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

Reserved on: 18.02.2026
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\+ W.P.(C) 11095/2015 & CM APPL. 9194/2017

M/S. NOVARTIS INDIA LIMITED .....Petitioner

Through: Mr. Manoj and Ms. Aparna Sinha, Advs.

versus

SARABHJEET SINGH & ANR. .....Respondents

Through: Mr. Varun Chandiok, Ms. Riya Seth, Advs. for R-1 with R-1 in person.

CORAM:
HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT

SHAIL JAIN, J.

1. The present petition, has been filed under Article 227 of the Constitution of India, by M/s Novartis India Limited (*hereinafter referred to as the "Petitioner/Management*"), assailing the Award dated 24.02.2015 passed by the learned Presiding Officer, Labour Court–XIX, Karkardooma Courts, Delhi (*hereinafter referred to as the "Labour Court*") in LIR No. 547/2011.

2. By the impugned Award, the Labour Court has set aside the termination of services of Shri Sarabjeet Singh (*hereinafter referred to as "Respondent /Workman*") and directed his reinstatement with continuity of service, along with consequential benefits and 25% back wages with effect from 11.01.2010.

BRIEF FACTS

3. The Respondent No.1/Workman, Shri Sarabjeet Singh, was appointed as a Medical Sales Representative (*MSR*) with M/s Sandoz (India) Limited, which subsequently became M/s Novartis India Limited , on 26.08.1985. He was initially appointed on probation and was thereafter confirmed in service as a permanent employee on 04.06.1986. The terms of appointment, inter alia, provided that his services were transferable to any establishment of the Management in India and that his employment could be terminated by either party upon one month's notice or salary in lieu thereof.

4. The Workman was initially posted at Chandigarh and came to be transferred to New Delhi in or about January, 1990. While the Workman asserts that such transfer was effected upon mutual discussion and consent, the stand of the Management is that transfers were effected in the ordinary course in terms of service conditions. It is not in dispute that a long-term settlement between the Management and the Association of Chemical Workers (ACW), governing service conditions, remained in force from 08.08.1990 to 30.06.1992. Upon expiry of the said settlement, fresh negotiations commenced. One of the demands raised by the union, being Demand No.20, stipulated that transfers of MSRs be effected only with their consent; however, the Management did not agree to the said demand.

5. It is also borne out by the record that the Workman was associated with the ACW, and issues regarding his alleged resignation from union membership in April, 1995 became a matter of controversy in subsequent proceedings. The Workman contends that deductions towards union subscription continued even thereafter, which aspect was not specifically explained by the Management.

6. The dispute in the present case arises from a sequence of events commencing in September, 1995. On 05.09.1995, the Management directed that the Workman's work be "frozen" till further instructions, without assigning any reason whatsoever. The Workman, vide letter dated 13.09.1995, sought reasons for the said action; however, no response was furnished by the Management at any stage.

7. On 25.09.1995, the Government of Maharashtra referred an industrial dispute between the ACW and the Management to the Industrial Tribunal, Mumbai, being Reference IT No.55/1995. The said reference included, inter alia, the issue relating to transfer of employees, as embodied in Demand No.20. On the very next day, i.e., 26.09.1995, the Management issued an order transferring the Workman from New Delhi to Ratlam, Madhya Pradesh with effect from 09.10.1995 . It is not disputed that the Management received notice of the said reference on 04.10.1995.

8. The Workman received the transfer order on 05.10.1995 and, thereafter, submitted a representation dated 07.10.1995 requesting that the transfer be kept in abeyance pending adjudication of the dispute before the Industrial Tribunal. The Management, however, rejected the said representation on 13.10.1995, taking the position that the pending reference was not relevant.

9. Shortly thereafter, on 01.11.1995, the services of the Workman were terminated by the Management upon payment of one month's salary in lieu of notice. Admittedly, no charge-sheet, show-cause notice, or domestic enquiry preceded the said termination. The termination was thus effected within a short span of time from the date of transfer and rejection of representation.

10. Aggrieved thereby, the Workman instituted Complaint (IT)No.1/1996 before the Industrial Tribunal, Mumbai under Section 33-A of the Industrial Disputes Act (*hereinafter referred to as ID Act*), challenging the legality of the transfer and the consequential termination during the pendency of the industrial dispute. The said proceedings, along with the industrial dispute and subsequent challenges, culminated in a series of decisions. The Industrial Tribunal, by order dated 30.06.2005, allowed the complaint and held the termination to be invalid. However, the said decision was set aside by the learned Single Judge of the High Court of Bombay on 21.12.2006, which was thereafter affirmed by the Division Bench on 07.08.2007, essentially on the ground that the provisions of Section 33(2)(b) of the ID Act were not attracted as the Workman was not a "concerned workman" in the pending reference.

11. The matter was carried to the Supreme Court by the Workman by way of a Special Leave Petition bearing SLP No. 1234 of 2008. The said SLP was converted into Civil Appeal No. 6473 of 2009, which was disposed of vide Order dated 18.09.2009. By the said Order, the Hon'ble Supreme Court held that the controversy under Section 33(2)(b) of the ID Act stood concluded. However, the Workman was granted liberty to raise an industrial dispute under Section 10 of the Industrial Disputes Act, and it was specifically directed that such adjudication would be undertaken on merits, uninfluenced by the observations of the High Court on issues other than Section 33(2)(b) of the ID Act, 1947.

12. Pursuant thereto, the Government of NCT of Delhi, vide order dated 18.12.2009, referred the industrial dispute for adjudication to the Labour Court–XIX, Karkardooma Courts, Delhi, where it was registered as LIR No.

547/2011. The term of reference, as specified by the Appropriate Government, reads as under:

> *"Whether the services of Sh. Sarabhjeet Singh S/o Sh. Jialal Singh have been illegally and/or unjustifiably terminated by the management, and if yes, to what relief is he entitled?"*

Upon consideration of the pleadings and evidence led by the parties, the Labour Court passed the impugned Award dated 24.02.2015, whereby the termination of the Workman was set aside and directions were issued for reinstatement with continuity of service, along with consequential benefits and 25% back wages with effect from 11.01.2010.

13. The said Award was published on 20.07.2015. Aggrieved by the aforesaid Award, the Petitioner/Management has preferred the present petition under Article 227 of the Constitution of India.

SUBMISSIONS ON BEHALF OF THE PETITIONER

14. It is submitted that the impugned Award is unsustainable in law and on facts, having failed to appreciate that the termination of the respondent was a direct consequence of his wilful and deliberate disobedience of a lawful transfer order. The respondent, despite being bound by the terms of his appointment permitting transfer anywhere in India, failed to join duties at Ratlam without any justifiable cause.

15. Learned counsel for the petitioner submits that the learned Labour Court has erred in holding the respondent to be a "workman" under Section 2(s) of the Industrial Disputes Act, 1947, despite his admitted role as a Medical Representative engaged primarily in sales promotion and canvassing, which does not fall within the enumerated categories under the

provision. Reliance is placed on the Constitution Bench judgment in ***H.R. Adyanthaya v. Sandoz (India) Ltd.*, (1994) 5 SCC 737**, which conclusively holds that employees engaged in promotion of sales are not "workmen"; it is thus contended that the impugned finding is unsustainable in law.

16. Learned counsel submits that the respondent has, in his cross-examination, admitted that he did not join duties at the transferred place and that his services were terminated on account of such non-compliance. In view of such admitted position, it is contended that the misconduct stands established.

17. It is further submitted that the transfer order was never challenged by the respondent and has, therefore, attained finality. In the absence of any finding declaring the transfer to be illegal, the respondent was under an obligation to comply with the same, and his failure disentitles him to any relief.

18. Learned counsel submits that transfer is a normal incident of service and an employee is bound to comply with such orders. Reliance is placed on***Gujarat Electricity Board v. Atmaram Sungomal Poshani*, (1989) 2 SCC 602** to contend that mere submission of a representation does not justify non-compliance, and failure to join pursuant to a transfer order exposes the employee to disciplinary action.

19. It is submitted that the Labour Court erred in proceeding on the assumption that a domestic enquiry is indispensable in every case. In the present case, where the misconduct is admitted and self-evident, the requirement of holding a domestic enquiry would be an empty formality.

20. Without prejudice, it is submitted that even in the absence of a domestic enquiry, the petitioner was entitled in law to justify the termination

by leading evidence before the Labour Court.

21. It is further submitted that the respondent had resigned from the union prior to the reference and was not concerned with the industrial dispute relied upon by him. The findings of the Bombay High Court, which have attained finality, establish that no Medical Sales Representative was connected with the dispute, and therefore the respondent could not rely on the said proceedings to justify his conduct.

22. Learned counsel submits that the Labour Court erred in attributing a bona fide belief to the respondent despite absence of any legal basis, and in recording findings of malafides without evidence. It is further contended that the grant of reinstatement is wholly disproportionate and would encourage indiscipline by permitting employees to disregard lawful orders.

23. Learned counsel for the petitioner has placed reliance on the following decisions in support of the aforesaid submissions: ***Workmen v. Firestone Tyre & Rubber Co. of India Pvt. Ltd.*, (1973) 1 SCC 813; and *Amar Chakravarty v. Maruti Suzuki India Ltd.*, (2010) 14 SCC 471.**

SUBMISSIONS ON BEHALF OF THE RESPONDENT

24. It is submitted that the impugned Award warrants no interference, the Labour Court having, upon due appreciation of the material on record, rightly held the termination of the Respondent to be illegal, unjustified, and vitiated by mala fides. The Respondent was a confirmed employee with long and unblemished service, whose conditions were governed not only by the appointment terms but also by prevailing practice and settlements, wherein transfers were effected with mutual consent; the unilateral transfer to Ratlam, effected in the backdrop of ongoing industrial disputes, was thus

contrary to established practice.

25. It is contended that the sequence of events clearly demonstrates mala fides, inasmuch as the work of the Respondent was first frozen without justification, followed by issuance of a transfer order received belatedly, and culminating in termination within eighteen days of the rejection of his representation , without affording any opportunity of hearing or initiating disciplinary proceedings.

26. Learned counsel submits that the Respondent had, upon receipt of the transfer order, submitted a representation seeking deferment in view of the pending industrial dispute; however, the same was rejected and he was precipitously terminated. The Labour Court has rightly held that the Respondent was under a bona fide belief that his request would be considered, and his non-compliance cannot be treated as misconduct in the facts of the case.

27. It is further submitted that even assuming non-compliance with the transfer order, the same could at best constitute misconduct requiring a proper disciplinary enquiry. In the admitted absence of any show cause notice, charge-sheet, or enquiry, the termination is rendered procedurally and substantively illegal. The material on record also indicates that the action of the Petitioner was actuated by hostility towards the Respondent's association with the employees' union and his refusal to accept altered service conditions, thereby vitiating the action on grounds of victimisation and unfair labour practice.

28. It is urged that the findings returned by the Labour Court on maintainability, status of the Respondent as a workman, non-compliance with statutory requirements, and existence of mala fides are findings of fact

based on evidence, which do not warrant interference in exercise of writ jurisdiction. The direction of reinstatement with partial back wages is, therefore, justified, and the present petition, being devoid of merit, is liable to be dismissed

ISSUES FOR CONSIDERATION

29. Having heard the learned counsel appearing for the parties at considerable length, and having examined the pleadings, the Award of the Labour Court, the evidence adduced before it, and the written submissions placed on record, this Court frames the following issues for its determination:

I. Whether the respondent qualifies as a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, and whether the reference before the Labour Court was maintainable in law?

II. Whether the termination of the respondent/workman, being founded on alleged misconduct, was illegal, unjustified, or disproportionate in law?

III. Whether the findings returned by the Labour Court suffer from perversity, jurisdictional error, or patent illegality so as to warrant interference under Article 227 of the Constitution of India?

ANALYSIS AND FINDINGS

30. The present petition has been instituted under Article 227 of the Constitution of India, invoking the supervisory jurisdiction of this Court to

assail the Award dated 24.02.2015 passed by the Labour Court. The jurisdiction under Article 227 is one of superintendence and not of appeal, and is accordingly limited in scope. This Court is concerned with ensuring that the subordinate court or tribunal has acted within the bounds of its authority and in accordance with law; it does not sit in appeal to correct mere errors or to reappreciate evidence. Interference is warranted only where the impugned order suffers from jurisdictional error, patent illegality, violation of principles of natural justice, or perversity, that is, where findings are based on no evidence or are such as no reasonable tribunal could have arrived at. The existence of another possible view, or even an erroneous finding, does not by itself justify interference. This position stands settled in ***Waryam Singh v. Amarnath*, AIR 1954 SC 215**, and ***Shalini Shyam Shetty v. Rajendra Shankar Patil*, (2010) 8 SCC 329**.

31. A perusal of the impugned Award indicates that the Labour Court, upon consideration of the pleadings and evidence, rejected the preliminary objection as to maintainability and proceeded to adjudicate the dispute on merits. It held that the termination of the respondent/workman was founded on alleged misconduct, namely non-compliance with the transfer order, and that no charge-sheet, show cause notice or domestic enquiry preceded such termination, thereby rendering the action violative of the principles of natural justice. While recognising that transfer is an incidence of service and that non-compliance may constitute misconduct, the Labour Court concluded that such misconduct could not justify termination in the absence of a disciplinary enquiry. It further took into account the surrounding circumstances, including the prior freezing of duties, the issuance of the transfer order in the backdrop of a pending industrial dispute, and the

proximity between the transfer and termination, to infer mala fides, and accepted the plea that the respondent acted under a bona fide belief. On a cumulative assessment, the Labour Court held the termination to be illegal and unjustified and therefore granted reinstatement with continuity of service along with partial back wages.

32. The petitioner has placed reliance on the order dated 18.09.2009 passed by the Hon'ble Supreme Court to contend that the issue relating to **Section 33(2)(b)** of the ID Act stood concluded and could not be re-agitated. The said order reads as under:

> *"We once again re-iterate that as far as the applicability of section 33(2)(b) of the Industrial Disputes Act, 1947 is concerned the dispute stands concluded and the appellant will not raise the dispute under Section 33(2)(b). We clarify that the Industrial Tribunal will decide the reference on merits uninfluenced by the observations of the High Court on the points other than on Section 33(2)(b) of the Industrial Disputes Act, 1947.*

33. A plain reading of the aforesaid order makes it clear that while the issue relating to the applicability of Section 33(2)(b) of the ID Act stood concluded, adjudication of the dispute on merits was expressly left open to be decided under Section 10 of the ID Act, uninfluenced by observations on issues other than Section 33(2)(b) of the ID Act. Pursuant thereto, the appropriate Government made a reference dated 18.12.2009 for adjudication of the legality of the termination of the respondent/workman and the relief, if any, to which he is entitled. The reference thus constitutes an independent statutory proceeding, the scope of which is defined by its terms and is not barred by the earlier proceedings under Section 33(2)(b) of the ID Act. The Labour Court, therefore, committed no error in proceeding to adjudicate the

dispute on merits.

34. Before adverting to the merits, it is necessary to determine the preliminary issue whether the respondent qualifies as a "workman" under Section 2(s) of the ID Act, as the maintainability of the reference is contingent thereon. The petitioner contends that the respondent, being a **Medical Sales Representative** engaged in sales promotion, does not fall within the definition of a "**workman**" under Section 2(s) of the Industrial Disputes Act, 1947, placing reliance on ***H.R. Adyanthaya & Ors. v. Sandoz (India) Ltd. & Ors., (1994) 5 SCC 737*** The said contention is considered hereinafter.

35. It is well settled that the status of an employee as a "workman" is a jurisdictional fact; however, such determination is not a pure question of law but one requiring factual enquiry into the nature of duties performed and the capacity in which the employee was engaged. In the present case, no objection to the respondent's status was raised in the written statement before the Labour Court, nor was any amendment sought at any subsequent stage; the plea was raised for the first time at the stage of final arguments, after conclusion of evidence, thereby depriving the respondent of any opportunity to meet it by leading evidence. The belated raising of such a plea, without any factual foundation having been laid, cannot be permitted. The conduct of the petitioner further disentitles it from raising this contention having invoked the jurisdiction of the Industrial Tribunal in earlier proceedings under Section 33-A of the ID Act without ever disputing the respondent's status as a workman, the petitioner cannot be permitted to resile from that position at this stage. The challenge to the respondent's status as a workman, raised belatedly and without factual foundation, does

not merit acceptance and is rejected.

36. Even otherwise ,The Constitution Bench in ***H.R. Adyanthaya v. Sandoz (India) Ltd., (1994) 5 SCC 737***, held that employees engaged in sales promotion do not, by virtue of such engagement alone, fall within the categories enumerated under Section 2(s) of the ID Act. The said judgment, however, recognises that the status of such employees is governed by the applicable statutory framework. In this context, the Sales Promotion Employees (Conditions of Service) Act, 1976 (hereinafter, "SPE Act"), as amended by Act 48 of 1986 with effect from 06.05.1987, assumes significance. By virtue of Section 6(2) of the SPE Act, sales promotion employees not falling within excluded categories such as those employed in a managerial or supervisory capacity beyond the prescribed limits are deemed to be "workmen" for the purposes of the ID Act.

37. In the present case, the termination took place on 01.11.1995, after the coming into force of the amended statutory regime. There is no material on record to indicate that the respondent was employed in a managerial or supervisory capacity so as to fall within the excluded category. On the contrary, the material on record indicates that the respondent was engaged as a field-level Medical Sales Representative without any supervisory authority. The respondent would, therefore, fall within the ambit of a "sales promotion employee" under the SPE Act and consequently be deemed to be a "workman" under the ID Act.

38. The Labour Court, while arriving at this conclusion, referred to the salary reflected in the appointment letter with reference to the pre-amendment wage ceiling, an approach not strictly aligned with the post-1987 position. However, it is well settled that the validity of a conclusion

does not stand vitiated merely because the reasoning is not entirely accurate, so long as the conclusion is otherwise sustainable in law.

39. In view of the aforesaid, the **respondent is held to be a workman** within the meaning of Section 2(s) of the ID Act, and the reference before the Labour Court was accordingly maintainable. The challenge on this ground is **rejected**.

40. The principal question that arises for consideration before this court in the present case is **whether the impugned termination of the respondent's services is illegal or unjustified**.

41. The record indicates that on 05.09.1995, the Management froze the respondent's work without assigning any reason, and despite his letter dated 13.09.1995 seeking reasons therefore, no response was ever furnished. By order dated 26.09.1995, the respondent was transferred to Ratlam, Madhya Pradesh .Upon receipt of the transfer order on 05.10.1995, the respondent submitted a representation dated 07.10.1995 seeking deferment, which was rejected on 13.10.1995 without any interim protection being granted. The respondent did not join at the transferred place, which led to termination of his services on 01.11.1995.

42. In the aforesaid backdrop, the respondent's failure to report at the transferred place, despite rejection of his representation and in the absence of any restraint on the transfer order, may ordinarily invite disciplinary action. That position is not in dispute. However, the admission of non-compliance establishes only the factum of non-joining; it does not, by itself, establish wilful or contumacious misconduct. Whether the conduct warrants the extreme penalty of termination must be assessed in the light of the surrounding circumstances, including the context of the transfer, the time

afforded for compliance, the pendency of the industrial reference, and the manner in which the termination followed. Significantly, between the rejection of the representation on 13.10.1995 and the termination on 01.11.1995, the management issued no show-cause notice, charge-sheet, warning, or communication affording the respondent an opportunity to explain his conduct. The termination was thus effected without any disciplinary process. The mere fact that the transfer order was not challenged does not dispense with this requirement. Non-compliance with a transfer order is the starting point of an enquiry, not its conclusion.

43. In view of the above, the petitioner contends that the termination dated 01.11.1995 is a **discharge simpliciter** effected under Clause (C) of the confirmation letter dated 04.06.1986 by payment of one month's salary in lieu of notice, and, being non-punitive, did not require compliance with disciplinary process.

44. The distinction between a discharge simpliciter and a punitive termination is well settled in law. A discharge simpliciter rests on neutral or administrative considerations and is not founded on any charge or adverse material against the employee. A termination, however, assumes a punitive character where its real and operative foundation lies in the conduct attributed to the employee. The form of the order or the contractual mechanism invoked is not determinative; it is the substance of the action that governs its true character.

45. Tested on the aforesaid principles, the termination in the present case **cannot be regarded as a discharge simpliciter.** The termination letter dated 01.11.1995 expressly proceeds on the basis that the respondent/workman failed to comply with the transfer order and neglected

his contractual obligations, thereby making his conduct the foundation of the action rather than any neutral or administrative consideration. This position is further reinforced by the stand taken by the management in its Written Statement before the Labour Court, wherein the respondent's conduct has been characterised as deliberate and in defiance of lawful directions, even described as having been committed "with impunity." Having thus founded its action on misconduct, and having so pleaded before the Labour Court, the petitioner cannot now adopt an inconsistent position by describing the termination as a mere contractual discharge. The factual background further fortifies this conclusion: the respondent's work was frozen by the management *vide* communication dated 05.09.1995 without assigning any reason; a transfer order was thereafter issued on 26.09.1995 and received by the respondent on 05.10.1995, leaving him only a few days to comply before its operative date of 09.10.1995; the respondent submitted a representation dated 07.10.1995, which was rejected on 13.10.1995; and thereafter, without issuance of any show cause notice, framing of any charge-sheet, or conduct of any domestic enquiry, the respondent's services were terminated on 01.11.1995. These events from the unexplained freezing of work, to the transfer, and the hasty termination are wholly inconsistent with a neutral administrative discharge and are consistent only with a punitive action founded on the respondent's failure to comply with the transfer order.

46. It is well settled that where termination is founded on misconduct, it cannot be sustained as a contractual discharge, irrespective of the form adopted .This principle has been affirmed in ***Uptron India Ltd. v. Shammi Bhan, (1998) 6 SCC 538***, where the Hon'ble Supreme Court held:

"Conferment of 'permanent' status on an employee

> *guarantees security of tenure. It is now well settled that the services of a permanent employee, whether employed by the Government, or Govt. company or Govt. instrumentality or Statutory Corporations or any other "Authority" within the meaning of Article 12, cannot be terminated abruptly and arbitrarily, either by giving him a month's or three months' notice or pay in lieu thereof or even without notice, notwithstanding that there may be a stipulation to that effect either in the contract of service or in the Certified Standing Orders."*

47. The termination dated 01.11.1995 being **punitive in nature**, compliance with the principles of natural justice was imperative. No show-cause notice was issued, no charge-sheet was framed, and no domestic enquiry was conducted prior to termination. In ***D.K. Yadav v. J.M.A. Industries*, (1993) 3 SCC 259**, the Hon'ble Supreme Court held that termination affecting livelihood must be preceded by a just, fair and reasonable procedure in compliance with the principles of natural justice , as the right to livelihood forms part of Article 21 of Constitution of India , and that an employee is entitled to a fair hearing before any adverse civil consequence is imposed. The action of the management, taken in disregard of this requirement, cannot be sustained.

48. The petitioner contends that since the factum of non-joining at the transferred place stands admitted, the holding of a domestic enquiry would have served no purpose and amounted to an empty formality. The requirement of a prior hearing is not confined to establishing the bare factum of conduct; it extends to affording the employee an opportunity to explain the circumstances in which such conduct occurred, including whether the non-compliance was wilful or arose from a bona fide belief, and whether

any mitigating factors warranted a lesser consequence.

49. In ***Novartis India Ltd. v. State of West Bengal & Ors, (2009) 3 SCC 124***, (***CIVIL APPEAL NO. 7011 of 2008***) arising in a similar factual context involving the same petitioner, the Hon'ble Supreme Court observed as under:

> *" 18. When an employee does not join at his transferred place, he commits a misconduct. A disciplinary proceeding was, therefore, required to be initiated. The order of discharge is not a substitute for an order of punishment. If an employee is to be dismissed from services on the ground that he had committed a misconduct, he was entitled to an opportunity of hearing. Had such an opportunity of hearing been given to them, they could have shown that there were compelling reasons for their not joining at the transferred places. Even a minor punishment could have been granted. Appellant precipitated the situation by passing a post haste order of termination of their services."*

50. The submission of the petitioner that the decision in ***Novartis India Ltd. v. State of West Bengal (supra)*** is confined to the issue of back wages was also raised before the Labour Court and was rejected on the ground that the observations of the Supreme Court on the requirement of disciplinary proceedings and a pre-termination opportunity of hearing are of general application and do not lose relevance merely because the case also involved back wages. This Court finds no reason to take a different view. Relevant para of the judgment reads as follows:

> "*Respondents were in private employment and not in public employment. Their services were permanent in nature. The termination of their services was held to be illegal as prior to issuance of the orders, no enquiry had been conducted. The order of discharge was, thus, void ab initio. Back wages, therefore, could have been granted from the date of*

termination of service."

51. Applied to the present case, the termination, being founded on the respondent's failure to comply with the transfer order, could not have been effected without affording him an opportunity of hearing. A domestic enquiry was, therefore, necessary.

52. Similarly, in ***Uptron India Ltd. v. Shammi Bhan (supra),*** the Hon'ble Supreme Court held that even where termination is sought to be effected under a provision of the Standing Orders, it must satisfy the requirements of fairness and natural justice, and the employee must be afforded an opportunity of hearing. The Court observed as under:

> " ……..*What it says is that "the services are liable to automatic termination." This provision, therefore, confers a discretion upon the management to terminate or not to terminate the services of an employee who overstays the leave. It is obvious that this discretion cannot be exercised, or permitted to be exercised, capriciously. The discretion has to be based on an objective consideration of all the circumstances and material which may be available on record. What are the circumstances which compelled the employee to proceed on leave; why he overstayed the leave; was there any just and reasonable cause for overstaying the leave; whether he gave any further application for extension of leave; whether any medical certificate was sent if he had, in the meantime, fallen ill? These are questions which would naturally arise while deciding to terminate the services of the employee for overstaying the leave. Who would answer these questions and who would furnish the material to enable the management to decide whether to terminate or not to terminate the services are again questions which have an answer inherent in the provision itself, namely, that the employee against whom action on the basis of this provision is proposed to be taken must be given an opportunity of hearing....."*

53. The aforesaid principle applies to the present case, where the termination, though effected under the applicable service conditions , is founded on the respondent's conduct and could not have been made without affording an opportunity of hearing.

54. The petitioner has placed reliance on ***Workmen v. Firestone Tyre & Rubber Co., (1973) 1 SCC 813,*** and ***Amar Chakravarty v. Maruti Suzuki (I) Ltd., (2010) 14 SCC 471*** to contend that absence of a domestic enquiry does not vitiate the termination, as the management may justify its action by leading evidence before the Labour Court. The proposition is not in dispute. However, the reliance does not advance the case of the petitioner. The said principle permits the employer to adduce evidence to establish misconduct where no enquiry has been held; it does not dispense with the requirement of affording a pre-termination opportunity of hearing where the action is founded on misconduct. In the present case, although evidence has been led to establish non-compliance with the transfer order, the termination, having been effected without any notice, charge-sheet or enquiry, suffers from a defect going to the root of the action and does not obviate the requirement of fairness at the stage of termination. Further, even under the *Firestone (supra)* principle, the management is required to establish not merely the factum of misconduct but that the action taken was proper; as noticed in ***Amar Chakravarty (supra)***, that burden is not discharged by proof of non-joining alone.

55. In view of the above, **no infirmity** is found in the Labour Court's conclusion that the termination stood vitiated for non-compliance with the principles of natural justice.

56. While the conduct of the respondent in not complying with the transfer order after rejection of his representation cannot be said to be justified, it cannot, in the circumstances, be regarded as wilful. The Labour Court, on an appraisal of the material on record, found that the respondent was under a bona fide impression that the management would consider his request for withdrawal of the transfer order, particularly in view of the reference dated 25.09.1995 made by the Government of Maharashtra to the Industrial Tribunal, Mumbai, which included Demand No. 20 relating to transfer of Medical Sales Representatives by mutual consent. The respondent had specifically relied upon the said pending reference in his representation dated 07.10.1995, requesting reconsideration of the transfer order, and upon termination, pursued remedies under the ID Act by initiating proceedings before the Industrial Tribunal. The Labour Court treated this course of conduct as indicative of the respondent's belief that the pending proceedings afforded him protection. It also took note of the surrounding circumstances, including the prior freezing of the respondent's work on 05.09.1995 without explanation, the limited time available to comply with the transfer order, and the termination of his services within a short span thereafter. The findings of the Labour Court on this aspect are supported by the material on record and do not suffer from perversity.

57. The petitioner's contention based on the alleged resignation from ACW is of no assistance. The observation of the Bombay High Court arose in proceedings under Section 33(2)(b) of the ID Act and, as clarified by the order of the Hon'ble Supreme Court dated 18.09.2009, was confined to that context. In any event, there is nothing on record to indicate that, at the relevant time in October 1995, the respondent was aware that no other

Medical Sales Representative continued to be a member of ACW. The enquiry in the present case is confined to the respondent's bona fide belief in the facts and circumstances relating to his transfer in Ratlam to the reference pending before the Industrial Tribunal, and not about the facts which came into the light in subsequent proceedings.

58. In support of the above submission, the petitioner has placed reliance on ***Gujarat Electricity Board v. Atmaram Sungomal Poshani, (1989) 2 SCC 602***,contending that once a representation against a transfer order is rejected and no stay is obtained, the employee must comply. The proposition is well settled. However, its application depends on the factual context in which the non-compliance occurs. The Labour Court distinguished the said decision on the ground that, in the present case, a reference concerning the transfer of Medical Sales Representatives was already pending before the Industrial Tribunal at the relevant time, which gave rise to a bona fide belief on the part of the respondent that compliance could await its resolution. This Court concurs; the decision is distinguishable on facts and does not aid the petitioner.

59. The petitioner further relies on ***Y.P. Sarabhai v. Union Bank of India, (2006) 5 SCC 377***. The Labour Court distinguished the said decision on the ground that therein the employee remained absent from duty for a very long time i.e. from 03.06.1997 to 23.11.1997 without any reasonable cause or justification, despite repeated requests and further time being granted to join duty, disclosing that he was bent upon evading the transfer order. In the present case, the respondent acted under a bona fide belief arising from the pending industrial dispute and was terminated within eighteen days of the rejection of his representation ,without any domestic

enquiry or opportunity of hearing. This Court finds no infirmity in the said distinction. The decision does not assist the petitioner.

60. The Labour Court, in exercise of its jurisdiction under Section 11-A of the ID Act, was competent to examine the proportionality of the punishment. The alleged misconduct is confined to non-joining in circumstances where the respondent acted under an impression that his grievance was under consideration. He had rendered about ten years of service without any adverse record, and the action stands vitiated by absence of a disciplinary process. Notably, the termination was effected within about eighteen days of the rejection of his representation, without any intervening corrective step, rendering the imposition of the extreme penalty disproportionate. The finding of the Labour Court, therefore, does not suffer from any infirmity.

61. At the same time, the Labour Court did not treat the respondent's conduct as justified. It has been recorded that the respondent's failure to join at the transferred place was not without fault. However, having regard to the surrounding circumstances, including the pendency of the industrial dispute, the prior freezing of work without any justification, explanation and the absence of any opportunity before termination, the Labour Court proceeded to balance the equities between the parties. This is reflected in the nature of the relief granted, whereby back wages were denied for a substantial part of the period and only partially awarded thereafter. The approach of the Labour Court thus demonstrates a considered calibration of relief, taking into account both the conduct of the respondent and the illegality in the action of the management. This Court finds no infirmity in the said approach and concurs with the manner in which the Labour Court has balanced the

equities between the parties.

62. In view of the aforesaid discussion, **the impugned Award does not suffer from any jurisdictional error, patent illegality or perversity warranting interference under Article 227 of the Constitution of India.** The finding of the Labour Court that the termination of the respondent's services was illegal and unjustified is **upheld.**

63. As regards the **relief,** the Labour Court, having found the termination to be illegal, unjustified and vitiated by mala fides, directed reinstatement of the respondent/workman with continuity of service and consequential benefits. While doing so, it denied back wages for the period from 01.11.1995 to 10.01.2010 having regard to the conduct of the workman and the surrounding circumstances , and awarded back wages at the rate of 25% of the last drawn wages for the period from 11.01.2010, being the date of receipt of the reference, till the date of the Award, i.e., 24.02.2015.

64. The petitioner assails the grant of reinstatement on the ground of lapse of time and further contends that the respondent was gainfully employed, placing reliance on alleged business activity in Delhi and income tax returns reflecting amounts of ₹4,60,705/- and ₹1,87,673/-. These submissions do not merit acceptance. The allegation of business activity is unsupported by any material on record, and the reliance on isolated income tax entries does not establish gainful employment in a comparable capacity. As held in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Others* , (2013) 10 SCC 324**, the burden to prove gainful employment lies on the employer and is not discharged by such material.

65. The Labour Court, on appreciation of evidence, found that the management had led no material to establish employment in a comparable

capacity; that the income reflected in the returns was explained as family deposits and sale proceeds; that the suggestion of a dog-breeding business remained unsubstantiated; and that the respondent had stated on oath that he had remained unemployed since 1995. On this basis, the Labour Court declined to treat the said material as proof of gainful employment. This Court finds **no infirmity** in that view.

66. The grant of 25% back wages from 11.01.2010, while denying wages for the earlier period, reflects a balanced exercise of discretion, taking into account both the illegality of the termination and the conduct of the workman. The said determination warrants no interference.

67. The contention that reinstatement should be denied on account of lapse of time is also without merit. The respondent was terminated on 01.11.1995 and has undergone prolonged litigation spanning three decades. Delay attributable to adjudicatory processes cannot operate to the detriment of the workman or defeat the relief otherwise due. As recognised in ***Deepali Gundu Surwase*** **(supra)**, the passage of time does not extinguish the entitlement arising from an illegal termination. No ground is made out to substitute reinstatement with compensation.

68. However, since the respondent has attained the age of superannuation during the pendency of the proceedings, physical reinstatement is no longer feasible. The relief is accordingly moulded by directing that the respondent shall be deemed to have continued in service from 01.11.1995 till the date of superannuation as per applicable service rules , with full continuity of service and all consequential retiral and monetary benefits.

69. The application under Section 17-B of the ID Act, 1947 (CM No. 9194 of 2017) stands disposed of in view of the final relief granted herein.

Any amount deposited pursuant thereto shall be adjusted against the amounts finally payable so as to avoid double recovery.

CONCLUSION

70. In view of the foregoing, the Award dated 24.02.2015 warrants no interference and is upheld, subject to the modification on account of superannuation. Accordingly:

(i) The termination dated 01.11.1995 is set aside as illegal and unjustified.

(ii) The respondent/workman shall be deemed to have continued in service from 01.11.1995 till the date of superannuation as per applicable service rules , with continuity of service for all purposes.

(iii) The respondent/workman shall not be entitled to back wages for the period from 01.11.1995 to 10.01.2010, in terms of the Award, which is upheld.

(iv) The respondent/workman shall be entitled to back wages at the rate of 25% of the last drawn wages for the period from 11.01.2010 to 24.02.2015, in terms of the Award, which is upheld.

(v) For the period from 24.02.2015 till the date of superannuation as per applicable service rules , the respondent/workman shall be entitled to full wages on the basis of deemed continuation in service, along with all increments and benefits applicable to the post.

(vi) The petitioner/management shall compute and release all consequential monetary and retiral benefits, including gratuity,

provident fund and other admissible dues, on the basis of notional continuity of service, within twelve weeks from the date of this judgment.

(vii) Any amount deposited under Section 17-B shall be adjusted against the aforesaid dues.

(viii) In the event of default, the amounts shall carry interest at 6% per annum from the date of expiry of the stipulated period till realization.

The petition and all pending applications stand disposed of. No order as to costs.

SHAIL JAIN
JUDGE

MAY 04, 2026
RM