

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

WRIT PETITION NO. 478 OF 2014

Airports Authority of India

... Petitioner

Vs.

Indian Airport Kamgar Union,
Sahar Road, Andheri (E), Mumbai

... Respondent

Ms. Shilpa Kapil, Advocate for the petitioner.

Ms. Gayatri Singh, Senior Advocate for the respondent.

Coram : Smt. R. P. SondurBaldota, J.

Date : 13th August, 2015.

P.C. :

1. This petition is being disposed of finally at the stage of admission in view of the order dated 12th August, 2014. The order impugned in the petition is the interim order dated 22th October, 2013, by which Central Government Industrial Tribunal ('CGIT' for short), Mumbai allowed the interim application of the respondent union and set aside transfer of two employees.

2. Reference No. CGIT-2/23/2008 made at the instance of the respondent relates to the action of the petitioner in entering into Operations, Management and Development agreement with Mumbai International Airports Pvt. Ltd. ('the company' for short). During pendency of the reference when the petitioner transferred some of its employees in the annual transfers to various places in the country, an application for interim relief of stay of the

transfers had been made by the respondent. The order on that application was carried upto this Court. By the order dated 23rd April, 2009 passed in Letters Patent Appeal No.117 of 2009 and the Letters Patent Appeal No.119 of 2009, the Division Bench has held that transfer being one of the conditions of service of the employees of the petitioner, it cannot be said that action of the petitioner of transferring the employees is in contravention of Section 9A of the Industrial Disputes Act, 1947. It further held that there is no possibility of the employee suffering any irreparable injury because of the transfer and the balance of convenience was in favour of the petitioner. This order is confirmed by the Hon'ble Supreme Court.

3. In the month of September-2013, the respondent filed one more application styled as "Application For Urgent Additional Interim Relief" for quashing and setting aside the order of transfer of one Shri. Gumgaonkar, who is allegedly the Branch and Additional Regional Secretary of the respondent and Shri. Wayal, its Branch Secretary.

4. The objections of the respondent to the transfer of the two employees are : (i) Shri. Gumgaonkar was a protected workman till the year 2012, (ii) the act of transfer is vindictive. Both the employees are being deliberately transferred to far of places. Shri. Gumgaonkar is transferred from Mumbai to

Porbandar whereas Shri. Wayal is transferred from Aurangabad to Jabalpur. They are being transferred for not voting in favour of Airport Authority Employees Union (AAEU) and (iii) both the employees are active in prosecuting the present reference as also Writ Petition No.2727 of 2013 and their transfer could be detrimental to proper conducting of the proceedings.

5. While denying the allegations made against it the petitioner stated in it's reply that Shri. Gumgaonkar is posted at Mumbai since the date of his appointment on 1st February, 1993 and Shri. Wayal is working at Aurangabad since 12th May, 2009. As such, they are overdue for transfer. According to the petitioner, Shri. Gumgaonkar is not a protected workman because the respondent does not enjoy the status of a recognised union.

6. In the short impugned order the only reason stated by the CGIT for setting aside the orders of transfer, is that undisputedly Shri. Gumgaonkar and Shri. Wayal are the office bearers of the respondent and hence it is not proper to transfer them. It also noted that both are pursuing the cause of the union by attending the proceedings at Bombay and at Delhi. The Tribunal has, thus, not accepted, prima facie, the allegations of victimisation of the two employees and status of Shri. Gumgaonkar as protected workman.

7. Careful consideration of the record and the impugned

order makes it abundantly clear that it cannot be sustained. As regards the service conditions of the employees, the Division Bench has already held that as per Clause 7 of Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulation, 2003, the employees are liable to be transferred to any place in the country or even abroad. Further, the condition is specifically incorporated in their letters of appointment. The respondent is neither the recognised union or a majority union and no material is produced by the respondent to show that the two employees are protected workmen. So is the case as regards victimisation. These facts have not been considered by the CGIT while setting aside the orders of transfer. As regards the attendance to the Court proceedings, the respondent has not established any specific inconvenience that may be caused on account of the transfer. Victimisation on any other ground has not been established even on prima facie view of the matter. In the circumstances, the impugned order cannot be sustained. Hence, the petition is allowed in terms of prayer clause (a).

8. At the request of Ms. Gayatri Singh, the learned senior counsel for the respondent, the operation of this order is stayed for four weeks.

(Smt. R. P. SondurBaldota, J.)