Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8297 OF 2018

M/s.Samudra Electronic System Pvt. Ltd. .. Petitioner
Vs.
Mr.Gajanan Abhiman Akhade .. Respondent

Ms.Anjali P. Yajurvedi, for the Petitioner.
Ms.Anjali S.Ranade, for Respondent.

CORAM : M.S.KARNIK, J.

DATE : 09th APRIL, 2019

P.C. :

. Heard learned Counsel for the petitioner and respondent.

2. Rule. Rule is made returnable forthwith and heard finally by consent of the parties. Learned Counsel waives service of Rule on behalf of the respondent.

3. The petitioner by this Petition under Articles 226 & 227 of the Constitution of India is challenging the order dated

08/05/2018 passed by the Industrial Court, Pune. By the impugned order, the Industrial Court was pleased to set aside the transfer/ deputation order dated 17/07/2013. The respondent was appointed by the order dated 01/04/1987 as 'Assembler' with the petitioner company. Clause 3 of the appointment order reads thus : page 24

> "The Company will bear all the expenses that occur on actuals in case you are sent for servicing or for any other work out of station. You will generally be provided with adequate money in advance."

4. Learned Counsel for the petitioner submitted that as there was no assembly work left to be performed at Pune, the petitioner had no option but to relocate the respondent to Hyderabad. By communication dated 17/07/2013, the respondent was relocated to Hyderabad. The respondent represented against such relocation and pointed out his difficulties for accepting this relocation. By communication dated 23/07/2013, the petitioner rejected his request. The petitioner therefore approached Industrial Court challenging the

said order of deputation.

5. I have gone through the reasons recorded by the Industrial Court. The Industrial Court found that the appointment order did not provide for condition relating to transfer. In the terms and condition of the appointment order, it is only mentioned that the company will bear all the expenses that occur on actuals in case the respondent is sent for servicing or for any other work out of station. Thus, there appears to be no provision for transfer of an employee.

6. Now, the petitioner company has come out with a case that they have diversified and there is no assembly work available at Pune, as a result of which, they had no option but to relocate the respondent to Hyderabad. Learned Counsel Smt. Yajurvedi would invite my attention to the order of the Industrial Court where respondent admits that it appears 5 to 6 employees are working in office and 8 to 9 employees are working at Baramati factory. It is now stated by her that

presently there is no work at Baramati also. Learned Counsel for the petitioner submitted that they are willing to accommodate the respondent at Hyderabad. Learned Counsel for the respondent, on instructions of the respondent who is present in the Court today, submits that he is not wiling to report for work at Hyderabad. Learned Counsel for the petitioner submitted that right from 2013, they have been paying salary to the respondent without the respondent actually working as there is no work available.

7. I do not find that the order passed by the Industrial Court calls for any interference as terms and conditions of the appointment order did not provide for transfer on deputation or otherwise. Nonetheless, if there is no work available for the respondent and the respondent refused to join at the place where there is work available, then it is always open for the petitioner to initiate such action in accordance with law as consequence of there being no work available at Pune. Moreover, from the evidence of the respondent himself, it

appears 5 to 6 employees are working in the office. The respondent was appointed as an Assembler with the petitioner company. Keeping the liberty of the petitioner open to initiate such action against the petitioner as a consequence of there being no work available at Pune since the respondent is refusing to go to any other place on deputation or otherwise, present Petition is dismissed. I do not find any perversity in the order passed by the Industrial Court.

8. Writ Petition is, therefore, dismissed. Rule is discharged.

(M.S.KARNIK, J.)