

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition Nos.16894 & 16895 of 2018

Rajiv Kumar Ishwar ... Petitioner in W.P.No.16894/2018  
Roopa Ram Jangir ... Petitioner in W.P.No.16895/2018

Vs.

1. Presiding Officer, Labour Court,  
Parrys, George Town,  
Chennai, Tamil Nadu 600 104
2. M/s. Rajasthan Patrika Private Ltd.,  
Rep. by its Director and Chairman,  
2A Wellington Estate,  
No.53 Ethiraj Salai, Egmore,  
Chennai 600 008 ... R-1 & R-2 in both W.Ps.
3. M/s. Forte Foliage Pvt. Ltd.,  
2A Wellington Estate,  
No.53 Ethiraj Salai, Egmore,  
Chennai 600 008 ... R-3 in W.P.No.16895/2018

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records from the first respondent in his proceedings and to quash the orders dated 14.06.2018 in I.D.(SR) Nos.3536/2018 and 3535/2018 and to direct the first respondent to number the same.

For Petitioner in both W.Ps.: Mr. Balasubramanian, for,  
M/s. Rohini Ravikumar

For Respondents in both W.Ps : Mr. M.Sunilkumar, for R-2

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C O M M O N O R D E R

W.P.No.16894 of 2018 has been filed by one Rajiv Kumar Ishwar seeking to quash the order dated 14.06.2018 in I.D.(SR) No.3536 of 2018 and to direct the first respondent to number the same and pass any such other order as the Court deems fit and proper in the circumstances of the case.

1.1. W.P.No.16895 of 2018 has been filed by one Roopa Ram Jangir seeking to quash the order dated 14.06.2018 in I.D.(SR) No.3535 of 2018 and to direct the first respondent to number the same and pass any such other order as the Court deems fit and proper in the circumstances of the case.

2. The issue to be decided is common in both the cases, hence, the common order is pronounced.

3. The impugned orders of the Labour Court read as under:-  
The order in I.D.(SR) No.3536 of 2018:-

"Heard the arguments of the petitioner and perused the typed set submitted by the petitioner. Sec.33A of the I.D.Act can be invoked by the petitioner for adjudication if the condition of the service etc. are changed during the pendency of the proceedings. Here a proceeding is pending before the Joint Labour Commissioner-I, Chennai and during the pendency of such proceedings the petitioner is transferred as per order dt. 12.04.2018 to Bhiwadi Office at Rajasthan State.

Whether it is a change of condition of service?

It is not a change of condition of service.

Hence petitioner cannot directly raise Industrial Dispute u/sec. 33A of I.D.Act of 1947.

Hence this petition is rejected."

The order in I.D. (SR) No.3535 of 2018:

"Heard the arguments of the petitioner and perused the typed set submitted by the petitioner. Sec.33A of the I.D.Act can be invoked by the petitioner for adjudication if the condition of the service etc. are changed during the pendency of the proceedings. Here a proceeding is pending before the Joint Labour Commissioner-I, Chennai and during the pendency of such proceedings the petitioner is transferred as per order dt. 16.04.2018 to Jagdalpar, Chattisgadh State.

Whether it is a change of condition of service?

It is not a change of condition of service. Hence petitioner cannot directly raise Industrial Dispute u/sec. 33A of I.D.Act of 1947.

Hence this petition is rejected."

4. The main contention raised by the learned counsel appearing for the workmen is that the transfer orders dated 12/16.04.2018 are contrary to Section 16A of the Working Journalist and Other Newspaper Employees (Condition of Service)

and Miscellaneous Provisions Act, 1955, as well as Section 33A of the Industrial Disputes Act.

4.1. Section 16A of the Act reads as under:-

"16A. Employer not to dismiss, discharge, etc., newspaper employees.- No employer in relation to a newspaper establishment shall, by reason of his liability for payment of wages to newspaper employees at the rates specified in an order of the Central Government under section 12, or under section 12 read with section 13AA or section 13DD, dismiss, discharge or retrench any newspaper employee."

5. The learned counsel for the workmen further submitted that the transfer of the petitioners during the pendency of the dispute with regard to the revised salary and arrears of salary before the Joint Labour Commissioner-I, Chennai, is vindictive and it is against law.

6. The next contention of the learned counsel appearing for the workmen is that the present dispute is of the nature under Section 2 (a) of the Act.

7. The learned counsel appearing for the respondents would contend that the order passed by the Labour Court is perfectly justified and the dispute raised by the workmen challenging the orders of transfer themselves are against law and therefore, they are rightly not entertained. In support of the said contention, the following decisions are relied upon:-

(i) 1993 (4) SCC 357 (Union of India and Others v. S.L.Abbas):-

"There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the

couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all- India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, 'they cannot as-of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that-the spouses thereby would-be posted at different places. No doubt the guidelines requires the two spouses to be posted at one place " as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

(ii) 2004 Supp (4) SCR 578 (Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and Others):-

"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan (2001) 8 SCC 574". "

(iii) (2017) 8 SCC 435 (Avishek Raja & Ors. v. Sanjay Gupta):-

"29. Having clarified all doubts and ambiguities in the matter and upon holding that none

of the newspaper establishments should, in the facts of the cases before us, be held guilty of commission of contempt, we direct that henceforth all complaints with regard to non-implementation of the Majithia Wage Board Award or otherwise be dealt with in terms of the mechanism provided under Section 17 of the Act. It would be more appropriate to resolve such complaints and grievances by resort to the enforcement and remedial machinery provided under the Act rather than by any future approaches to the Courts in exercise of the contempt jurisdiction of the Courts or otherwise.

28. Insofar as the writ petitions seeking interference with transfer/termination, as the case may be, are concerned, it appears that the same are relatable to service conditions of the concerned writ petitioners. Adjudication of such question in the exercise of high prerogative writ jurisdiction of this Court under Article 32 of the Constitution would not only be unjustified but such questions should be left for determination before the appropriate authority either under the Act or under cognate provisions of law (Industrial Disputes Act, 1947 etc.), as the case may be."

8. In the light of the contentions raised on both sides, the only issue to be decided is, whether the transfer would amount to change of service conditions and if so, whether the workmen can challenge the order of transfer.

9. In the reported decision, viz., (2017) 8 SCC 435 (referred to supra) it has been clearly held that transfer may also amount to change of service conditions and that it should be raised only before the Labour Court.

10. Therefore, the orders of the Labour Court rejecting the Industrial Dispute are liable to be set-aside and they are set-aside accordingly. The writ petitions are allowed. The Labour Court is directed to take the cases on file and to dispose of the same, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. Till the conclusion of proceedings, the orders of transfer shall be kept in abeyance. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

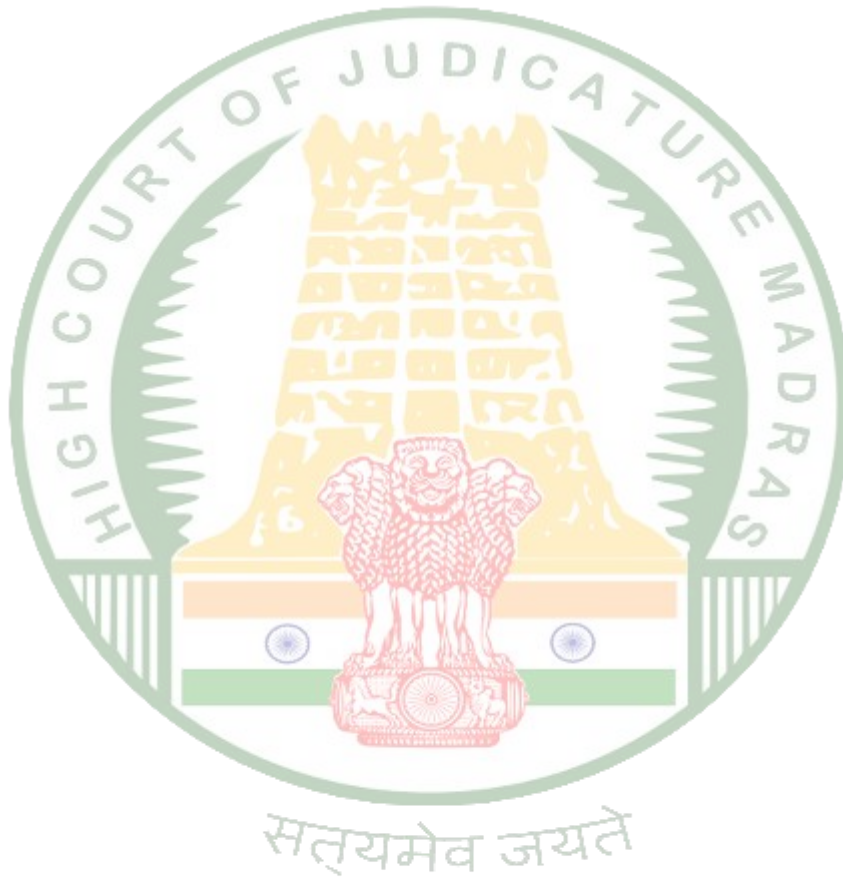
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To

1. The Presiding Officer, Labour Court, George Town, Chennai.

W.P.Nos.16894 & 16895 of 2018

nr 26/12/2018



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