

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

WRIT PETITION NO.10515 OF 2018

**MANGESH ANILRAO MURDIO
VERSUS
THE INDIAN EXPRESS PVT LTD, THE REGIONAL MANAGER,
EXPRESS HOUSE PUNE**

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Advocate for the Petitioner : Shri B. B. Yenge
Advocate for the Respondent -sole : Shri S. V. Dankh

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 13th MARCH, 2019.

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PER COURT :

1. On 27/02/2019, after hearing the learned Advocates for the respective sides briefly, I had passed the following order :-

"1. *I have heard this matter, briefly.*

2. *The petitioner/original complainant is aggrieved by the rejection order dated 21/08/2018, passed by the Industrial Court on an application Exh. U-2 seeking interim relief as against his order of transfer dated 21/05/2018.*

3. *A cursory glance at the transfer order indicates that the only ground put forth for effecting a transfer from Aurangabad to Kolkata is "work exigencies". An e-mail dated 24/12/2018 issued by the All India Controller*

Production to Mr. Jumde, Admin, Pune is cited wherein reasons for selecting the petitioner for transfer were spelt out about 7 months after the transfer. Learned Advocate for the Management submits that such reasons were also mentioned in the written statement. He, however, concedes on the basis of the record available that besides mentioning the reason of work exigency, no material was placed before the Industrial Court to indicate that a specific requisition was received from Kolkata much prior to the issuance of the transfer order.

4. *In this backdrop, ex-facie, I am of the view that the e-mail dated 24/12/2018, which is taken on record and marked as Exhibit "X" for identification, would amount to creation of reasons / evidence to support the transfer.*

5. *Nevertheless, the petitioner makes a statement that he is willing to work anywhere in Maharashtra as per the choice of the employer in the same capacity as a "semi-skilled baller" and this entire litigation would come to an end.*

6. *Learned Advocate for the Management submits that he would take instructions in this matter and would convey the response of the management on the next date.*

7. *Stand over to 12/03/2019 in the "Urgent Admissions Category".*

2. At the outset, it appears that the Director of the Indian Express Private Limited has been personally arrayed as a respondent in complaint (ULP) No. 81/2018 which is filed under Section 28(1) of the MRTU and PULP Act, 1971. I find that the said complaint needs to be amended as the employer has to be made an answering respondent in a ULP complaint through the appointing / disciplinary authority. Merely because the transfer order was signed by the Director, would not mean that the Director should be arrayed in personal capacity as a respondent. The petitioner is, therefore, directed to delete "Vaidehi Thakar, Director" as a respondent from the said ULP complaint and the respondent Indian Express Private Limited shall be arrayed through the Regional Manager at Pune. This amendment shall be carried out on or before 29/03/2019, failing which the ULP complaint would stand dismissed by the Industrial Court on 30/03/2019. Consequent amendment be carried out in this writ petition forthwith.

3. It appears that the respondent Management, as well as, the petitioner, who are present have graciously settled the

issue between themselves. The respondent Management has filed a brief affidavit dated 12/03/2019 through Shri Nitin Bhaiyasaheb Jumde, who is a Deputy General Manager, Stationed at Pune. An offer has been made in paragraphs 1 to 3 as follows :

"(1) During the course of proceedings and as recorded in the Order passed on 27/02/2019 in the above matter, the Petitioner has made a statement that he is willing to work anywhere in Maharashtra as per the choice of the employer in the same capacity as a "semiskilled baller" and this entire litigation would come to an end. The Management of the Company has examined the Petitioner's statement and in good faith to give a quietus to all proceedings relating thereto makes the following offer :

(a) “ The dates for the LOKSABHA General Elections are imminent. During the election process the demand for newspapers (print) picks up and there is pressure on the printing operations. During this crucial period in our printing operations, during the general elections, declaration of results and formation of new Government process, Kolkata being one of the major centres of the Company, the Petitioner may report to Kolkata immediately as it is not possible to accommodate the petitioner forthwith as desired by him. The Company will accommodate the Petitioner Mr. Mangesh Murdio within the state of Maharashtra in the same capacity as a "semiskilled Baller" within the period not

more than six months from today. Our proposal to allow the transfer of the Petitioner Mr. Mangesh Murdio to Kolkata forthwith for a period of not more than six month will meet the urgent requirements of the Company. Without being quoted as a precedent in any other matter or in the matter of Petitioner henceforth.

(b) "He would not be deprived of any benefit to which he is entitled to as per his terms of employment and there will be no change in service conditions. This will enable the Company will consider his request sympathetically. In the meantime the Company will have sufficient time to train some other employee to close the manpower requirement of the Kolkata Press.

(2) "The company has a printing press in Kolkata the printing volume at Kolkata Press is at a much bigger scale as compared to printing done at the Aurangabad press, but the number of machine staff is almost the same at both the locations rendering Aurangabad manpower surplus. Since January 2017 there has been no new recruitment made at Aurangabad Press, as none were required. Similarly no replacement has taken against the left employees, as none were required replacement. In the Kolkata press, the Company has only two Ballers whereas the Aurangabad press has four SSB/Ballers.

(3) No Prejudice would cause to the Petitioner and his wages (CTC) at Kolkata center would be increased by Rs. 4,718/- (Rupees Four Thousand Seven Hundred Eighteen

only) per month during the period he is working at Kolkata".

4. The learned Advocate for the petitioner employee, who is present in the Court, submits, on instructions, that the petitioner is agreeable to the offer made by the Management and he accepts the said offer with the following requests :-

(a) The Management may assist the petitioner to find an accommodation at Kolkata which is the place of transfer at the address mentioned in the transfer order dated 21/05/2018.

(b) The petitioner would join the place of transfer on 20/03/2019.

(c) The respondent Management would indicate, by way of an advance notice to the petitioner, the place in the State of Maharashtra where he would return within six months by way of a re-deployment, in the last week of May 2019 so that he can make arrangements for the school admissions of his son and daughter at that place. This would enable him in saving an academic year of the children.

d) The pending restoration case in relation to the reference case, would be looked after by the learned Advocate till his returned to Maharashtra and the said proceeding would not be

disposed off merely because the petitioner would be at Kolkata.

5. The learned Advocate for the Management submits, on instructions, that the said terms are agreeable to the Management and in order to ensure that the academic year of the petitioner's children is not lost, they would give an advance notice in the last week of May 2019, about the place and the date on which he would return to Maharashtra. The compensatory allowance mentioned in CTC wages at Kolkata Centre, which would give him a rise of Rs. 4718/- per month, would be available as long as he is working at Kolkata and will not be considered as a rise in wages after he returns to Maharashtra.

6. In view of the above, this petition is disposed off. The pending ULP complaint would, therefore, survive only to the extent of the issue of unpaid wages in view of the petitioner joining at Kolkata. Said aspect would be decided on its own merits. The litigating sides would be at liberty to place the matter in the Lok Adalat to explore the possibility of a

settlement.

7. Needless to state, the resolution of this dispute in terms of the settlement of the litigating sides recorded as above, would not be cited as a precedent in any other matter or even in the event of any future transfer of this petitioner.

8. In view of the request of the petitioner seeking advance payment, the learned Advocate for the respondent submits, on instructions, that the petitioner would be paid 50 % advance salary for the period 20/03/2019 till 19/04/2019, strictly as per the advance payment policy of the respondent.

(RAVINDRA V. GHUGE, J.)

shp/-