

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9108 OF 2015

1. Alisab Bapusab Shaikh,
Aged 45 years, occ. Service,
R/o Millat Colony,
Near Aksa Masjid, Old Jalna,
Jalna.

2. Panthar Power Kamgar
Sanghatna, Through its
General Secretary,
Mr. Anil Jabhade,
Mahatma Phule Nagar,
Osmnapura, Aurangabad.

..Petitioners

Versus

M/s NRB Bearings Limited,
Plot No.C-6, New MIDC,
Jalna.

..Respondent

...
Advocate for Petitioners : Shri Sarvadnya Rohit S.
Advocate for Respondent : Shri Dankh Sachin V.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 09, 2015
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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner / employee is aggrieved by the order dated 14.8.2015 passed by the Industrial Court Jalna in Complaint (ULP) No. 56 of 2015.

5. The grievance of the petitioner / employee as has been voiced is as under:-

(a) The petitioner / employee joined the respondent as an Operator on 1.10.1991 and was confirmed in employment on 1.4.1994.

(b) A union by name All Marathwada Kamgar Union was representing the workmen in the respondent factory.

(c) On 22.11.2014, a new union by the name, Panther Power Kamgar Sanghatana was formed and the petitioner / employee became its Unit Committee Member.

(d) By order dated 26.2.2015, passed by the respondent / management, the petitioner / employee was transferred to the respondent factory at Pantnagar in Uttarkhand.

(d) The said transfer was for the purpose of imparting training by the petitioner / employee and which was only for a period of three months.

(e) The petitioner / employee preferred Complaint (ULP) No.56 of 2015 for challenging the transfer order before the Industrial Court.

(f) By order dated 11.3.2015, the application for interim relief under Section 30(2) of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”) was rejected.

(g) The petitioner / employee reported at the place of transfer on 16.3.2015 and was on duty till 5.4.2015.

(h) On 8.4.2015, the petitioner / employee returned to Jalna for the reason that he was suffering from Spondylitis. He undertook treatment at Jalna.

(i) On 22.6.2015, the petitioner / employee approached the respondent / management at Jalna with a medical certificate indicating that he is fit to perform duties.

(j) With the aid of the said certificate, the petitioner / employee prayed that he should be allotted duties at Jalna since his tenure of three months at the place of transfer was completed.

(k) The respondent / management issued an order dated 2.7.2015 pointing out to the petitioner / employee that he had worked only

for three weeks from 16.3.2015 to 5.4.2015 at Pantnagar. His transfer period was, therefore, extended from 6.7.2015 to 5.10.2015.

(l) The petitioner / employee therefore, preferred an application for urgent orders in the complaint, Exhibit U-10.

(m) By the impugned order below Exhibit U-10, dated 14.8.2015, the Industrial Court has rejected the said application and issued certain directions to the respondent / management .

(n) The Industrial Court should have considered the fact that the petitioner / employee was not allotted any work.

(o) He has maintained a daily diary bearing the signature of the Plant Manager at Pantnagar, which indicates that he has been sitting idle frequently.

(p) When the work for which the petitioner / employee was transferred to Pantnagar is not being allotted to the petitioner / employee, there is no purpose in maintaining the transfer order.

(q) The mischief played by the respondent / management deserves to be deprecated and since no work is allotted at Pantnagar, the impugned order deserves to be stayed.

6. Shri Dankh, learned Advocate for the respondent / management has supported the impugned order. He has reiterated his contentions as were put forth before the Industrial Court while opposing application Exhibit U-10. He further submits that the petitioner / employee will have to work at Pantnagar for the residual portion of his transfer period and thereafter, he would be reporting back to Jalna. He further adds that the medical certificate which indicates that the petitioner / employee is fit to report for duties, warrants that the petitioner / employee should work out the remainder portion of his transfer period at Pantnagar.

7. I have considered the submissions of the learned Advocates as have been recorded herein-above. With their assistance I have gone through the petition paper book and the documents pertaining to the illness of the petitioner / employee.

8. It is not the case of the petitioner / employee that he has developed reduction of inter vertebral disc spaces posteriorly at L-4-5 and L-5-S-1, as a reason of the transfer. The x-ray lumbo sacral spine A.P. / Lateral View does not indicate a serious ailment as per the opinion expressed by the Consulting Radiologist on the basis of clinical and pathological parameters.

9. It cannot be lost sight of the fact that the interim relief application Exhibit U/2, filed by the petitioner / employee was rejected on 11.3.2015. The employee reported for duties at Pantnagar on 16.3.2015. Changed circumstances do not appear to have been made out by the petitioner /

employee pursuant to his reporting at the place of transfer, except that he claimed to be unwell and the employer was intermittently allotting duties to him.

10. The transfer order originally issued to the petitioner / employee was for a period of three months from 16.3.2015 till 15.6.2015. Admittedly, he has worked till 5.4.2015. That amounts to a duration of about 21 days. The order dated 2.7.2015, cannot be termed to be a second transfer order. The respondent / management has extended the period of transfer since the petitioner / employee did not work from 6.4.2015 till 15.6.2015, when the tenure of the transfer would have expired by efflux of time. The only error that I can see in the said order and which can be set right is that the respondent / management needs to keep the petitioner / employee at Pantnagar for about 69 days, which would be the residual portion of his transfer period in the light of he having worked for 21 days.

11. In so far as the aspect of not being allotted work is concerned, on some occasions, the petitioner / employee has been kept idle and on some occasions he has performed his duties. The grievance of the petitioner / employee that there being no work available for him at Pantnagar indicates that the transfer order has been issued malafide, with ulterior motives and in the guise of following management policy, can be surely looked into by the Industrial Court while deciding the main complaint.

12. Whether the work was allotted or not can be established by oral and

documentary evidence and in the event, the petitioner / employee succeeds in establishing that the transfer was a vexatious act on the part of the respondent / management and was a malafide transfer, it would surely entitle the petitioner / employee to claim exemplary costs in view of the grave hardships and manifest inconvenience caused to him, on account of the said transfer.

13. In the light of the above, the impugned order dated 14.8.2015 shall stand modified to the extent of Clause A(II) and the petitioner employee shall work for a period of 69 days, which is the residual portion of his transfer tenure from the date he reports for duty at Pantnagar.

14. The direction of the Industrial Court below Clause A(II) is maintained and the respondent / management shall comply with the same in letters and spirit.

15. With the above modification, this petition is partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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