

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2015

Date of Reserving the Order	Date of Pronouncing the Order
20.11.2015	01.12.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.8923 of 2015

Indian Airports Kamgar Union
(Regd.No.3950),
Rep., by its General Secretary,
Qtr., No.B-140, Pocket-A,
INA Colony,
New Delhi - 110 -023. Petitioner

Vs.

1.The Airports Authority of India (SR),
Rep., by Regional Executive Director,
Chennai Airport,
Meenambakkam,
Chennai - 600 027.

2.Deputy General Manager - HR,
Office of Regional Executive Director,
Airports Authority of India (SR),
Chennai Airport,
Meenambakkam,
Chennai - 600 027.

3.The Assistant General Manager - HR
Office of Regional Executive Director,
Airports Authority of India (SR),
Chennai Airport,
Meenambakkam,
Chennai - 600 027.

4.The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court,
No.4, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to forbear the respondents from giving effect to the order of transfer dated 22.09.2014 bearing AAI/SR/2-2(7)/EA issued by the second respondent and the order dated 20/23.03.2015, bearing AAI/SR/2-2(7)/EA issued by the third respondent in so far as transferring G.Venkataswamy, Senior Superintendent (Fire Service) from Chennai Airport to Tirupati Airport, who is the Branch Secretary of the petitioner Union at Chennai Airport, without getting prior permission from the fourth respondent under Section 33 of the Industrial Disputes Act, 1947, in the Industrial Disputes raised by the petitioner Union which is pending as I.D.No.19 of 2015.

For petitioner ... Mr.Balan Haridas

For Respondents ... Mr.C.K.M Appaji for RR2&3
Father A.Xavier Arulraj for R1

O R D E R

The petitioner is a Trade Union registered under the provisions of the Trade Unions Act, 1926, consisting of members who are employees in the respondent organisation.

2. The prayer sought for in the Writ Petition is for issuance of a Writ of Mandamus to forbear the respondents from giving effect to the order of transfer dated 22.09.2014, issued by the second respondent and the order of the third respondent, dated 23.03.2015, in so far as it transfers Mr.G.Venkataswamy, Senior Superintendent (Fire Service) from Chennai Airport to Tirupathi Airport.

3. The petitioner would contend that without obtaining prior permission from the fourth respondent, the Industrial Tribunal, under Section 33 of the Industrial Disputes Act, 1947, (I.D.,Act), in I.D.No.19 of 2015, such order of transfer cannot be effected.

4. The case of the petitioner is that there are three major Trade Unions operating in the respondent organisation namely Airport Authority Employees Union, (AAEU); Airport Authority of India Workers Union (AIWU) and the petitioner Union and there is rivalry between them due to trade union activities. It is alleged that the respondent Management is favouring the rivalry trade union namely AAEU and certain other allegations are made as against the said Union. However this allegation cannot be gone into, as the said Trade Union has not been impleaded as a respondent in the Writ petition. For the purpose of deciding the case on hand vis-a-vis, the prayer sought, it would suffice to take note of the following facts.

5. The petitioner would contend that the transfers and promotions are the exclusive function of the respondent Management, however the Management associated with the Regional Secretary of the rival Trade Union, AAEU in the Annual Transfer Committee, which committee makes recommendations for annual transfer of employees. This lead to a dispute being raised by the petitioner Union before the Regional Labour Commissioner (Central), questioning certain transfers effected by the Management as being illegal. While Conciliation proceedings were pending, order of transfer was issued to the Branch Secretary of the petitioner Union Mr.G.Venkataswamy, by order of transfer dated 22.09.2014. The petitioner would state that though the Union opposed the said order, the Management is said to have obtained a letter from the said G.Venkataswamy stating that he may be retained till the end of March 2015. The petitioner would contend that the said letter cannot be put against the employee, who is also the Branch Secretary of the Union and without prior approval of the Industrial Tribunal, order of transfer could not have been effected.

6. The further case of the petitioner is that the dispute which has been referred for adjudication before the Industrial Tribunal pertains to the process adopted by the Transfer Committee and justifiability of the same, therefore, the dispute pending before the Tribunal is strictly relateable to transfers and transfer of G.Venkataswamy, when the dispute is pending without prior approval of the Tribunal, is illegal. Further, the said G.Venkataswamy has been declared as a Protected Workman by Assistant Labour Commissioner (Central), vide his order dated 16.02.2015 and the period of validity of the said order being from 30.04.2014 to 29.04.2015. It is submitted that the application for declaration of the Officer Bearers of the petitioner Union for the year 2015-16, has been submitted by the Union to the Chairman of the Airport Authority of India on 10.03.2015, more than 1½ month prior to the date of expiry of the order, dated 16.02.2015, which was to expire on 29.04.2015. In the said application, which has been submitted under Section 33(4) of the I.D.Act read with Rule 61 (3) of the Central Rules, the name of G.Venkataswamy is found in serial No.35 in the capacity of Branch Secretary. Since the Management failed to notify the names of Protected Workmen within 15 days of the receipt of the list, the petitioner Union has raised an industrial dispute before the Labour Commissioner (Central), New Delhi, on 13.04.2015 who by memo dated 05.05.2015 has directed the respondent Management to submit their comments on the representation of the petitioner's Union to declare 60 office bearers as Protected Workmen under Section 33(4) of the Act. The respondent Organisation through its General Manager (H&R), has sent a reply, dated 20.07.2015 to the Assistant Labour Commissioner (Central), stating that the recognised Union

is AAEU and they have been granted benefit and are exempted from transfer and accordingly, the representation of the petitioner Union may be disposed of. The Assistant Labour Commissioner (Central), by communication dated 20.11.2015, has directed the respondent Management to attend discussion/conciliation proceedings which has been fixed on 26.11.2015. With these facts, the petitioner has approached this Court by way of this Writ Petition for the above mentioned relief.

7. The learned counsel appearing for the petitioner after reiterating the above factual submissions submitted that the dispute which is now pending adjudication before the fourth respondent Tribunal is directly relateable to transfers, its legality and validity. Therefore, the concerned employee namely G.Venkataswamy being a Protected Workman could not have been transferred without prior approval from the Industrial Tribunal. It is further submitted that the Management refused to approve the list of workmen submitted by the petitioner Union and therefore, dispute has to be raised and the Assistant Labour Commissioner (Central) by order dated 16.02.2015, passed an order approving the names of 59 members of the petitioner Union as Protected Workmen and the name of the G.Venkataswamy is found in serial No.35 of the said order. It is submitted that the fresh list had been submitted on 10.03.2015 and since the Management did not pass orders within 15 days, dispute has been raised and the application is still pending consideration. Therefore, it is submitted that the benefit of Protection granted on 16.02.2015, should be extended to the said employee. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., vs. Ram Gopal Sharma & Ors., reported in (2002) 2 SCC 244 and the decision of the Hon'ble First Bench of this Court in the case of Arasu Viraiyu Pokkuvarathu Oozhiyar Sangam vs. State Express Transport Corpn., Ltd., reported in 2006-III-LLJ-245.

8. The learned counsel for the first respondent submitted that the said employee G.Venkataswamy is no longer a Protected Workman, as such benefit came to an end on 29.04.2015, after which the benefit does not accrue to the said employee. Further, it is submitted that the transfers have been effected strictly in accordance with the transfer policy and the allegations made against the management with regard to another trade Union are absolutely baseless and uncalled for. Further, it is submitted that the said G.Venkataswamy, who is due for transfer in 2014, has been transferred to Tirupathi Airport as per tenure seniority list of Superintendent/Senior Superintendent (FS) as on 01.01.2014 and he had requested for retention beyond 31.03.2015. Therefore, the competent authority

considered his request and retained him at Chennai Airport with condition that he should report at Tirupathi Airport on 01.04.2015. It is submitted that the Industrial Dispute was filed before the fourth respondent Tribunal on 25.02.2015 whereas the order of transfer was issued on 22.09.2014 and the officials also undertook to report at Tirupathi. Further, it is submitted that AAEU has secured highest number of votes in the Union Election held on 29.01.2013 and has been declared as recognised Union. It is further submitted that no Union representative is associated with the Departmental Promotion Committee and the representative of the recognised Union was allowed to be associated in the Transfer Committee based on the Corporate Headquarters letter dated 27.11.2002, as it involves the interest of the staff. Further, the learned counsel referred to the averments in the counter affidavit, which has been filed on behalf of the respondent through the counsel appearing for the second and third respondents and submitted that since the transfer orders were issued before the declaration of the Protective Workmen for the year 2014-15, the petitioner has no right to claim exemption in tenure posting. Further, it is submitted that as per the Corporate Headquarters letter dated 23.05.2015, no Union is involved in the Transfer Recommendation Committee from 2014 and the transfer of G.Venkataswamy was purely made as per the transfer policy. In support of his contentions, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of National Hydroelectric Power vs. Corporation Ltd., reported in (2001) 8 SCC 574, Airports Authority of India vs. Rajeev Ratan Pandey & Ors., reported in (2009) 8 SCC 337, State of U.P., & Ors., vs. Gobardhan Lal reported in (2004) 11 SCC 402 and the decision of the Delhi High Court in the case of G.S.Puri vs. Indian Oil Corporation reported in 1996-2-LLJ-573 (DEL). The decision of the Calcutta High Court in Pankaj Kumar Paul vs. Airports Authority of India, & Ors., in W.P.No.16456 of 2012, dated 30.08.2012. The decision of the Bombay High Court in W.P.No.478 of 2014, dated 13.08.2015, [AAI vs. IAKU, Sahar Road, Andheri (E), Mumbai], which was affirmed by the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.25891 of 2015, dated 10.09.2015, and the decision of the Bombay High Court in the case of AAI vs. President, Airport Kamgar Union in W.P.ST.No.9004 of 2009, dated 23.04.2009, which was affirmed by the Hon'ble Supreme Court in SLP (Civil) No.10894 - 10895 of 2009, dated 01.05.2009 and the decision of the Division Bench of this Court in the case of N.Vijayakumar vs. UOI & Ors., in W.A.Nos.95 & 96 of 2011, dated 25.09.2014.

9. Heard the learned counsels appearing on either side and perused the materials placed on record.

10. Section 33 of the ID Act deals with conditions of service etc., to remain unchanged under certain circumstances during pendency of proceedings. Sub-section (2) of Section 33 states that during the pendency of any proceedings in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman. In regard to any matter connected with the dispute, alter, to the prejudice of the workman concerned in such dispute, the conditions of service applicable to them immediately before commencement of such proceedings. The Hon'ble Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., vs. Ram Gopal Sharma & Ors. (Supra), while construing the scope of Section 33(2)(b), which pertains to misconduct connected with the dispute or discharge, held that the said provision is mandatory and the employer who contravenes the provisions of Section 33, invites a punishment under Section 31(1) of the ID Act. Further, it was pointed out that the condition being mandatory has to be obeyed. Though the said decision was rendered interpreting Section 33(2)(b) read with proviso thereunder, the Hon'ble Supreme Court pointed out that the provision is mandatory intended to provide safeguard to a workman during pendency of a dispute.

11. In the case of Arasu Viraivu Pokkuvarathu Oozhiyar Sangam, (supra), the Hon'ble First Bench while considering the scope of Section 33(1A) of the Act, after taking note of the decision in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., vs. Ram Gopal Sharma & Ors. (supra), held that the order which has been passed in violation of the mandatory provisions of Section 33 of the I.D. Act, is void and inoperative and it is not necessary for the workmen to approach the Labour Court and especially when there is no factual dispute, such an order can be interfered with under Article 226 of the Constitution of India.

12. Bearing the legal principle set out by the Hon'ble Supreme Court as regards the effect of Section 33, we shall proceed to examine the merits of the matter.

13. The learned counsel appearing for the respondent emphasised that the order of transfer of G.Venkataswamy was in accordance with their transfer policy, he was due for transfer and the transfer was effected prior to the order passed by the Assistant Labour Commissioner (Central), dated 16.02.2015, granting status of Protected workman to the said G.Venkataswamy. Therefore, on the date of transfer and even as on date, he is not a Protected Workman.

14. Before proceeding further this Court proposes to consider the decisions relied on by the learned counsel for the first respondent and its effect on the case on hand. In the case of National Hydroelectric Power (supra), orders of transfer were challenged on the ground that they were contrary to the settlement entered into between the corporation and the employees Union and to penalize for trade union activities and while considering the validity of such transfers, it was held that no Government servant or employee of a public undertaking has a legal right to be posted for ever at one particular place and transfer is an incident of service. However, the said decision did not relate to case pertaining to a Protected Workmen. Therefore, the same is distinguishable on facts.

15. The decision in the case of Airports Authority of India vs. Rajeev Ratan Pandey & Ors., (supra), also is a challenge to the order of transfer and when it was proved to the satisfaction that it was in accordance with the transfer policy, the Hon'ble Supreme Court upheld the order of transfer. However, the facts of the present case is slightly different and therefore, the said decision does not render much assistance to the case of the respondents. Similarly the decision in the case of State of U.P., & Ors., vs. Gobardhan Lal (supra), also does not deal with cases relating to Protected workmen, but a case where the order of transfer came to be challenged having been made due to political pressure and influence of a local MLA.

16. The decision in the case of G.S.Puri vs. Indian Oil Corporation (Supra), though pertains to an order of transfer of a local secretary of the workers Union, in the said decision the Delhi High Court was not considering a case pertaining to a Protected workmen, who had a benefit of a statutory protection and the decision does not deal with the effect of Section 33 of the I.D.Act and therefore, the said decision does not render support to the case of the respondents.

17. The decision of the Calcutta High Court in the case of Pankaj Kumar Paul vs. Airports Authority of India, & Ors., (supra), pertains to a challenge to the orders of transfer as being contrary to the transfer policy and the Court having found that it is in-consonance with the transfer policy rejected the challenge, therefore, the said decision is distinguishable on facts.

18. The decision of the Bombay High Court in the case of AAI vs. IAKU, Sahar Road, Andheri (E), Mumbai, though pertains to a challenge to an order of transfer, the specific contention of AAI was that the concerned employee was not a Protected workmen. However, in the said decision that controversy was not gone into nor the effect of Section 33 of the I.D.Act was considered, but the Court upheld the order of transfer having been satisfied

that it is in accordance with the Service Regulation and no material was placed before the Court to prove the employees were Protected Workmen. Therefore, the decision is distinguishable on facts.

19. The decision of the Bombay High Court in the case of AAI vs. President, Airport Kamgar Union (Supra), related to the orders of transfer and the Industrial Tribunal had granted an interim relief to the workmen, which was slightly modified by the learned Single Judge of the Bombay High Court and the correctness of which was challenged before the Division Bench. The Division Bench by its judgment, dated 23.04.2009, examined the Service Regulations and Section 9A of the I.D., Act and granted an interim order thereby staying the order of the Tribunal. The said case arose out of an interim order and not out of a final order arising out of the order of the Tribunal. That apart, the issue as to whether the workmen was a Protected Workmen or not, was not raised as a controversy and therefore, the decision is distinguishable on facts.

20. The decision of the Hon'ble Division Bench of this Court in W.A.Nos.95 & 96 of 2011, arose out of a challenge to a circular issued by the respondent, dated 18.12.2012 and the consequential seniority and promotion list. Before the learned Single Judge when petitions to vacate the interim orders of status quo were filed, learned Single Judge gave liberty to the appellants to challenge the orders of transfer separately and that is how the prayer in the Writ Petition was amended. The challenge to the order of transfer was primarily on the ground that the fixation of seniority has been arbitrarily done and the respondent organisation resisted the claim by stating that the parent order of Government of India has not been challenged and there is no stay of the operation of the Service Regulations, 2005, and the appellants have rushed to Court even before options were called for and the Hon'ble Supreme Court has also upheld the order of the Central Government. The challenge to the order of transfers in the said case were totally on different grounds and the said decision does not render any assistance to the case of the respondents.

21. Having held so, the only issue to be considered is whether the concerned employee G.Venkataswamy is entitled to the protection under Section 33(1) (a) of the I.D.Act.

22. It is not in dispute that the said employee, who is the Branch Secretary of the petitioner Union was declared as a Protected Workmen by order dated 16.02.2015. It is noteworthy to point out that the said order was passed on 16.02.2015 and it was an order declaring 59 Office Bearers of the petitioner Union through out the country as Protected Workmen and the order was to take effect from 30.04.2014 and to remain in force till

29.04.2015. This delay in passing such an order is on account of the fact that the respondent Management did not declare the list of Protected Workmen of the petitioner Union. Therefore, dispute was raised and ultimately the Assistant Labour Commissioner (Central) passed the order for the year 2014-15. From the counter affidavit, it is seen that the order of transfer was issued on 22.09.2014, it is not in dispute that the protection which accrued in favour of the said employee G.Venkataswamy is with effect from 30.04.2014 and the benefit of the said order should enure in favour of the employee, though the Assistant Labour Commissioner (Central), passed the formal order only on 16.02.2015, since the employee should not be put to prejudice on account of the time taken for adjudication of the dispute and for passing the order.

23. It is to be noted that the adjudication was necessary by the Labour Commissioner, since the Management did not recognise the names of the Office Bearers submitted by the petitioner Union for being declared as Protected Workmen. Therefore, the said employee was deemed to be a Protected Workmen on the date when the transfer was effected. This protection being a statutory protection, there cannot be any estoppel against the same and any letter given by the employee when faced with difficult circumstances while taking care of his ailing wife can hardly be put against him, more so, when the dispute has been raised by the petitioner Union and admittedly, pending adjudication before the Industrial Tribunal.

24. As noticed above, the order of protection for the year 2014-15, is with effect from 30.04.2014, to 29.04.2015. The petitioner Union submitted a list of office bearers to the respondent organisation on 10.03.2015, by filing an application under Section 33(4) of the I.D.Act, to be declared as Protected Workmen. G.Venkataswamy's name is found in serial No.35. This application was well before the date of expiry of the protection order i.e., 29.04.2015. The Management did not initiate action to notify the names within 15 days, therefore, the petitioner has raised a dispute before the Assistant Labour Commissioner on 13.04.2015, i.e., prior to 29.04.2015. In this dispute, notice has been issued to the respondent organisation vide proceedings dated 05.05.2015 of the Assistant Labour Commissioner. The respondent has sent a reply on 20.07.2015 and Conciliation is in progress and the date was fixed on 26.11.2015. Therefore, to state that the protection had come to an end with effect from 29.04.2015 and therefore, as on today, the employee is not a Protected employee would be a very unreasonable stand on the part of the respondent Management in the light of the facts mentioned above. The respondent is contesting the matter before the Labour Commissioner and Conciliation is in progress. Therefore, this Court is of the view that on the given facts and circumstances, it should be construed that the protection

continuous, since the dispute is yet to attain finality.

25. The next important aspect to be noted is regards the order of reference made by the Government of India to the fourth respondent Tribunal in exercise of its power under Section 10 (2A) of the I.D. Act and the reference is on the following terms:-

Whether the action of the management of AAI, Chennai in connection with allowing the leaders of Airport Authority Employees Union during the process of Transfer committee and DPC is justifiable or not? if not, to what relief the representative of the petitioner Union is entitled to?

26. The Tribunal is now seized off the matter and the same is pending adjudication in I.D.No.19 of 2015. The reference relates to the process adopted by the Transfer Committee and the Departmental Promotion Committee. In the counter affidavit filed by the respondents, a stand has been taken in paragraph 10, that no Union member/representative is associated with Departmental Promotion Committee and in paragraph 12, it has been stated that in terms of Corporate Headquarter letter dated 23.05.2014, no union is involved in Transfer Recommendation Committee from 2014. It is not known as to whether this would mean that prior to 2014, the Union was allowed to be involved in the transfer recommendations and the Management concedes this position. However, this issue cannot be adjudicated in this Writ Petition and to be agitated before the Tribunal, which shall adjudicate the same.

27. The grievance of the petitioner Union concerns the transfer of an employee, who was admittedly a protected workmen and this issue is directly relateable to the dispute, which is now pending before the Industrial Tribunal for adjudication and therefore, the respondent Management are mandatorily required to seek approval from the Tribunal before effecting transfer of the said employee.

28. The learned counsel for the respondent organisation submitted that on account of the interdict issued by this Court restraining the respondent from transferring the employee G.Venkataswamy chain of transfers are effected. This Court is unable to accept such a plea, which has not been substantiated in the first place and in any event, if the said employee is entitled to statutory protection, that cannot be negated on such a plea raised by the Management.

29. In the light of the above discussion, the petitioner is entitled to succeed and accordingly, the Writ Petition is allowed with liberty to the respondent Management to move the fourth respondent Tribunal for appropriate orders seeking

permission to transfer the said employee G.Venkataswamy. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

True Copy

Sub Assistant Registrar

To

- 1.The Regional Executive Director,
The Airports Authority of India (SR),
Chennai Airport,
Meenambakkam,
Chennai - 600 027.
- 2.Deputy General Manager - HR,
Office of Regional Executive Director,
Airports Authority of India (SR),
Chennai Airport,
Meenambakkam,
Chennai - 600 027.
- 3.The Assistant General Manager - HR
Office of Regional Executive Director,
Airports Authority of India (SR),
Chennai Airport,
Meenambakkam,
Chennai - 600 027.
- 4.The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court,
No.4, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

+1cc to Mr.C.K.M.Appaji, Advocate Sr.63691
+1CC TO Balan Haridas, Advocate Sr.65236
+2cc to MrFr.A.Xavier Arulraj, Advocate Sr.65438

Pre-Delivery O r d e r in
W.P.No.8923 of 2015

vs[co]
srg 11/12/2015