

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Letters Patent Appeal No.840 of 2016 (O&M)

Date of Decision: May 18, 2016

Bharat Electronics Workers Union, Panchkula

.....Appellant

versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE A.B.CHAUDHARI.**

Present: Mr.V.M.Gupta, Advocate, for the appellant.

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

Surya Kant, J. (Oral)

This letters patent appeal is directed against the order dated 06.05.2016 whereby the learned Single Judge has dismissed the writ petition of appellant-Workers Union in which the relieving orders of its office-bearers, who were transferred out of Panchkula to other industrial units of the respondent-Organization, were assailed. The respondent is a Government of India Organization under the Ministry of Defence.

[2] The facts may be briefly noticed.

[3] On 26.06.2013, the respondent-Organization transferred some of its non-executive employees from Panchkula Unit to different Units, i.e., most of them to Gaziabad whereas the others were sent to Chennai, Navi Mumbai, Macchlipatnam etc.

The appellant-Union raised an 'industrial dispute' against the transfer orders alleging it to be 'unfair labour practice' and an attempt to gag the mouth of workers' spokespersons. Government of India, Ministry of Labour vide order dated 22.10.2013, referred the dispute for adjudication to the Labour Court at Chandigarh. The reference sent for adjudication was to the following effect:-

“.....Whether the action of the management of Bharat Electronics Ltd., Panchkula in transferring 15 workmen as annexed from Panchkula Unit to other units without any transfer policy is just, fair and legal? If not, what relief the concerned workmen are entitled to?....”

[4] The respondent-Management challenged the reference order before this Court in CWP No.111 of 2014 which a learned Single Judge dismissed vide order dated 09.01.2014 but in an intra-court appeal (LPA No.590 of 2014), a Division Bench of this Court on 16.09.2015 allowed the Management's appeal in part and held that the 'Reference' as framed and reproduced above, was contrary to the standing orders. The reference order was thus set-aside with liberty to the appropriate Government to take a fresh decision in accordance with law. It was further directed that “during this period, the transfer orders shall remain in abeyance”...

[5] The Government of India through the Ministry of Labour has again made a reference on 01.02.2016 which reads as follows:-

“..... Whether the action of the management of Bharat Electronics Limited, Panchkula in

transferring 15 workmen as annexed from Panchkula Unit to other units is just, fair, correct and legal? If not, what relief these workmen are entitled to.....”

[6] Soon after the revised reference, the respondent-Organization relieved the transferees and directed them to join their new places of posting.

[7] The Workers-Union challenged those relieving orders like dated 28.11.2015 (P-20) before this Court but the learned Single Judge has vide order under appeal dated 06.05.2016 dismissed their writ petition primarily on the following grounds:- (i) the challenge to a transfer or relieving order before Writ-Court can be the grievance of an individual employee only, hence the writ petition by Workers-Union is not maintainable; (ii) the transfer of an employee in administrative exigency *per se* would not call for any interference, save in exceptional circumstances; (iii) there is no violation of the directions issued by this Court vide order dated 16.09.2015 to keep the transfer orders in abeyance as that direction was interim in nature till the matter was to be re-considered by the Ministry of Labour as to whether or not the 'industrial dispute' was worth referable?; (iv) the transfer as such is an incidence of service as ruled by the Hon'ble Supreme Court in a catena of decisions, and that (v) there is no legally vested right to hold a post for any tenure.

[8] We have heard learned counsel for the appellant-Union who, besides reiterating the pleas taken before the learned Single Judge, has further contended that the observations made in the order

under appeal on the merits of transfer orders would cause prejudice to the “industrial dispute” pending adjudication before the Industrial Tribunal-cum-Labour Court. It is also contended that the directions issued by this Court on 16.09.2015 in LPA No.590 of 2014 were to operate for a period of six weeks from the date of fresh reference as meanwhile, the Workers-Union could seek ad-interim stay from the Industrial Tribunal-cum-Labour Court against the unfair labour practice.

[9] The issue as to whether or not the transfer of office-bearers of Workers' Union amounts to 'unfair labour practice' is essentially a question of fact which can be effectively determined by the appropriate forum on consideration of evidence on record. It may not be prudent for a writ court to pre-empt the effect of a transfer order merely on the basis of allegations of 'unfair labour practice'. We are satisfied that the previous directions issued by this Court to keep the transfer orders in abeyance were for the interregnum only till the appropriate-Government could decide as to whether or not there existed a referable Industrial dispute. Once reference has been made, it is for the Industrial Tribunal-cum-Labour Court to pass appropriate orders for which the appellant is at liberty to approach.

[10] Since the appellant directly approached the writ Court against relieving orders, the learned Single Judge has rightly declined to interfere with the same following the settled principles governing the scope of interference in 'transfer orders' issued in

administrative exigency and/or as an incidence of service. Further, there is nothing on record to hold that the officer-bearers of the appellant-Union are appointed against non-transferable posts.

[11] The learned Single Judge appears to be right in observing that the Workers-Union may not have any locus-standi to question the relieving order of an individual employee before a Writ Court though it may be competent to represent the collective interest of its workmen-members before an Industrial Tribunal-cum-Labour Court.

[12] Needless to say that the observations made by the learned Single Judge on the scope of interference in 'relieving orders' are in the context of exercise of writ jurisdiction and such observations in no manner would impinge upon the jurisdictional competence of the Industrial Tribunal-cum-Labour Court in deciding the reference in question on merits.

[13] The appeal thus stands dismissed, save the clarifications made above.

**[SURYA KANT]
JUDGE**

May 18, 2016
mohinder

**[A.B.CHAUDHARI]
JUDGE**