

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-25804-2015 (O&M)
Date of decision: 06.05.2016**

Bharat Electronics Workers' Union, Panchkula

....Petitioner

Versus

Union of India and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. P.K.Mutneja, Advocate with
Mr. D.K.Bhatti, Advocate and
Mr. Vinamjeet Singh Mahal, Advocate for the petitioner.

Mr. Piyush Khanna, Advocate for respondents No. 1 and 2.

P.B. Bajanthri, J. (Oral)

CM No. 1904 of 2016

CM has been filed for vacating stay order dated 10.12.2015.

With the consent of the parties instead of deciding application for vacating interim order they addressed the main matter itself. Therefore, CM No.1904 of 2016 does not survive for consideration.

CWP No.25804 of 2015

In this petition, the workers union have questioned the validity

of the memos dated 28.11.2015 (Annexure P-20) and further sought for direction to the respondent to alter/vary the service condition especially transferring the workman in terms of transfer order dated 26.06.2013 (Annexure P-2). Instant writ petition has been filed during pendency of the reference of dispute.

2. On 26.06.2013 vide Annexure P-2 members of the Union have been transferred from Panchkula to various units i.e. Chennai, Gaziabad, Navi Mumbai, Machli Patna and Corporate office. The workers whose names are reflected in Annexure P-2 submitted representation to the Labour Commissioner through their Workers Union, Panchkula registered (hereinafter for short 'Union'). On 28.06.2013, Union submitted a representation "Subject: Proposed agitation by the non-executive employees from 27.06.2013". Pursuant to the representation to the Labour Commissioner on 28.06.2013 itself Labour Commissioner issued notices to the Management as well as Union for commencement of conciliation proceedings. On 31.07.2013, the conciliation proceedings was failed. Thereafter, workers union preferred a writ petition before this Court which was numbered as CWP 16656 of 2013 while ordering notice interim order was granted staying the order of transfer. Feeling aggrieved by the interim order Management-respondent preferred LPA which was numbered as 1552 of 2013. The same was dismissed on 01.10.2013.

3. On 27.10.2013, Government made a reference vide Annexure P-7. Union withdrew the CWP No. 16656 of 2013 on 11.12.2013. Reference dated 22.10.2013 was the subject matter in this Court in CWP

No.111 of 2014 challenged by the Management and the same was dismissed on 09.01.2014. The management aggrieved by the order of the learned Single Judge passed in CWP No. 111 of 2014 preferred LPA before this Court it was numbered as LPA NO. 590 of 2014. The LPA was allowed on 16.09.2015 while reference is set aside and reserving liberty to the appropriate Government (Government of India, Ministry of Labour), to take a fresh decision in accordance with law, after considering the grievance of the workman, if any, that may be raised by the Management, within a period of 6 weeks' from the date of receipt of certified copy of the order. It was further ordered that intervening period transfer orders shall remain in abeyance vide Annexure P-13.

4. Pursuant to the disposal of the LPA No. 590 of 2014, it is stated that both the Union and Management approached the Government. On 13.10.2015, the Government directed Labour Commissioner relating to terms of reference on the dispute from referring the same. The Labour Court issued notice on 13.10.2015. In the meanwhile, 6 weeks' time granted by Division Bench of this Court expired in the month of November, 2015. The conciliation proceedings failed on 19.11.2015. Thus, the transfer order was given effect by relieving the concerned workers. Feeling aggrieved by the order of relieving dated 28.11.2015 Union presented this petition on 07.12.2015. While ordering notice of motion interim relief was granted.

5. During pendency of this petition, Government submitted their report on 19.01.2016 vide Annexure P-24. The reference by the

Government is the subject matter before the Labour Court.

6. Learned counsel for the petitioner submitted that relieving workers with reference to transfer order on 28.11.2015 is hurriedly done i.e., even before receipt of the report from the Government. It was further contended that the transfer orders have been given effect with a mala fide intention, it is not in accordance with settlement between the workers' union and the management. The settlement is in respect of only wages and not relating to the transfer. Therefore, it is submitted that the workers' Union has got every right to approach this Court and the writ petition is maintainable.

7. Per contra, learned counsel for the Management-respondent submitted that on 13.05.2013 a meeting was conveyed between Management and the Union and one of the decision reads as follows:-

“Panchkula unit has not done well and profit margins are shrinking. Bharani Radar has taken 2 years, the progress is not upto the mark and it is yet to get bulk production clearance (BPC). Considering the business requirements, transferring employees from PK unit to other units is necessary.”

Therefore, transfer of workers is in the administrative exigencies.

8. Learned counsel for the respondent further contended that on 19.05.2010 a memorandum of settlement under Section 12(3) and 18(3) of the Industrial Disputes Act, 1947 read with Rule 15(a) of the Industrial

Disputes Act, (Central Rules) 1957 between the workman and the management of Bharat Electronics Limited, Panchkula Union was represented by President, Senior Vice President, Vice President and General Secretary. One of the decision reads as follows:-

“1.3.4. To improve the utilization of existing manpower by re-deployment and retraining of workmen wherever required and also by undertaking multi-skills training.”

and items No. 23.0 reads as follows:-

“23.0 This Memorandum of Settlement is in full and final settlement of all the demands raised by the Bharat Electronics Workers' Union, Panchkula in its Charter of Demands and none of them shall form a point of Industrial Dispute during the currency of this settlement. Bharat Electronics Workers Union, Panchkula (NTU) agrees that it will not raise any other demand/s having monetary value/financial implication during the currency of this settlement.”

In view of these factual aspects transfer of workers are in the public interest and there is no mala fide.

9. Learned counsel for the respondent submitted that the petitioners Union contended that with the mala fide intention workers have been transferred to far away places and it is not in the Administrative interest for which petitioners' Union have not impleaded by name so as to allege that transfer of workers is with mala fide intention as well as issuing

relieving order. In the absence of impleading by name question of consideration of mala fide ground is untenable. It was further contended that transfer is an incident of service. The courts and Tribunals can interfere in respect of the transfer of employees only on the ground of violation of statutory provisions or mala fide. In the present case, while effecting transfer of workers no statutory rules have been violated and further petitioners Union have not made out a case in respect of the contention that the transfer order has been issued with the mala fide intention. It was further contended that transfer order has not been challenged only relieving order has been challenged in the present petition. Therefore, in the absence of challenge to transfer order, writ petition is not maintainable.

10. Both the counsels argued with reference to various Sections of the Industrial Disputes Act, 1947.

11. Heard learned counsel for the parties.

12. Transfer of an employee is an individual grievance. Therefore, filing of writ petition by workers' Union is not maintainable. Since the petitioner's union is before this Court in number of litigations from the date of issuance of transfer order. Therefore, it is not proper to reject petition on the ground of maintainability of writ by workers' Union.

13. From the dates and events, it is noticed that workers have been transferred on 26.06.2013. By virtue of Court orders they are continued for almost 3 years. Therefore, they are bound to obey the transfer order. Insofar as challenge to the relieving order, it is evident that relieving order has been given effect only after the condition of 6 weeks' imposed by this

Court while disposing LPA No. 590 of 2014 vide Annexure P-13. Therefore, there is no infirmity in issuance of relieving memos. Learned counsel for the petitioner contended that with the mala fide intention the transfer orders have been issued. In the absence of impleading by name against whom mala fide is being urged. Question of mala fide contention cannot be considered and no material is shown that with the mala fide intention, the transfer order has been given effect. On the contrary, there was a decision, which reads as follows:-

“1.3.4. To improve the utilization of existing manpower by re-deployment and retraining of workmen wherever required and also by undertaking multi-skills training.”

14. Decision was already taken in the year 2010 that employees can be transferred in the Administrative exigency in the presence of representative of workers' union. Reading of the various documents, it is crystal clear that the decision to transfer workers has been taken in the administrative interest. One of the contention of learned counsel for the respondent that the petitioners have failed to challenge transfer order and they have challenged only relieving order, this contention may not sustain for the reasons that relieving order merges with the transfer orders. Therefore, the petitioners union seeking quashing of relieving order and in not challenging the transfer order may not hold good.

15. Insofar as contentions relating to various provisions of the Industrial Disputes, Act has been violated/followed is concerned, it is immaterial in this case for the reasons that matter pertains to transfer of

worker. No provision of law prohibits transfer of worker. An employee has no right to stay in a particular post and place. Moreover scope of judicial review in the matter of transfer of employee/worker is very limited. Constitutional Court/Tribunals do not substitute their own decision in the matter of transfer. The Supreme Court in the case of ***High Court of Judicature of Madras v. R. Perachi***, (2011) 12 SCC 137 held as follows:

21. *We have considered the submissions of both the counsel. As far as the action of transfer against the first respondent is concerned, the same was on the basis of the report of the Registrar (Vigilance). Besides, the District Judge had also opined that retention of the appellant in his district was undesirable from the point of view of administration. Thus, it involved inter- district transfer. Respondent no.1 had not disputed the power of the High Court to transfer him outside the district, nor did the Division Bench interfere therein on that ground. This is apart from the fact that transfer is an incident of service, and one cannot make a grievance if a transfer is made on the administrative grounds, and without attaching any stigma which was so done in the present case.*

22. *In the context of transfer of a government servant we may refer to the dicta of this Court in N.K. Singh Vs. Union of India where this Court observed in AIR para 22 as follows: (SCC p.108, para 23) :-*

"23..... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into

account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

23. *In State of Madhya Pradesh Vs. S.S. Kourav the Administrative Tribunal had interfered with the transfer order of the respondent and directed him to be posted at a particular place. It is relevant to note that while setting aside the order of the tribunal this Court observed in para 4 of its judgment as follows: (SCCp.272)*

"4.....The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is

for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

24. We may mention that this Court has reiterated the legal position recently in *Airports Authority of India Vs. Rajeev Ratan Pandey* that : (SCC p.339, para 10)

"10. In a matter of transfer of a govt. employee, the scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

25. The Division Bench has however interfered with the order of transfer on the ground that the transfer order was passed by the then Chief Justice unilaterally, and he did not have the competence therefor. In rebuttal, the appellant relied upon a Full Court Resolution dated 19.7.1993, and the text thereof was placed before this Court. Item 3 thereof was regarding services of Judicial Officers, and Ministerial and Menial Staff. The subject of "Vigilance Cell" alongwith certain other subjects was specifically included therein as falling within the jurisdiction of the Chief Justice alone. It was submitted that all residuary subjects not allocated to the committee

of Judges or any individual Judge, remain within the jurisdiction of Chief Justice. Further, the Chief Justice has to supervise the administration in the subordinate Courts also and has to take the decisions in emergencies, on all necessary matters. It was also submitted on behalf of the appellant that the Division Bench erred in not accepting the propositions emanating from the judgment of the other Division Bench in the case of A.K. Vasudevan which judgment had been left undisturbed by this Court when a Special Leave Petition against the same was dismissed.”

In view of the above decision, it is not appropriate to interfere with transfer matter in the absence of any violation of statutory provisions or incompetent authority has issued transfer order. An order of transfer of an employee is a part of the service conditions. Such transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction. Unless court finds that either the order is mala fide or that the service regulations/rules prohibit such transfer on that authorities, who issued the order, had not the competence to pass order.

16. Thus, the petitioners have not make out a case so as to interfere, since their rights have not been affected in any manner. In the absence of valid legal right to hold a particular post under statutory provision courts cannot interfere. Ultimately, it is for the employer to get posting of its employee to a particular post and place. The employer is the best Judge who can exercise discretionary power to post an employee to a particular post and place for the purpose of extracting work and also run the administration smoothly.

17. In view of these facts and circumstances, the writ petition stands dismissed.

18. No order as to costs.

06.05.2016
pooja saini

(P.B. BAJANTHRI)
JUDGE