

relied upon by the mortgagees in **Prabhakaran's case** (supra) and **Sampuran Singh 's case** (supra).

(47) Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable.

(48) Having answered the questions of law framed, we do not find any merit in the present appeal filed by the mortgagees to seek declaration in respect of their title. The appeal is dismissed.

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**R.N.R.**

*Before K. C. Puri, J.*

**PUNJAB STATE ELECTRICITY BOARD,—Petitioner**

*versus*

**GURVINDER SINGH AND ANOTHER,—Respondents**

C.W.P. No. 3186 of 1997

7th February, 2008

*Constitution of India, 1950—Art. 226—Labour Court ordering reinstatement with continuity of service—Allegation that workman was never appointed & he had forged transfer order on the basis of which he joined duty—Labour Court failing to frame issue in that regard—Approach of Labour Court is against principles of natural justice—Legal duty of Labour Court to decide controversy whether transfer order is forged or fabricated document—Petition allowed, case remanded to Labour Court for fresh decision.*

*Held*, that the allegations made by the Punjab State Electricity Board that respondent No. 1 has forged the transfer order on the basis of which he has joined duty. That was a vital question for determination

but the learned Labour Court has not framed any issue in that regard and has ordered the reinstatement without deciding the said controversy. That approach of the Labour Court is against the principles of natural justice. In case the Punjab State Electricity Board is able to prove the fact that respondent No. 1 has joined duty on the basis of forged documents and in spite of that, the Labour Court ordered reinstatement of the workman without deciding that controversy, it will amount to perpetuating the fraud of workman/respondent No. 1. It was the legal duty of the learned Labour Court to decide the controversy i.e. whether the transfer order is forged or fabricated document. So, it is a fit case to set aside the award of the Labour Court and to remand the case for fresh decision.

(Para 9)

Y. P. Khullar, Advocate, *for the petitioner.*

B. R. Mahajan, Advocate *for respondent No. 1.*

### JUDGMENT

**K. C. PURI, J.**

(1) Challenge in this Civil Writ Petition is to the award dated 24th September, 1996, Annexure P-10, passed by the Labour Court, Jalandhar,— *vide* which reference made by Gurvinder Singh, workman was answered in his favour and he was reinstated into service with continuity of service.

(2) The workman pleaded that he was in regular employment of petitioner as work charge at Behram Sub-Division No. 1, Punjab State Electricity Board. Due to heavy floods, he went on leave from 2nd July, 1993 to 7th July, 1993. He found that his house-hold articles had been washed away by the floods. He received letter dated 13th July, 1993 from the petitioner to which he sent reply by registered post on 23rd July, 1993. Thereafter he reported for duty on 26th July, 1993 but he was not allowed to join duty. His services were illegally terminated.

(3) The Punjab State Electricity Board admitted that the workman joined duty under Sub-Divisional Officer, Behram Sub-Division, Sub-Division of Banga Division on 21st July, 1992 as R.T.M. by procuring office order No. 1050, dated 22rd June, 1992. He also produced No Demand

Certificate. The office order and No Demand Certificate were of doubtful authenticity. So, the office order was referred to the Director (Personnel), P.S.E.B., Patiala and No Demand Certificate was referred to the Sub-Divisional Officer, Sujapur. The Director (Personnel),—*vide* his memo No. 36480/GN-159, dated 19th July, 1993 and No. 11047, dated 30th July, 1993 intimated that the said office order had not been issued by him. Similarly, S.D.O. Sujapur,—*vide* his memo No. 3130, dated 24th September, 1993 also wrote that No Demand Certificate was not issued by him and that the workman never worked in that Sub-Division. Therefore, there was no valid contract of employment between the parties as no appointment offer was given to the workman by the management and hence the reference was not maintainable.

(4) The learned Labour Court framed the following issues :—

1. Whether termination of service of the workman concerned is justified and in order ? OPR
2. Relief

(5) Returning the finding on issue No. 1 in favour of the workman, he was ordered to be reinstated with full back wages.

(6) I have heard arguments of both sides and have gone through the record of the case.

(7) The Punjab State Electricity Board has taken a definite stand that Gurvinder Singh was never appointed by it and that he has forged the transfer order, on the basis of which he has joined duty. The learned Labour Court in para No. 11 has observed that if there was duty doubt about the authenticity of the transfer order, the same should have been got clarified. It was further observed in para No. 12 that the petitioner shall be at liberty to take disciplinary action after issuing show cause notice of the allegations given in the written statement.

(8) On the last date of hearing, during the course of arguments, the learned counsel for respondent No. 1 was orally directed to produce the

documents. Mr. B. R. Mahajan, learned counsel for respondent No. 1 has stated at the Bar that the documents have been washed away in floods and on that count the documents could not be produced.

(9) There are allegations made by the Punjab State Electricity Board that respondent No. 1 has forged the transfer order on the basis of which he has joined duty. That was a vital question for determination but the learned Labour Court has not framed any issue in that regard and has ordered the reinstatement without deciding the said controversy. That approach of the Labour Court is against the principles of natural justice. In case the Punjab State Electricity Board is able to prove the fact that respondent No. 1 has joined duty on the basis of forged documents and in spite of that, the Labour Court ordered reinstatement of the workman without deciding that controversy, it will amount to perpetuating the fraud of workman/respondent No. 1. It was the legal duty of the learned Labour Court to decide the controversy i.e. whether the transfer order is forged or fabricated document. So, it is a fit case to set aside the award of the Labour Court and to remand the case for fresh decision. The following additional issue stands framed :—

“Whether office order/transfer orders dated No. 1050, 22nd June, 1992 and No Dues Certificates produced by the workman are forged and fabricated documents ? OPM”.

(10) The learned Labour Court shall decide the reference, after giving full opportunity to both the parties, within a period of four months from the receipt of order of this Court.

(11) The parties are directed to appear the Court on 26th February, 2008. In case, any of the parties does not appear before the Labour Court on that day, the Labour Court will be well within its right to proceed in accordance with law.

(12) This Civil Writ Petition stands disposed of in the manner indicated above.

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**R.N.R.**