

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6399 OF 2014

M/s. Texport Syndicate (India) Ltd.,
(Government Recognized Trading House)
Plot No.6, F-11/12, Western Ind.Co.op Estate,
Opp. SEEPZ,
MIDC, Andheri (East),
Mumbai-400 093.

.....Petitioner

: V/S :

1. Ms. Kalpana Pandurang Dholam,
5095-B, Sai Co-op, Housing Society Ltd.,
Savarkar Nagar, Thane

2. The Ld. Member,
Industrial Court,
Mumbai

.....Respondents

Mr. Kiran Bapat a/w. Mr. Jayesh Desai i/by. M/s. Desai & Desai
Associates, Advocate for the petitioner.

Mr. Arun D. Nimbalkar, Advocate for the respondents.

ALONGWITH
WRIT PETITION NO. 2667 OF 2015

Ms. Kalpana Pandurang Dholam,
Mauli Sadan,
Room No.6, Ground Floor,
Jagannath Bhatankar Marg,
Parel,
Mumbai-400 012

.....Petitioner

: V/S :

1. M/s. Texport Syndicate (India) Ltd.,
(Government Recognized Trading House)
Plot No.6, F-11/12, Western Ind.Co.op Estate,
Opp. SEEPZ,
MIDC, Andheri (East),
Mumbai-400 093.

2. Mr. Rajendra Goenka
The Managing Director of
M/s. Texport Syndicate (India) Ltd.,
(Government Recognized Trading House)
Plot No.6, F-11/12, Western Ind.Co.op.Estate,
Opp. SEEPZ,
MIDC, Andheri (East),
Mumbai : 400 093.

3. Mr. Abdul Aleem Bukhari,
Administrative Officer,
M/s. Texport Syndicate (India) Ltd.,
(Government Recognized Trading House)
Plot No.6, F-11/12, Western Ind.Co.op.Estate,
Opp. SEEPZ,
MIDC, Andheri (East),
Mumbai : 400 093.

.....Respondents

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Mr. Arun D. Nimbalkar, Advocate for the petitioner.

Mr. Kiran Bapat a/w. Mr. Jayesh Desai i/by. M/s. Desai & Desai
Associates, Advocate for the respondent.

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

21st August, 2015.

JUDGMENT :-

1). Rule. Rule made returnable forthwith. Heard the parties.

2). This is a common order on the above two petitions, one filed by the employee and the other by the employer. The first petition by the employer is to challenge the order dated 17th December, 2011 passed by the Industrial Tribunal in Complaint (ULP) No. 476 of 2008. The second petition filed by the employee is to challenge the order of the Industrial Tribunal dated 16th December, 2011 in Complaint (ULP) No. 164 of 2007. The complaints, out of which the petitions arise, being filed by the employee, the parties shall hereinafter be referred to by their original nomenclature i.e. the complainant and the respondent.

3). The complainant is employed as Communication-In-Charge and Fax Operator with the respondent, Company. Earlier she was, working at the Andheri office. The respondent terminated her services w.e.f. 16th December, 2006 by giving notice of one month dated 17th November, 2006. The complainant challenged the termination by filing Complaint (ULP) No. 361 of 2006. By the interim order passed in the complaint, the Labour Court has directed the respondent not to give effect to the termination pending the hearing of the complaint. Thus, she continues in the employment. The respondent, then by the letter dated 16th December, 2006 recorded that the complainant was offered two alternate job profiles at the Head Office, but she had denied to accept the same. Since at the relevant time, both the vacant posts were filled up

and reshuffling of the staff for the convenience of the complainant was not possible, the complainant was offered another job profile at its factory situated at Rabale, Navi Mumbai in Administration Department to control the entire activities of the staff working there and asked her to report to the factory Manager at Rabale. About 4 months thereafter, i.e. 9th April, 2007 the complainant filed her first complaint under Section 28 read with Items-3, 9 and 10 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act ("MRTU & PULP Act" for short) alleging that her transfer to Rabale was *malafide*. It was allegedly in retaliation of the complaint filed by her and the orders passed therein. The complainant denied that she was given any alternate job profiles as mentioned in the letter of transfer. She further alleged that, the transfer order is vague and does not specify the post on which she has to serve. Besides, there is change in the nature of duties to be performed by her at Rabale.

4). During pendency of the first complaint, the respondent by its letter dated 3rd July, 2008 asked the complainant to report to Central Godown office in the factory at Rabale. The letter alleged that, for more than 7 months, the complainant was not doing any work and was sitting idle. She refused to obey instructions from the factory Manager and had adopted stand of non-cooperation. The letter stated that, in order to

resolve the problems of the complainant, it was decided by the respondent to put her in the Central Godown office with immediate effect and she was asked to report to the godown in-charge. The complainant, then filed the second complaint making identical allegations of unfair labour practice.

5). The respondents contested the complaint challenging the territorial jurisdiction of the Industrial Tribunal, as well as, on merit. The objection to the jurisdiction of the Court raised by the respondent was that since the place of work of the complainant was at Rabale, Navi Mumbai, it was beyond the territorial jurisdiction of the Industrial Tribunal at Mumbai. On merit, the respondent contended that, it holds the exclusive prerogative to transfer the petitioner, particularly in view of a specific clause in the letter of appointment issued to her. The respondent also alleged that the complainant was behaving rudely with her subordinates, colleagues and having adamant attitude towards her Senior Manager. She was openly criticizing management policies, did not take initiative in her job profile and used to sit idle during working hours. Further, considering the business exigencies, the Management decided to exercise restructuring within the organisation. In the process of restructuring, she was transferred to Rabale. Taking note of the specific complaint of the complainant that, she found it inconvenient to

work at the factory premises in the company of the workers, the respondent during the pendency of the first complaint, issued letter dated 3rd July, 2007 directing her to work in office in the godown premises instead of the factory premises at Rabale. Thereafter, the complainant filed the second complaint alleging identical unfair labour practices on the part of the respondent. The first complaint was dismissed by the Industrial Tribunal by the impugned order dated 15th December, 2011. The second complaint was partly allowed by the Industrial Tribunal by holding that the transfer order dated 3rd July, 2008 is bad in law and set the same aside. It directed the respondent to put back the complainant to the office of her first transfer on the first floor at Rabale, Navi Mumbai and upon her reporting for duty, pay her the wages as in the past.

5). Mr. Nimbalkar, the learned Advocate appearing for the complainant, submits that the transfer of the complainant from Andheri to the factory premises at Rabale ought to have been considered as unfair labour practice by the Industrial Tribunal. According to him, considering the nature of the allegations made in respect of the transfer, the nature of the unfair labour practice alleged and the relief sought, it was necessary for the Industrial Tribunal to consider and decide both the complaints together. If this course of action were to be adopted by the

Industrial Tribunal, there would not have been different outcomes in the two complaints. He also submits that, there is no evidence produced before the Court by the respondents of any restructuring of the organisation and submits that the complainant was singled out by the respondents under the guise of exigency of business and victimised her because the respondent wanted her to resign from the employment.

6). Mr. Bapat, the learned Advocate appearing for the respondent, submits *per-contra* that, the misconduct on the part of the complainant while at Andheri, as alleged in the written statement has continued on her transfer and that she is infact either not attending the duty or not performing work on some pretext or the other, whenever she attends the duty. The complainant had alleged in reply that, she was deliberately not assigned any work.

7). In view of the rival contentions, by the order dated 8th June, 2015 the complainant was directed to attend to the work everyday and the respondent was directed to assign the regular work to her which involves, (i) working on computer, (ii) preparing gate passes, (iii) preparing inward and outward challans, (iv) preparing all inventories etc., and (v) working as per direction of superiors. On the next date, the complainant submitted chart of the work done by her during the period 8th June, 2015 to 4th July, 2015. The chart shows that, even after the

order was passed, the complainant had absented herself from the work on, as many as, 6 days. On three dates, the office was closed being a Sunday. Then, for 10 days, there was allegedly either no electricity or some problem with the computer. On the remaining days, she claims to have done some work. Thus, for 19 out of 27 days, there was no work output by her.

8). The advocates for both the sides inform that the place of work, where the complainant was posted by the transfer order dated 16th December, 2006 is no more available to the respondent and therefore the direction contained in the order impugned in the first petition cannot be complied with.

9). The unfair labour practices alleged against the respondents are under Items-3, 9 and 10 of Schedule-IV of the MRTU & PULP Act. The same reads as follows :

SCHEDULE-IV

General Unfair Labour Practices on the part of employers

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

9. Failure to implement award, settlement or agreement.

10. To indulge in act of force or violence.”

10). As regards the unfair labour practice under Items-9 and 10 above, there are no pleadings whatsoever in the two complaints.

Consequently, there is no question of the respondent indulging into unfair labour practice under the two items. By the order impugned in the second petition, the Industrial Tribunal, on appreciation of the material brought before it by the parties, has held that the complainant has failed to establish any unfair labour practices i.e. including under Item-3 of Schedule-IV. The Industrial Tribunal, further by referring to Clause-4 of the appointment letter of the complainant noted that the employment of the complainant was transferable and the transfer of its employees is the prerogative of the Management. It further observed that, there is a possibility of loss of confidence by the respondent in the complainant and her presence at Andheri might have led to complications. Besides, the post held by the complainant was a key post for which mutual faith and confidence was most important. The complainant used to receive faxes for the Directors from within the State, from within the country and from abroad. Thus, she had access to confidential information of the Directors of the respondent. It also observed that, a little inconvenience of commutation to Rabale, Navi Mumbai as the outcome of transfer cannot be said to be so serious as to treat the same as adverse to the service conditions. These, observations of the Industrial Tribunal are a probable and reasonable view of the matter by the Tribunal and hence do not require interference. Also,

there is nothing indicated from the evidence of the complainant that, her transfer order suffered from *mala fides*. Therefore, Writ Petition No. 2667 of 2015 filed to challenge the order dated 16th December, 2011 is liable to be dismissed.

11). As regards the order impugned in Writ Petition No. 6399 of 2014, since the basic facts involved in the two complaints relevant for the unfair labour practices are same, once it is held that, there are no *malafides* in transferring the complainant from Andheri to Rabale at Navi Mumbai, any change in the place of her work at Rabale can hardly be said to be lacking *bonafides*. Perusal of the letter dated 3rd July, 2007 shows that the letter is not exactly a transfer order from one place to another. The office, where she has to work has shifted from the first floor of the factory premises at Rabale to the godown premises at Rabale. But, the Industrial Tribunal, has observed that if the services of the complainant were required on the first floor, where she was transferred initially, it is hard to digest and believe that her transfer from the first floor to the ground floor in the Warehouse where only mathadi workers are working was on the administrative ground and for administrative exigency. It is to be noted that, the specific case of the respondents is that, the respondents surrendered their factory license and premises of the first floor at Rabale w.e.f. 16th July, 2011. Non-

availability of the premises would obviously be administrative exigency. Further, as has been rightly submitted by Mr. Bapat that the Industrial Tribunal has not dealt with an objection to the territorial jurisdiction of the Tribunal to entertain and try the complaint. When the second complaint was filed, the complainant was already working in the Rabale office which is beyond the territorial jurisdiction of the Industrial Tribunal, Mumbai.

12). For the reasons stated above, the first petition is allowed. The order dated 17th December, 2011 passed by the Industrial Tribunal in Complaint (ULP) No. 476 of 2008 is set aside and the complaint is dismissed. The second petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)