

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

**WRIT PETITION NO.9747 OF 2021
WITH
CIVIL APPLICATION NO.10812/2021
IN
WRIT PETITION NO.9747 OF 2021**

Pandurang Namdeo Waghmare,
Age : 40 years, Occu: Clerk,
R/o. Charwak Darshan, Sainikpuri,
Kapil Nagar, Latur.

... PETITIONER

VERSUS

- 1) Maharashtra State Road Transport Corporation [MSRTC],
through its Labour Officer,
Latur Divisional Office,
Ambejogai Road, Latur.
- 2) Maharashtra State Road Transport Corporation [MSRTC],
through its Divisional Controller,
Latur Divisional Office,
Ambejogai Road, Latur.

... RESPONDENTS

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Advocate for Petitioner : Mr. Bhagwan V. Gawali a/w Mr. B.J. Kamble
AGP for Respondent/State : Mr. Y.G. Gujarathi
Advocate for respondent No.2 : Mr. S.S. Rathi

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CORAM : MANGESH S. PATIL, J.
Reserved on : 21.10.2021
Pronounced on : 25.10.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. Rathi waives service for both the respondents. At the request of the parties, the matter is heard finally at the stage of admission.

2. The facts which are relevant for the decision of the Writ Petition and regarding which there is no dispute between the parties are to the following effect :

- i. The petitioner is serving in a clerical grade with the respondent No.1 Corporation and was posted in the Divisional Office at Latur. He was served with an official communication dated 31.05.2021 asking him to give three options for transfer by making a reference to some internal confidential correspondence between the respondents *inter se*.
- ii. He filed complaint ULP No.74/2021 under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (herein after the PULP Act). By the order dated 21.06.2021 the Industrial Court granted him interim relief holding that there was a *prima facie* case in his favour and he would be put to irreparable loss and inconvenience if he was transferred. The respondents were directed not to initiate his transfer pursuant to the communication dated 31.05.2021 till decision of the main complaint.
- iii. On 02.06.2021 the respondent No.2 issued a transfer order and the respondent No.1 also issued relieving order.
- iv. He then filed a second complaint bearing ULP No.79/2021

under Section 28 of the PULP Act. On 14.07.2021 he withdrew it.

- v. He filed an Application (Exhibit U-14) under Section 30(2) read with Section 32 of the PULP Act in the first complaint. He prayed to stay the effect of the transfer order dated 22.06.2021 and the relieving order issued by the respondent No.1. He also sought declaration that the respondents have indulged in unfair labour practice and further claimed direction restraining them from resorting to unfair labour practice.
- vi. The respondents contested that Application by filing say. They denied to have committed any unfair labour practice. They contended that after passing of the interim order on 21.06.2021 the communication dated 31.05.2021 was withdrawn and the complaint itself had become infructuous. They also raised objection to the maintainability of the Application under Section 30(2) read with Section 32.
- vii. After hearing both the sides, by the order which is impugned in this Writ Petition, the learned Member of the Industrial Court rejected the Application (Exhibit U-14).

3. There is no dispute about the fact that the relation between the parties as far as the transfer is concerned is regulated by the regulation No.5/2014 dated 03.05.2014. The petitioner comes under Class-III

category. Regulation 8 contains several provisions touching the aspect of transfer on administrative ground. As per Clause (C), tenure of a Class-III employee in the ordinary course has to be six years. After first three years his duties can be changed. After completion of further period of three years on such changed position he can be transferred in the same department to some other branch or depot in the month of March. As per Clause E(2) in exceptional circumstances or for special reasons or on account of some complaint if the competent authority is satisfied that an employee is to be transferred he can do so by recording reasons in writing and with the prior permission of his immediate superior.

4. According to the respondents it is pursuant to such enabling clause that the respondent No.1 has passed the impugned order transferring the petitioner. It is quite clear that this provision regulates the powers of the respondents to effect a transfer under exceptional circumstances by following the requisite procedure. A bare perusal of the order of transfer dated 22.06.2021 reveals that with a bald two word reasoning that “for administrative reasons” the petitioner has been directed to be transferred. The order has been issued by the respondent No.1. It does not refer to the reasons as is required by the aforementioned regulation 8(E)(2). It also does not mention that it was being issued with the approval of immediate superior of the respondent No.1.

5. Considering the fact that it is only under exceptional circumstances that the respondents had sought to transfer the petitioner, it

was imperative for them to have come out with such exceptional circumstances which compelled them to effect the transfer. When their powers have been regulated by this provision, it was expected of them to have resorted to invoke such power strictly in accordance with the regulation.

6. Precisely for this reason, apart from several other factors, the impugned order of transfer *prima facie* is not sustainable in law and demonstrates arbitrary and capricious exercise of powers, more so in the backdrop of all the attending circumstances mentioned herein above leading to the passing of this order. To repeat, the petitioner had already filed a complaint under Section 28 of the PULP Act, an interim relief was granted in his favour on the previous day and on the very next day the transfer order was passed and the earlier communication which was challenged in the complaint dated 31.05.2021 was withdrawn. The sequence of events clearly demonstrates that respondents were bent upon to transfer the petitioner and in the process have not cared to follow the regulation which governed their power. Therefore the impugned transfer order *prima facie* being arbitrary and capricious deserves to be stayed. The learned Member of the Industrial Court does not seem to have borne in mind all the above aforementioned clinching circumstances.

7. Some capital was tried to be made on behalf of the respondents of the fact that the petitioner initially filed a second complaint under Section 28 bearing ULP No.79/2021, withdrew it without seeking any liberty and

then resorted to the present Application (Exhibit U-14). The learned advocate Mr. Rathi on their behalf strenuously submitted that in view of such state of affairs, the Application itself was not maintainable under Section 30(2) read with Section 32 of the PULP Act.

8. Per contra, the learned advocate for the petitioner referring to the decision in the case of **National General Mazdoor Union, Thane and Nitin Casting, Ltd. and Ors.; 1991 (1) Bom.C.R. 8**, which is subsequently referred to with approval in the case of **Blue Star Limited Vs. Blue Star Workers Union and Anr.; (1998) 1 Bom. C.R. 277** submitted that since already the Industrial Court had recorded *prima facie* finding while granting interim relief to the petitioner that the respondents had engaged in unfair labour practice, their subsequent conduct in passing the impugned order of transfer is indeed an order which calls for exercise of powers by the same court under Section 32 since the dispute which now arises is incidental to the earlier dispute.

9. True it is that as laid down in the aforementioned decisions, the Industrial Court is not empowered to enlarge the jurisdiction while exercising the power under Section 32 of the PULP Act. However, the peculiar facts and circumstances and the sequence of events mentioned herein above clearly indicate that the dispute which now is presented before us is nothing but a question which is incidental to the main dispute in respect of which the Industrial Court had already granted interim relief in favour of the petitioner regarding a *prima facie* finding about the

respondents having engaged in unfair labour practice. Therefore, in my considered view, there is no substance in the submission of the learned advocate Mr. Rathi that the Application (Exhibit U-14) on which the impugned order is passed is not maintainable.

10. The learned advocate Mr. Rathi then made another attempt to oppose the Writ Petition by pointing out that pursuant to the order of transfer the petitioner has already been relieved. The learned advocate for the petitioner pointed out that unlike the practice that is being followed while relieving the employees by the respondents, it is only on papers that *prima facie* the respondent have directed the petitioner to be relieved, without there being any formal handing over the charge.

11. Besides once it is found that *prima facie* the respondents have resorted to an unfair labour practice and have again indulged in a similar practice in issuing the impugned order of transfer, in my considered view, they cannot be allowed to now resort to any such argument of the matter having become infructuous.

12. Overlooking all the aforementioned facts and circumstances, the learned Member of the Industrial Court has rejected the Application (Exhibit U-14). The order is clearly perverse and arbitrary. It clearly demonstrates that he has refused to exercise the jurisdiction vested in him and is apparently swayed away by the fact that the communication dated 31.05.2021 was subsequently withdrawn and it is thereafter that the order of transfer was effected on administrative ground. Though Clause E(2) was

brought to his notice he failed to appreciate the facts and circumstances under which that Clause can be invoked.

13. The Writ Petition is allowed. The impugned order of transfer dated 22.06.2021 is quashed and set aside. The respondent shall now allow the petitioner to resume the duties in the same place of posting.

14. It is made clear that the observations made herein above, are confined to the decision of the present Writ Petition.

15. The Civil Application No.10812/2021 is disposed of.

(MANGESH S. PATIL, J.)

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