

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9084 OF 2016

Vishal s/o Prakash Kasar,
Age : 35 years, Occupation : Service,
R/o 8, Mahalaxmi, Kalika Nagar,
Bhadgaon Road, Pachora,
Taluka Pachora, District Jalgaon.

...PETITIONER

-VERSUS-

- 1 D.B.Corporation Limited.
Through its Chairman,
Plot No.280, Sarfez Gandhinagar,
Near Highway YMCA Plot,
Makaraba, Ahmedabad.
Gujarat.
- 2 The Editor,
Divya Marathi,
44, Navi Peth,
Near Punjab National Bank,
Jalgaon, District Jalgaon.
- 3 The Creative Chief Designer,
Plot No.6, Dwarkasadan,
Press Complex, M.P.Nagar,
Bhopal, Madhya Pradesh.
- 4 Deputy Chief Designer,
Dainik Divya Marathi,
Plot No.15295, Motiwala Complex,
Jalna Road, Aurangabad.

...RESPONDENTS

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Advocate for Petitioner : Shri Bhosle Pratik A. a/w Shri Ajinkya Kale.

Advocate for Respondents : Shri Waikos Amit B. a/w Shri Rohit S
Sarvadnya.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th November, 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 order dated 10.08.2016
passed by the Industrial Court, Jalgaon by which Application Exhibit U/3
in Complaint (ULP) No.38/2016 praying for interim relief in the nature of
staying the effect and operation of the transfer order, has been rejected.

3 I have heard Shri Bhosale, learned Advocate for the Petitioner,
who has strenuously criticized the impugned order and Shri Waikos,
learned Advocate on behalf of the Respondents.

4 The learned Advocate for the Petitioner has voiced grave
hardships in view of his transfer from Jalgaon, Maharashtra to Bhagalpur,
Bihar. It is submitted that he was appointed only by Divya Marathi and as
such, he cannot be moved out of Maharashtra. It is further stated that as a

group of employees had made some representation to the Assistant Commissioner of Labour seeking benefits of the Majethiya Wage Board Recommendations, the Respondent/ Management developed animosity towards the Petitioner and transferred him to Bhagalpur. It is further stated that there is no policy with the Respondent to transfer the employees like the Petitioner out of the State. His transfer is under the guise of following the Management policy and is a malafide transfer under Item 3 of Schedule IV of the MRTU & PULP Act, 1971.

5 The learned Advocate for the Respondents submits that clause 5 of the appointment order issued to the Petitioner dated 12.07.2011 clearly indicates that his services are transferable and the transfer is a normal incidence of his service. It is further stated that the Management has transferred many persons and all of them have joined at the places of transfer and this aspect would be brought on record before the Industrial Court at the time of leading oral and documentary evidence. It is denied that the transfer is on account of malafide intention and is under the guise of following the Management policy.

6 From the above submissions, I find that the Petitioner is putting forth mainly two grounds. Firstly that, he should not have been transferred out of Maharashtra and secondly, Item 3 of Schedule IV is

attracted.

7 From the appointment order issued to the Petitioner, it is apparent that his service is transferable. In his representation dated 29.06.2016, it is specifically stated that he is working with "Dainik Divya Marathi" (DB Corp Limited). The Chief Manager (HR) for the Maharashtra State has issued the appointment order dated 12.07.2011.

8 It would be a matter of evidence as to whether, the appointment of the Petitioner is restricted to being a Page Maker (Editorial), DB Corp Limited, Jalgaon at Jalgaon or whether, he can be transferred to any place in Maharashtra or outside Maharashtra. It is also a matter of evidence to find out as to whether, the Respondent/ Management has a policy of transferring the employees from one State to another State and whether, any employee has been transferred. If such instances are brought on record, the case of the Petitioner could be assessed on the basis of the parity and comparability.

9 Prima facie, merely because the Petitioner prayed for wages as per the Majethiya Wage Board Recommendations, may not be a ground for the Petitioner to contend that his transfer is covered by Item 3 of Schedule IV. Nevertheless, this issue will have to be gone into by the

Industrial Court while deciding the complaint on its merits and the same is, therefore, kept open.

10 Though the Petitioner has prayed that the pending complaint before the Industrial Court be subjected to a time frame with the direction to the Industrial Court, I am not inclined to accept the said request considering the fact that the complaint is lodged only on 15.07.2016. It would not be appropriate to expedite the adjudication in the complaint merely because the Petitioner has approached this Court.

11 Since I do not find that the impugned order of the Industrial Court could be termed as being perverse or erroneous, this Writ Petition being devoid of merit is dismissed. Rule is discharged.

12 At this stage, the Petitioner prays that in the event he does not join at the place of transfer during the pendency of the complaint, the Respondents may be precluded from initiating disciplinary proceeding considering the fact that his complaint is pending. The Respondents oppose.

13 On this request, I deem it proper to direct the Respondents not to initiate a disciplinary proceeding if the Petitioner does not join the

place of transfer during the pendency of his complaint. However, it is clarified that if the Petitioner does not join the place of transfer on his own will and accord, he would not be entitled for the wages for the said period of not working on the principle of "no work - no wages".

kps

(RAVINDRA V. GHUGE, J.)