
(2012) 12 DEL CK 0318
In the Delhi High Court
Case No : LPA No. 803 of 2012

Management of M/s Rajasthan Patrika Ltd.	APPELLANT
Vs	
Jasod Singh	RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 LLJ 436

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : R. Aruneshwar Gupta, Mr. Manish Raghav and Mr. Nikhil Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the judgment dated 4th July, 2012 of the learned Single Judge of dismissal of W.P.(C) No. 6621/2005 preferred by the appellant employer. The said writ petition was preferred impugning the award dated 20th May, 2004 of the Industrial Adjudicator on the following industrial dispute raised by the respondent workman:-

Whether the transfer of Sh. Jasod Singh from Delhi office to Jaipur is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

and holding the transfer to be not justified and illegal and directing the appellant employer to treat the respondent workman as employee at Delhi from the date of transfer and to grant him all consequential benefits.

The appeal is accompanied with an application for condonation of 83 days delay in re-filing thereof. We have however without entering into the technicalities, heard the counsel for the appellant employer on the merits of the appeal.

2. The Industrial Adjudicator, on the basis of the evidence led before him, has

found/observed/ held:-

- (a). that the respondent workman was a resident of Delhi and was employed by the appellant employer at Delhi as a chaprasi/peon;
- (b). that he was transferred from Delhi to Jaipur "due to administrative exigencies";
- (c). that the respondent workman had represented against the said transfer pleading his inability to shift to Jaipur;
- (d). that no letter of appointment had been issued to the respondent workman and at the time of appointment no service conditions were informed to the respondent workman;
- (e). that the respondent workman is not a skilled workman;
- (f). that the Standing Orders of the appellant employer had been certified at Rajasthan, after the appointment of the respondent workman;
- (g). that the said Standing Orders were never brought to the knowledge of the respondent workman;
- (h). that though the respondent workman had been transferred "due to administrative exigencies" but the appellant employer had after transferring the respondent workman appointed a new person as chaprasi/peon at Delhi;
- (i). that the time for the respondent workman to join at Jaipur had been extended from time to time;
- (j). that there was no administrative exigency to transfer a chaprasi/peon from Delhi to Jaipur;
- (k). that there was no reason for the transfer except annoyance of the appellant employer with the respondent workman;
- (l). there cannot be any legal or valid purpose and administrative exigency to transfer the respondent workman engaged as chaprasi/peon to Jaipur and to take a new entrant in his place.

3. The learned Single Judge has dismissed the writ petition challenging the aforesaid award, holding:-

- (i). that in the absence of an appointment letter there was no express agreement whereunder the appellant employer had a right to transfer the respondent workman from one office to another;
- (ii). that the Standing Orders did not come to the rescue of the appellant employer in this regard since the same were certified four years after the appointment of the respondent workman;
- (iii). that the decision of the Industrial Adjudicator that the Standing Orders did

not apply to the respondent workman since the same were not made known to him cannot be said to be perverse, justifying any interference by this Court in writ jurisdiction;

(iv). that right to transfer an employee is not implicit in every contract of service. Reliance in this regard was placed on *Kundan Sugar Mills Vs. Ziyauddin and Others*, and *Priscy D'Souza Vs. Indamer Company (Pvt.) Ltd.* 2003 LLR 142.

4. The counsel for the appellant employer has contended that the reasoning given by the learned Single Judge of the Standing Orders being not applicable to employees who had joined the employment prior to the certification thereof causes serious prejudice to the appellant employer, especially qua other employees who may also so claim to be not bound by the Standing Orders. He has referred to *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, and *Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors*, in this regard. It is further contended that since the learned Single Judge has confined his judgment to the said aspect only, after setting aside the said finding the matter be remanded to the learned Single Judge for decision on the other challenges to the award of the Industrial Adjudicator made in the writ petition.

5. We are unable to agree. Even if there were to be merit in the contention of the appellant employer as to the applicability of Standing Orders to employees already in employment since prior to the certification thereof, we in the facts of the present case find no merit in the challenge on other grounds to the award of the Industrial Adjudicator. Though the counsel for the appellant employer has contended that since the learned Single Judge has not rendered findings on other aspects, the appellant employer be not deprived of a decision thereon by the learned Single Judge, but it cannot be lost sight of that the industrial dispute is already nearly 13 years old. The challenge to the award remained pending before the learned Single Judge for nearly seven years. We cannot keep the respondent workman of the level of a chaprasi/peon so embroiled in litigation any further, merely for the sake of technicalities. Moreover, a reading of the judgment of the learned Single Judge does not show any other arguments than which have been dealt with, to have been raised during the course of hearing. Had any other argument been raised and had not been dealt with by the learned Single Judge, the remedy of review/approaching the learned Single Judge would have been availed. Merely because a different counsel is engaged in this appeal, does not give any right to a litigant to a re-hearing. In this context, the reason given for seeking condonation of delay in re-filing, of engagement of a new counsel, also acquires significance. Though the new counsel had been engaged and had filed the appeal but did not feel the need to approach the learned Single Judge. The necessary inference has to be that no other argument than on which findings have been returned by the learned Single Judge were raised. The appellant employer cannot, to harass a workman, invoke the technicalities of law to keep the litigation pending. Further, other arguments challenging the award have been

raised before us and in which also as hereinafter mentioned we do not find any merit.

6. The Industrial Adjudicator has in the award spelled out cogent reasons for holding the order of transfer to be unjustified and illegal. The said reasons are based on evidence led before the Industrial Adjudicator. In fact, most of the said reasons are based on admissions in the cross examination of the witness of the appellant employer. The scope of interference in exercise of jurisdiction under Article 226 of the Constitution of India, in such factual findings of the Industrial Adjudicator is limited. Reference, if any required in this regard, can be made to the recent dicta in *Devinder Singh Vs. Municipal Council, Sanaur*, . The counsel for the appellant employer has in fact been unable to even argue that the reasoning of the Industrial Adjudicator, of the order of transfer being not owing to any administrative exigency and being mala fide is perverse. In the face of such findings, there is no error in the award holding the transfer to be bad and illegal.

7. The counsel for the appellant employer has then contended that there was no plea even of the respondent workman of mala fide. We find the said argument also to be factually incorrect. A perusal of the Statement of Claim shows it to be the plea of the respondent workman that the order of transfer was motivated, to punish the respondent workman for the dispute raised by another workman introduced by the respondent workman herein. It was further the plea of the respondent workman that the appellant employer had earlier harassed him by deducting Rs. 500/- per month from his wages and by stopping the revision of his wages, blaming him for the monetary loss caused by such other workman and ultimately by transferring him, all to compel him to leave the employment of the appellant employer. It was expressly pleaded that the action of the appellant employer was in colourable exercise of power. Mala fide, is definitely a ground for interference with a transfer order. Reference in this regard can be made to *Rajendra Singh Vs. State of U.P. and Others*, , *Somesh Tiwari Vs. Union of India (UOI) and Others*, and *State of U.P. and Others Vs. Gobardhan Lal*, .

8. We are entirely in agreement with the reasoning of the Industrial Adjudicator of there being possibly no administrative exigency in transferring a chaprasi/peon level employee from Delhi to Jaipur, especially when the need for a chaprasi/peon at Delhi continued, as is evident from engagement/employment of another chaprasi/peon at Delhi. The counsel for the appellant in spite of our coaxing has been unable to tell as what was the need for the services of the respondent workman at Jaipur.

9. It has been held in *B. Varadha Rao Vs. State of Karnataka and Others*, that the principle, that continued posting at one station is not conducive to good administration, is not applicable to Class III and Class IV employees who stand on a different footing. Similarly, in *State of Madhya Pradesh Vs. Shankar Lal and Ors*, it was observed that in case of employees getting small emoluments, the power of transfer is to be sparingly exercised, only under some compelling

exigencies and not as a matter of course. It was further observed that to such employees, transfer will cause tremendous problems and difficulties.

10. However to allay the fears expressed by the counsel for the appellant employer that the impugned judgment on the aspect of applicability of Standing Orders may come in the way of disputes if any of the appellant employer with other employees, we clarify that we have not gone into that question and leave the same open for adjudication, if arises in any future dispute. We therefore do not find any merit in this appeal and dismiss the same. The appeal having been dismissed in limine on the very first date, no order as to costs.