

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

+ **W.P.(C.) No. 14134/2009**

% **Date of Decision: 18th February ,2010**

SHRI M.K. BAINIWAL

.....PETITIONER

! Through: Petitioner with his counsel
Mr. K. Venkataraman. Advocate.

VERSUS

\$ UOI AND OTHERS

.....RESPONDENTS

^ Through: Ms. Sangeeta Bharti for the respondent
no.1/UOI.
Mr. M.M. Sudan for the respondents no. 2
to 6

CORAM: Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? YES
2. To be referred to the reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

S.N.AGGARWAL, J (ORAL)

The petitioner belongs to a reserved category and is working as General Manager with Project Equipment Corporation Limited, a Public Sector Enterprise (in short 'PEC'). He, in this writ petition, has challenged order of his transfer from Delhi to Hyderabad vide transfer order dated 04.12.2009. The challenge to the transfer order has been made by him mainly on the ground of mala fides and bias against the respondents.

2 According to the petitioner, his impugned transfer is not for administrative exigencies. He has made allegations of caste-based atrocities and harassment against the respondents. Prior to the impugned transfer, he made several complaints against the respondents aggrieved by alleged caste-based atrocities and harassment upon him,

both before the National Commission for Scheduled Castes and also before the Police. His said complaints were duly enquired both by the National Commission for Scheduled Castes and also by the Delhi Police but they did not find any substance in his complaints. It may be mentioned that the National Commission for Scheduled Castes had even called the Chairman of respondent no. 2 for discussion on the complaint of the petitioner and it was after discussion with him and upon consideration of other relevant material placed before the Commission that it arrived at a conclusion that there was no merit or substance in his complaint. The petitioner was informed accordingly by the Commission vide letter dated 6/7th August, 2009, Annexure P-6 at page 107 of the Paper Book, which is extracted below :-

To,

Shri Manish Kumar Beniwal,
General Manager, (Marketing),
PEC Ltd.
R/o12, Bazar Lane, Jangpura-Bhogal,
New Delhi-110014

Sub:- Representation regarding harassment by the office of PEC Ltd.

Sir,

I am directed to refer to your representation dated 03.09.2008 and 24.02.2009 forwarded through All India Harijan League (Regd.)'s letter dated 27.03.2009 and this Commission letter of even no dated 12.09.2008 on the above subject and to say that the matter was taken up with the PEC Ltd. and subsequent a hearing written statement also held before the Hon'ble Member Shri M. Nayak on 12.11.2008. After considering the facts submitted by you and the PEC Ltd. the Commission has observed that there is no violation of rules of reservation and any other violation of service safeguard provided to the SCs. A copy of the reply received from the PEC Ltd is also enclosed for your information.

In view of the above, the Commission may not intervene in the matter further.

Yours faithfully,

Sd./-
(Y.K.Bansal)
Research Officer

3 The Police, upon investigation into the allegations of caste-based atrocities made by the petitioner against the senior officials of the PEC Limited, also arrived at the same conclusion that there was no truth into the allegations of the petitioner. The investigation report of the Police in this regard is Annexure R-2 to the counter affidavit of respondents no. 2 to 6 at running pages 222 to 225 of the Paper Book. It shall be relevant to refer to the conclusion of the police contained in the said report, which is extracted below :-

***“Conclusion:-** On inquiry, it has been found that no direct witness is available in the office, who can corroborate the facts that caste based remarks have been passed by any of the alleged management officials. The staff belonging to SC category and also affiliated to SC/ST Association have also refuted the happening of any such incident either with Mr. Manish Kumar Baniwal or with them or any other employees of PEC Ltd. The statement of 22 such staff members has been obtained for record, but all of them categorically denied the allegation. In fact, one Mr. Ravi Kumar (Director), PEC Ltd. to whom Mr. Baniwa claims to be his supporter for the harassment incident stated contrarily. He also stated that no such harassment against Mr. Baniwal took place. Hence by and large employees refuted the caste allegation levelled by Mr. Baniwal.*

Mr. Baniwal cited 4 officials in his favour namely Sh. Jai Prakash, Sh. Gian Chand, Sh. Suresh Chand and Sh. A.S. Rajouriya belonging to PEC Ltd. These officials are now posted outside Delhi by the management. Hence, they are not available and their statement could not be taken. However, from the official record provided by the PEC Ltd., it is found that all these four officials have undergone disciplinary proceeding under PEC Employee (Conduct and Discipline Appeal) Rules, 1975 & charges levelled were proved against them by the disciplinary authority.

Mr. Baniwal's representation has also been forwarded by Sh. Devi Ram, General Secretary, SC/ST Employees Welfare Association, PEC Ltd. His statement has also been taken. But not concrete incidents were cited by him that any caste based remarks were passed by the management towards Mr. Baniwal.

As far as the assigning of work to Mr. Baniwal, it is felt that the management headed by Sh. A.K. Mirchandani, Chairman Cum-CMD, PEC Ltd as head of the organization is competent enough to distribute the task on merit and competence of the employee including Sh. Baniwal.

In view of the above allegations levelled by Sh. Manish Kumar Baniwal are not substantiated.”

4 Along with the present petition, the petitioner had filed an application seeking stay against his transfer. Since the petitioner stood already relieved from Delhi on 07.12.2009 consequent upon his transfer

to Hyderabad vide impugned transfer order dated 04.12.2009, this Court vide its order dated 23.12.2009 declined to stay the operation of the said transfer order observing that the prayer for stay made in the application has become infructuous. Aggrieved therefrom, the petitioner preferred an appeal before the Division Bench being LPA No. 37/2010, which was dismissed as withdrawn vide order passed by the Division Bench dated 18.01.2010. Not deterred by that, the petitioner filed yet another application for stalling his transfer, before this Court being CM No. 1258/2010, which was dismissed by this Court vide its order dated 29.01.2010.

5 A reference to the above would show that the petitioner had made all possible efforts to stall his transfer from Delhi to Hyderabad and it is an admitted fact on record that he has not joined the place of his transfer till date although about 2 ½ months have expired since the date of his transfer despite his failing to get any favourable order to keep his transfer in abeyance from this Court or even from the Division Bench.

6 In **Gujarat Electricity Board and Another Versus Atmaram Sungomal Poshani, AIR 1989SC 1433**, it was held by the Hon'ble Supreme Court as under :-

“Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he

would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

7 In the present case, this Court does not find any merit in the contention of the petitioner that he has been transferred on account of any mala fide or bias on the part of the respondents.

8 The case of the respondents is that the transfer of the petitioner from Delhi to Hyderabad vide impugned transfer order dated 04.12.2009 has been effected in administrative exigencies because a Senior Manager at its Hyderabad Branch was going to superannuate on 31.12.2009 and they considered the petitioner, being in senior managerial position, to be in a better position to take charge of Hyderabad Region so that the organization can have good opportunity to develop further business from that region also. The fact regarding retirement of a Senior Manager from Hyderabad Unit of respondent no. 2 is not disputed by the petitioner.

9 This Court is of the opinion that the transfer of the petitioner from Delhi to Hyderabad has been effected by his employer in administrative exigencies and cannot be interfered with by this Court in exercise of its discretionary writ jurisdiction under Article 226 of the Constitution of India. It seems that the petitioner has abused the legal machinery and seems to be in the habit of making frivolous complaints one after another against all concerned authorities taking advantage of alleged caste-based prejudices. He has not joined the place of his transfer despite having failed to get any order of stay against the said transfer from this Court till now. The petitioner is present in the Court today. He says that he could not join the place of his transfer because he was ill and had applied for leave to respondent no. 2. Admittedly, no leave had been sanctioned to

him by respondent no. 2 till date. Mr. Sudan, counsel appearing on behalf of respondents no. 2 to 6 says that the petitioner has not even sent any medical certificate till date. When the Court asked the petitioner that it will be better if he goes and join his place of transfer at Hyderabad, then the petitioner responded by saying that he cannot go at this stage because his son has to appear in Board Examinations for Class XIIth in March, 2010. He also his own medical ground as another reason for not joining the duty at the place of his transfer. The petitioner cannot be permitted to take his employer for granted and to continue disobeying the transfer order as long as he wants. In case the petitioner is interested in service, then he should join at the place of his transfer at Hyderabad immediately.

10 Mr. Sudan, counsel appearing on behalf of respondent nos. 2 to 6 seeks leave of the Court to initiate disciplinary proceedings against the petitioner for non-compliance of transfer orders despite no stay order against him granted by this Court. The respondent no. 2 may take such action against the petitioner as it may be advised in view of observations of the Hon'ble Supreme Court in Atmaram's Case (supra), extracted above.

11 In view of the foregoing, I do not find any merit in this writ petition which fails and is hereby dismissed with no order as to costs.

FEBRUARY 18, 2010
'MA'

S.N.AGGARWAL, J