

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8941 OF 2016

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Sarjepura (Kotala),
Ahmednagar

-- PETITIONER

VERSUS

Dyandeo Ganpat Akolkar,
Age-51 years, Occu-Service,
R/o "Shivchaitanya" Wamanbhau Nagar,
New Pathardi S.T.
At Post Tq.Pathardi, Dist.Ahmednagar

-- RESPONDENT

Mr.B.S.Deshmukh, Advocate for the petitioner.
Mr.P.V.Barde, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/08/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the interim order dated 03/08/2016 by which the application for interim relief filed by the respondent/employee seeking a stay to the order of transfer has been allowed. Consequentially, the transfer order dated 18/07/2016 has

been stayed by the Industrial Court till the general transfers occur in March-April 2017.

3. The contention of the petitioner is that the respondent is a troublesome employee. There are several complaints against him. He is the Divisional Secretary of the recognized Union. He is working at the Pathardi Depot as a 'Mechanic-Class III' for more than 20 years.

4. It is further submitted that the respondent has been transferred from Pathardi Depot to Shrirampur Depot, which is 80 kms. away. An internal enquiry was conducted by which it was decided to transfer the respondent so as to diffuse the situation. The Hon'ble Cabinet Minister has also directed his transfer. Hence, he was relieved from his posting on 25/07/2016. The Industrial Court has passed a perverse order. By staying the transfer order, the Industrial Court has virtually granted final relief at an interim stage.

5. Certain complaints have been tendered across the bar to appraise the Court that there are several complaints against the respondent and because of his mis-demeanors, he needs to be shifted out of the Pathardi Depot so as to ensure harmony and peaceful

working at the Pathardi Depot.

6. Mr.Barde, learned Advocate for the respondent/employee submits that an interlocutory order has been challenged. This Court should exercise jurisdiction in interlocutory order only if it appears that the order passed is erroneous and is likely to cause gross injustice to the litigating sides.

7. He has indicated from the rules that a transfer in the month of July is not permissible. The Management has to prepare a list of employees to be transferred, by the month of December in each year. 3 options have to be sought from the employee who is to be transferred and after taking a decision considering the options indicated, the employee has to be transferred in the month of March or April of the subsequent year.

8. He further submits that by flouting the guidelines on transfer, the transfer order of the respondent has been issued by an unauthorized authority. The Divisional Controller has issued the order of transfer without any authority.

9. During the course of the submissions of the learned Advocates,

Mr.Barde submitted on instructions from the respondent present in the Court that instead of transferring him to Shrirampur, he is willing to be transferred to Ahmednagar. If the petitioner intends to transfer him out of Pathardi, it may very well accommodate him at Ahmednagar till the decision in the complaint.

10. This matter was therefore adjourned on 2 occasions to enable the petitioner to take a decision. It is submitted today that the petitioner does not intend to accept the request of the respondent and hence the matter may be decided on its merits.

11. Having considered the submissions of the learned Advocates, I have gone through the petition paper book and the record available. Since the petitioner insists that the legality of the impugned interlocutory order be considered on its merits, despite the pendency of the complaint, I have therefore taken up this matter and heard the learned Advocates for final disposal.

12. The respondent has invoked Item 3 of Schedule IV of the MRTU and PULP Act, 1971 which reads as under :-

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

13. It is trite law that transfer is a normal incidence of service if the service of the employee is transferable. It is equally settled that a transfer order should not be interfered into unless it appears to have been issued malafide and is under the guise of following the management policy.

14. The Rules governing the transfers of Officers and employees in the petitioner/Corporation have been placed on record. The respondent falls in the category of Class-III employees. According to the Rules appearing at page No.85 of the petition paper book, clause 4(b) indicates that the transfer order of the respondent could have been issued by the Regional Manager. The petitioner contends that the respondent would fall under clause 5 by which the Chief of the Depot or the office where he is working can issue the transfer order. Contention of the respondent is that he would fall under 4(b).

15. Since the complaint is pending, despite the insistence of the petitioner, I am not dealing with this issue as it would virtually amount to deciding the complaint in this Court. Any conclusion of this Court holding that the transfer order has been issued by an unauthorized authority, would virtually render the complaint

decided.

16. The thrust of the petitioner's case is that the respondent has committed several misconducts. There are several complaints against him. He has become a headache to the petitioner at Pathardi and therefore the Corporation has urgently taken a decision to transfer him out of Pathardi.

17. Upon testing the contentions of the petitioner in the light of the service record of the respondent, it reveals that the respondent has been punished only once and that too for the reasons of unauthorized absence. The respondent contends that if he is guilty of having committed any acts which may amount to misconducts, the petitioner should have exercised its powers under the service conditions for getting the charges proved.

18. It cannot be ignored that Rule 8 of the Transfer Rules prescribes a particular scheme to be followed by the petitioner while transferring an employee. Those employees, who are liable to be transferred, are entered into a list which is prepared in the month of December of each year. The said employee is then called upon to indicate 3 options. Finally, the transferring authority takes a

decision and issues the transfer orders in the month of March and April of the succeeding year. It is an admitted position that this has not been done by the Corporation.

19. Clause 8(e)(2) of the Rules empowers the Corporation to transfer an employee without following the above procedure for special reasons and in the event there are any complaints, after conducting an enquiry into the said complaints. Prior approval has to be taken while issuing such an order.

20. In the above backdrop, the petitioner contends that the respondent has been transferred because there are several complaints against him. It, therefore, presupposes that some incident of such a magnitude must have occurred in June or July 2016 on account of which the Management had to act urgently in an emergent situation and shift the respondent out of Pathardi Depot. It needs mention that in the last 25 years of the service of the respondent, he has been penalized only once for an act of unauthorized absence.

21. The petitioner points out a complaint written by the Depot Manager of Pathardi to the Divisional Controller on 01/07/2016.

After going through the said complaint, it appears to be totally vague and does not set out any specific event or charge against the respondent. Vague and ambiguous statements are found in the said communication by which the Depot Manager desires to indicate that the respondent resorts to Union activities while on duty and attempts to increase the membership of the Union. He had once pressurized the Depot Manager to victimize some of the employees.

22. The petitioner relies upon another communication dated 07/07/2016 which is signed by the Personnel Officer indicating to the Divisional Controller that the respondent used to pressurize him with regard to allocation of work and for allotting inconvenient duties to some employees and for rejecting leave applications of some employees. The remark below the said communication by the Divisional Controller is that the Hon'ble Transport Minister of the State of Maharashtra has directed that the petitioner should contact him after 2 days for taking a decision.

23. Another communication dated 11/07/2016 bearing the remark of the Divisional Controller indicates that the Hon'ble Transport Minister has directed that the respondent should be transferred out of the Pathardi Depot.

24. It, therefore, clearly indicates that the Hon'ble Minister has issued a dictat. I do not find a single incident in between 01/07/2016 to 07/07/2016 which would indicate that the respondent has committed such an act which could be termed as being a grave or serious misconduct, if proved.

25. It is contended by the respondent that his Union is a recognized Union. One more Union by name S.T.Kamgar Sena holds affiliation to a Political Party by name Shivsena and the Cabinet Minister for transport belongs to the Shivsena. It is, therefore, contended that it was in this backdrop that the Transport Minister has directed the petitioner to transfer the respondent only to interfere in the Union activities and to undermine the Union.

26. It is, therefore, prima facie apparent that circumstances creating an emergent situation for transferring the respondent are not prevailing. It also appears prima facie that it was under the orders of the Transport Minister that the respondent has been transferred. In this backdrop and considering that the Rules of transfer appear to be prima facie violated, the Industrial Court has stayed the order of transfer dated 18/07/2016. I, therefore, do not

find that the order of the Industrial Court could be termed as being perverse. Needless to mention, it being an interlocutory order, the Industrial Court while deciding the complaint, shall not be influenced by any of the observations made in the impugned order or in this order and the complaint shall be decided on its own merits.

27. This petition, being devoid of merits, is therefore dismissed.
Rule is discharged.

(RAVINDRA V. GHUGE, J.)