

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2122 OF 2016

Bhaskar Mhasaji Wagh

.. **Versus** ..

Division Controller, MSRTC,
Buldhana & another.

.....
Shri P. N. Verma, Advocate for the petitioner.
.....

CORAM : S. B. SHUKRE, J.

DATED : 2nd APRIL, 2016.

P. C. :

Heard.

2. By this petition, the petitioner has challenged the legality and correctness of order dated 15/02/2016 passed by the learned Industrial Court, Akola thereby rejecting the application filed by the petitioner for grant of stay to his transfer order.

3. The application for grant of stay was filed by the petitioner in Complaint ULP No. 8 of 2016 under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

4. By the impugned order, the learned Member of the Industrial Court found that the petitioner did not place any material before him so as to enable him to make prima facie inference that the

impugned order of transfer has been passed with some mala fide intention. The learned Member has found that the transfer order has been issued for administrative reasons and the petitioner also did not state in the complaint the period for which he was posted on various posts in Buldhana.

5. According to the learned Counsel for the petitioner, the transfer order has been manifestly passed in violation of regulation 7 governing the transfer of employees of the respondent. He submits that the petitioner was promoted from the post of Traffic Controller to the post of Assistant Traffic Inspector in June, 2015 and on his promotion, was posted at Buldhana depot. He submits that regulation-7, which defines transfer, would entitle the petitioner to get his posting on promotion in June, 2015 at Buldhana depot, treated as posting on transfer. Therefore, learned Counsel for the petitioner further submits, Clause-A of regulation-7 would also entitle the petitioner to be retained at Buldhana for a period at least three years from June, 2015 and this period having not been completed in this case, the transfer order would have to be termed as illegal. He submits that this aspect of the matter has not been considered at all by the learned Member of the Industrial Court and, therefore, the impugned order is illegal and arbitrary.

6. No doubt, under regulation-7, any posting made upon the promotion has to be treated as a transfer and once the employee is

posted on transfer within the meaning of regulation-7, under Clause-A of regulation-7, ordinarily he would have to be kept posted at that place for a period of at least three years. But, further provision in this regulation as seen from Clause-E of regulation-7 would also enable the competent Authority to make transfer on administrative grounds. In the instant case, it is seen from the transfer order (page-43, Annexure-F) that the transfer of the petitioner from Buldhana depot to Malkapur depot has been effected on administrative grounds.

7. Learned Counsel for the petitioner submits that if the transfer is to be made on administrative grounds, specific reasons for the same are required to be stated as per Clause-E of the regulation. This submission of learned Counsel for the petitioner is correct. Reasons are required to be stated. In the transfer order in question, the reason stated is of administrative ground and according to me this reason is sufficient to indicate that the transfer of the petitioner has been made for that reason. In case of such a reason, the petitioner would have to show that there was no administrative exigency and the real reason was something else, either in the nature of imposition of punishment upon the petitioner or in the nature of showering some favour upon another employee by accommodating him at the cost of the petitioner. This has not been shown by the petitioner. Therefore, the reason stated in the transfer order in question would have to be accepted, at least at this stage, as based upon the needs of the

administration.

8. Then, the petitioner has also not approached the Court with clean hands. The petitioner has not mentioned anywhere in the petition the period from which the petitioner has been posted at Buldhana. When a specific query was made by the Court, learned Counsel for the petitioner fairly submitted that the petitioner has been in Buldhana since the year 2002. Of course, learned Counsel further submitted that the petitioner was working on different posts since the year 2004 at Buldhana and so far as the definition of transfer is concerned, the relevant period would have to be taken as running only from June, 2015, the time when the petitioner was posted at Buldhana depot on promotion to the post of Assistant Traffic Inspector and that is the reason why the petitioner remained in Buldhana on different postings. But, the fact remains, the petitioner has not stated anywhere in the petition the period since when he is in Buldhana. The petitioner ought to have disclosed the entire period to enable the Court to examine the issue from the view point of prejudice being caused to either of the contesting parties. That is why, I say, there is suppression of material fact in the memo of petition. About the argument that earlier period is not relevant, I must say, there is no substance in it and the reason is already recorded.

9. At the cost of repetition, I would say, in transfer matters, a continuous posting at one place is a relevant fact and, therefore,

whatever might be the posting on which an employee has worked and remained posted at one place, that period must be stated by the petitioner so that proper justice could be done by the Court. This has not been done by the petitioner. In the instant case, this fact has also been rightly noticed by the learned Industrial Court. In these circumstances, I do not find that the order impugned in this case is illegal, arbitrary or perverse. Even otherwise, it is not open to this Court to substitute its view for the view taken by the Court below just because another view is possible while exercising its supervisory jurisdiction under Article 227 of the Constitution of India. It is also not necessary while exercising jurisdiction under Article 227 of the Constitution to correct every error which could be noticed in the order challenged by the petitioner as long as there is no failure of justice. In this case there can be no failure of justice. Reason being that an employee cannot have a right to a particular posting and would only have a right to be treated equally, fairly and in accordance with applicable rules. This right, as I have already found, does not appear to be violated in this case.

10. Learned Counsel for the petitioner has also referred to me the case of Purushottam Govindrao Bhagwat Vs. State of Maharashtra & others – **2012(3) Bom. C. R. - 442**. In this case, it has been held by the Division Bench of this Court that any transfer order made in violation of Section 4(1) of the Maharashtra Government Servants

Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 would be liable to be quashed and set aside. In this case, the facts are quite different. In this case, there is no violation of the regulations applicable to the transfer of employees of the respondent. Rather, the transfer in this case has been made on administrative ground, which appears to be permissible under the regulations applicable to the petitioner. Therefore, I am of the humble opinion that the ratio of this case cannot be applied to the facts of the present case.

11. Learned Counsel for the petitioner has also relied upon the case of Ramakant Baburao Kendre Vs. State of Maharashtra & another – 2012 (1) Mh.L.J. 951, wherein the Division Bench of this Court found that the petitioner was transferred even prior to completion of his tenure of three years. In this case, the petitioner has been in Buldhana since the year 2004 and has been transferred on administrative grounds. These facts distinguish themselves from the facts of the case of *Ramakant Baburao Kendre* (supra) and so said case, in my humble opinion, would be of no help to the petitioner.

Thus, I find no substance in the petition and it is liable to be summarily dismissed. The writ petition stands summarily dismissed.

JUDGE