant thereto was passed. The resignation letter dated 4.4.1988 was also addressed to Pinjore.

15. We may note that undoubtedly the appellant was working at Delhi when he was transferred to Pinjore. However, the appellant did not challenge the transfer order for which the jurisdiction would have been at Delhi. Instead the appellant permitted the proceedings to go on at Pinjore and finally addressed a letter of resignation to the address at Pinjore, which was duly accepted at Pinjore.

16. The learned single Judge has referred to the Full Bench judgement of the High Court Judicature at Patna in Paritosh Kumar Pal Vs. State of Bihar and Others, where it was held that the well established test of jurisdiction in such a case would be dependent on the subject matter of dispute having substantially arisen within the jurisdiction of that Court. Thus, the question would be as to what is the dispute.

17. The learned single Judge has found that the situs of the workman is at Pinjore. The dispute is not whether the transfer order of the petitioner was legal since the same was never challenged but whether on the transfer order having been made and the appellant not having joined, the subsequent letters sent by the appellant of resignation were under duress or pressure since the disciplinary proceedings were being carried on at Pinjore where the resignation letter was

sent and accepted, its reference in Delhi was without jurisdiction. The mere receipt of order of termination of services was held not to create jurisdiction. The learned single Judge also noticed the doctrine of forum conveniens as enunciated in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, .

18. We are conscious of the fact that in a dispute amongst the management and the workman, the workman is a weaker party and should not be displaced on grounds of jurisdiction to a place where it would be difficult for the workman to contest the proceedings. Thus, if a transfer was to be made mala fide or contrary to the policy and was thereafter sought to be challenged, it would not be open for the management to contend that it is only the place of transfer which would have jurisdiction. However, in the present case the transfer has not been challenged. The appellant did seek to agitate the aspect of his transfer but never took the challenge to its proper culmination by seeking to challenge the same and that has formed the basis of the impugned order.

19. In WP (C) No. 1533/2008 titled *Bisundhari Singh and Ors. v. Dhillon Transport Agency* decided 26.2.2008, one of us (Sudershan Kumar Misra, J.) had an opportunity to look into a similar situation. It was held that a workman cannot create an artificial cause of action to raise a dispute at a place wherever he has been transferred in violation of transfer orders by incidentally questioning the order of transfer. It was observed as under:

In *General Manager, N.E. Railway, Gorakhpur and Ors. v. Jamait Ram Khatnani and Ors.* 1975 FLR 246 All, the following observations were made by Allahabad High Court:

...Once an employee is transferred and posted to a particular place acceptance of the transfer order by that employee is immaterial. Even though he may not join his duties or physically may not go to the new place of posting he will continue to be posted there in the eye of law. His place of posting cannot be deemed to have changed merely because he disobeys the transfer order....

Similarly, in *Siemens Ltd. Vs. Presiding Officer, Additional Industrial Tribunal-cum-Additional Labour Court and Another*, the following observations were made by the Andhra Pradesh High Court:

40. ...the situs of employment would become paramount in raising the industrial dispute. Since the situs of the employment of the workman was at Manipal with effect from 3.10.1994 as indicated in the order of transfer dated 19.9.1994 and notice dated 6.10.1994 and the same was treated as misconduct, by the office at Bangalore.

41. In other words he ceases to be an employee of Hyderabad Office with effect from 3.10.1994 and supposed to have born at the new station at Manipal, within the jurisdiction of Bangalore Office.... At the most his stay at Hyderabad is only illegal and as right pointed, the same amounts to absenting himself from attending the duties at the new station.

In *Lohla Starlinger Ltd. and Anr. v. Government of NCT of Delhi and Ors.* 2006 LLR 905, Delhi, a Single Bench of our High Court has observed as follows:

36.Mere continuation of stay at the place where the employee has been transferred does not create any legal right to adjudicate his grievance by his termination after the cessation of his employment at the office wherefrom he is transferred; his continuous stay at such place is illegal and amounts to absenting himself from attending duties at the new station. Stay at the place wherefrom an employee is transferred must be for valid reasons.

37. A workman cannot create an artificial cause of action to raise a dispute at a place wherefrom he/she has been transferred by incidentally questioning the order of transfer....

Similar observations have been made in *Indian Express Newspaper (Bombay) Pvt. Ltd. and State of West Bengal and Ors. with Sampat B.G. v. Indian Express Newspaper (Bombay) Pvt. Ltd.* 2005 (106) FLR 467 Cal., New Delhi *General Mazdoor Union v. Government of Delhi and Ors.* 2000 LLR 770.

5. I have repeatedly tried to explain to learned Counsel for the petitioner that if his case is that the petitioner's service has been terminated under the garb of a transfer; it can only mean that the management has stopped the petitioners from working and had no intention of taking their services even at the place to which they were transferred. If that were so, it would have been quite easy for the petitioners to put the ball in the management's court by reporting for work at that place, or at least expressing their willingness to do so....

20. We do not consider it appropriate to say anything more in this behalf as, in our considered view, on the facts of the case where the termination is voluntary and at the own volition of the workman nothing more is required to be examined.

21. The appeal is without any merit and is dismissed leaving the parties to bear their own costs.