

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 334 of 2018

1. Manoj Vishvakarma S/o Late Shri Chhunilal , Aged About 45 Years Computer Operator, Dainik Bhashkar, Bilaspur R/o Village Devridih, District Bilaspur Chhattisgarh.

2. Puran Sonkar, S/o Late Ramlal, Aged About 52 Years D.T.P. Incharge, Dainik Bhashkar, R/o Jalaram Caintin Gali, Tapshya Bhawan, Tikrapara, District Bilaspur Chhattisgarh.

3. Rajnish Dubey, S/o Late Shri Shivshankar Prasad Dubey, Aged About 50 Years Computer Operator, Dainik Bhashkar, R/o Pachrighat, Juna Bilaspur, District Bilaspur Chhattisgarh

---- Petitioners

Versus

1. Vipul Gupta Aged About 41 Years Sampadak, Dainik Bhashkar, R/o Old High Court, Opposite Narmal School, Bilaspur, District Bilaspur Chhattisgarh.

2. Subhodh Panda, Aged About 33 Years H.R. And Amin. Head In - Charge, Dainik Bhashakar, Old High Court, Opposite Narmal School, Bilaspur, District Bilaspur Chhattisgarh.

3. Avinash Kothari, Aged About 42 Years H.R. In - Charge, Dainik Bhashakar, R/o Rajbhandha Maidan, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For petitioners –Smt. Renu Kochar, Advocate.
For respondents – Shri N.K. Vyas, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

17/04/2018

Heard.

1. Instant petition is against the order dated 15/12/2017 passed in MCA No.52/2017 by the 3rd Additional District Judge, Bilaspur wherein the District Judge has set aside the order dated 19/05/2017 passed by the 4th Civil Judge, Class-II Bilaspur granting injunction on transfer to other places that of the petitioners. The declaration and permanent injunction was sought for in a civil suit bearing No.84-A/2017.

2. Learned counsel for the petitioners would submit that the

petitioners are the journalists and working for Dainik Bhaskar, however their services are being rendered as computer operator in the office of Dainik Bhaskar. It is stated that the petitioners in lieu of their right and claim which is granted in Majithia Wage Board requested the management to grant them necessary benefit as has been ordered by the wage board. It is stated that having demanded the same, petitioners were subjected to transfer from Bilaspur to different places which are 2000 kms away. Learned counsel referred to section 16-A of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and submit that employer cannot dismiss, discharge etc. newspaper employee only for liability of the payment of wages to newspaper employee. It is contended that when the petitioners were transferred from Bilaspur to other places a civil suit was filed wherein declaration and injunction was sought for to cancel transfer letter dated 20/03/2017. Learned court of 4th Civil Judge, Class-II by an order dated 19/05/2017 has passed the injunction order in favour of the petitioners/plaintiffs which was subject of appeal before the Additional District Judge, the same was set aside. Hence, this petition.

3. Learned counsel for the petitioners further submits that according to section 17 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 the respondents were required to pay amount as has been awarded by the wage board. It is further stated that entire proceeding for demand was not mala fide and the learned District Judge failed to take into account the same. Hence this order requires to be set aside. Learned counsel further submits that respondents Vipul Gupta who is Editor, Subhodh Panda is the Manager HR Administrative Head and Avinash Kothari HR In-charge of Dainik Bhaskar and they are responsible for transfer, therefore they

have been made as a party and they would be within the definition of newspaper establishment under section 2-d of the Act of 1955. It is further stated that order of transfer is malafide and hence requires to be set aside.

4. Per contra, learned counsel for the respondents vehemently opposes the same and would submit that the civil suit itself is barred before the court below. It is contended that the petitioners/plaintiffs have already raised industrial dispute before the ALC and without waiting for the outcome of same have filed the civil suit which is barred under section 9 of CPC. He further submits that dispute like nature cannot be entertained by the civil court and he referred to case reported in **2009 AIR SCW 2566** in between **Rajasthan State Road Transport Corporation & Anr. Vs. Bal Mukund Bairwa** and **2010 AIR SCW 3108** in between **R.S.R.T.C. & Ors. Vs. Deen Dayal Sharma**.

5. Perused the order. Perusal of the order would show that 3rd Additional District Judge, Bilaspur has set aside the order of the 4th Civil Judge, Class-II dated 19/05/2017 wherein injunction was granted in favour of the petitioners/plaintiffs. Perusal of the plaint would show that prayer was made that transfer letter dated 20/03/2017 being illegal was sought to be declared nullity. The plaint as would show that Vipul Gupta, Subodh Panda and Avinash Kothari have been made as defendants. The company which is publishing newspaper wherefrom the petitioners are getting salary has not been arrayed as defendant. Further the learned appellate court has reproduced the terms of the appointment letter dated 1st April, 2012 which is reproduced here under:-

“Your services are liable to be transferred to any of our offices or associate company in which the company has interest. Such transfer can be made to either existing reporting authority or the

authority coming up in future. Rules and regulations of the company as applicable shall govern your appointment from time to time.”

6. The order of transfer which is filed alongwith the petition discloses that it was issued from the institution named Dainik Bhaskar. Suit when was filed only 3 of the employee were picked up and the company was not arrayed as defendant wherein petitioners are employed. However without going into detail of such facts since this court is only confined to the application moved by the petitioners under Order 39 Rule 1 and 2 of CPC and appeal thereof, while considering the lis in between the parties this court is of the opinion that suit filed by the petitioners was not for enforcement of any right under the statutory regulation. It is a trite law that transfer is an incident of service. The claim of petitioners are that when they demanded their right under the Majithia Wage Board by way of punishment they have been transferred. In such cases, the issue involved would be covered by the principles and ratio laid down in **2009 AIR SCW 2566** in between **Rajasthan State Road Transport Coporation & Anr. Vs. Bal Mukund Bairwa** and **2010 AIR SCW 3108** in between **R.S.R.T.C. & Ors. Vs. Deen Dayal Sharma**. It appears that industrial dispute exist in between the parties as such order of the Additional District Judge while allowing the appeal preferred by the respondents cannot be said to be illegal. In the facts of this case, moreso establishment i.e. body corporate of Dainik Bhaskar was not arrayed as defendant. Consequently, order passed by the 4th Civil Judge, Class-II itself suffers with illegality.

7. In the result, I am not inclined to interfere in the order passed by the court below. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE

