

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No. 38988 of 2015

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Date: 07.12.2015

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Between:

Sk.Sadiq Ali, S/o Abdul Razak, Aged 53 years,
Occu: Master Mechanic Gr.I, R/o.H.No.3-3-94,
Opp: T.S.Genco, P.O. SIIL Campus, Paloncha,
Khammam District and four others.

.....Petitioners

And

NMDC Limited, Khanij Bhavan, 10-3-311/A,
Castle House, Masab Tank, Hyderabad, rep.by
its Chairman and Managing Director and others.

.....Respondents

The Court made the following:

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ORDER:

Petitioners are employees of M/s National Mineral Development Corporation of

Limited (NMDC). In the course of their service, they earned promotion to higher cadres and are presently working in the cadre of Master Mechanic Grade-I, Technician-cum-Operator, Mechanic, Technician-cum-Operator, Mechanic, respectively. This writ petition is instituted challenging the order of transfer dated 04.11.2015. By the said proceedings, petitioners are transferred from Paloncha in Khammam District to Diamond Mining Project, Panna, Madhya Pradesh.

2. Heard learned counsel for petitioners and learned standing counsel for respondents.

3. Learned counsel for petitioners contends that petitioners were members of the AITUC; subsequently differences arose and now joined in INTUC. There were serious differences between two rival unions and petitioners were unable to tolerate the illegalities meted out by the office bearers of AITUC and they have expressed their views openly. Without appreciating grievances ventilated by the petitioners, the impugned order of transfer is slapped on them transferring to a far of place and that too in the middle of the academic year. Learned counsel further contends that sudden transfer is causing hardship and suffering to them and their family members. Children of some of the petitioners are perusing graduation courses and if the petitioners are now moved out of the present place, it would cause grave inconvenience to their children, more particularly when the final exams are approaching. One petitioner's daughter is blessed with a son last week only and his presence is necessary. Parents of the petitioners are senior citizens and they require constant help and medical assistance, which cannot be provided if the petitioners are now shifted to far of place. Learned counsel further submits that there is no justification to pick up the petitioners when several other persons similarly situated to the petitioners are retained. The petitioners are neither the senior most nor the juniors and it is not known how they are picked out. According to the petitioners, they were identified only because of their open expression of dissent on the illegalities meted out by the union on certain issues and at the instance of union leaders they are transferred.

4. Learned standing counsel representing Respondent Corporation states that there is a dire need of the technical manpower in Diamond Mining Project, Panna. In fact petitioners were sought to be shifted in the year 2011 and on the request of the union on behalf of the petitioners, petitioners were not disturbed. Before effecting transfers notice was published seeking willingness of the employees working in

Paloncha for transfer to Madhya Pradesh, but there was no proper response. Mining work in Panna has affected due to non-availability of skilled employees and as there is dire need of technical personnel, the respondent corporation has taken the decision to transfer the petitioners. He further contends that as against the low requirement of technical personnel in Paloncha, there is dire need of personnel in Panna. Diamond Mining Project in Panna is a profit making unit. Thus, in the interest of Respondent Corporation, it is necessary to utilize the services of technical personnel where there is a need and where more profit is generated for the corporation and thus, it is in the public interest. Learned standing counsel further submits that petitioners are in the earning group of Rs.80,000/- per month. The Corporation permits them to retain the accommodation provided in Paloncha for six months even after their transfer. In addition they will be provided accommodation free of charge in Panna. Thus, in case of necessity petitioners can retain quarters occupied by them in Paloncha in order to attend to necessities of their families. On transfer, petitioners do not suffer any disadvantage regarding their conditions of service; on the contrary since Diamond Mining Unit, Panna being a profit making unit, they may earn additional income of approximately Rs.6000/- per month as productivity related bonus.

5. I have given my anxious consideration to the issue of transfer of the petitioners. No doubt petitioners are now transferred to a far of place from the present place of posting, but petitioners are employees of the respondent corporation and Corporation has units located in various places in the country. In the best interests of the organization, it is permissible for the employer to shift its employees from one unit to another. As seen from the material enclosed to the writ petition, circulars were issued calling willingness of the employees for voluntary transfer to Panna, but the response was poor. Therefore, the corporation had to identify employees to shift them. It is not the case of the petitioners that they are not liable for transfer. It is also not the case of petitioners that their conditions of service are likely to be affected. On the contrary, as stated by the learned standing counsel, petitioners may get some additional remuneration in the form of productivity bonus. As fairly stated by the learned standing counsel, petitioners are entitled to retain the quarters occupied by them in Paloncha free of charge in order to attend to immediate requirements of the families.

6. Transfer is an incidence of service. Wherever, the employee is transferred, he has

to work. It is for the employer to organize his work force as per the requirements of the organization. Petitioners agitate against their transfer on the ground that why they are picked out when there are several others. It is for the employer to decide as to who should be transferred. Court cannot mandate to make transfers in a particular manner. Employer may face same complaint if some others are picked up for transfer. It is also appropriate to note that petitioners were selected for transfer in the year 2011, but at the instance of the union the transfer was differed. There appears to be no relation to their transfer and union rivalry.

7. In matters of transfer ordinarily the scope of interference by writ Court under Article 226 of the Constitution of India is very limited. It is only in cases where such transfer is vitiated on account of *mala fide* exercise of power; if transfer results in altering service conditions; and if such transfer is contrary to rules/regulations governing the service, Court can interfere. In cases of grave hardship on sudden transfer due to special circumstances, in a given case, the writ Court can exercise equity jurisdiction to grant appropriate relief. The case on hand does not present any extraordinary circumstance warranting this Court to exercise its equity jurisdiction, more so when it is stated on behalf of the Corporation that petitioners earn additional remuneration in the form of productivity bonus and employer is willing to allow retention of quarters in Paloncha for some time free of charges. In the facts of this case, it cannot be said that transfers were made in an arbitrary or discriminatory manner. I do not see any illegality and irregularity in the order of transfer warranting interference of this Court.

8. However, if there are some individual grievances with reference to the domestic problems, it is always open to the petitioners to make a representation for retention at the same place. If representations are already submitted or to be submitted by the petitioners the same shall be considered by the competent authority. It is hoped and expected that the requests of petitioners are considered objectively. However, no direction can be issued for retention pending consideration of the representations and it is for the employer to take a decision.

9. Accordingly, the writ petition is dismissed. Miscellaneous petitions if any pending in the writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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