

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1919/1997**

% **Date of decision: 5th May, 2010**

**THE NAV BHARAT REFRIGERATION
& INDUSTRIES LTD.**

..... Petitioner

Through: Mr. Vinay Sabharwal, Advocate

Versus

**THE PRESIDING OFFICER,
LABOUR COURT-III & ORS.**

..... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The petitioner employer impugns the award dated 12th January, 1996 of the Labour Court on the following reference

“Whether the termination of the services of Sh. Krishan Chand Shukla is illegal and / or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

in favour of the respondent no.3 workman and directing the petitioner to reinstate the respondent no.3 workman at Delhi with continuity in service and all consequent benefits.

2. The award records that the respondent no.3 workman was employed as a Clerk with the petitioner w.e.f. 1st March, 1983; that on 30th June, 1988, the petitioner transferred the respondent no.3 workman to Farukhabad, Uttar Pradesh; that respondent no.3 workman requested for withdrawal of his transfer and though was allowed to resume duty at Delhi for a few days but thereafter refused work. The respondent no.3 workman claiming to have been removed from service raised the industrial dispute aforesaid.

3. The petitioner filed a reply before the Industrial Tribunal denying that the services of the respondent no.3 workman had been terminated or that he was being denied work. It was the stand of the petitioner that the respondent no.3 workman continued to be its employee posted at Farukhabad; since he had till then failed to report for duty at Farukhabad, he was being marked absent at Farukhabad. It was further pleaded that none of the service benefits or facilities of the petitioner had been reduced on transfer and that the service of the respondent no.3 workman was in any case transferable.

4. The Labour Court held that the petitioner had not placed on record the appointment letter of the respondent no.3 workman which would have shown whether he could have been transferred out of Delhi or not. The Labour Court further held that the petitioner had also failed to prove that the respondent no.3 workman was the junior most Clerk to be transferred to Farukhabad. It was held that under the Industrial Employment (Standing Orders) Act, 1946, the employer has no absolute right of transfer since the schedule thereof does not empower the employer to frame standing orders to transfer the workman from one place to another. The Labour Court concluded that since the petitioner does not have the right to transfer the respondent no.3 workman from Delhi, the removal by the petitioner of the

name of the respondent no.3 workman from the roll at Delhi amounted to retrenchment and made the award aforesaid.

5. Aggrieved therefrom the present petition has been preferred. This Court vide order dated 24th July, 1997, while issuing notice of the petition, stayed the recovery proceedings initiated by the respondent no.3 workman in enforcement of the award. The counsel for the respondent no.3 workman appeared and claimed to have filed a counter affidavit (an advance copy of which was given to the petitioner and rejoinder of the petitioner is on record) but which is not on record. The counsel for the respondent no.3 workman on 12th July, 2000 also stated that he had filed an application under Section 17B of the I.D. Act but the same is also not on record. Thereafter, the counsel for the respondent no.3 workman stopped appearing and has not appeared for the last about 10 years. When the writ petition was ripe for final hearing, notices were again ordered to be issued to the respondent no.3 workman which were returned with the endorsement that the respondent no.3 workman is not available at his address. The matter was thereafter referred to the Lok Adalat which also issued notices to the respondent no.3 workman as well as the counsel earlier appearing for him. Though the respondent no.3 workman remained unserved but the counsel earlier appearing for him was served but failed to appear. In the circumstances, Lok Adalat returned the matter. This court on 26th April, 2010 directed the matter to be listed today with notation in the cause list of notice of default to the respondent no.3 workman. In spite of such notation in the cause list, today also none has appeared for the respondent no.3 workman in spite of pass-over. The respondent no.3 workman is in the circumstances proceeded against *ex-parte*. The counsel for the petitioner has been heard.

5. What strikes one immediately with respect to the award is that the reference to the Labour Court was on the aspect of termination. No dispute was raised by the respondent no.3 workman as to the order of his transfer and no reference with respect thereto was made. Upon the petitioner denying before the Labour Court that the services of the respondent no.3 workman had been terminated, the Labour Court ought to have returned the reference as a case of no dispute. The Labour Court gets jurisdiction to adjudicate only that dispute which is referred to it and has no general or inherent jurisdiction. The respondent no.3 workman had chosen not to raise a dispute of his transfer and in any case the reference made to the Labour Court was not of the validity of the order of transfer and the findings thereon by the Labour Court are thus found to be without jurisdiction and the award of the Labour Court impugned in this petition is liable to be quashed on this ground alone.

6. The Supreme Court in *Union of India Vs. Muralidhara Menon* (2009) 9 SCC 304 has held that transfer is an incident of service and an employee has no right to be posted at a particular place and cannot exercise his option to be posted in his home State unless there exists any statute or statutory rule governing the field. Similarly in *Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi* AIR 2004 SC 1373, it has been held that in the absence of a pleading that transfer is in violation of any term of employment and in the absence of a term prohibiting transfer of the employee, *prima facie* the transfer order cannot be called in question. To the same effect are the judgments of this Court in *Shyam Sunder Aggarwal Vs. Globe Detective Agency (P) Ltd.* MANU/DE/7973/2007 and *Anand Swarup Mittal Vs. Managing Committee of Ramjas Sr. Secondary School No.4* MANU/DE/9134/2006.

7. The reasoning of the Labour Court in the present case is contrary to the grain of the judgments aforesaid. The Labour Court has proceeded on

the premise that in the absence of a clause in the appointment letter permitting transfer, the respondent no.3 workman could not be transferred. However, the law is otherwise; in the absence of any prohibition of transfer, transfer is an incident of service. The award is thus even otherwise found to be contrary to law and thus perverse.

8. The reference by the Labour Court to the Industrial Employment (Standing Orders) Act is also misconceived. There is no finding that the said Act applies to the petitioner. Moreover, just because the schedule to the said Act does not list provision to be made in the standing orders for transfer, does not mean that the standing orders cannot make a provision therefor or that there is any prohibition therein of transfer.

9. The petition therefore succeeds. The award dated 12th January, 1996 impugned in this petition is set aside / quashed. However, since the respondent no.3 workman has failed to contest the petition, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th May, 2010
gsr