
(2013) 12 P&H CK 0124

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 7479 of 2013 (O&M)

Senior Manager

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2014) 141 FLR 1063 : (2014) 2 PLR 383

Hon'ble Judges : Sat Paul Bangarh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.P. Bangarh, J.—C.M. 24803-CII of 2013 Civil Miscellaneous application has been filed u/s 151 of the Code of Civil Procedure, for placing on record Annexures P-7 and P-8, and exemption from filing certified copies, thereof.

Civil Miscellaneous application is allowed, subject to all just exceptions.

C.R. 7479 of 2013

Petitioner, herein, is respondent before the Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh (for short "the Labour Court"), in Industrial Dispute Reference No. 48 of 2007. This reference was made to the Labour Court by the appropriate government (Chandigarh Administration, Union Territory, Chandigarh), at the instance of respondent No. 2, herein, who was a workman with the petitioner, herein.

The reference, that was made by the Chandigarh Administration, Labour Department, is Annexure P-4. The dispute was referred to the Labour Court, Chandigarh, for adjudication, as to whether the services of workman-Smt. Sangita Sharma (respondent No. 2, herein) were illegally terminated by the petitioner, herein, if so, to what effect and to what relief, she is entitled to, if any.

2. On receipt of this reference, the Labour Court, Chandigarh, issued notice to the petitioner, who, on appearance, filed an application for framing specific issue

to the following effect:-

Whether this Hon"ble Court has the jurisdiction to adjudicate upon the reference when she was transferred to Ludhiana and was not working at branch office at Chandigarh?

3. It was also averred in the application that if the Court comes to the conclusion that the case be decided on merits, as well as, along with other issue, the petitioner be allowed to file written statement, on merits, too, as the reply had been filed reserving the right to file a proper written statement, whereas, the Court had framed the issue, on merits, too.

4. It was further averred in the application that the petitioner was appointing and terminating authority of the workman, as submitted by her in para-1 of her statement of claim. As per her own admission in the demand notice, she admitted in para-1 that she was posted at branch office at Chandigarh. She absented from duty w.e.f. 1.6.1999. Though, she applied for leave w.e.f. 2.6.1999, but, did not mention the period of leave, and reported for duty as late as on 1.2.2000, after 9 months, as admitted by her in para-5 of the statement of claim. No leave was sanctioned for this period and she claimed the amount for this period u/s 33(c)(2) of the Industrial Disputes Act, 1947 (for short "the Act").

5. Petitioner, in para-1 of the written statement, pleaded all the preliminary objections, which go to the very root and jurisdiction of the Court and specifically pleaded that as the workman was not working in branch office at Chandigarh, after 1.6.1999, and she proceeded on leave without specifying the period of leave, her seat could not be kept vacant for such a long time. On her reporting back for work, she was deputed to work at Panchkula, but she did not join duty there. As she did not join at Panchkula, therefore, to accommodate her, she was asked to join at Ludhiana and, side by side, she was promoted as Proof Delivery Executive instead of Proof Delivery Assistant. However, during the course of claim u/s 33(c)(2) of the Act, she admitted that she got the letter of transfer on a higher post, when she was not working either at Chandigarh or anywhere else and further averred that she did not want to work at Ludhiana, therefore, she had not joined there.

6. It was further averred in the application that the cause of action had accrued to the workman at Ludhiana, to which place, she was transferred and Ludhiana office is also appointing and terminating authority of the workman and no relationship of master and servant existed between the workman and respondent No. 2, she being not on their roll. Therefore, the industrial dispute had arisen at Ludhiana and the workman was not working at any place after 1.6.1999, therefore, the Labour Court, Chandigarh had no jurisdiction to adjudicate upon this reference. It was prayed that the case may be transferred to the Labour Court, Ludhiana.

7. This prayer was opposed by respondent No. 2.

8. After hearing both the sides, the Labour Court, Chandigarh, vide impugned order dated 2.9.2013 (Annexure P-6), came to the conclusion that it has jurisdiction to hear the dispute between the petitioner and respondent No. 2.

9. Aggrieved against the order (supra), the petitioner has come up in this civil revision with prayer for acceptance, thereof, and for setting aside of the impugned order and transfer of the reference case to the Labour Court, Ludhiana.

10. Learned counsel for the petitioner contended that the office of the appointing authority of respondent No. 2 is at Ludhiana. He also contended that respondent No. 2 was transferred to Ludhiana, but she did not join her duty there and when she filed demand notice in July, 2006, she was not posted in Chandigarh office. He further contended that respondent No. 2 was directed to join duty at Panchkula vide order dated 22.2.2000, but she did not join her duty there and, after her transfer to Panchkula, her name was removed from the Muster Roll of branch office at Chandigarh. He, therefore, contended that no industrial dispute arose at Chandigarh and the termination order was passed by the office of the petitioner at Ludhiana and, therefore, the appropriate government was Punjab Government, who should have sent the reference, for adjudication of the industrial dispute between the petitioner and respondent No. 2, to Labour Court, Ludhiana. He further contended that the present reference be transferred to the Labour Court, Ludhiana.

11. Thoughtful consideration has been given to the contentions raised by learned counsel for the petitioner, but no merit is found, therein, as respondent No. 2 never joined at Ludhiana office of the petitioner. The Head Office of the petitioner may be at Ludhiana, but, at the same time, respondent No. 2 was working in the branch office of the petitioner at Chandigarh. When respondent No. 2 never worked at Ludhiana, then, how it could be held that the industrial dispute arose between the petitioner and respondent No. 2, at Ludhiana.

12. Now, this industrial dispute cannot be transferred to the Labour Court, Ludhiana, as the appropriate governments at both the places are different. When the appropriate government i.e. Chandigarh Administration, referred the industrial dispute between the petitioner and respondent No. 2, after hearing both the sides, then, at this stage, it shall be very arduous to hold that the appropriate government for adjudication of the industrial dispute, that has arisen between the petitioner and respondent No. 2, was Punjab Government, especially, when respondent No. 2 never worked under the petitioner at Ludhiana, or in any other area of Punjab State.

13. Respondent No. 2 worked at Chandigarh. Her name was removed from the Muster Roll of the petitioner at Chandigarh, when she failed to join at its office at Panchkula. Therefore, certainly, the cause of action arose to respondent No. 2, at Chandigarh, and the appropriate government to make the reference in this industrial dispute, was Chandigarh Administration only.

14. Learned counsel for the petitioner placed reliance upon a Division Bench

judgment of this Court in Pritam Singh Vs. Presiding Officer, Labour Court and Another, , but this judgment is inconsequential to the petitioner. In this judgment, it was held that it is the occurrence of an "industrial dispute" or a part, thereof, within the territory of a State, which shall empower the government of that state being the "appropriate government" to make reference of an industrial dispute. It was also held that the question to determine, as to who is the "appropriate government" always depends upon the facts and circumstances of each case and, in the light of the undisputed facts of the present case, the Union Territory of Chandigarh is, certainly, the "appropriate government", who could refer the industrial dispute, for adjudication.

15. Even, in the present case, the action of the appropriate government i.e. Chandigarh Administration, has not been challenged by way of separate writ petition. Only the order of the Labour Court, Chandigarh, has been challenged, who was bound to take cognizance of the reference, that was made to it, and, now, it cannot say that it should be transferred to the Labour Court, Ludhiana. The reference was not made by the Punjab Government and, therefore, the Labour Court, Chandigarh, was not even competent to transfer the dispute to the Labour Court, Ludhiana.

16. No prejudice is going to be caused to the petitioner, if the Labour Court, Chandigarh, adjudicates the industrial dispute between the petitioner and respondent No. 2. It has been held by the Labour Court, Chandigarh, that, indubitably, the workman was posted at Chandigarh, when she proceeded on leave. It is her case that she was given oral appointment, whereas, the petitioner is alleging that written appointment was given. The Labour Court, Chandigarh, rightly concluded that since part of cause of action arose at Chandigarh office of the petitioner, it has jurisdiction to adjudicate upon the reference. So, the reference that has been made by the appropriate government, has become absolute. In this revision petition, that order has not been challenged. Even, that cannot be set aside in this revision, as respondent No. 2 never worked at Ludhiana. She worked only at Chandigarh. The petitioner is having branch office at Chandigarh. It is, thus, not a case that the petitioner is not working for gain at Chandigarh. It is not the case of the petitioner that it has no branch office at Chandigarh. So, taking the case from any angle, that the petitioner has a branch office at Chandigarh and the respondent No. 2 never worked at Ludhiana, the appropriate government was Chandigarh Administration, who rightly referred the industrial dispute raised by respondent No. 2 in her demand notice, to the Labour Court, Chandigarh. There is, thus, no illegality or impropriety in the impugned order, that is, hereby, upheld and affirmed.

Resultantly, the revision fails and is, hereby dismissed.