Before Rajiv Narain Raina, J.

THE EXECUTIVE TECHNICAL & SCALES BENZY INFOTECH PRIVATE LTD. — *Petitioner*

versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, JALANDHAR & OTHERS — *Respondents*

CWP No.18507 OF 2016

May 02, 2017

Constitution of India, 1950 — Arts. 226 & 227 — Industrial Disputes Act, 1947 — Ss. 2(s) & 25-F — Respondent-Workman reinstated in service with continuity of service and full back wages — Petitioner challenged award before High Court — High Court considered whether the respondent was a 'workman' and whether she would be deemed to have resigned when she withdrew the letter of resignation before it came into effect.

Considering the facts of the case and the nature of duties assigned to the respondent, High Court came to the conclusion that respondent was not performing duties of managerial or supervisory nature and therefore was 'workman' within the meaning of S. 2(s) of the Industrial Disputes Act, notwithstanding the fancy and high-sounding designation of 'Senior Executive Customer Support and Training' given to her.

In the absence of any statutory rules governing the service of the respondent, High Court came to the conclusion that service would be governed by the contract of service — Resignation letter submitted by the respondent was withdrawn before it came into effect at a future date — High Court held that letter in law was only a notice of resignation and was to take effect from a future date contemplated in the letter — Resignation would only take effect from the date mentioned in the letter — Letter having been withdrawn before that date could not come into effect — Hurried acceptance of resignation by the Management before the date mentioned in the letter amounts to termination of service within the meaning of S. 25-F of the Industrial Disputes Act — Provisions of S. 25-F not complied with — Termination held illegal.

Further held, that writ of certiorari will not issue as a cloak of an appeal in disguise — Normally courts would loathe to interfere in

an award where the findings of fact are recorded after perusing material facts — It is only when there is an error apparent on the face of the record that interference is warranted — Writ petition dismissed.

Held, that respondent Claimant produced in rebuttal her evidence to support the conclusion that her designation alone was not material to the determination of the issue as to whether she was a "workman" by definition, when in fact she was proved not to perform either managerial functions or supervisory duties of a managerial nature and therefore, the case fell within the ambit of the definition in Section 2 (s) of the ID Act. She was no more than a workman with industrial rights acquired by virtue of appointment and promotion and could never be; in the face of probative evidence on record, part of the officers of the management even on the promoted and high-sounding post of Senior Executive Customer Support & and Training when not taking managerial decisions binding on the company and her co-employees. The words 'Senior Executive" alone would be of no help without making known on paper, the nature of duties and responsibilities attached to the post.

(Para 17)

Further held, that management had opportunity but failed to adduce any legal evidence delineating the nature of the duties performed by the claimant in support of their stand that she was not a workman but a Senior Executive and part of the management laying down an executing business policy. In absence of any creditworthy evidence, the lack of which materials on record of the court could not be seriously disputed by the learned counsel for the petitioners was not adduced on record, either by documentary or unimpeachable oral evidence then it was a case of no evidence before the tribunal; other than two documents marked and not exhibited on record which were admitted to legal evidence and are to be discarded on mode of proof. And that was all that was produced by the management before the Labour Court trying to establish its case. The evidence of the management on the crucial jurisdictional fact of proving person a "workman" was far too weak to sustain a finding in its favour.

(Para 18)

Further held, that the question falling for consideration is that when an employee in a private company governed by personal contract of service resigns and specifies the future date on which it will take

effect, then (1) has the management in law to await expiry of the period before accepting the resignation letter or (2) can proceed to accept it immediately.

(Para 11)

Further held, that but if acceptance of resignation is made effective from a future date then private employer has to wait for the day to arrive. This is because the employer is not denuded of its right to terminate services at any time for any reason by following due process as per contract stepping aside the resignation. As far as resignations go, the ordinary rule is that the employer possesses power to accept resignation when tendered with immediate effect unless the letter of resignation itself specifies future date for person resigning from service to be relieved. For the legal principles involved; See, Supreme Court speaking in Union of India v. Hitender Kumar Soni, (2014) 13 SCC 204. For an expansive study of the law in the subject field read Union of India v. Gopal Chandra Mishra, (1978) 2 SCC 301 which is a leading case involving a sitting judge of the Allahabad High Court submitting his resignation to the President of India from future date and withdrawing it before the expiry of the last day specified.

(Para 12)

Further held, that ordinarily, resignation in public employment operates as per rules governing service. Resignation becomes effective on acceptance by person competent to do so. However, in private law domain the position may be different in absence of statutory rules governing the subject matter. In contracts of personal service a letter of resignation can only operate strictly as per intention of the person resigning and if he specifies future date, employer is precluded from accepting the resignation till the last day otherwise it may amount to termination, discharge, dismissal or retrenchment as in Section 2A of the ID Act. This does not mean employer cannot dismiss employee for misconduct meanwhile or take such action under the model or certified standing orders, if applicable or as per the terms and conditions of the appointment stipulated in the contract.

(Para 13)

Further held, that since the parties in the present case are governed by contract of service and there were no rules of procedure on acceptance or refusal of resignation and none were relied upon by the management then one stands in non-rule territory without explaining as to how resignations are to be managed. The thread of employment in the case of the claimant continued to run till the day appointed in the

letter of resignation. Management need not have accepted the resignation and could have proceeded to terminate services in accordance with the due process of the law in the ID Act. But that is not the case set up by the management. Therefore, private management had no *locus poenitentiae* to act before the expiry date fixed by employee in her letter of resignation. The letter though appears to be a resignation is really in law a notice of resignation to take effect from future contemplated date. The dissolution of the contract of employment could be brought about only on the date indicated in the letter of resignation, if direct action was not resorted to by way of disciplinary proceedings or otherwise in terms of the contract of employment to bring an end to it.

(Para 14)

Further held, that the intention of unfair practice in the management is explicit and becomes manifest when salary for the month paid in advance indisputably was not offered to the claimant respondent nor compensation paid. This *ex facie* establishes the intention that the management wanted to get rid of the respondent anyhow and as quickly as possible for which they conveniently had in hand a document to accept. The management's desperation to act rapidly has landed them in serious trouble and committed the irreversible and incurable mistake of falling foul of the pre-conditions in Section 25F of the ID Act. Management was ill-advised in the steps it took to wind up the matter and remove the claimant from the scene. The cost of error falls in the lot of the petitioner.

(Para 15)

Further held, that the learned Labour Court went into the question in the light of the facts-in-issue on the evidence adduced by the parties and concluded that the claimant was within her right to withdraw the resignation before expiry of the period of notice. The acceptance was a sham and not binding on the rights of the respondent claimant. The action could only amount to termination and thereby immediately in a blinding flash polarize the mandatory provisions of Section 25F of the ID Act at the same blinding speed in which the letter of resignation was accepted, the day after.

(Para 16)

Further held, that the reasoning adopted by the Labour Court for reaching this conclusion after appreciating the evidence on file is unexceptionable and to my mind is a proper view of the evidence.

When the evidence has been appreciated by the learned Labour Court then it is not the business of the writ Court to reappreciate it and hunt for potholes in the reasoning and substitute one opinion over another to reach a different conclusion. If the award is free from doubt on law and fact and there is no apparent perversity or irrationality in its making, then interference is not warranted in writ jurisdiction in this case. The parameters of interference are well settled while judicially reviewing the work of Tribunals under Article 226 of the Constitution of India which has been expounded by the constitution bench of the Supreme Court in the celebrated and much cited case in Syed Yakoob V.K.S. Radhakrishnan, AIR 1964 SC 477.

(Para 20)

Further held, that as said before, it is only when an award is based on no evidence, or is perverse or irrational or discloses errors apparent on the face of record that interference may be warranted. If none of these negative elements is present in the award then I would be loathe to interfere with the findings of fact recorded on appreciation of material facts and the law by the learned Labour Court assigning reasons I would commend dismissal of this petition. "A writ of certiorari will not issue as a cloak of an appeal in disguise". The High Court does not sit in appeal over Labour Courts and Tribunals to find its own solutions and possibilities. Interference is justified only if there is an easily noticeable fundamental flaw which vitiates the award or there has been a transgression of jurisdiction.

(Para 21)

Ashish Verma, Advocate,
for the petitioner.

Tanu Bedi, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.(Oral)

C.M. No.6525 of 2017

(1) Allowed as prayed for. Documents are taken on record, subject to relevancy and they being exhibited documents on the record of the Labour Court from where this writ arises.

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(2) When this matter came up for motion hearing on 22.12.2016, coordinate Bench directed the petitioner to reinstate the

respondent-workman forthwith subject to result of this litigation. Such an interim order is the consequence of the award of the Presiding Officer, Labour Court-cum- Industrial Tribunal, Jalandhar made on May 05, 2016 directing respondent 1 & 3-management to reinstate the workman on the same post and on the same terms and conditions with continuity of service and full back wages for the intervening period. The reference has been dismissed qua respondents No.2 and 4, namely, Abkar Travels of India Pvt. Ltd., Jalandhar and Abacus Distribution System (India) Pvt. Ltd., Mumbai. The direction was not appealed against and had to be complied with, which led to resumption of work at Jalandhar by the claimant.

(3) Meanwhile, Ms. Tanu Bedi appearing on behalf of claimant respondent No.2 presented CM No.5261 of 2017 bringing to the notice of the Court that respondent No.2 had been transferred vide order dated January 19, 2017 to the Lucknow Branch of the company and is to report to one Mr. Shavez Jafri, Assistant Manager, Benzy Infotech Pvt. Ltd, Lucknow. The reason for transfer maintained by the company is that there is no vacancy in Jalandhar and other Branches of North India.

(4) The respondent pleads that her harassment continues unabated at the hands of the management and she is being victimized because of the ensuing litigation for the vindication of her rights and the management smarting from the interim mandamus reinstating the workman subject to the result of the litigation.

(5) When the CM came up before me on April 19, 2017, notice of the application was issued to the non-applicant/petitioners for the date already fixed in the main case i.e. May 02, 2017.

(6) Notice was also issued regarding stay of transfer order.

(7) Meanwhile, interim directions were issued that the transfer order shall remain stayed till further orders.

(8) Heard Mr. Ashish Verma and Ms Tanu Bedi at length.

(9) The only two seriously contested issues in this petition is whether the respondent No.2 qualifies as a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 ('the ID Act' for short) and the other is the issue arising from resignation tendered by the claimant respondent specifying future date and withdrawing it time stipulated which resignation letter was accepted

before time expired. Claimant had changed her mind, but was forced out of employment relationship which gave rise to the dispute referred for adjudication as to whether the action amounted to termination of service.

(10) It is the case of the management that the respondent was employed as an Executive, Training and Customer Support. She was promoted as Senior Executive Customer Support & and Training vide letter dated December 15, 2010 with basic salary of Rs.11500/- plus HRA and special allowance in sums of Rs. 5750/- & 2750/- per month respectively. From the promotion order it appears that the job profile related to work demanding travel. While serving on the promoted post, she submitted her resignation letter dated January18, 2012. However, just around the time before it was accepted by the management, she withdrew her resignation by registered letter dated January 20, 2012. The letter of resignation recited that it would take effect after one month from the date of submission of the resignation letter. The e-mail received from management accepting the resignation was dated January 19, 2012 was sent to the address of the respondent at an odd and late hour.

(11) The question falling for consideration is that when an employee in a private company governed by personal contract of service resigns and specifies the future date on which it will take effect, then (1) has the management in law to await expiry of the period before accepting the resignation letter or (2) can proceed to accept it immediately.

(12) But if acceptance of resignation is made effective from a future date then private employer has to wait for the day to arrive. This is because the employer is not denuded of its right to terminate services at any time for any reason by following due process as per contract stepping aside the resignation. As far as resignations go, the ordinary rule is that the employer possesses power to accept resignation when tendered with immediate effect unless the letter of resignation itself specifies future date for person resigning from service to be relieved. For the legal principles involved; See, Supreme Court speaking in ***Union of India*** versus ***Hitender Kumar Soni***[1]. For an expansive study of the law in the subject field read ***Union of India*** versus ***Gopal Chandra Mishra***[2] which is a leading case involving a sitting judge of

[1] (2014) 13 SCC 204
[2] (1978) 2 SCC 301

the Allahabad High Court submitting his resignation to the President of India from future date and withdrawing it before the expiry of the last day specified.

(13) Ordinarily, resignation in public employment operates as per rules governing service. Resignation becomes effective on acceptance by person competent to do so. However, in private law domain the position may be different in absence of statutory rules governing the subject matter. In contracts of personal service a letter of resignation can only operate strictly as per intention of the person resigning and if he specifies future date, employer is precluded from accepting the resignation till the last day otherwise it may amount to termination, discharge, dismissal or retrenchment as in Section 2A of the ID Act. This does not mean employer cannot dismiss employee for misconduct meanwhile or take such action under the model or certified standing orders, if applicable or as per the terms and conditions of the appointment stipulated in the contract.

(14) Since the parties in the present case are governed by contract of service and there were no rules of procedure on acceptance or refusal of resignation and none were relied upon by the management then one stands in non-rule territory without explaining as to how resignations are to be managed. The thread of employment in the case of the claimant continued to run till the day appointed in the letter of resignation. Management need not have accepted the resignation and could have proceeded to terminate services in accordance with the due process of the law in the ID Act. But that is not the case set up by the management. Therefore, private management had no *locus poenitentiae* to act before the expiry date fixed by employee in her letter of resignation. The letter though appears to be a resignation is really in law a notice of resignation to take effect from future contemplated date. The dissolution of the contract of employment could be brought about only on the date indicated in the letter of resignation, if direct action was not resorted to by way of disciplinary proceedings or otherwise in terms of the contract of employment to bring an end to it.

(15) The intention of unfair practice in the management is explicit and becomes manifest when salary for the month paid in advance indisputably was not offered to the claimant respondent nor compensation paid. This *ex facie* establishes the intention that the management wanted to get rid of the respondent anyhow and as quickly as possible for which they conveniently had in hand a

document to accept. The management's desperation to act rapidly has landed them in serious trouble and committed the irreversible and incurable mistake of falling foul of the pre-conditions in Section 25F of the ID Act. Management was ill-advised in the steps it took to wind up the matter and remove the claimant from the scene. The cost of error falls in the lot of the petitioner.

(16) The learned Labour Court went into the question in the light of the facts-in-issue on the evidence adduced by the parties and concluded that the claimant was within her right to withdraw the resignation before expiry of the period of notice. The acceptance was a sham and not binding on the rights of the respondent claimant. The action could only amount to termination and thereby immediately in a blinding flash polarize the mandatory provisions of Section 25F of the ID Act at the same blinding speed in which the letter of resignation was accepted, the day after.

(17) Once this obstacle was crossed and legal position recognized, the learned Labour Court went into the moot issue whether claimant was a "workman" by definition and accordingly an issue had been framed for answer on evidence. The respondent Claimant produced in rebuttal her evidence to support the conclusion that her designation alone was not material to the determination of the issue as to whether she was a "workman" by definition, when in fact she was proved not to perform either managerial functions or supervisory duties of a managerial nature and therefore, the case fell within the ambit of the definition in Section 2 (s) of the ID Act. She was no more than a workman with industrial rights acquired by virtue of appointment and promotion and could never be; in the face of probative evidence on record, part of the officers of the management even on the promoted and high-sounding post of Senior Executive Customer Support & and Training when not taking managerial decisions binding on the company and her co-employees. The words 'Senior Executive" alone would be of no help without making known on paper, the nature of duties and responsibilities attached to the post.

(18) On the other hand, management had opportunity but failed to adduce any legal evidence delineating the nature of the duties performed by the claimant in support of their stand that she was not a workman but a Senior Executive and part of the management laying down an executing business policy. In absence of any creditworthy evidence, the lack of which materials on record of the court could not be seriously disputed by the learned counsel for the petitioners was not

adduced on record, either by documentary or unimpeachable oral evidence then it was a case of no evidence before the tribunal; other than two documents marked and not exhibited on record which were admitted to legal evidence and are to be discarded on mode of proof. And that was all that was produced by the management before the Labour Court trying to establish its case. The evidence of the management on the crucial jurisdictional fact of proving person a "workman" was far too weak to sustain a finding in its favour.

(19) Although the management did lead some oral evidence by production of witnesses but they could not say much in their favour to take their defence away from the teeth of Section 2 (s) of the ID Act. The burden and the onus on the issue was on the management to discharge. If the management failed to discharge its burden of proof, then I do not find anything wrong in what the learned Labour Court has reasoned in declaring the claimant as a "workman" protected by the provisions of the ID Act. Since the nature of the defence of the management was such it admitted of no exception or escape route to them and the natural fallout of the facts and circumstances will be abject violation of the mandatory provisions of Section 25-F of the ID Act staring the management in its face and therefore, the hurried acceptance of the resignation before the period specified in the resignation letter certainly amounts to termination which action the learned Labour Court has found to be illegal and, void ab initio and this is the declaration given by the Presiding Officer, Industrial Tribunal, Jalandhar in its impugned award dated May 5, 2016 answering the reference against the management and in favour of claimant. The labour court has awarded reinstatement on the same post and on the same terms and conditions with continuity of service and full back wages for the intervening period.

(20) The reasoning adopted by the Labour Court for reaching this conclusion after appreciating the evidence on file is unexceptionable and to my mind is a proper view of the evidence. When the evidence has been appreciated by the learned Labour Court then it is not the business of the writ Court to reappreciate it and hunt for potholes in the reasoning and substitute one opinion over another to reach a different conclusion. If the award is free from doubt on law and fact and there is no apparent perversity or irrationality in its making, then interference is not warranted in writ jurisdiction in this case. The parameters of interference are well settled while judicially reviewing the work of Tribunals under Article 226 of the Constitution of India

which has been expounded by the constitution bench of the Supreme Court in the celebrated and much cited case in ***Syed Yakoob*** versus ***K. S. Radhakrishnan***[3].

(21) As said before, it is only when an award is based on no evidence, or is perverse or irrational or discloses errors apparent on the face of record that interference may be warranted. If none of these negative elements is present in the award then I would be loathe to interfere with the findings of fact recorded on appreciation of material facts and the law by the learned Labour Court assigning reasons I would commend dismissal of this petition. "A writ of certiorari will not issue as a cloak of an appeal in disguise". The High Court does not sit in appeal over Labour Courts and Tribunals to find its own solutions and possibilities. Interference is justified only if there is an easily noticeable fundamental flaw which vitiates the award or there has been a transgression of jurisdiction.

(22) There is no merit in the petition which is ordered to stand dismissed.

(23) However, for the time being, the interim order of stay of transfer from Jalandhar to far away Lucknow is made absolute. This is mostly for the reason that Ms. Tanu Bedi informs Court that the lady is unmarried, is from a Jalandhar based family and resides there with her parents and such a distant transfer may seem to the ordinary man of reasonable intelligence rather unfair and unjustified. This would be like asking her to leave the job.

P.S. Bajwa

[3] AIR 1964 SC 477