

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

WRIT PETITION NO. 10619 OF 2015

Vishwas Pundlik Borse,
Age : 58 years, Occ : Service,
R/o Bharat Nagar, Deopur,
Dhule, Taluka and District Dhule.

...PETITIONER

-VERSUS-

- 1 The Circle Superintending Engineer,
Maharashtra State Jeevan Pradhikaran,
Circle Nashik, Holaram Colony,
Sadhu Vaswani Marg,
Nashik.
- 2 The Executive Engineer,
Maharashtra State Jeevan Pradhikaran,
Urban and Rural Planning Division,
Behind Akashwani Centre,
Jeevan Dhara Building, Jalgaon,
Taluka and District Jalgaon.

...RESPONDENTS

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Advocate for Petitioner : Shri V.D.Hon, Senior Advocate h/f Shri Sawant
Amol S.

AGP for Respondent 1 : Shri V.G.Shelke.

Advocate for Respondent 2 : Shri J.R.Shah h/f Shri S.J.Bhamare.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th January, 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 judgment and order dated
02.05.2015 delivered by the Industrial Court, Dhule by which his
Complaint (ULP) No.7/2013 has been dismissed.

3 Shri Hon, learned Senior Advocate appearing on behalf of the
Petitioner, submits that the Petitioner is only a Pump Operator. He was
transferred on 24.09.2012 from Nashik Circle to Thane Circle. He did not
join the place of transfer and preferred the complaint before the Industrial
Court invoking Item Nos.3, 5, 9 and 10 of Schedule IV of the MRTU &
PULP Act, 1971 on 27.02.2013.

4 Shri Hon submits that by an interim order dated 22.03.2013
below Exhibit U/2, the Industrial Court invoked its powers under Section
30(2) of the MRTU & PULP Act, 1971 and stayed the transfer order till the
decision in the complaint. He concedes that from 24.09.2012 till
22.03.2013, the Petitioner had not worked and had not joined at the place
of transfer. He further submits that by the impugned judgment and order
dated 02.05.2015, the complaint was dismissed and the interim protection
was vacated.

5 Shri Hon further submits that on 16.05.2015, the Petitioner was deputed to Kumbha-Mela at Nashik. Subsequently, he is said to have suffered a heart attack and had undergone angioplasty at Ruby Hall Clinic Hospital at Pune on 28.10.2015. He is due to retire on 30.06.2016. At his request on health ground, his deputation to Kumbha Mela was also cancelled.

6 Shri Hon further submits that this case rests more on equity than on a legal challenge to the transfer order. He submits that the Petitioner is due for retirement on 30.06.2016. Only five months are left for retirement. He is a heart patient having already undergone angioplasty. The Industrial Court should have considered these factors and in the light of the same, the complaint should have been allowed for the reason that the Petitioner's service as a Pump Operator is neither indispensable, nor he is required to be transferred at Thane to train other untrained employees. There are already three Pump Operators at Thane.

7 He further makes a grievance that the Industrial Court lost sight of the fact that the transfer order was stayed on 22.03.2013 and the complaint has been dismissed on 02.05.2015. The Industrial Court was aware that the Petitioner was due to retire on 30.06.2016. He, therefore,

submits that equity demands that the Petitioner should be granted some protection till the date of retirement, which is only five months.

8 Shri Shah, learned Advocate for the Respondent/ Management, has vehemently opposed this petition and has supported the impugned judgment. He submits that Item Nos.3, 5, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971, have been invoked. No case was made out as regards Item No.5. No favouritism or partiality to one set of workers, regardless of merits, was set out in the complaint. There was no failure to implement any award, settlement or agreement, so as to invoke Item No.9. There was no pleading or evidence with regard to the act of force or violence at the hands of the Management. Therefore, Item No.10 also cannot be invoked.

9 Shri Shah submits that Item No.3 was the only provision on which the Petitioner could have based his case. For the purpose of establishing ULP under Item No.3, the Petitioner was required to establish an act of the Employer in transferring an Employee under the guise of following the Management policy, but with ulterior or mala-fide motives. The Petitioner has been working at Dhule from 1988. He has not been transferred even once. Personal hardship cannot be a ground for interfering with the transfer, which is a normal incident of service. He,

therefore, prays that the Petitioner should not be shown any misplaced sympathy and unless the impugned judgment is held to be perverse or erroneous, this Court cannot interfere in this petition.

10 He further submits that any interference caused by this Court would send a wrong signal and would affect discipline expected of employees in the Establishment.

11 I have considered the submissions of the learned Advocates as have been recorded herein above.

12 There is no doubt that Item Nos.5, 9 and 10 could not be established as there was no evidence at all before the Industrial Court. Personal hardship cannot be considered as a ground for interfering with the order of transfer since the transfer of an employee, if set out in the appointment order/ service conditions, is a normal incident of service.

13 I, however, cannot ignore the subsequent developments that have occurred post the dismissal of the complaint. The Petitioner had to undergo angioplasty after he was diagnosed of Unstable Angina. Shri Hon has tendered across the Bar certain medical documents generated by Grant Medical Foundation's Ruby Hall Clinic, Pune. The report of the

Interventional Cardiologist dated 25.10.2015 indicates that the Petitioner has Unstable Angina and he underwent Coronary Angiography which revealed Proximal LAD -- 70% Stenosis and Mid LAD -- 99% Stenosis. The Petitioner was advised Coronary Angioplasty immediately. The Coronary Angioplasty Report generated on 30.10.2015 indicates that balloon angioplasty was performed on the Petitioner.

14 Considering the above, the fact remains that the Petitioner has only five more months for retirement. From 24.09.2012 till 22.03.2013 when the Industrial Court granted him protection, he had not reported at the place of work and is, therefore, disentitled for his wages/ salary on the principle of "No Work- No Wages". Similarly, after the dismissal of the complaint on 02.05.2015, in the event the Petitioner has still not reported for work and is not granted leave of any nature whatsoever, he would be disentitled for wages for this period as well.

15 Shri Shah is right in contending that the transfer is a normal incident of service if the services are transferable in the light of the appointment orders or service conditions applicable. He is equally right in submitting that discipline amongst employees would be affected if the transfer orders are lightly interfered with by the courts without being satisfied about Item No.3 of Schedule IV of the MRTU & PULP Act, 1971.

Notwithstanding his submissions, the Court cannot be insensitive to a litigant who is a patient, who has undergone angioplasty and who is just five more months away from retirement.

16 In the light of the above, I find that the writ jurisdiction of this Court needs to be invoked in order to ensure that gross injustice is not done to either of the litigating sides. Equities have to be balanced since this is a Court of Equity. The Petitioner can be deprived of his wages on the principle of “No Work - No Pay” for the period during which there was no protection of any Court and yet, he had not reported at the place of transfer and not performed his duties.

17 As such, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dated 02.05.2015 is modified to the extent of directing the Respondent not to execute the transfer orders dated 24.09.2012 and 05.08.2015. The Petitioner shall be deprived of his wages for the period 24.09.2012 till 22.03.2013 and for the period of absence after the dismissal of the complaint on 02.05.2015 till this date. The Respondent/ Management shall permit the Petitioner to work at Dhule till his retirement.

18 It is made clear that this order is passed only after considering

the health condition of the Petitioner and the fact that he is only five months away from retirement. Needless to state, this order is passed in the above peculiar circumstances and shall not be cited as a precedent.

19 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)