

Reportable

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2934 OF 2018

- 1 The Divisional Controller,
Maharashtra State Road Transport
Corporation, Division Office,
Samarth Nagar, Aurangabad.
- 2 Maharashtra State Road Transport
Corporation, Wahatuk Bhavan,
Dr.Anand Nair Marg, Mumbai Central-8,
Through
Vice Chairman and Managing Director.

...PETITIONERS

-VERSUS-

Maharashtra S.T. Workers Congress (INTUC).
Through it's Organizing Secretary,
Shri Suresh s/o Sitaram Jadhav,
Age : Major, Occupation : Service,
R/o Plot No.36, Ekta Nagar,
Jatwada Road, Harsul, Aurangabad,
Taluka and District Aurangabad.

...RESPONDENT

...

Advocate for the Petitioners : Shri M.K.Goyanka a/w Shri Manoj Shinde.

Advocate for the Respondent : Shri S.S.Kulkarni a/w Smt.A.S.Kulkarni.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2018

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard by the consent of the parties.

2 The three issues involved in this case are as under :-

- A) Can the Industrial Court stay a circular without concluding that Section 9-A of the Industrial Disputes Act, 1947 has been prima facie violated?
- B) Can a worker, on deputation for a specific period, continue at the deputed location, without any official extension?
- C) Can the Industrial Court grant interim relief, before concluding that the ULP Complaint is tenable, in the face of an objection raised in the Written Statement?

3 The Petitioner/ MSRTC is aggrieved by the interim order dated 14.12.2017 passed by the Industrial Court, Aurangabad in Complaint (ULP) No.288/2017 thereby, allowing the applications Exhibit-U-2 and Exhibit U-18 filed by the Respondent/ Complainant/ Union. Consequentially, the circular dated 14.07.2017 introduced by the Petitioner/ Corporation has been stayed till the disposal of the main

complaint. By partly allowing Exhibit U-18, the Industrial Court has directed that a notice be issued to Mr.Mukesh Digambarrao Tigote for cancellation of his deputation and thereafter, if he does not resume at his place at Aurangabad, the Petitioner/ Corporation would be at liberty to initiate an action under their discipline and appeal procedure.

4 I have considered the strenuous submissions of the learned Advocates for the Petitioner and on behalf of the Respondent/ Union.

5 The undisputed factors, in this case, are as under:-

- (a) Circular No.42 of 2001 dated 22.07.2001 was introduced by the Petitioner Corporation by which, certain conditions for foreign service have been introduced.
- (b) The term "foreign service" is said to be a deputation under the orders of the Vice Chairman of the Corporation, subject to the consent of an employee, to a different office of the Corporation for the purpose of carrying out the Union activities.
- (c) Clause 75-F of the said circular mandates that if an employee on foreign service (deputation) is to be recalled, a minimum of two months notice will have to be issued to him.
- (d) By communication dated 15.07.2011, the General Manager of the Corporation informed Mr.Mukesh Tigote, who was working as an Assistant in Aurangabad Depot-2, about his

deputation to the ST Workers Congress, Mumbai for a period of one year.

- (e) The General Manager has then issued an order dated 16.08.2013 granting extension to the continuance of Mr.Tigote on deputation for a period from 25.07.2012 till 24.07.2015.
- (f) A copy of the above letter has been served upon Mr.Tigote to intimate him that his deputation is continued till 24.07.2015. He has accepted the same.
- (g) The Deputy General Manager, by communication dated 19.08.2015, has informed the President of the Maharashtra ST Workers Congress that since Mr.Tigote's tenure is concluded on 24.07.2015, he should report for duties at Aurangabad.
- (h) The Divisional Controller, Aurangabad then informed the same President of the Union by communication dated 03.09.2015 that, even after conclusion of the deputation period, Mr.Tigote has not rejoined duties at Aurangabad.
- (i) Similar letter was issued by the Divisional Controller on 05.09.2015 to Mr.Tigote thereby, calling upon him to report for duties at Aurangabad.
- (j) By communication dated 14.07.2017, the Vice President and

Managing Director of the Corporation has slightly altered the earlier Foreign Service Scheme dated 22.07.2001, which is impugned in Complaint (ULP) No.288/2017.

- (k) Since Mr.Tigote did not report for duties, the second show cause notice proposing the punishment of dismissal after an enquiry, was issued on 28.09.2017.
- (l) Mr.Tigote has approached the Labour Court by filing Complaint (ULP) No.59/2017 for challenging the said second show cause notice and has been granted ad-interim protection.
- (m) Subsequently, the new charge sheet was issued on 28.11.2017, which is challenged before the Industrial Court by filing application Exhibit U-18 in Complaint (ULP) No.288/2017.
- (n) The Union had requested the Corporation that Mr.Tigote's deputation be continued.
- (o) The Depot Manager at Aurangabad has also recommended that his deputation be continued.
- (p) The Corporation is yet to pass an order extending the deputation of Mr.Tigote.

Advocates for the respective sides and taking into account the grounds formulated in the memo of the petition and the affidavit in reply filed by the Union, it appears that the following two applications were filed before the Industrial Court at an interim stage :-

- (a) Under Exhibit U-2, the circular dated 14.07.2017 was challenged on the ground that Section 9-A of the Industrial Disputes Act, 1947 has been violated.
- (b) Under Exhibit U-18, the charge sheet dated 28.11.2017 issued to Mr.Tigote has been challenged.

7 It is obvious that Complaint (ULP) No.288/2017 is filed as against the circular dated 14.07.2017. Exhibit U-18 is a completely different application, which is restricted to the cause of action which Mr.Tigote may have as against the charge sheet.

8 Insofar as Exhibit U-18 is concerned, the Union which has preferred the complaint for challenging the circular, could not have challenged the personal cause of action of Mr.Tigote without there being any pleading to this extent in the complaint. The charge sheet dated 28.11.2017 could have been challenged by Mr.Tigote or even by the Union, which claims to be representing him, through a separate complaint since the charge sheet given to Mr.Tigote is not in connection with the circular dated 14.07.2017 and unconnected to the ULP

Complaint No.288/2017.

9 The contention of the learned Advocate for the Union is that the said charge sheet dated 28.11.2017 is a mere farce and Mr.Tigote was likely to be dismissed from service pursuant to the said charge sheet. If that be so, the challenge to the said charge sheet, on the assumption that it was at a penultimate stage of dismissing Mr.Tigote, would be a cause of action, which would lie under Item 1 of Schedule IV of the MRTU & PULP Act, 1971 before the Labour Court. The judgment of the Honourable Supreme Court in the matter of *Hindustan Lever v/s Ashok Vishnu Kate*, **1995(6) SCC 326** (paragraphs 53 and 54) would entitle a worker to approach the Labour Court if he, at a penultimate stage of the enquiry, apprehended dismissal. Mr.Tigote should then have approached the Labour Court for assailing the order/ charge sheet dated 28.11.2017.

10 Insofar as the deputation of Mr.Tigote is concerned, there is no dispute that the General Manager had granted a one year deputation to him by order dated 15.07.2011 and by a subsequent order dated 16.08.2013, an extension was granted till 24.07.2015. Mr.Tigote was, therefore, aware that his deputation was to expire on 24.07.2015. The communication by the Divisional Controller from Aurangabad to the President of the Union dated 09.07.2015 is placed on record, which according to the learned Advocate for the Union, was not before the Industrial Court. By the said communication, the Divisional Controller has

informed the President of the Union that the deputation of Mr.Tigote would be ending on 24.07.2015 and he, therefore, should report for duties and the Union should release him for reporting back at Aurangabad. The President of the Union has not answered the said letter.

11 The Divisional Controller has also issued the letter dated 12.08.2015 informing the Deputy General Manager (Personnel) that Mr.Tigote has still not reported for duties. A copy of the said letter was forwarded to the President of the Union. There are similar communications to the President of the Union as well as to Mr.Tigote. The learned Advocate for the Union submits that Mr.Tigote did not receive the said communications.

12 I find that the Industrial Court has concluded on a presumption that since clause 75-F of the earlier circular was not complied with, Mr.Tigote was never recalled from deputation. The Industrial Court has misread clause 75-F for the reason that clause 75-F pertains to recalling the deputationist by giving him two months notice, which would, therefore, infer that he is being recalled in the midst of his deputation period.

13 In the instant case, Mr.Tigote was fully aware that his deputation would conclude on 24.07.2015 and as a disciplined employee, he was obliged to return back to Aurangabad, join duties and then pursue his desire of extension or continuation at Mumbai. Even on this count, the

Industrial Court has lost sight of the fact that the tenure of deputation of Mr.Tigote was fixed by the communication dated 16.08.2013 and without there being any specific order of continuation or extension, he could not have continued at Mumbai. He, thus, had stayed back at Mumbai unauthorizedly.

14 In my view, the Industrial Court has exercised jurisdiction not vested in it by law and more so, has granted the relief, which could be of the nature of the final relief, inspite of a substantive challenge not being posed with regard to the disciplinary action against Mr.Tigote in any complaint. Consequentially, the relief granted in clauses 2 and 3 of the operative part of the impugned order dated 14.12.2017, deserves to be quashed and set aside.

15 Insofar as the challenge to the circular dated 14.07.2017 is concerned and the application Exhibit U/2 is concerned, the complaint does not contain a specific pleading as to which item of Schedule IV below Section 9-A of the Industrial Disputes Act, 1947 would be attracted, if the said circular is to be branded as being violative of Section 9-A. There are 11 items under Schedule IV. I find from the complaint that the Union has merely stated that Section 9-A is violated. The circular dated 14.07.2017 is by way of an alteration in the earlier terms of the policy of foreign service. No where is it stated in the complaint as to which amongst the 11 items, would stand attracted by the introduction of the amended circular.

16 The Industrial Court has stayed the circular by way of interim relief, notwithstanding the fact that an objection was raised to the maintainability of the complaint. Considering the law laid down by this Court in the matter of *Dalal Engineering Private Limited vs. Ramrao Bhaurao Sawant*, **1991 (2) CLR 808**, whether, the Industrial Court could exercise its jurisdiction over the complaint and interim relief could have been granted, without concluding that the complaint was maintainable. This Court has observed in *Dalal Engineering (supra)* that granting interim relief without considering the cause shown by the respondent, is like shooting first and asking questions later, which could be the law in the Wild West.

17 In this case, the MSRTC had raised a specific objection that the complaint was untenable. This aspect has not been considered by the Industrial Court.

18 Besides this aspect, I do not find that the Industrial Court has arrived at any conclusion that the introduction of the circular dated 14.07.2017 would amount to a violation of any item under Schedule IV so as to attract Section 9-A of the Industrial Disputes Act, 1947. Unless a prima facie conclusion is arrived at, the Industrial Court could not have granted interim relief.

19 Considering the above, this Writ Petition is allowed. The impugned order dated 14.12.2017 passed by the Industrial Court is

quashed and set aside. Application Exhibit U-2 stands rejected. The application Exhibit U-18, being untenable before the Industrial Court as it has been filed on the premise that Mr.Tigote would be dismissed pursuant to the charge sheet and the Industrial Court could not have exercised it's jurisdiction, stands rejected.

20 However, the Industrial Court is now expected to frame an issue as to whether, Complaint (ULP) No.288/2017 filed by the Union would be maintainable or not. It is left to the Industrial Court to frame other issues as well and deal with the jurisdictional issue, peremptorily.

21 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)