

**Sompal Singh Vs. Artificial Limbs Mfg. Corpn. of India**

**Sompal Singh Vs. Artificial Limbs Mfg. Corpn. of India**

**SooperKanoon Citation :** [sooperkanoon.com/458253](http://sooperkanoon.com/458253)

**Court :** Allahabad

**Decided On :** Oct-11-1993

**Reported in :** (1995)ILLJ81All; (1994)1UPLBEC29

**Judge :** R.R.K. Trivedi, J.

**Acts :** Industrial Employment (Standing Orders) Act, 1946 - Sections 12A

**Appeal No. :** C.M.W.P. No. 37137/1993

**Appellant :** Sompal Singh

**Respondent :** Artificial Limbs Mfg. Corpn. of India

**Advocate for Def. :** Tarun Agarwal, S.C.

**Advocate for Pet/Ap. :** Bhoopendra Nath Singh, Adv.

**Disposition :** Petition allowed

**Judgement :**

**R.R.K. Trivedi, J.**

1. In this petition counter affidavit has been filed by respondent and both the Learned Counsel have agreed that the writ petition may be disposed of finally at this stage.

2. By means of this writ petition petitioner has challenged the order dated October 1, 1993, Annexure 1 to the writ petition, by which petitioner who is a Senior Assistant working in P.S. 3 Department has been transferred to Regional Marketing Centre, ALIMCO, C/o National Institute of Orthopaedically Handicapped, B.T. Road, Bon Honghly, Calcutta.

3. Learned Counsel for petitioner has questioned the legality of the aforesaid order of transfer on the ground that the respondent industrial establishment has Certified Standing Orders which do not contain any provision for transfers and the employer in absence of such a provision could not pass the impugned order transferring petitioner from Kanpur to Calcutta. It has been farther submitted that though petitioner was appointed in the year 1976 and the order of appointment contained a condition that petitioner may be transferred to other centers anywhere in India at the discretion of the management but this condition was meaningless as at the time of appointment there was no other centre except Kanpur. The two other centres at Calcutta (West Bengal) and Bhubneshwar (Orissa) came in existence in 1983. Learned Counsel submitted that the aforesaid condition in the order of appointment became ineffective on the certified Standing Orders coming into existence which have statutory effect and govern the terms and conditions of service. Learned Counsel has further submitted that respondent submitted the draft Standing Orders under Section 3 of the Industrial Employment (Standing Orders) Act, 1946 and the draft Standing Orders in Clause 22 contained a condition of transfer of the employees. The union of the workers of which the petitioner was also member opposed the said clause containing the provision of transfer. The Certifying Officer after hearing both the parties found the provision of transfer as unfair and unreasonable and deleted the same. The Learned Counsel has submitted that as the provision with regard to transfer has already been adjudicated by a quasi-judicial authority and the order has become final, the respondent's order directing transfer of petitioner is wholly illegal and without authority. Lastly, it has been submitted by Learned Counsel for petitioner that the condition of transfer in the appointment order is illegal and void as it is unregistered and it was not arrived at before the Conciliation Officer as required under Section 6-B of U.P. Industrial Disputes Act, 1947.

4. Learned Counsel for petitioner has relied on the cases : Western India Match Company Ltd. v. Workman, reported in (1973-II-LLJ-403) and the Air Gases Mazdoor Sangh and Ors. v. Indian Air Gases Ltd. Varanasi and Ors.; reported in (1977-II- LLJ-503).

5. The respondent have resisted the relief sought in the writ petition by filing counter affidavit on various grounds. Learned Counsel appearing for respondent has submitted that at the time of appointment petitioner specifically agreed to the condition of transfer which was contained in para 6 of the appointment order dated June 25, 1976 which is Annexure 1 to the counter affidavit. Learned Counsel has placed before me letter of petitioner dated July 23, 1976 by which he has unconditionally accepted all the terms and conditions contained in the appointment letter mentioned above; Learned Counsel has submitted that in view of this unconditional acceptance of the condition of transfer, petitioner has no locus standi to resist the order of transfer. Learned counsel for the respondent has further submitted that it is true that the Certifying Officer by his order dated December 24, 1976 refused to certify the condition of transfer mentioned in Clause 22. However, appeal was filed and in appeal it was found that as the transfer is not included in the Schedule of the Act, hence such an item could not be certified. However, the appropriate authority by notification date January 17, 1983 amended the Industrial Employment (Standing Orders) Central Rules, 1946 (hereinafter referred to as the Rules) and the Schedule was amended and the matter of transfer was specifically provided as item No. 4 to Rule 2A (10B). Learned Counsel has further submitted that the Model Standing Orders as provided in Schedule 1B for additional items introduced by amendment dated January 17, 1983 contain a provision for transfer and as the Model Standing Orders are applicable, the order of transfer is justified. Learned Counsel has further submitted that the grievance with regard to transfer is an industrial dispute and it should have been raised by the petitioner before the Industrial Tribunal or the Labour Court and in view of the aforesaid alternative remedy, the petitioner could not raise this dispute directly in this Court. Shri Sudhir Chandra has further submitted that Section 6B of the U.P. Industrial Disputes Act, 1947 applies only to the agreement between the employer and the workmen arrived at during the course of conciliation proceedings and this provision could not affect the condition of transfer contained

in the appointment order.

6. I have considered the submissions made by the Learned Counsel for parties and, in my opinion, the question for consideration in the present writ petition is as to whether the respondent could pass the impugned order transferring the petitioner from Kanpur to Calcutta in the absence of any provision in this regard in the certified Standing Orders applicable to the workmen of the establishment. It cannot be denied that the purpose and object of the Act is to have uniform Standing Orders providing for the matters enumerated in the schedule to the Act and that it was not intended that there should be different conditions of service for those who are employed before and those employed after the Standing Orders came into force finally, Once the Standing Orders come into force, they bind all those presently in the employment of the concerned establishment as well as those who are appointed thereafter. The learned counsel for the respondent placed before me a copy of the order dated November 30, 1977 passed by the appellate authority in the appeal filed by the respondent against the order dated December 24, 1976 passed by the Certifying Officer. Paras 7.1 and 7.2 of the appellate order which deal with the draft Standing Order No. 22 relating to the transfer may be reproduced here for appreciating the controversy properly:-

'7.1 The management have also appealed against Certified Standing Order No. 22 relating to 'transfer'. The Regional Labour Commissioner (Central), Kanpur and Certifying Officer has provided that workmen shall be liable to be transferred, at the discretion of the management, from one work, Section or establishment to another department provided that in doing so, the management shall keep in view the suitability of the workmen for the particular work and also that the pay, grade and seniority of the workman concerned is protected. He has, however, disallowed the portion of the draft Standing Orders proposed by the management wherein they had also proposed that the workman shall be liable to be transferred anywhere within the country, on the ground that there is no other factory anywhere in the country, of this establishment excepting at Kanpur.

7.2 I find that item relating to 'transfer' is also not included in the schedule to the Industrial Employment (Standing Orders) Act, 1946. Hence, such an item cannot

be certified. I, therefore, order that the entire Standing Order No. 22, as certified by the Regional Labour Commissioner (Central), Kanpur and Certifying Officer shall stand deleted and other Standing Orders shall be renumbered accordingly.'

7. From a persual of the aforesaid finding of the appellate authority it is clear that the draft Standing Order No. 22 contained a provision relating to transfer. However, Certifying Officer certified it only with regard to the transfers within the establishment. So far as the provision regarding transfer anywhere within the country was concerned, it was not certified on the ground that there is no factory anywhere in the country of this establishment except at Kanpur. The appellate authority, however, refused to certify the entire Standing Order No. 22 and order of the Certifying Officer was modified and the entire Standing Order No. 22 was deleted on the ground that the Schedule of the Act does not include the matter of transfer. The order of the appellate authority dated November 30, 1977 has become final. The effect of this adjudication by the quasi-judicial authority is that after the certified Standing Orders came into force, the workers of the establishment could not be transferred to other establishments of this Corporation in the Country. The Learned Counsel for the respondent, however, placed much reliance on the condition No. 6 contained in appointment order dated June 25, 1976, Annexure 1 to the counter affidavit and Annexure 2 to the counter affidavit which is unconditional acceptance of the condition by the petitioner. Learned Counsel has submitted that this condition continued to be effective between the parties and the impugned order of transfer is justified. In my opinion, the submission of Learned Counsel cannot be accepted.

8. Hon'ble the Supreme Court in case of Agra Electricity Supply Co. Ltd v. Shri Allahdin and Ors., reported in (1969-II-LLJ- 540) specifically held that the certified Standing Orders, once they come into force, shall have uniform application both to those who were employed earlier and those who were employed subsequently. Portion of the aforesaid judgment of the Hon'ble Supreme Court may be quoted usefully (p.546):

'This decision thus confirms the view taken by us that the object of the Act is to have uniform Standing Orders providing for the matters enumerated in the

Schedule to the Act, that it was not intended that there should be different conditions of service for those who are employed before and those employed after the Standing Orders came into force, and finding that once the Standing Orders came into force, they bind all those presently in the employment of the concerned establishment as well as those who are appointed thereafter.'

In my opinion, in view of the view expressed by Hon'ble Supreme Court, the condition of transfer contained in the order of appointment agreed between the parties before the Standing Orders came into force cannot prevail. Hon'ble Supreme Court in the case U.P. State Electricity Board and another v. Hari Shankar Jain and Ors. reported in (1978-II-LLJ-399) specifically held that the Industrial Employment (Standing Orders) Act is an Act specifically designed to define the terms of employment of the workmen in the industrial establishments to give the workmen collective voice defining the terms of employment and to subject the terms of employment to the scrutiny of the quasi-judicial authority by the application of test of fairness and reasonableness. It is an Act giving recognition and form to the claim and rights of the workmen. Therefore, it is a special Act specially and exclusively dealing with the schedule-enumerated conditions of service of workmen in the industrial establishments. Since the establishment has certified Standing Orders covering the terms and conditions applicable between the parties, i.e. the workmen and the respondent employer, They will prevail and the alleged condition in the order of appointment cannot be applied. It is also noteworthy that the matter of transfer having been specifically considered and adjudicated by quasi-judicial authority and disapproved and deleted from the draft Standing Order, the condition of transfer cannot be enforced. The orders have become final and are binding on the respondent.

9. Learned Counsel for respondents, however, submitted in view of the amendment in the Rules of 1946 and matter of transfer having been specifically included, the respondent on the basis of the Model Standing Orders given in Schedule to the Rules could transfer petitioner on the basis of item No. 4 thereof. In my opinion, the submission of Learned Counsel is not correct. Persual of Section 12A of the Act will show that the Model Standing Orders could have only temporary application during the period the Act became applicable to the Industrial

Establishment and ending with the date on which the Standing Orders are finally certified under the Act. Admittedly, there are Certified Standing Orders applicable to the respondent establishment and the Model Standing Orders could not be applied. However, on the basis of the amendment in the Rules brought about in 1983 and by providing the matter of transfer in the schedule, the respondent could apply for modification of the Standing Orders. However, until the certified orders contain provision for transfer, the respondent could not pass the impugned orders either on the basis of the appointment order or on the basis of the model Standing Orders. Hon'ble Supreme Court in case Western India Match Company, mentioned supra, specifically held that the pre-arrangement of service with the workman inconsistent with the provisions of Standing Orders of the company will not be valid. Para 11 may be reproduced for better appreciation of the controversy:- (p.407)

'11. The special agreement, in so far as it provides for additional four months of probation, is an act in contravention of the Standing Order. We have already held that, it plainly follows from Sections 4, 10 and 13(2) that the inconsistent part of the special agreement cannot prevail over the Standing Order. As long as the Standing Order is in force, it is binding on the company as well as the workmen. To uphold the special agreement would mean giving a go-by to the Act's principle of three-party participation in the settlement of terms of employment. So we are of opinion that the inconsistent part of the special agreement is ineffective and unenforceable.'

10. Learned Counsel for the respondent also submitted that petitioner could raise Industrial Dispute under the U.P. Industrial Disputes Act, 1947 and as he has an alternative remedy, he should not be allowed to approach this Court directly. I have considered this submission also of the Learned Counsel for respondent. Normally this Court does not interfere in those cases where petitioner has an alternative remedy. However, in the present case, there being no controversy with regard to the factual aspect of the case, I feel inclined to interfere. For resolving the controversy between the parties only legal question, as stated above, required determination. It is well known that dispute before the Industrial Tribunal or Labour Court could be raised on the basis of reference made by the Government or the

appropriate authority which takes much time and in view of the order of transfer which contains a direction to join at the transferred place on a definite date, in my opinion, the remedy cannot be said to be efficacious and appropriate.

11. For the reasons recorded above, this petition is allowed. The order dated October 1, 1993, Annexure 1 to the writ petition, is hereby quashed. There will be no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**