



2026:DHC:5025



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

% Reserved on : 04.05.2026
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+ **W.P.(C) 13060/2018**

SEEMAPetitioner
Through: Ms. Vagisha Kochar and Mr. Sharath
Sampath, Advocates.

versus

ORIENT CRAFT LIMITEDRespondent
Through: Mr. Gulshan Chawla, Ms. Kanupriya
Chawla and Mr. Manish Kumar,
Advocates.

+ **W.P.(C) 13067/2018**

PUSHPA PALPetitioner
Through: Ms. Vagisha Kochar and Mr. Sharath
Sampath, Advocates.

versus

M/S ORIENT CRAFT LIMITEDRespondent
Through: Mr. Gulshan Chawla, Ms. Kanupriya
Chawla and Mr. Manish Kumar,
Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present petitions, the petitioners/workwomen have assailed the award dated 23.07.2018, whereby the Labour Court dismissed



their claims/references and denied them the reliefs sought against the common respondent/management.

2. Briefly stated, as per their respective claim applications, the workwomen, namely *Seema* and *Pushpa Pal*, had been working with the management as permanent skilled workers in 'Hand Embroidery' for several years. The petitioner/*Seema* had joined service in July 2003 whereas the petitioner/*Pushpa Pal* had joined service on 01.01.1997. The last drawn wages of both the workwomen were stated to be Rs.5,278/- per month. Both the workwomen averred that during the tenure of their service, they had performed their duties diligently and no complaint was ever made against either of them by the management. It was further averred that the management had failed to extend statutory and legal facilities to them, such as appointment letters, identity cards, pay slips, minimum wages, leave benefits, overtime wages, attendance cards, and other service benefits. According to the workwomen, upon repeatedly demanding such legal facilities, the management illegally terminated their services without paying their earned wages and other dues, and without complying with the mandatory provisions of the law. Aggrieved thereby, the workwomen raised industrial disputes seeking reinstatement with continuity of service, back wages and consequential benefits; however, upon failure of conciliation proceedings, the disputes were referred to the Labour Court for adjudication and, as noted above, the same came to be dismissed by the Labour Court.

3. Ms. Kochar, learned counsel appearing for the petitioners/workwomen, while assailing the impugned award, contends that the workwomen had been working with the management for several years as skilled workers without any complaints, but when they demanded legal



facilities and statutory benefits, the management, in the garb of transfer, illegally terminated their services without issuing any notice, chargesheet or conducting any inquiry. She argues that the transfer of services shown by the management is only a cover to justify the illegal termination of the petitioners. It is contended that no proof regarding the service of the concerned transfer letters upon the workwomen has been placed on record and even the management witness admitted the same during cross-examination. It is further contended that the documents relied upon by the management, including the appointment letters, were fraudulently prepared using blank papers previously signed by the workwomen.

4. *Per contra*, Mr. Chawla, learned counsel appearing for the management in both petitions, defends the impugned award and submits that the petitioner workwomen were never terminated from service and their services were only transferred from the *Okhla Unit* of the management to the *Gurgaon Unit*, duly in compliance of the terms stipulated in the appointment letters and the Certified Standing Orders of the management. It is further submitted that the management repeatedly called upon the petitioner workwomen to report for duty at the new workplace through various letters and communications; however, the workwomen deliberately did not join their duties. He also submits that the appointment letters and other records are genuine documents.

5. In rejoinder, learned counsel for the workwomen submits that the factum of the existence or display of the Certified Standing Orders of the management was not even pleaded before the Labour Court.

6. To appreciate the controversy involved in the present petitions, it is deemed apposite to note that the impugned award came to be passed



pursuant to the following terms of reference:

“Whether Smt. Seema wife of Sh.Ashok Kumar and three others (as per annexure "A") are absenting from their duties by not reporting duty at the transferred place or their services have been terminated in the garb of transfer illegally and/or unjustifiably by the management, and if yes, to what relief are they entitled and what directions are necessary in this respect?”

“Whether Smt. Pushpa Pal wife of Sh. Mahesh Pal and three others (as per Annexure 'A') are absenting from their duties by not reporting for duty at the transferred place or whether their services have been terminated in the garb of transfer illegally and/or unjustifiably by the management, and if yes, to what relief are they entitled and what directions are necessary in this respect?”

7. Upon completion of pleadings, the Labour Court framed six issues for adjudication. Only four of the said issues pertain to the present petitioners/workwomen and the other two issues pertained to a third workwoman who is not before this Court. The relevant issues are reproduced below:

“ ...
(2) *Whether the services of workwomen Smt. Pushpa Pal and Seema were illegally and/or unjustifiably terminated by the management on 12.06.2010? OPW*
...
(4) *Whether the services of Smt. Pushpa Pal and Seema were not terminated and they were only transferred on 12.06.2010 at Gurgaon and they did not join their duties? OPM*
(5) *If it is proved that the services of the workwomen were not terminated by the management and they were only transferred at Gurgaon on the dates in question, then whether this Court had jurisdiction to entertain the claim filed by the workwomen? OPM*
(6) *Relief.”*

8. Regarding the aspect of service conditions, including job transferability i.e., physical location transfers in the concerned appointment letters, it is pertinent to note that the workwomen have denied the issuance of any appointment letters to them in the first place. They also challenge the



genuineness of the said documents on the ground that the same appear to have been issued after the workwomen were granted ESIC and PF facilities. Furthermore, it has been submitted that no service conditions were explained to the workwomen at the time of their joining service.

9. Notably, the discrepancy between the ESI records and the appointment letters relied upon by the management assumes significance as the management's own witness (MW-1) admitted that ESI and PF facilities are made available to employees from the very first day of joining. The records relied upon by the management do not align with its own stand regarding the date of appointment of the workwomen. The ESI Card of petitioner/*Seema* reflects the date of appointment as 08.10.2005, whereas the appointment letter produced by the management bears the date 15.10.2005. The management witness, MW-1, could not furnish any satisfactory explanation for this discrepancy.

Similarly, for petitioner/*Pushpa Pal*, two ESI Cards were placed on record, showing her dates of appointment as 30.03.2000 and 07.10.2005 respectively. MW-1 admitted that both these ESI Cards had been provided through the management, yet failed to explain the existence of two different dates of appointment in the statutory records. Although MW-1 put forth an explanation, stating that petitioner/*Pushpa Pal* might have worked with the management earlier, left service, and thereafter joined again, however neither has this assertion been pleaded by the management nor is it supported by any documentary evidence whatsoever. Notably, the ESI records, being statutory records, are generated on the basis of information furnished by the employer.

10. Further, the workwomen consistently asserted that at the time of



employment, the management had obtained their signatures/thumb impressions on blank papers and forms, and that the contents thereof were subsequently filled in by the management. During their respective cross-examinations, both *Seema* and *Pushpa* specifically stated that the documents, including the appointment letters, were blank and unfilled when signed by them. Significantly, the testimony of MW-1 reveals that the columns in the forms and appointment-related documents were filled by the management after obtaining the particulars from the workwomen.

11. The contention of the management that the workwomen refused to accept the transfer letters is not fully borne out by the record. Both the workwomen denied refusing service of the transfer letters dated 12.06.2010. The petitioner/*Seema* stated during cross-examination that she received the transfer letter through post five/six days after her termination, whereas the petitioner/*Pushpa* specifically denied receipt of the transfer letters dated 12.06.2010 and 15.06.2010. The petitioner/*Pushpa* also denied the suggestion that she had refused to receive the transfer letter in the presence of Mr. *Girish Chand Tiwari*. Significantly, no independent witness, including Mr. *Girish Chand Tiwari*, was examined by the management to prove such a refusal. MW-1 further admitted during cross-examination that there was no proof of receipt of the letters dated 12.06.2010, 15.06.2010, or 21.06.2010 sent through post to the workwomen, and that he could not say whether the said letters were actually received by them or were returned unserved. He also admitted that the transfer letter dated 12.06.2010 was not immediately sent through post and no explanation could be furnished as to why the same was not dispatched between 12.06.2010 and 15.06.2010.

12. Notably, the reply dated 17.06.2010 sent by the petitioner/*Seema* to



the management immediately after the receipt of the transfer communications dated 12.06.2010 and 15.06.2010 demonstrates that she had raised protest against the action of the management immediately.

13. The evidence shows that the consistent stand of the workwomen was that their services had been illegally terminated and that the transfer orders were merely used to justify such action. Their statements regarding financial hardship and difficulty in travelling were made only to show that, even otherwise, the alleged transfer was unreasonable and unfair. In this regard, it is relevant to note that the workwomen were admittedly low-paid female workers and were statedly transferred from *Delhi* to *Gurgaon/Khandsa*. The management failed to produce any convincing material to show any administrative exigency or operational necessity requiring such transfer. This Court, in *Chelsea Mills Vs. Tarkeshwar Singh*¹, observed that transfers effected to a distant location, causing disproportionate hardship to workmen and lacking *bona fide* justification, amount to an unfair labour practice.

14. It is settled law that Certified Standing Orders have statutory force and prevail over private contracts. In *Bharatiya Kamgar Karmachari Mahasangh Vs. Jet Airways Ltd.*², the Supreme Court held that Certified Standing Orders override inconsistent contractual terms. In the present case, MW-1 admitted during cross-examination that copies of the Certified Standing Orders were never supplied to the workwomen, either at the time of appointment or during their service, and were only displayed at the main gate of the management workplace. However, no material was placed on record to establish even such display. MW-1 further admitted that he could

¹ 2025 SCC OnLine Del 3844

² (2023) 20 SCC 178



not even state the number of pages of the Certified Standing Orders or the amendments thereto. Crucially, the management also failed to place the said Standing Orders on record. Furthermore, learned counsel for the respondent/management has placed reliance upon Pearlite Liners (P) Ltd. Vs. Manorama Sirsi³ to argue that transfer is a normal incidence of service; however, this reliance is completely misplaced as the said case arose out of a civil suit and, by its own terms, is inapplicable to a reference under the Industrial Disputes Act, 1947.

15. The stand of the workwomen that their services were terminated also finds support in the management evidence. In this regard, the contention raised on behalf of the management that the issue regarding the removal of the workwomen's names from the muster rolls was not pleaded before the Conciliation Officer or the Labour Court is also devoid of merit. The said aspect clearly emerges from the evidence led before the Labour Court. MW-1, during cross-examination, specifically admitted that the names of the workwomen were no longer reflected on the muster rolls of the management. He further admitted that no charge-sheet was ever issued and no domestic inquiry was conducted before striking off their names from the muster rolls. The Supreme Court, in Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji⁴, observed that striking off the name of a workman from the rolls amounts to termination of service.

16. Admittedly, no domestic inquiry was conducted by the management before discontinuing the services of the workwomen. During cross-examination, MW-1 specifically admitted that no charge-sheet was issued to

³ (2004) 3 SCC 172

⁴ (1977) 4 SCC 415



the workwomen and no inquiry whatsoever was conducted before striking off their names from the muster rolls of the management. Even according to the concerned appointment letters, acts of misconduct were required to be dealt with by following proper procedure, including suspension and domestic inquiry. Therefore, once the management claimed that the workwomen had failed to comply with the transfer orders and treated such conduct as misconduct, the management should have followed the procedure prescribed under its own service conditions and adhered to the principles of natural justice. However, no such procedure was followed in the present cases. In Uptron India Ltd. Vs. Shammi Bhan⁵, the Supreme Court held that termination on the ground of absence without holding an inquiry is violative of the principles of natural justice.

17. It is equally well settled that abandonment of service cannot be readily inferred and the burden lies upon the employer to establish a clear intention on the part of the employee to permanently relinquish employment. In Fateh Chand Vs. Presiding Officer, Labour Court⁶, this Court held that mere absenteeism does not amount to abandonment of service and that the management must bring sufficient material on record to establish such abandonment. The Court further observed that where a workman fails to report for duty, the management is required to call upon the workman to resume duties and, if necessary, initiate disciplinary proceedings in accordance with law. Thus, mere absence from duty or non-reporting at the transferred workplace could not automatically amount to abandonment of service in the absence of a proper domestic inquiry. While learned counsel

⁵ (1998) 6 SCC 538

⁶ 2012 SCC OnLine Del 281



for the respondent/management has placed reliance upon the decision of this Court in Chand Singh Vs. Sigma Industries Corporation⁷, a perusal of the same shows that in the said case, the workman was a daily-wage driver who was unable to discharge his initial burden, which is not the case in the present matter where the petitioners are permanent skilled workers who have supported their claims with material evidence.

18. Before proceeding further, this Court also takes note of the limited scope of writ jurisdiction in exercise of powers conferred under Article 226 of the Constitution of India. It is well settled that the challenge is not in the nature of appeal, but to see if the award is passed without jurisdiction, is perverse, or does not follow the principles of natural justice. In Rajinder Kumar Kindra Vs. Delhi Administration⁸, the Supreme Court has held that where material evidence is ignored or findings are based on improper appreciation of evidence, interference in writ jurisdiction is justified.

19. In the present case, the findings recorded by the Labour Court suffer from non-consideration of material evidence and therefore warrant interference by this Court.

20. In view of the aforesaid discussion, this Court is of the considered opinion that the management failed to establish that the workwomen had unlawfully abandoned their service, or that the transfers were *bona fide* and validly effected in accordance with law. On the contrary, the material on record demonstrates that the workwomen were illegally terminated from service under the guise of transfer.

21. The question that now arises is regarding the nature and extent of

⁷ 2012 SCC OnLine Del 6050

⁸ (1984) 4 SCC 635



relief to which the workwomen are entitled. Learned counsel for the respondent/management has placed reliance upon State of Punjab Vs. Jagir Singh⁹ to contend that back wages shall not be granted; however, the said decision was rendered in the specific facts of that case, on the basis of the workman's conduct. The principles relating to reinstatement and back wages in cases of wrongful termination have been clearly laid down by the Supreme Court in Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya¹⁰, wherein reinstatement with back wages has been recognized as the normal rule, subject to certain exceptions. The relevant extract is reproduced hereunder:

“38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal

⁹ (2004)9 SCC 129

¹⁰ (2013) 10 SCC 324



exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame.”

22. It is also pertinent to note that the impugned award itself records that the workwomen have remained unemployed since termination. The petitioners have consistently deposed that they have not been gainfully



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employed since their termination. The management has not produced any material to establish otherwise.

23. Considering the peculiar facts and circumstances of the present case, as well as the law laid down by the Supreme Court in Deepali Gundu Surwase (*supra*), this Court deems it just and proper to direct reinstatement of the petitioners/workwomen in *Delhi* with continuity of service and 50% back wages from the date of termination till reinstatement. The management is directed to comply with the said direction within a period of four weeks.

24. Accordingly, the present petitions are allowed, and the impugned award is set aside.

25. The present petitions are disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

MAY 30, 2026
dh/nb