Rajneesh Khajuria vs Wockhardt Ltd. on 15 January, 2020

Equivalent citations: AIR 2020 SUPREME COURT 629, (2020) 1 CURLR 546, (2020) 1 SCT 702, (2020) 2 SCALE 111, AIRONLINE 2020 SC 34

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Bench: Hemant Gupta, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8989 OF 2019
(ARISING OUT OF SLP (CIVIL) NO. 6692 OF 2015)

RAJNEESH KHAJURIA .....APPELLANT(S)

VERSUS

M/S. WOCKHARDT LTD. & ANR. .....RESPONDENT(S)

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Judicature at Bombay on 21 st January, 2014 whereby the writ petition filed by M/s. Wockhardt Ltd. 1 was allowed and the order passed by the Industrial Court on 6 th August, 2012 was set aside.

2. The High Court held that the transfer of the appellant 2 was as per the terms and conditions of employment. It was held that the employer had to decide who should work at particular place and who was to be transferred to another place in the interest of 1 for short, 'employer' 2 for short, 'employee' establishment. It was also held that the employee had failed to challenge the termination order dated 15th April, 2005.

3. Brief facts leading to the present appeal are that the employee was appointed on 6th June, 1985 as a Professional Service Representative and was posted at Sagar, Madhya Pradesh. Thereafter, he was

promoted to Field Sales Officer Grade FM-One. One of the conditions in the letter of appointment was that the employer shall be entitled, at any time during the course of employment, to transfer the employee to any of its affiliates, subsidiaries or sister companies. The employee was transferred to Mumbai on 21st March, 2005 with immediate effect. The employee did not join duty at Mumbai; therefore, reminders were sent by the employer on 1st April, 2005 and 8th April, 2005. The service of the employee was terminated on 15th April, 2005.

4. The employee along with National Federation of Sales Representatives' Union3 filed a complaint on 30 th April, 2005 before the Industrial Court, Maharashtra established under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 19714. The allegation of the employee is that he had reasonable and bona fide apprehension that the employer, after filing of the present complaint, was going to take adverse actions such as mala fide transfers, suspension, disciplinary actions, summary terminations etc. against N.P. Mishra, Rajendra 3 for short, 'Union' 4 for short, 'Act' Khandelwal, Sandeep Mitra, Manoj Bhatt, Rajaram V. Baliga and Rajkumar Jasnani. The employee has alleged that the basis of apprehended action against the employees mentioned by him was that they have filed affidavits in his favour against unfair labour practices, high handed actions, atrocities etc. committed by employer company and its employer on 15th March, 2005 during the Launching Conference at Ahmedabad. The employee alleged that he was the President of Sagar Unit of Madhya Pradesh Medical Representatives' Association which is affiliated to complainant No. 1 i.e. the Union. The employee also alleged that one Mr. Ashish Khare, an active member of the Union was forced to resign from the employment of the employer company in January, 2005 but the same was not accepted. He was paid wages till February, 2005. He was invited for a Launching Conference but two managers of the employer company Deepak Sethi, Sales Manager and Sanjay Anand, Regional Manager drove Mr. Ashish Khare out of the hotel at night time. The employee had protested against the same and it is on account of raising his voice against the said atrocities and acts of force, the employee was threatened that he would be transferred and his other colleagues would also be dealt with severely by the employer. Soon after the Conference was over, the employee was transferred on 21st March, 2005. Such transfer order was received on 4th April, 2005. The employee alleged that his transfer was unjust, unfair, illegal, improper, arbitrary and mala fide, amounting to unfair labour practices under Item 3, 7, 9 and 10 of Schedule IV of the Act. It may be noticed at this stage that the complaint was filed against the company and its General Manager (HR) in its official capacity. Relevant assertion in the complaint reads as under:

> "(iii) That the impugned transfer order does not mention any business exigency and/or administrative reason/s and, in fact, there does not exist any business exigency and/or administrative reason/s for suddenly transferring the Complainant No. 2 from Sagar (Madhya Pradesh) to Mumbai (State of Maharashtra) because there are sufficient number of Medical Representatives working in Mumbai. Thus, there is no business exigency or administrative reason for transferring the Complainant No. 2 from Sagar (Madhya Pradesh) to Mumbai (State of Maharashtra). The impugned transfer of the Complainant No. 2 is, therefore, malafide transfer and thereby the Respondents are engaging in the unfair labour practices under Item 3 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971."

5. In the written statement filed by the employer, the status of the employee as a workman was denied as he was alleged to be working in supervisory, managerial or administrative capacity and he was discharging his duties as Territory Manager. The stand of the employer was that the transfer was as per contract of employment signed between the parties and that there is no mala fide in the order of transfer. It was also pleaded that services of the employee stood terminated on 15th April, 2005 and on the date of filing of the complaint, the employee was not in the employment of the respondent employer, therefore, no complaint of unfair labour practices can be entertained in law. It was also asserted that the employee had failed to report for duties at the transferred place, therefore, communications dated 1st April, 2005 and 8th April, 2005 were addressed to him to resume duties but the employee continued his defiant attitude of not reporting for work at the transferred place and subsequently, his services were terminated on 15th April, 2005. It was also pleaded that the Industrial Court did not have any jurisdiction to return findings on the issue of termination in a complaint filed under Item 3, 7, 9 and 10 of Schedule IV of the Act. It was also pleaded that there was no Sagar Unit of Madhya Pradesh Medical Representatives' Association as per the information of the employer. Further, it was pleaded that the resignation of Mr. Ashish Khare was voluntary which was accepted and he was relieved on 6th January, 2005. It was further pleaded that Mr. Khare came to the Conference without an invitation in a clandestine manner. It was also stated that transfer of the employee was discussed by the employer much prior to the actual issuance of the order of transfer. It was also mentioned that the employee had failed to submit his expense statements for the months of February and March, 2005 and, therefore, it was not possible to make payments of salary to the employee.

6. The Industrial Court examined four issues. The first being whether the employee was a workman under Section 2(s) of the Industrial Dispute Act, 1947 read with Section 3(5) of the Act. The second issue being whether the termination order dated 15 th April, 2005 was real, existent and bona fide. The third, whether the employer had indulged in unfair labour practices under the Act. The last issue being whether the employee was entitled to the reliefs claimed.

7. In support of the complaint, the employee filed his affidavit in evidence reiterating the version given by him in his complaint.

However, in respect of termination alleged by the employer, the employee stated to the following effect:

"9. I say that the company had addressed me an E-Mail dated 14th April, 2005, inter alia asking me to report for work at Mumbai. I say that a copy of the said E-Mail is filed by me along with my Application dated April 14, 2005, with Application dated 27th July, 2006. I say that I have never received any termination letter dated 15.4.2005 either by courier or by UPC or by any other mode of communication. I say that the purported letter of termination dated 15.4.2005 is not real, existent and bona

fide. I say that it is fake and bogus termination letter."

8. The employee in his cross-examination, as a witness, conducted on 4th June, 2009, admitted that there was no Union by the name Madhya Pradesh Medical and Sales Representatives' Association.

9. Mr. Raj Kumar Chadha furnished his affidavit in evidence on behalf of the employer. In cross-examination, he deposed that the Employer communicated to the employee that he must report at the reported place. Since the employee had failed to report on duty, his services stood terminated. Relevant extract of the cross-

examination of the witness of the employer is reproduced hereunder:

"With respect to his telegram claiming sick leave w.e.f. 02/04/2005, I say he was communicated by the management that only if he first reports at transferred place can it be considered, and hence was not granted. I say thereafter the services of Mr. Rajneesh Jagannath Khajoria stood terminated vide company's letter dated 15.4.2005. I say the transfer order and the termination letter contents are true and I identify the signatures therein."

10. With the said factual background, we find that the following questions arise for consideration:

(i) Whether the employee is entitled to dispute the termination order dated 15th April, 2005 as not real or bona fide for the reason that it was not received by him?

(ii) Whether the employee is entitled to dispute his transfer as unfair labour practice in terms of Item 3 of Schedule IV of the Act without impleading the person who is said to have acted in a mala fide manner?

(iii) Whether the question of malice in law can be inferred in the matter of transfer of an employee as unfair labour practice?

(iv) Whether the order of termination is ancillary to the order of transfer which confers jurisdiction on the Industrial Court to exercise jurisdiction in the matter arising out of allegation of unfair labour practice?

11. Before we proceed further, relevant statutory provisions from the Act need to be reproduced hereunder:

"3 (8) "Industrial Court" means an Industrial Court constituted under section 4;

xx xx xx 3 (10) "Labour Court" means a Labour Court constituted under Section 6;

xx xx xx

5. Duties of Industrial Court

(a)	xx	xx	xx
(b)	xx	xx	xx
(c)	xx	xx	xx

(d) to decide complaints relating to unfair labour practices excepts unfair labour practices falling in Item 1 of Schedule IV;

xx xx xx

7. Duties of Labour Court – It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item 1 of Schedule IV and to try offences punishable under this Act.

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26. Unfair labour practices:- In this Act, unless the context requires otherwise, 'unfair labour practices' mean any of the practices listed in Schedules II, III and IV.

27. Prohibition on engaging in unfair labour practices:-

No employer or union and no employees shall engage in any unfair labour practice.

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32. Power of Court to decide all connected matters:-

Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of this Act.

xx xx xx Schedule IV – General Unfair Labour Practices on the part of employers

1. To discharge or dismiss employees –

(a) by way of victimisation;

(b) not in good faith, but in colourable exercise of employer's rights;

(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegation of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

2. xx xx xx

3. To transfer an employee mala fide from one place to another, under the guise of following management policy."

12. The termination order is said to be fake, bogus and not real or bona fide for the reason that the employee never received any termination letter either by courier, UPC or by any other mode of communication. The statement of the witness of the employer is that the transfer order and termination letter are true. He has identified the signatures of the authorised representative on such documents as well. Therefore, it is not possible to accept the argument that the termination order is not in existence as the statement of the employer witness has not been challenged. The only allegation is that the employee has not received the termination letter. This Court in a judgment reported as State of Punjab v. Khemi Ram5 held that once the order is issued and sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. This Court held as under:

> "17. The question then is whether communicating the order means its actual receipt by the concerned government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word "communicate" is to impart, confer or transmit information. (Cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958, were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958, after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958 i.e. before August 4, 1958, when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential 5 (1969) 3 SCC 28 and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is

> issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective.

If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in The State of Punjab v. Amar Singh contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid." (Emphasis supplied)

13. In view of the aforesaid judgment, the assertion that an order of transfer was not received by the employee is not relevant to hold that the termination order was fake. The order was issued, as deposed by the employer witness. Even if, the employee has managed not to receive the same, the termination order does not become fake or ingenuine. Therefore, the finding of the Industrial Court on question No. 2 was rightly set aside by the High Court. We affirm the order of the High Court but on the ground other than which weighed with it. Thus, we find that the appellant is not entitled to dispute the termination order as not real or bona fide for the reason that it was not received by him.

14. The act of transfer can be unfair labour practice if the transfer is actuated by mala fide. The allegations of mala fide have two facets – one malice in law and the other being malice in fact. The challenge to the transfer is based upon malice in fact as it is an action taken by the employer on account of two officers present in Conference. In a judgment reported as State of Bihar & Anr. v. P.P. Sharma, IAS & Anr.6, this Court held that mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions of the Act, the transfer by itself cannot be said to be an act of unfair labour 6 1992 Supp (1) SCC 222 practice unless it is actuated by mala fide. Therefore, to sustain a plea of mala fide, there has to be an element of personal bias or an oblique motive. This Court held as under:

> "50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.
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> 51. The action taken must, therefore, be proved to have been made mala fide for such considerations.

Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

xx xx xx

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer, cannot be held to be a colourable exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information report was not lodged in good faith. State of Haryana v. Ch. Bhajan Lal [1992 Supp (1) SCC 335 :

> JT 1990 (4) SC 650] is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the FIR. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the mala fides and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesitatingly I hold that the findings of the High Court that FIR gets vitiated by the mala fides of the Administrator and the charge-sheets are the results of the mala fides of the informant or investigator, to say the least, is fantastic and obvious gross error of law."
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> 15. In another judgment reported as Prabodh Sagar v. Punjab State Electricity Board & Ors.7, it was held by this Court that the mere use of the expression "mala fide" would not by itself make the petition entertainable. The Court held as under:

"13. ... Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances. We ourselves feel it expedient to record that the petitioner has become more of a liability than an asset and in the event of there being such a situation vis-à-vis an employee, the employer will be within his liberty to take appropriate steps including the cessation of relationship between the employer and the employee. The service conditions of the Board's employees also provide for voluntary (sic compulsory) retirement, a person of the nature of the petitioner, as more fully detailed hereinbefore, cannot possibly be given any redress against the order of the Board for 7 (2000) 5 SCC 630 voluntary retirement. There must be factual support pertaining to the allegations of mala fides, unfortunately there is none. Mere user of the word "mala fide" by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e. exactly what the High Court has done and that is the reason why the narration has been noted in this judgment in extenso. ..."

16. In a judgment reported as HMT Ltd. & Anr. v. Mudappa & Ors.8, quoting from earlier judgment of this Court reported as State of A.P. & Ors. v. Goverdhanlal Pitti9, it was held that 'legal malice' or 'malice in law' means 'something done without lawful excuse'. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. The Court held as under:

"24. The Court also explained the concept of legal mala fide. By referring to Words and Phrases Legally Defined , 3rd Edn., London Butterworths, 1989 the Court stated:

(Goverdhanlal case [(2003) 4 SCC 739], SCC p. 744, para 12) "12. The legal meaning of malice is 'ill will or spite towards a party and any indirect or improper motive in taking an action'. This is sometimes described as 'malice in fact'. 'Legal malice' or 'malice in law' means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others.' " It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or 8 (2007) 9 SCC 768 9 (2003) 4 SCC 739 personal ill-will or spite on the part of the State. It could only be malice in law i.e. legal mala fide. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held mala fide."

17. In a judgment reported as Union of India & Ors. v. Ashok Kumar & Ors.10, it has been held that allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. The Court held as under:

> "21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab [(1964) 4 SCR 733 : AIR 1964 SC 72] .) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made 10 (2005) 8 SCC 760 than proved, and the very seriousness of such allegations demands proof of a high order of credibility.

As noted by this Court in E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar [(2003) 4 SCC 579 : 2003 SCC (L&S) 528] .)"

18. In another judgment reported as Ratnagiri Gas and Power Private Limited v. RDS Projects Limited & Ors.11, this Court held that when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. A judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. The Court held as under:

> "27. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. Courts

> have, therefore, to be slow in drawing conclusions when it comes to holding allegations of mala fides to be proved and only in cases 11 (2013) 1 SCC 524 where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of mala fides that the Court should record a finding in the process ensuring that while it does so, it also hears the person who was likely to be affected by such a finding."

19. The allegation in the complaint is that the transfer was actuated for the reason that the employee had raised voice against removal of Shri Khare from the venue of a Conference. The officers present in the said Conference were the Regional Manager or Sales Manager, whereas order of transfer was passed by Mr. Suresh Srinivasan, General Manager-HR. It is an admitted fact that there is power of transfer with the employer. The allegations are against the persons present in the Conference but there is no allegation against the person who has passed the order of transfer. None of the named persons including the person present in Conference have been impleaded as parties to rebut such allegations. Since the order of transfer is in terms of the letter of appointment, therefore, the mere fact that the employee was transferred will per se not make it mala fide. The allegations of mala fide are easier to levy than to prove.

20. Therefore, the allegation that the transfer of the appellant was an act of unfair labour practice without impleading the person who is said to have acted in a mala fide manner is not sustainable.

21. We do not find that the appellant has laid any foundation to allege a malice in law. As mentioned in the judgments referred to above, malice in law would be something which is done without lawful excuse or an act done wrongfully and willfully without reasonable or probable cause. There is power of transfer in the letter of appointment. The appellant has stayed at Sagar for almost 20 years. If an employee is transferred after 20 years and that to the place of headquarters of a company, it cannot be said that the act of transfer was done without lawful excuse. No inference can be drawn that an act was done from ill feeling or spite.

22. The next question which was vehemently argued by Mr. Cama, learned senior counsel for the employer was that the order of termination can be disputed only before the Labour Court in terms of Section 7 of the Act read with Item 1 of Schedule IV of the Act and not before the Industrial Court. Learned counsel for the appellant argued that the termination was ancillary to the order of transfer or a consequence of not joining the transferred station. Therefore, in terms of Section 32 of the Act, there need not be any separate challenge to the termination as such termination is a consequence of transfer and, thus, will fall within the scope of Section 32 of the Act.

23. We do not find any merit in the arguments raised by the learned counsel for the appellant. The jurisdiction of the Industrial Court is, inter alia, to decide complaints relating to unfair labour practices except unfair labour practices falling under Item 1 of Schedule IV. The unfair labour practices mentioned in Item 1 of Schedule IV fall within the jurisdiction of the Labour Court (See Section 7). In view of the specific provision that the complaint relating to unfair labour practices described in Item 1 of Schedule IV fall within the jurisdiction of the Labour Court, therefore, the Industrial Court will not have jurisdiction to examine the question of termination as a consequence

of the order of transfer. Since the statute creates a forum for redressal of grievances in respect of termination of services, it is the said forum alone which can be invoked for redressal of grievances. The jurisdiction of a forum can be invoked only in accordance with the statutory provisions. Therefore, alleging termination as a consequence of non-joining on the transferred post will not confer jurisdiction on the Industrial Court. The dispute regarding termination as act of victimization falls exclusively within the jurisdiction of the Labour Court. Consequently, we do not find that the appellant has made out any case for interference against an order passed by the High Court in the present appeal. Therefore, the Labour Court alone was competent to decide the issue of alleged un-lawful termination of the appellant.

24. In view of the above, we do not find any merit in the present appeal. Accordingly, the appeal is dismissed.

.....J. (L. NAGESWARA RAO) .....J. (HEMANT GUPTA) NEW DELHI;

JANUARY 15, 2020.