

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION (WP) NO.1591 OF 2021

PETITIONER : The Chief Executive Officer,
 (Orig. Resp. No.2) Zilla Parishad, Civil Lines, Nagpur.

--VERSUS--

RESPONDENTS : 1. Shri Vijay S/o Jangluji Kokode,
 (Orig. Complainant) Aged about 49 years, Occ : Service,
 R/o. Plot No.19, Lahari Krupa Housing
 Society, Rama Nagar, Nagpur.
 (Orig. Resp.No.1) 2. The Divisional Commissioner,
 Nagpur Division, Civil Lines, Nagpur.
 3. The Industrial Court of Maharashtra,
 Civil Lines, Nagpur.

Ms. B. D. Maldhure, Advocate for Petitioner
 Shri. S. P. Bhandarkar, Advocate for Respondent NO.1
 Shri. S. M. Ukey, Addl. GP for Respondent Nos.2 and 3.

CORAM : **N. B. SURYAWANSHI, J.**
RESERVED ON : **05.07.2021**
PRONOUNCED ON : **20.07.2021**

JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the parties.

3. This petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order passed by the Industrial Court, Nagpur below Exh-U-2 in Complaint (ULP) No.108 of 2020, thereby granting stay to the transfer order of Respondent no.1.

4. Brief facts, necessary to decide the controversy, are as follows :

The Respondent No.1 (for short, “the Complainant”) filed Complaint (ULP) No.108 of 2020 contending that he is working on the post of Extension Officer (Education) at Zilla Parishad, Nagpur since 16.06.2008. By the impugned order dated 31.07.2020, he was transferred to Bhiwapur Panchayat Samiti. He was relieved on 03.08.2020 and he joined at Bhiwapur on 12.11.2020. He unsuccessfully challenged the transfer order by filing appeal before the Divisional Commissioner, Nagpur. He therefore challenged his transfer order on various grounds by filing the complaint.

Alongwith the complaint, he filed application for interim relief under Section 30(2) of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short, “the MRTU and PULP Act”), seeking stay of the transfer order on various grounds, including that he being the President of registered Union i.e. Maharashtra Rajya Shikshan Vistar Adhikari Sanghatana since inception, is entitled to continue at Nagpur for a period of 15 years, in terms of the Government Resolution dated 15.05.2014 (for short, “the said G.R.”). The said G.R. provides that the tenure of the President, Secretary, Treasurer and working President of the recognized Trade Union functioning in Zilla Parishad in Maharashtra State/District Levels can be extended (Administrative tenure 10 years plus extended tenure 5 years) at District Headquarters. The benefit of the said G.R. was extended to the Complainant in the year 2018. Therefore, he prayed for stay to the transfer order.

5. The application was opposed by the Petitioner (for short, "the Respondent") claiming that since the impugned transfer order is already acted upon and the Complainant has joined on the transferred post, is not entitled for any relief. It is further contended that the Union of the Complainant is not a registered Union, and therefore, he cannot claim the benefit of the said G.R. The Complainant had enjoyed longest tenure at Nagpur since last 12 years. The transfer is on Administrative grounds and as per the policy decision. At Bhiwapur, though there were 3 sanctioned posts, all were vacant, and therefore, the Complainant was transferred there and there is no unfair labour practice. It is also contended that the Complainant has failed to submit a certificate that his Union is registered under Sections 11 and 12 of the MRTU and PULP Act. The application of the Complainant's Union is pending for approval before the Industrial Court, therefore, he is not entitled for any benefit. Reliance is placed on the Circulars dated 10.10.2018 and 17.11.2018 issued by the Rural Development Department, which state that the Unions

are required to be registered under the provisions of the MRTU and PULP Act, therefore, the application filed by the Complainant deserves to be rejected.

6. The Industrial Court allowed the application of the Complainant and granted stay to the impugned transfer order, till the final disposal of the main complaint, hence the present petition.

7. The learned Advocate for the Petitioner - Respondent submitted that the Industrial Court has committed an error in granting stay to the transfer order ignoring the fact that the transfer order was already acted upon. By placing reliance on the Circulars issued by the Rural Development Department dated 10.10.2018 and 17.11.2018, she submitted that the Union of the Complainant is not registered Union under the provisions of the MRTU and PULP Act. Therefore, he is not entitled to claim any benefit. Further submission is that since the transfer was on Administrative grounds, the Industrial Court has committed an error in coming to the

conclusion that the respondent has committed unfair labour practice. She therefore submitted that the petition deserves to be allowed by setting aside the impugned order. In support of her submissions, she relied upon the following decisions.

i) Ichalkarnaji Municipal Council ..Vrs.. Raju Bandu Taral, **1999(I) CLR 1257.**

ii) Executive Engineer Maharashtra State Electricity Board Division, Morshi ..Vrs.. Industrial Court, Amravati, **2001(3) Mh.L.J. 320.**

iii) BSES Limited ..Vrs.. Bombay Electric Workers Union, **2004(III) CLR 70.**

8. On the other hand, the learned Advocate for the Complainant supported the order passed by the Industrial Court submitting that a well reasoned order is passed by the Industrial Court. He submitted that the said G.R. does not require recognition of the Union under a particular Act. The Union of the Complainant is

registered Union under the Industrial Disputes Act. Hence, the same fulfills the requirement of the said G.R. Previously on 11.05.2018, the benefit of the said G.R. was granted to the Complainant, hence the Respondent is estopped from denying the benefit of the said G.R. to the Complainant. He therefore submitted that the petition is devoid of any substance and the same is liable to be dismissed.

9. It is not disputed that the Complainant is a President of the Union, which is registered under the Industrial Disputes Act. Chapter 5 Clause 4 of the said G.R. provides for extension of the tenure of the office bearers of the registered Union (Administrative tenure 10 years plus extended tenure 5 years) at the District Headquarters.

10. On 10.10.2018, the Rural Development Department informed all the Chief Executive Officers of the Zilla Parishads within the State of Maharashtra that the Zilla Parishad District Services (Recruitment) Rules,

1967 do not provide for the procedure to give recognition to the Unions of Class-III and Class-IV employees. The Unions of those employees can be registered under Section 12 of the MRTU and PULP Act. Hence, all the CEOs were directed to inform the Unions to immediately approach the Industrial Court and obtain recognition. On 17.11.2018, the Rural Development Department informed to all the Chief Executive Officers that in the State, no Zilla Parishad employee's Union is granted recognition by the Government of Maharashtra. Therefore, the office bearers of such Unions are not entitled to claim benefit in transfer, in terms of the said G.R. It is not in dispute that the proposal filed under the MRTU and PULP Act by the Complainant's Union for recognition, is pending before the Industrial Court. In view of these two communications, which were specifically pleaded and relied upon by the Respondent before the Industrial Court, it is clear that in terms of the said G.R, the Complainant was not entitled to special concession in the transfer. Though, this aspect was brought to the notice of the Industrial Court, the

Industrial Court has erroneously ignored the same while granting stay to the transfer order.

11. The Complainant has completed 12 years of his service at Nagpur, the transfer order is issued on Administrative grounds, as all the 3 sanctioned posts at Bhiwapur were vacant, and therefore, the services of the Complainant were required at that place. It is settled legal position that the transfer is at incident of service and the employer has prerogative to transfer the employee, where his services are required. Apart from this, in pursuance of the transfer order dated 31.07.2020, the Complainant was relieved on 03.08.2020. He joined at the transferred place i.e. at Panchayat Samiti Bhiwapur on 12.11.2020. Since the transfer was acted upon, the Industrial Court was not justified in granting stay to the transfer order on 12.03.2021 i.e. after 4 months of the Complainant's joining at the transferred place. The reasoning adopted by the Industrial Court is erroneous and unacceptable. The non-application of mind on the part of the Industrial

Court to the documents placed before is writ large on the face of record. The Industrial Court misdirected itself in granting stay to the transfer order of the Complainant.

12. There is no substance in the arguments of the Complainant that since he was granted special concession, in terms of the said G.R. on 11.05.2018. Now, also he is entitled for the same particularly in view of the subsequent communications dated 10.10.2018 and 17.11.2018. The learned Advocate for the Complainant placed reliance in the decision of the Single Bench of this Court in Writ Petition No.3060 of 2018, wherein the protection of the said G.R. was granted in favour of the Petitioners therein. Perusal of the order passed in that petition shows that the name of the Union of which, the petitioners therein were the office bearers was included in the list as recognized Union, in terms of the Government Resolution dated 03.01.1989. Therefore, this Court held that “the petitioners therein were entitled to receive the protection under the Government Resolutions dated 03.01.1989 and

15.05.2014 (for short, the said Resolutions). As is held herein-above, the Complainant herein is not entitled for protection of the said Resolution, in view of the fact that the Complainant's Union is not recognized under the MRTU and PULP Act and the proceedings for its recognition is pending before the Industrial Court.

13. For the aforestated reasons, the impugned order is unsustainable in law and facts of the case, and therefore, the same is liable to be quashed and set aside. Hence, the following order :

ORDER

- i) The order passed below Exh-U-2 dated 12.03.2021 by the Industrial Court, Nagpur in Complaint (ULP) No.108 of 2020, is hereby quashed and set aside.
- ii) The Industrial Court is directed to decide the complaint within a period of three months from the date of receipt of this order.

Rule is made absolute, in the above terms with
no order as to costs.

JUDGE

TAMBE