

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

921 WRIT PETITION NO.7306 OF 2019
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION THROUGH
ITS DIVISIONAL CONTROLLER OSMANABAD
VERSUS
MAYUR MADHUKAR WANAVE

WITH
923 WRIT PETITION NO.7309 OF 2019
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION THROUGH
ITS DIVISIONAL CONTROLLER OSMANABAD
VERSUS
HNAMANT SAKHAHARI BONDER

...
Advocate for the Petitioner : Shri Bagul D.S. a/w Shri Dipesh Pande

...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 18th June, 2019

Per Court:

1 In both these petitions, the petitioner MSRTC is aggrieved by the interim orders dated 05.10.2018 passed below exhibit U/2 in Complaint (ULP) Nos.209/2018 and 208/2018, respectively.

2 The learned advocate for the petitioner corporation has strenuously criticized the impugned orders on the following grounds :-

- (a) The final relief cannot be granted at an interim stage.
- (b) Transfer is a normal incidence of service and the court should be extremely slow while interfering with such orders.
- (c) Unless the transfer order appears to be grossly perverse and

illegal, no interference can be caused at an interim stage.

- (d) The petitioner corporation has introduced the circular No.2/2017 dated 01.02.2017 by which, those employees, who are committing misconducts frequently, should be shifted to neighbouring places.
- (e) Both the respondents are alleged to have committed acts of misappropriation and their departmental enquiries are being conducted.
- (f) Considering the charges levelled upon them, these respondents have been transferred to neighbouring places.
- (g) The petitioner corporation has considered it's administrative exigencies for effecting such transfers.

3 I have considered the submissions of the learned advocate for the petitioner, have gone through the grounds formulated in the memo of the petitions and I have perused the petition paper books with his assistance.

4 The petitioner corporation is said to have introduced the circular on 01.02.2017 by which, those conductors, who are involved in acts of misconducts, can be shifted to nearby places under transfer orders. The types of misconducts are also mentioned in the circular thereby, qualifying those bus conductors, who have committed such misconducts.

5 The learned advocate for the petitioner corporation submits that such transfers are not punitive in nature, but are meant for administrative exigencies. Such transfers have nothing to do with the pending disciplinary proceedings and they would not come in the way of taking such disciplinary proceedings to their logical end.

6 I find from the record that these two respondents have already been subjected to disciplinary proceedings. It is stated that after the enquiries are complete, the petitioner corporation would follow the due process of law by abiding with the service conditions.

7 I am in agreement with the submissions of the learned advocate for the petitioner on the principle that transfer is a normal incidence of service and the court should be extremely slow in interfering with such transfer orders unless they appear to be malafide transfers and effected in a disguise of following management policy. I also agree with him that such transfers are not to be interfered with at an interim stage.

8 The only issue that needs consideration and can be left to the Industrial Court to deal with, is as to how would such employees participate in the departmental enquiries initiated by the petitioner corporation, after they have been transferred. It is settled law that an employee, who is participating in the disciplinary proceeding, should find it convenient to attend the enquiry proceeding. So also, whether, such a transfer, in the face of the pending disciplinary proceeding, could be

termed as being a punitive transfer. These issues will have to be gone into by the Industrial Court.

9 Insofar as reliance placed by the Industrial Court upon the judgment of this Court dated 29.08.2016 in the matter of the *Divisional Controller, MSRTC, Ahmednagar vs. Dnyandeo Ganpat Akolkar, Writ Petition No.8941/2016*, is concerned, I find that the factors emerging from the said case are distinguishable. Nevertheless, in the said case as well, the corporation was aggrieved by the interim stay granted by the Industrial Court to such transfer and this Court had considered Rule 8 of the Transfer Rules of the corporation and had concluded that the order of the Industrial Court was not liable to be interfered with.

10 In view of the above, as an interlocutory order is at issue, which cannot be branded as being perverse or erroneous, no interference is called for. These Writ Petitions, being devoid of merit, are disposed off.

11 Nevertheless, it be noted that the petitioner corporation would be at liberty to take the disciplinary proceedings against both these respondents to their logical end and the pendency of the complaints or the disposal of these writ petitions, would not be an impediment for the petitioner corporation to adopt a strict view if the charges are held to be proved and if such charges are of grave and serious nature.