IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4719 OF 2015

(Mrs.) Ashalata Shridhar Tawate ... Petitioner
Versus
State of Maharashtra And Others ... Respondents

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Mr. Tawate Shridhar for the Petitioner.
Mrs. M.S. Bane 'B' Panel Counsel for Respondent No.1.
Mr. K.M. Naik a/w Mr. Hemant Telkar i/b Mr. Sujeet P. Salkar for Respondent No.3

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CORAM : S.C.GUPTE, J.

DATE : 9 AUGUST 2016.

(ORAL JUDGEMENT)

. This Petition, filed under Articles 226 and 227 of the Constitution of India, challenges a judgment and order dated 11 December 2012 passed by the Industrial Court at Mumbai dismissing a complaint of unfair labour practice.

2 Brief facts of the case may be stated as follows :

In September 1975, the Petitioner joined Overseas Communications Services ("OCS"), Department of Telecommunication, Government of India, which was taken over by Videsh Sanchar Nigam Limited ("VSNL"), a Government of India Undertaking, with effect from 1 January 1990. The Petitioner, working as Upper Division Clerk, was absorbed into the new concern and promoted as Assistant Officer (Traffic Accounts). On 13 February 2002, Respondent No.3, Tata Communications Ltd., took over the management of VSNL by acquiring 51% shares. In or about November 2006, a Voluntary Retirement Scheme ("VRS") was introduced by Respondent No.3. On 19 November 2006, the Petitioner accepted the VRS. (It is case of the Petitioner that she was forced and coerced into accepting the VRS by means of an illegal transfer order issued by Respondent No.3, in pursuance of which she was even relieved from her post at Mumbai.) In January 2007, the Petitioner accepted the payment of VRS dues together with gratuity. (It is the case of the Petitioner that these amounts were accepted under protest and without prejudice to the Petitioner's rights.) After accepting these amounts, the Petitioner sent an approach letter to Respondent No.3 requesting them for cancellation of the VRS and the transfer order and allowing the Petitioner to resume her duties. Upon rejection of this request, the Petitioner filed the present complaint alleging unfair labour practice under Items 3, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. By the impugned judgment and order, the complaint was dismissed by the Labour Court. The Petitioner has come in challenge against that dismissal order.

3 Learned Counsel for the Petitioner urges two main issues. Firstly, he submits that the decision of the Industrial Court on the maintainability of the complaint was not legal or proper. The Industrial Court, in the impugned judgment and order, held that Respondent No.3 being a "controlled industry" specified in that behalf by the Central Government within the meaning of Section 2(a)(i) of the Industrial Disputes Act, 1947, the Appropriate Government in relation to the industrial dispute was the

Central Government, and that, accordingly, the Industrial Court did not have jurisdiction to entertain the complaint under MRTU & PULP Act, 1971. Learned Counsel for the Petitioner submits that the requirements of Section 2(a)(i) are not satisfied in the present case, and that Respondent No.3 cannot be termed as controlled industry specified in that behalf within the meaning of that provision. Secondly, it is submitted that the conclusion drawn by the Industrial Court on merits of the Petitioner's case of unfair labour practice under Items 3, 9 and 10 of Schedule IV of MRTU & PULP Act, 1971, suffers from perversity. Learned Counsel submits that the Petitioner was coerced, unduly influenced and forced into accepting the VRS and her retirement pursuant to the VRS tantamounts to an unfair labour practice.

4 “Appropriate Government” is defined under the Industrial Disputes Act under Section 2(a)(i). So far as the definition concerns us, the Appropriate Government means the Central Government, “*in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government ....or concerning any such controlled industry as may be specified in this behalf by the Central Government...........*” The above definition includes two types of industrial disputes, namely, (a) industrial disputes concerning industries carried on by or under the authority of the Central Government, and (b) industrial disputes concerning controlled industries as may be specified in this behalf by the Central Government. In relation to these disputes, the Appropriate Government is the Central Government. The present dispute does not come under the first category, i.e. (a), since Respondent No.3 is not an industry carried on by or under the authority of the Central Government.

After taking over of VSNL by Respondent No.3, the Industry has ceased to be a public undertaking under the Central Government. The question is, does this dispute fall under the second category referred to above, namely, a dispute concerning 'controlled industry' specified in that behalf by the Central Government. This question needs to be answered by considering, (a) whether Respondent No.3 is a controlled industry, and (b) whether it is specified within the meaning of clause (a)(i) of Section 2 by the Central Government.

5 Section 2 (ee) of the Industrial Disputes Act defines “controlled industry” as “any industry the control of which by the Union Government has been declared by any Central Act to be expedient in the public interest.” The Industries (Development and Regulation) Act, 1951 ('IDR Act'), a Central Act, declares, under Section 2 thereof, that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. The First Schedule to the IDR Act includes any industry engaged in the manufacture or production of any of the articles mentioned under each of the headings or sub-headings therein. We are concerned herewith Heading-6, which provides as follows :

> Heading-6 “Telecommunications” includes the followings :-
>
> (1) Telephones.
> (2) Telegraph equipment.
> (3) Wireless communication apparatus.
> (4) Radio receivers, including amplifying and public address equipment.
> (5) Television sets.
> (6) Teleprinters.

'Telegraph' is defined under the Indian Telegraph Act, 1885 to mean "any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by ware, visual or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means."

6 Respondent No.3 is a company formed to take over the entire management, control, maintenance of OCS, Department of Telecommunications, Government of India. Its main object is to establish, develope, provide, operate and maintain all types of international telephone network services including message, telex, telephone, etc. Respondent No.3 is, accordingly, engaged in the business of telecommunications, which includes telegraph and is clearly an industry specified in the First Schedule to the IDR Act. It is declared to be an industry, control of which by the Union Government has been declared by a Central Act to be expedient in the public interest. Respondent No.3, thus, satisfies the first requirement mentioned in Clause (a)(i) of Section 2 of the Industrial Disputes Act.

7 By a Notification issued by the Central Government, the Central Government has specified for the purpose of sub-clause (i) of clause (a) of Section 2 of the Industrial Disputes Act, a controlled industry engaged in telegraph service which is controlled by the Central Government under Section 4 of the Indian Telegraph Act, 1885. Under Section 4, the Central Government has the exclusive privilege of establishing, maintaining and working telegraphs. The Section has a proviso under which the Central

Government may grant a licence, on such conditions and in consideration of such payment as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India. Respondent No.3 holds a licence issued by the Central Government under the proviso. It is, thus, an industry specified in that behalf by the Central Government. Respondent No.3 accordingly satisfies even the second requirement.

8 Respondent No.3 being a controlled industry specified in that behalf by the Central Government within the meaning of clause-(a)(i) of Section 2 of the Industrial Disputes Act, 1947, in relation to any industrial dispute concerning it the Appropriate Government is the Central Government and as provided by sub-section (3) of Section 2 thereof, the MRTU & PULP Act, does not apply to such industrial dispute. The decision of the Industrial Court, based on the provisions noted above, that the complaint is not maintainable before it, cannot, thus, be faulted. The decision of the Supreme Court in the case of **Vishnu Sagar Vs. Their Workmen**[1], clearly applies to the facts of the present case. In that case, the Supreme Court held that for application of clause (a)(i) of Section 2 of the Industrial Disputes Act, the industry should not be only a controlled industry within the meaning of sub-section (ee) of Section 2, but must also be specified in that behalf, namely, for the purpose of Section 2(a) (I) as a controlled industry by the Central Government. As I have noted above, both these conditions are satisfied by Respondent No.3 and accordingly, it attracts the provisions of Section 2(a)(i) of the Industrial Disputes Act, 1947.

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9 The second aspect of the matter concerns the merits of the complaint. The Industrial Court framed four issues concerning merits in its impugned order, as set out below :

:ISSUES:

1. …..

2. …..

3. Whether the complainant proves that the transfer order dated 13 December 2006 issued by the Respondents amounts to use of force, coercion for forcing complainant to accept the so-called transfer ?

4 …..

5 Whether the complainant proves that her act of accepting so-called voluntary retirement was under undue influence and force of illegal/malafide/fradulent and forged transfer order in violation of Law of Contract ?

6 Whether the complainant is entitled for declaration that he transfer order dated 13 December 2006 is malafide, fraudulent under coercion, undue influence, forgery for forcing the complainant to accept the so-called VRS and violative of law of contract amounts to unfair labour practice and is liable to be quashed and set aside and the complainant is entitled for such declaration ?

7 Whether the transfer order is contrary to the provisions of law of contract or Model Standing Order ?

After taking into account the pleadings of the parties and documentary and oral evidence before the Court, the Court answered all these issues in the negative.

10 Let us now examine if this determination is either perverse or illegal so as to invite interference of this Court in its jurisdiction under Articles 226 and 227 of the Constitution of India. The Industrial Court considered two aspects in this behalf, namely, whether the VRS in the light of the transfer order preceding it, was illegal and whether the Petitioner was forced into accepting the VRS by undue influence, fraud, forgery or coercion. These were considered at two different stages. In the first stage, the Industrial Court held that the VRS, which was prepared with a view to relieve surplus employees, was finalized in consultation with the Union of workmen; the scheme covered all non-executive employees on the roll of the Company, who had attained either 40 years of age or rendered 10 years of service in the Company as of 20 December 2006; and the scheme was signed by Sr. Vice President (HR), who was the authorized representative of the Company. The Industrial Court came to the conclusion that, in the premises, there was no merit in the argument that the scheme was not signed by any authorised officer or that the scheme was without any resolution passed by the Board of Directors or that it was not in consonance with the Model Standing Orders. Model Standing Orders do not affect, or operate to the prejudice of, any right under a contract of service or any agreement or settlement or award applicable to the establishment and a VRS legally declared by the employer/establishment does not offend any standing order. There is, thus, no illegality in the VRS. The conclusion of the Court in this behalf cannot be termed as perverse.

11 As far as the transfer order is concerned, it is pertinent to note that the transfer order *per se* is not the subject matter of challenge here. The case of the Petitioner is that in the face of this transfer order, which was

said to be illegal, the Petitioner had no option but to accept the VRS. That being the position, what we are really concerned with in this case is whether the Petitioner was forced or coerced into accepting the VRS by slapping her with the transfer order rather than the merits of the transfer order *per se*. In any event, the Industrial Court nevertheless went into the question as to whether there was anything illegal about the transfer order. The grievance of the Petitioner was that transfer was not a condition of service of the Petitioner. The Industrial Court did not accept this contention, holding that Clause-16(4) of the agreement dated 31 January 2008 filed by the Petitioner herself provided for re-deployment of staff. As per that clause, redeployment/transfer, in the case of a business need from one job to another either within the same location or across different locations, in the same city or from one city to another within the region, was permissible. Even otherwise, under clause-8 of the terms and conditions given in Annexure-I, which are terms and conditions on which the erstwhile staff of OCS was absorbed into VSNL, the officials were liable to serve anywhere in India. The Petitioner, having been absorbed on 2 January 1990 on the basis of these terms and conditions, cannot be heard to say that transfer was not a condition of her service. On permissibility of the transfer, the Industrial Court accepted the evidence of Respondent No.3 that the transfer of the Petitioner was as per the exigencies of service. The Industrial Court held that on preponderance of probabilities, the case of Respondent No.3 that the Petitioner was duly sought to be transferred to a new location for business needs was more probable than the petitioner's case of an illegal transfer.

12 Coming now to the Petitioner's acceptance of the VRS, whether the Petitioner was coerced or in any way forced into accepting the VRS, is a pure question of fact. The Industrial Court has based its conclusion on this issue on various facts. In the first place, the Court has noted that the Petitioner had, in her cross examination, accepted that she had not complied with the transfer order by joining at Bhubhneshwar, but instead preferred to file an application for getting the VRS. The Petitioner has not made any written objection about the validity of the terms and conditions of the VRS. Though the Petitioner denied in her evidence that she had filed an application for VRS after going through and satisfying herself about the terms and conditions of the VRS, the Court considered the facts that she was a member of the union for 25 years; that she had not issued any letter to the union alleging any forcible or malafide transfer or claiming that the terms and conditions of the VRS were illegal or unacceptable; that she did not at any time challenge the order of transfer; that many employees of Respondent No.3 (as many as 130 employees as per the written statement of Respondent No.3) had accepted the VRS in the category of the complainant-Petitioner; and that the Union was also informed about the VRS scheme and did not at any time object to it. In the premises, the Court held that there was no coercion or undue influence on the Petitioner to accept the VRS.

13 Considering the respective pleadings of the parties and the material placed on record before the Court in the form of oral and documentary evidence, the conclusion drawn by the Industrial Court on the issue of coercion or undue influence, cannot be said to be unsupported by evidence. It also cannot be said that the Industrial Court did not take into account

any relevant or germane material or considered any irrelevant or non-germane material to arrive at the conclusion. This Court, in the premises, in its jurisdiction under Articles 226 and 227 of the Constitution of India, cannot find fault with the conclusion of the Industrial Court as being perverse or illegal.

14 In the premises, there is no merit in the Petition and the same is dismissed. No order as to costs.

(S.C.GUPTE, J.)