

(2007) 02 DEL CK 0156

In the Delhi High Court

Case No : Writ Petition (C) No. 3245 of 2003

Shyam Sunder Aggarwal

APPELLANT

Vs

Globe Detective Agency (P) Ltd. and Others

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Citation : (2007) 113 FLR 402 : (2007) 3 LLJ 52

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Rana Ranjit Singh and Ravi Nayak, for the Appellant; Jagat Arora, Rajat Arora and A.K. Datta, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the award dated October 11, 2002 passed by learned Labour Court-X, Karkardooma Court, Delhi whereby the Labour Court held that the petitioner was guilty of willful insubordination, disobedience of the employer's order which was a serious misconduct under Industrial law and the punishment of dismissal awarded to him from service on refusal to abide by the transfer orders passed by the management was not shockingly disproportionate to the misconduct.

2. Briefly, the facts are that the petitioner was appointed by the respondent as Office Assistant in May, 1974 on a salary of Rs. 350 per month. Thereafter the petitioner continued getting annual increments and promotions. The petitioner was promoted as Commercial Executive with increased salary of Rs. 1625 per month in May, 1987 and after promoting him as commercial executive he was transferred from Delhi to Visakhapatnam office vide letter dated May 11, 1987. The stand of the petitioner is that he was promoted and transferred to Visakhapatnam because he was elected as General Secretary of the workers' union of the respondent organization. The management did not like this and promoted him and transferred, him in order to harass him. The petitioner wrote several letters to the management explaining his inability to join the

Visakhapatnam office but the management did not cancel the transfer orders and thereafter the management held a domestic inquiry and terminated his services. He alleged that even during domestic inquiry, violation of principles of natural justice took place.

3. The management took the preliminary objections that the petitioner was not a workman while the petitioner has taken the stand that the domestic inquiry was not fair and proper. The Labour Court framed two preliminary issues:

1. Whether claimant Shyam Sunder is a workman? if so, its effect?
2. Whether, the domestic enquiry conducted by the management is illegal unfair and against the principles of natural justice?

The Labour Court decided the issue whether the petitioner was a workman, in, favor of the petitioner and about domestic inquiry being fair, in favor of the respondent management vide its order dated June 4, 2002. The Labour Court thereafter decided the reference vide order dated October 11, 2002 against the petitioner.

4. The petitioner took the stand in the writ petition that his post was not at all transferable outside Delhi in terms of his appointment letter and the Labour Court wrongly held that his job was transferable. The petitioner regularly visited New Delhi Office of respondent from May 25, 1987 onwards but he was not allowed to enter into the office at New Delhi, rather the respondent threatened him with dire consequences if he entered into the New Delhi office of the respondent and issued a warning letter to him that if he attempted to enter into the New Delhi Office, that should be construed as a criminal trespass. He alleged that his transfer was mala fide and the Labour Court did not go into this aspect. He was transferred merely because he was elected as General Secretary of the Union. The Inquiry Officer completed the inquiry within a short period without supplying necessary documents to him and submitted the inquiry report to the disciplinary authority. Copy of the report was not furnished to him. No requirement was received by the respondent for an employee from its Visakhapatnam office but still the petitioner was transferred to that office. Under these circumstances, the award passed by the Labour Court was perverse and should be set aside.

5. The plea of the petitioner that his job was not transferable outside Delhi is belied by the documents proved by the respondent. The respondent proved the standard application form filled by petitioner at the time of appointment of the petitioner. In the application form, a query was put to the petitioner, if he was prepared to move anywhere in India (if necessary) and the petitioner replied this query in affirmative. Even in the agreement of service, Clause 4 provides that if the exigency required, the employee shall not refuse posting at such places outside the city where he is given the task. Clause 9 of the agreement provides that in the event of an employee required to take up any out-station assignment, he shall be entitled to such allowances and expenses as per the rules of the

company. The application form coupled with the agreement makes it clear that the services of the petitioner was transferable outside Delhi and the plea of the petitioner that his services was not transferable is baseless.

6. While the petitioner was transferred in May, 1987, the employer waited for the petitioner to join in his new place of posting till August, 1988 i.e. for more than one year and it is only in September, 1988 that a charge sheet was issued and an inquiry officer was appointed by the respondent who issued a notice to the petitioner for attending the inquiry. The Labour Court came to conclusion that the inquiry was conducted in a fair and proper manner, after considering the entire inquiry proceedings and the evidence before it.

7. The petitioner has failed to show in this petition as to what prejudice was caused to the petitioner and what documents were not supplied to him. Mere bald allegations of non-supplying of documents without disclosing the nature of the documents and the prejudice caused to the petitioner, does not vitiate an inquiry. Neither non-supply of inquiry report vitiates the inquiry unless the petitioner shows that some prejudice was caused to him. It is admitted case of the petitioner that he refused to join duty at his new place of transfer and had, been going to New Delhi office only wherefrom he had already been transferred. So much so that the repeated visits of the petitioner at New Delhi Office irked the respondent to an extent that the respondent had to issue a caution to the, petitioner that in case he again came to the New Delhi office, it shall be construed as a trespass. Moreover, the petitioner did not challenge the transfer orders alleging that the transfer orders were mala fide or he was transferred because he had become Secretary of the Union. If he was aggrieved by the transfer orders issued in May, 1987, he should have raised the dispute about unfair labour practices or about the illegality of transfer at that time. He raised no dispute about the illegality of transfer order or about the unfair labour practices. He was estopped from raising these issues in the reference since these were beyond the scope of reference.

8. I am in complete agreement with the observations of the Labour Court that the punishment awarded by the respondent commensurate with the misconduct. Where an employee refuses to abide by the transfer orders and does not join place of his posting, he cannot claim a right to work at the place of his choice and cannot take the stand that he should not be terminated. Transfer is an incidence of service. It is the employer who has the prerogative to decide as to which employee should work at which of its office and who is suited for what job. An employee cannot dictate terms to employer as to where he should be posted and what work should be assigned to him. The Labour Courts/Tribunals are not the appropriate fora to decide on the transfer of officers/workmen of an employer on administrative grounds. The will of administration of employer organization has to be allowed to run smoothly and the Courts should not interfere about the transfers of the workmen. It is for administration to take appropriate decisions and such decisions have to be considered valid unless they are vitiated either by

mala fide or by extraneous considerations based on proved facts [Refer to State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others,

9. In view of the my foregoing discussion, the writ petition is dismissed. No orders as to costs.