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**(2014) 09 AHC CK 0196**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition (C) No. 45331 of 2008

Salora International Ltd.

APPELLANT

Vs

Prescribed Authority

RESPONDENT

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**Date of Decision :** 03-09-2014

**Acts Referred:**

**Citation :** (2014) 143 FLR 576 : (2015) 1 LLJ 547

**Hon'ble Judges :** Sunita Agarwal, J

**Bench :** Single Bench

**Advocate :** Shakti Swarup Nigam, P.K. Dubey and V.P. Yadav, Advocate for the Appellant; Mangal Rai, P.K. Dubey, S. Niranjana and V.P. Yadav, Advocate for the Respondent

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## **Judgement**

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Sunita Agarwal, J.—Heard Sri Shakti Swarup Nigam, teamed Counsel for the petitioner and Sri D.P. Singh learned Senior Advocate assisted by Sri Mangal Rai for respondent No. 2.

The writ petition is directed against the order dated 25.2.2008 passed in P.W.A. No. 807 of 2006 and P.W.A No. 977 of 2006 as also the recovery dated 30.7.2008 issued in aforesaid P.W.A. cases.

The facts giving rise to the present writ petition is that the respondent No. 2 was appointed by the petitioner company on 9.3.1989 and continued to work with the petitioner Company at NOIDA. Clause 7 of the appointment letter contains a condition for transfer of the respondent No. 2 to any part of the country i.e. in the sister concerns of the petitioner Company. Clause 7 of the appointment letter is reproduced as under:--

2. The respondent employee was transferred on 30.6.2006 from M/s. Salora International Ltd., B-52, NOIDA, Phase-II, Gautam Budh Nagar, Uttar Pradesh to sister Unit M/s. Salora Components Pvt. Ltd. E-7-8, Electronic Estate, G.I.D.C.,

Sector-26, Gandhi Nagar, Gujarat on the post of Driver. Instead of joining at the transferred place, the employee filed two claim petitions before the Prescribed Authority under the Payment of Wages Act at NOIDA, Gautam Budh Nagar, for payment of wages for the period of 1st July, 2006 to 31st July, 2006 and 1st August 2006 to 31st August, 2006. The claim petitions were registered as P.W.A. No. 804 of 2006 and P.W.A. No. 977 of 2006.

3. A preliminary objection has been raised by the petitioner with regard to the maintainability of the claim petitions. It was stated that the Prescribed Authority sitting at NOIDA had no jurisdiction to entertain the claim of the respondent employee.

4. The claim petitions were allowed by two separate orders dated 25.2.2008. The orders have been passed on the premise that the disciplinary proceedings have been initiated by the petitioner Company at NOIDA and, therefore, though the respondent has been transferred from NOIDA to Gandhi Nagar, Gujarat, but the petitioner Company at NOIDA would be liable to make payment of wages. The issue of jurisdiction though discussed but has not been addressed by the Prescribed Authority.

5. Learned Counsel for the petitioner has relied upon the judgment of this Court in case of General Manager, North-Eastern Railway, Gorakhpur and others v. Jamait Ram Khatnani and others decided on 5th February, 1975 and judgment of Andhra Pradesh High Court in between Siemens Ltd. Vs. Presiding Officer, Additional Industrial Tribunal-cum-Additional Labour Court and Another, Andhra Pradesh High Court in Siemens Limited (supra) taking into consideration of the Full Bench judgement of the Patna High Court in Paritosh Kumar Pal Vs. State of Bihar and Others, has held that the territorial jurisdiction is the situs of employment of the workman and not the head office. In General Manager, North-eastern Railway (supra), the question was whether after the transfer of the incumbent, the authority at the place of transfer would have jurisdiction or not. The question has been answered in affirmative and it was held that though the incumbent did not join his duty at the place of transfer, but that does not affect the place of employment. Once an employee is transferred and posted to a particular place, acceptance of the transfer order by that employee is immaterial. Even though the incumbent did not join his duties or physically did not go to the new place of posting but he will continue to be posted there in the eyes of law. His place of posting cannot be deemed to have changed merely because he disobeys the transfer order.

6. Considering the said position of law and the facts of the present case it is evident that the place of employment of the respondent was at Gandhi Nagar, Gujarat after 30.6.2006. The claim for payment of wages for the months of July, 2006 and August, 2006 should have been filed before the Payment of Wages Authority at Gujarat and the Payment of Wages Authority at NOIDA had no jurisdiction to entertain the claim petitions.

7. Learned Counsel for the respondent does not dispute the above preposition of law. However, he submits that the transfer order was bad in view of the Industrial Employment (Standing Orders) Act, 1947 and Employment Model Standing Order, 1991. The plea raised by the respondent is that he could not be transferred from NOIDA to Gujarat in absence of his consent as per the Standing Order and hence the transfer was bad.

8. To this submission, suffice it to say that the respondents did not challenge the transfer order before any Competent Court and hence validity of the transfer order cannot be seen. In view of the above discussion, the orders dated 25.2.2008 passed by the Prescribed Authority in P.W.A. No. 807 of 2006 and P.W.A. No. 977 of 2006 are hereby quashed. Consequently, the orders of recovery dated 30.7.2008 issued in the above mentioned claim petitions are also quashed.

The writ petition is allowed.