

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7470 OF 2016

M.C.G.M. & Anr.

.. Petitioner's

vs.

Municipal Karmachari Sangh,
Mumbai and Ors.

.. Respondents

Mr.S.S.Pakale i/b Mr.Vinod Mahadik for the petitioner

Ms.Vidula S. Patil for the respondent

CORAM : K. K. TATED, J.
DATE : FEBRUARY 17, 2017

P.C.:

- 1 Heard the learned counsel for the parties.
- 2 By consent of both the parties, matter is taken on board for final hearing at the stage of admission itself.
- 3 By this petition under Article 226 and 227 of the Constitution of India the Petitioner challenges the order dated 7.5.2016 passed by Industrial Court, Mumbai below Exhibit-U-2 in complaint (ULP) No.102 of 2016 staying the transfer order dated 29.3.2016 issued by the petitioner in respect of the respondents' original complainants' from M-East Ward to M-West Ward at Mumbai.

4 In the present proceedings, the respondents are working as Assistant Nuisance Detector with the petitioner Corporation in M-East Ward, Mumbai. Chief Supervisor of Corporation issued office order dated 29.3.2016 stating that whosoever have completed 5 years of service in M-East Ward office, they may be transferred to M-West Ward office. The said order was challenged by the respondents by preferring a complaint of unfair labour practice, being complaint (ULP) No.102 of 2016 under section 28 read with items 3, 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Industrial Court with following prayers:

- “1. It may be declared that the Respondent have engaged in or engaging in Unfair Labour Practice under Item 3, 5 & 9 of Schedule IV of MRTU & PULP Act, 1971 of the MRTU & PULP Act, 1971.
2. Direct the Respondents to cease and desist from engaging in the unfair Labour Practice engaged in and engaging in.
3. Direct the Respondents to withdraw orders of transfer of Complainants No.2 to 6 dated 29/03/2016 which is atAnn.”F”.
4. Direct the Respondents to allow the complainants to work at M/West ward of Respondent as Asst. Nuisance Detector.
5. Any other order / directions which may be deemed fit be granted by the Hon'ble Court.
6. Award cost.”

5 In that complaint, the respondents preferred application for interim relief under section 30(2) of the said Act directing petitioner to allow the respondents complainants to work at M-West Ward only. That

application was decided by the Industrial Court by impugned order dated 7.5.2016 mainly on the ground that during the pendency of reference (IT) No.8 of 2013, petitioner without obtaining permission from the Tribunal as required under section 33 of the Industrial Disputes Act issued transfer order which is illegal.

6 The learned counsel for the petitioner submits that impugned order passed by Industrial Court is against justice, equity and good conscience and same is liable to be set aside. He submits that Industrial Court failed to appreciate the fact that they shifted respondents' original complainants' duty from M-East Ward to M-West Ward in the same locality only. He submits that the office order dated 29.3.2016 issued by Chief Supervisor only to transfer the employees who have completed more than 5 years in M-East Ward to M-West Ward. He submits that they shifted the respondents' duty from M-East Ward to M-West Ward on the same post i.e Assistant Nuisance Detector. He submits that because of shifting from one place to other place neither their pay scale and / or seniority is going to affect.

7 The learned counsel for the petitioner submits that the Industrial court failed to appreciate the fact that by allowing the respondents' application for interim relief under Exhibit-U-2 indirectly the Industrial Court allowed the respondents' complaint itself. He submits that even the main prayer in the complaint is to set aside the office order/transfer order dated 29.3.2016.

8 The learned counsel for the petitioner submits that in any case the petitioners have power to transfer the respondents from one place to other place as per rules and regulations. In support of his contention,

he relies on the Division Bench judgment of this court in the matter of *Suresh S. Bhamre, Nasik vs. Devendra Purushottam Shinde, Police Inspector, Nasik, & Ors., 2003 III CLR 382*. In this authority the Bombay High Court held that at the time of issuing transfer order if because of that there may not be any breach of the statutory provisions and or same cannot be said as mala fide then the department can transfer perform from one place to other place. Paragraph 10 and 11 of the said judgment reads thus:

“10. From the above paragraph, it is clear that what weighed with the Tribunal was that (i) the applicant (respondent No. 1 herein) was posted at Manmad only in May, 2002 and had not completed even one year; (ii) there was nothing against his performance; and (iii) those facts were not brought to the notice of Hon'ble Dy. Chief Minister. had those facts been brought to the consideration of Dy. Chief Minister, in all probability, he would have reconsidered the matter and would not have made an order of transfer.”

“11. With respect, in our opinion, none of the grounds can be said to be germane, relevant or material so far as an action of transfer is concerned. Once it has been held that transfer is an incident of service, such action can be taken. It is immaterial whether an employee has or has not completed one year. Similarly, it is not necessary that such action can be taken only if there is something 'against' his performance. Finally, the fact whether those aspects were or were not brought to the notice of the Deputy Chief Minister is altogether irrelevant and extraneous. A person might be performing his duties to the satisfaction of the authorities, yet he can be transferred if the post held by him is transferable.”

9 On the basis of these submissions, the learned counsel for the petitioner submits that impugned order is required to be set aside. He further submits that in any case the complaint filed by the respondents is pending for hearing and final disposal on its own merits. He further submits that during the pendency of the present Writ Petition, respondents already resumed their duty in M-West Ward and at present, they are working there.

10 On the other hand, the learned counsel for the respondents vehemently opposed the present Writ Petition. She submits that Industrial court rightly held that during the pendency of the Reference (IT) No.8 of 2013 petitioner without obtaining appropriate order under section 33 of the Industrial Disputes Act, issued transfer order which is contrary to law. She submits that respondent are working as Assistant Nuisance Detector with the petitioner. She submits that there is no provision for transfer for their service.

11 The learned counsel for the respondents submits that during the pendency of the present petition respondents applied to the petitioner under Right to Information Act for certain information. She submits that the respondents' officer admitted that the transfer of Assistant Nuisance Detector cannot be made from one Ward to other Ward without their consent only. The said reply is placed on record by the respondent by submitting Affidavit-in-Reply dated 15.2.2017. She further submits that Industrial Court considering the documents and evidence on record rightly held that during the pendency of the complaint, petitioner has no right to transfer from one place to other place. She further submits that if court comes to the conclusion that grave hardship and existence is committed on the applicant in that

case, court can pass ad-interim relief in terms of final order also. In support of this contention, she relies on the judgment in the matter of ***Richardson & Cruddos (9172) Ltd. vs. Mahadeo, 1984(0) ALJ-MH 150125***. On the basis of these submissions and the authority, the learned counsel for the respondent submits that there is no substance and the same is liable to be dismissed with costs.

12 I have heard both the sides at length.

13 It is to be noted that in the present proceedings, the main prayer in the complaint is to set aside the transfer / office order dated 29.3.2016 issued by petitioner's officer. By impugned order which is in the form of interim relief, the Industrial Court stayed the transfer order itself. This itself shows that indirectly the Industrial Court allowed the complaint filed by the respondent and that is not permitted in law.

14 Bare reading of the transfer/office order dated 29.3.2016 shows that petitioner transferred employees who have completed more than 5 years in M-East Ward to M-West Ward. It is not possible to make out a case that because of the said order, any victimisation is done to the respondents. In any case, the Division Bench of this court in the matter of ***Suresh S. Bhamre, Nasik vs. Devendra Purushottam Shinde, Police Inspector, Nasik, & Ors.*** (Supra) held that employer has right to transfer the employees as per their convenience and work demand. In any case, the respondents already joined in M-West Ward and they are working there. Considering these facts, I am of the opinion that petitioner has made out a case to set aside the impugned order dated 7.5.2016 passed by Industrial Court, Mumbai below Exhibit-U-2 in complaint ULP No.102 of 2016 with a direction to hear the complaint

itself expeditiously. Hence, following order is passed:

- a) Order dated 7.5.2016 passed by Industrial Court, Mumbai below Exhibit-U-2 in complaint (ULP) No.102 of 2016 is set aside.
- b) Hearing of complaint (ULP) No.102 of 2016 is expedited.
- c) Writ Petition stands disposed of accordingly.
- d) No order as to costs.

JUDGE