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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3358 of 2019

S.Thiruarasu

.. Appellant

vs.

1. NLC India Ltd.

Rep. by its Chairman cum Managing Director
Corporate Officer, Block-1, Neyveli - 1

2. The Chief General Manager (HR)

Group Head-C, NLC India Ltd.
Corporate Officer
Block-1, Neyveli - 1.

3. The Chief Manager (HOHR)

Mine IA, Mines Office
NLC India Ltd.
Block - 26, Neyveli - 3.

.. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 30.9.2019 passed by the learned Single Judge in W.P.No.14358 of 2019.

W.P.No.14358 of 2019:

Petition praying for issuance of a Writ of Certiorari calling for the records pertaining to the transfer order issued by the 2nd respondent in proceedings O.O.No. CORP/ HR/ EB/ NE/ 0620/ 2019-28 dated 28.03.2019 and the consequent relieving order issued by the 3rd respondent in proceedings O.O.No. Mine-IA/ HR/ EB/ Re1/ Mar 19 2019 dated 30.04.2019 and quash the same.

For Appellant

: Mr.N.G.R.Prasad
for M/s.K.C.Karl Marx



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For Respondents

: Mr.G.Masilamani
Senior Counsel
for Mr.N.Nithianandam

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Aggrieved by the judgment of the learned Single Judge dismissing the writ petition raising a challenge to a transfer order passed by the respondent company, the appellant prays for setting aside the same. The appellant has been sent to Basrinagar Project, Rajasthan, from his present place of posting at Neyveli in the Neyveli Lignite Corporation, where he was working as a Chief Technician and also happens to be the Vice President of the Labour Staff Union at Neyveli.

2. The ground of challenge before the learned Single Judge was alleging mala fides, the order being without authority in law and without there being any policy of transfer and violating all norms. It was also contended before the learned Single Judge that in the absence of any such express power to transfer, the authority to displace a person could not be impliedly exercised, more so in the background that no workman/industrial labourer was transferred in the past.

3. It is further submitted that the terms and conditions in the letter of appointment also cannot be pressed into service in the background that no unit existed in Rajasthan when the appellant came to be appointed way back in the year 1990. The unit at Rajasthan has come up only in the year 2013.

4. It is also vehemently urged by Mr.N.G.R.Prasad, learned counsel for the appellant that the respondents subjected the appellant to disciplinary proceedings and pending disciplinary action which remains inconclusive without any final orders having been passed, this step of transfer has been undertaken and resorted to bypass the disciplinary proceedings.

5. It is also urged that the appellant on account of his activist role in the Union also appears to have been targeted and victimized, for which conciliation proceedings were undertaken, in which information was sought by the Deputy Chief Labour Commissioner regarding any transfers being made to Rajasthan, where no disclosures have been made by the respondents.

6. On facts, it has also been pointed out that the appellant moved a representation on 11.4.2019, whereafter he was allowed to resume work on 13.4.2019 onwards, but all of a sudden a relieving order was issued on 30.4.2019 calling upon the



appellant to join in terms of the transfer order dated 28.3.2019.

7. Aggrieved, the appellant approached this Court by filing the writ petition in which an interim order was granted on 17.5.2019. After exchange of affidavits, when the matter was being heard finally by the learned Single Judge, the respondents came up with a memo offering to transfer the appellant to Tuticorin, which is only 40 Kms away and this fact has also been urged on behalf of the appellant to contend that the said offer clearly indicates that the appellant's transfer to Rajasthan was not for any purpose to serve the interest of the company, nor was it based on any requirement at Rajasthan. The said offer was however not accepted by the appellant even though the learned counsel for the respondents has urged otherwise and the appellant chose to contest the matter on merits.

8. Again vide order dated 4.10.2019, a Division Bench issued directions for restoration of the appellant to the station from where he had been transferred.

9. It is in this background that Mr. Prasad, learned counsel for the appellant contends that the transfer order being unsustainable for the reasons herein above should be set aside and for which he has also buttressed his submissions with the aid of the judgment in the case of Kundan Sugar Mills v. Ziyauddin and others, AIR 1960 SC 650.

10. Responding to the said submissions, learned Senior Counsel for the respondent Corporation, Mr. G. Masilamani, urged that transfer being an exigency of service, the appellant could be transferred to any place throughout India as per the terms of his letter of appointment and there has been no violation of any rule or policy conferring any right on the appellant to contest the transfer order.

11. The mere undertaking of a disciplinary proceeding cannot be treated as a foundation for entertaining a plea of mala fides and all allegations in this regard are vague and without any substance. The appellant, according to the learned Senior Counsel, himself was agreeable for a transfer to a nearby place that was resorted to on the directions issued by the Court and it is thereafter that during the course of hearing an offer was made by the Corporation to send him to Tuticorin.

12. It is urged that the appellant appears to have changed his mind, and on an afterthought, withdrew his inclination to be transferred to a nearby place, which facts have been noted by the learned Single Judge, who has rightly dismissed the writ petition.



13. It is further submitted that the judgment in the case of Kundan Sugar Mills (supra) is clearly distinguishable and inapplicable on the facts of the present case.

14. It is, therefore, submitted that in the absence of any established mala fides, in the absence of any violation of rule and in the absence of any justification, no ground was available to challenge the transfer order and, hence, the judgment of the learned Single Judge does not call for any interference.

15. Having gone through the records, we may reiterate the principle that transfer is an exigency of service. In the instant case, the very letter of appointment dated 31.7.1990 spells out in Clauses (6) and (7) as under:

"6. He will be posted to Unit/Area/Place situated anywhere in India under the control of Neyveli Lignite Corporation.

7. He will also be subjected to further terms and conditions of service as may be prescribed by the Corporation from time to time. The Management reserves the right to change the service conditions for which there will not be any separate notice of change."

16. The argument of learned counsel for the appellant is that there was no unit at Rajasthan existing then and, therefore, unless there was a contemplation of transfer to an existing unit, it cannot be presumed that transfer to Rajasthan was also a condition of service. For this, learned counsel has relied on the judgment of Kundan Sugar Mills (supra). We have gone through the said judgment and find that in that case there was no express term in the contract of service that the employee would serve in any future concerns which the employer might acquire or start.

17. From Clause (6) of the letter of appointment read with Clause (7) extracted herein above, it is evident that the Corporation did have contemplation of expansion of its activities throughout India and the appellant had accepted the said terms and conditions with open eyes. The appellant was therefore aware about the expanse of the width of activities of the Corporation that could extend to any corner of the entire nation. The aforesaid clauses stipulate that the management reserved the right to alter the service conditions, which, in our opinion additionally empowers them to undertake transfers in respect of future units as well.

18. Apart from the above distinguishing feature, the Apex Court in the case of Kundan Sugar Mills (supra), in paragraph



(4), noted that there was nothing on record to indicate that there was any intention to purchase factories at different places. To the contrary, in the present case, the intention appears to be otherwise that the Corporation intended to undertake activities throughout the territory of India. In the said circumstances, the judgment relied upon cannot be pressed into service for the purpose of denying authority to the Corporation to transfer the appellant.

19. It is then contended that the Rajasthan unit came up only in the year 2013 and no other worker employee has been transferred to Rajasthan. This fact by itself, in our opinion, cannot be a ground for entertaining a challenge to the transfer order on the ground of lack of authority or absence of precedent.

20. Coming to the mala fides as asserted, it is evident that disciplinary proceedings had been initiated but remains inconclusive till date. Apart from this, the appellant was allowed to resume work from 13.4.2019 onwards and was then relieved on 30.4.2019. Coupled with this there is yet another factor which deserves notice, namely the offer of the respondent Corporation during the pendency of the writ petition to transfer the appellant to a nearby place, to be more precise to Tuticorin. Even though mala fides cannot be said to be clearly established, but a strong circumstance does exist to infer that the services of the appellant were not required at Rajasthan and respondent Corporation was prepared to accommodate him at Tuticorin. This, in our opinion, therefore takes away the necessity or administrative exigency of transferring the appellant to Rajasthan. We may, however, add that the appellant being a proactive labour union office bearer by itself might have not invited the transfer order, but in the above background the respondent corporation had persuaded itself to reconsider the transfer and post him at Tuticorin.

21. In the said background, the order of transfer impugned in the writ petition dated 28.3.2019 loses its efficacy.

22. Coming to the findings recorded by the learned Single Judge, we find that learned Single Judge has rightly, in our opinion, concluded that the respondent corporation could have transferred the appellant and there does not appear to be any legal deficiency on that count. But, at the same time, the aforesaid fact of an offer not being accepted by the appellant for being transferred nearby has been taken adversely to non suit the cause. This part of the impugned judgement, therefore, deserves to be modified in the light of what has been stated above.



23. We, accordingly, partly allow the appeal, set aside the impugned judgement dated 30.9.2019 and the transfer order dated 28.3.2019. We leave it open to the respondent Corporation to pass appropriate orders, in case so required, in accordance with law. No costs. Consequently, C.M.P.Nos.21571, 21572 and 22565 of 2019 are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

sasi

To

- 1.The Chairman cum Managing Director
NLC India Ltd.
Corporate Officer, Block-1, Neyveli - 1
2. The Chief General Manager (HR)
Group Head-C, NLC India Ltd.
Corporate Officer
Block-1, Neyveli - 1.
3. The Chief Manager (HOHR)
Mine IA, Mines Office
NLC India Ltd.
Block - 26, Neyveli - 3.

+1 CC to Mr.K.C. Karlmarx, Advocate sr 103914.
+1 CC to Mr.N.Nithianandam, advocate sr 103859.

W.A.No.3358 of 2019

SAI (CO)
SP(18/12/2019)