

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

WRIT PETITION NO.3461 OF 2021

Lokmat Media Private Limited through its Managing Director Shri Devendra Vijay
Darda and others

Vs.

Tushar Ganpatrao Hande

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. G. Bhangde, Senior Advocate assisted by Shri R. M.
Bhangde, Advocate for petitioners.
Mr. S. D. Thakur, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 14/09/2021

1. Heard Mr. M. G. Bhangde, learned Senior Counsel for the petitioners and Mr. Thakur, learned Counsel for the respondent.

2. The respondent, who is an employee with the petitioners was transferred by an order dated 21.1.2019 from Akola to Alibag, District Raigad, with effect from 21.1.2019. He stood relieved on the same day and was given ten days joining time to make arrangements to report at the place of transfer. The position therefore indicates, that the respondent stood relieved from his services on 21.1.2019 itself.

3. The respondent thereafter, on 25.1.2019 filed a complaint under Section 28 read with Items 3, 5 and 9 of Schedule

– IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter “the said Act”). The application for interim relief was also filed under Section 30 (2) of the said Act. The learned Industrial Court by order dated 25.1.2019 while granting time to the petitioners to file reply, directed the parties to maintain *status quo* as on 25.1.2019. Reply came to be filed by the petitioners on 30.1.2019 to which counter affidavit was filed by the respondent on 15.7.2021. The order of *status quo* was continued for some time intermittently and by the impugned order dated 26.7.2021 below Exh. U – 32, the learned Industrial Court directed the parties to maintain *status quo* as on that date in respect of the transfer order dated 21.1.2019 ("in respect to the services of the complainant"), which is one of the impugned orders.

4. By an order dated 27.8.2021 passed below Exh. C-09, C-05 and U-02, the learned Industrial Court rejected the preliminary objection raised by the petitioners to the effect that the respondent was not a workman, and held that all issues would be decided together. By the same order, the effect and operation of the transfer order dated 21.1.2019 and the relieving order dated 21.1.2019 were stayed and the petitioner was directed to continue the services of the

complainant at Akola till final decision of the complaint, which is the other order impugned.

5. Mr. Bhangde learned Senior Counsel submits that transfer is an incidence of service and the employment of the respondent was also subject to the said incidence. Learned Senior Counsel invited my attention to order dated 22.12.2000 whereby the services of the respondent were confirmed, in Class – III, which specifically provides that the services of the respondent were liable to be transferred at any place in India where the offices of the company or its associated companies were located. It is contended that this condition of service has been specifically accepted by the respondent and therefore, it was not permissible for him to come out of the same. Learned Senior Counsel further places reliance upon *M/s. Wockhardt Ltd. Vs. Rajneesh Khajuria and Anr., Writ Petition No.10816 of 2013, decided on 21.1.2014*, wherein in para 9 the earlier position as laid down in *Shivaji More Vs. Estate Manager, Maharashtra State Farming Corpn. Ltd., & Anr., reported in 1997 III L.L.J. (Supp) 1082* has been quoted in para 4 as under:

“4. In my considered view, there is no merit in the writ petition. By now it is well settled that in matters of transfer, the employee who has been served with the transfer order must first report to the place where he is transferred and thereafter make a representation or take out legal proceedings there-against. The inconveniences arising from transfer have been

held by the Supreme Court to be 'normal incidents' of service, not justifying interference with transfer orders. In fact, these are considerations which would apply even in cases of employees transferred from one town or city to another town or city. In the instant case, there is a transfer order from one Department to another and the Industrial Court was perfectly justified in coming to the conclusion that not even a prima facie case of unfair labour practice had been made out. I am broadly in agreement with the reasoning and the conclusion of the Industrial Court in both its orders dated November 26, 1987 and January 4, 1988. I find no merit in the petition which deserves to be dismissed."

6. The dictum of the Hon'ble Apex Court in ***Addisons paints & Chemicals Ltd. Vs. Workmen Represented by the Secretary (A.P. & C) Assistants' Association and another, reported in (2001) 2 SCC 289***, has also been relied on to contend that the employee who has been served with transfer order, must first report to the place where he is transferred and thereafter, take whatever legal recourse, he deems it permissible and justifiable.

7. Learned Senior Counsel, therefore, submits that the respondent since he already stood relieved on 21.1.2019 ought to have availed of the said course.

8. That apart, learned Senior Counsel Mr. Bhangde invited my attention to the provisions of Rule 100(2) and 100(3) of the Industrial Court Regulations 1975 which necessarily mandate that in

case of complaints relating to unfair labour practices, where there is an allegation of mala-fide, the person who is alleged to be guilty of such an act, is necessary to be made a party, as such a person has to answer to such allegations, for which he places reliance upon ***Sanjay s/o Late Ramesh Kumar Sinha Vs. Mineral Exploration Corporation Ltd, 2008 (2) Mh. L. J. 27 .***

“15. This Court has to consider that a Corporation or a Company is a legal entity, and if the state of mind, which is the essential factor for foundation of the malice, which is to be attributed to an individual human mind, it has to be so demonstrated in the complaint under section 28 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972. Under Rule 100(2) and 100(3) of Industrial Court Regulations 1975 framed under MRTU and PULP Act, 1971 the name of a particular person or persons is required to be named as a person who has committed the unfair labour practice complained of. Such person is also required to be argued as respondent.”

9. Learned Senior Counsel submits that in spite of this position being brought to the knowledge of the learned Industrial Court, the same was not considered and merely by accepting a specious plea of victimization, the learned Industrial Court has passed an order which results in restoring the *status quo ante* which is not permissible in law. He therefore, submits that the impugned order cannot be sustained on the above position of law. No other argument was advanced.

10. Mr. Thakur, learned Counsel for the respondent submits that the respondent has raised the plea of being covered by the Majithia Award under which the respondent was entitled to wages, as indicated therein and it is because of this dispute raised that the respondent has been victimized by transferring him to Alibag. He further submits that two other persons, namely, Shri Girhe and Shri Malamkar, who had also been transferred to Konda and Vasai respectively had filed Complaint Nos.11 of 2019 and 12 of 2019, challenging their respective transfer orders which have been subsequently withdrawn on 13.2.2019, consequent to which, these two persons had also submitted their resignations on 6.2.2019 and 12.2.2019 respectively and their claims under the Majithia Award have also been withdrawn by them and it is after this resignation that the said two persons were engaged for a specific period at Akola itself from 1.7.2020 to 30.6.2021, which according to him indicated that the work was available at Akola and therefore, substantiate the contention that the transfer was by way of victimization.

11. He further invited my attention to the provisions of Section 30 (2) of the MRTU & PULP Act to submit that it is within the power of the Court to pass such an interim order including restraining order as would be deemed just and proper, pending final decision and

therefore, no fault can be found with the impugned orders. He further submits that there was pressure upon the respondent to withdraw the claim under the Majithia Wage Board Award and the transfer was direct consequent of the same. No other argument was advanced.

12. It cannot be disputed that transfer is an incidence of employment. That the respondent was equally subject to this incidence, is also indicated from the terms of his employment specifically term No.3, in the order of confirmation dated 22.12.2000, which is not disputed. It is therefore, necessary to point out with some certainty in the complaint, so as to arrive at a *prima facie* determination as to how the order of transfer was by way of malice or victimization.

13. A perusal of the complaint indicates that except for the grievances raised by the respondent of non-implementation of Majithia Award by the Management / petitioners, as raised by him for which a claim by way of Ref. (WJ) No.7/2017 had already been filed by the respondent before the learned Labour Court, Akola, and the apprehension that due to the transfer he would not be in a position to prosecute the same by attending proceedings before the learned Labour Court, nothing else has been mentioned. The learned

Industrial Court completely relied upon the transfer of Shri Girhe and Shri Malamkar by the establishment, the consequent complaints filed by them, their withdrawal, the resignation and their subsequent engagement for a specific period, to hold that the transfer was effected only with a view to pressurize the respondent for withdrawing his claim under the Majithia Award as raised by him.

14. In my considered opinion, merely because the respondent had been transferred to another place that by itself would not make the respondent incapable of prosecuting his claim, as raised before the learned Labour Court for his entitlement to the benefits of the Majithia Award. Merely because, other two persons who had raised such a claim and had since tendered their resignation and were engaged for a short period of time at Akola, would again by itself would not indicate any victimization of the respondent. The said persons, namely, Shri Malamkar and Shri Girhe, were independent persons, who have taken their own decisions and merely because they have taken a decision in a particular manner that by itself would not be a sufficient ground to hold that it was victimization of the respondent also, so as to invite the impugned order.

15. That apart, when the provisions of Rule 100(2) and 100(3)

of the Industrial Court Regulations 1975 required specific averments and pleadings for the purpose of considering a claim of unfair labour practice being indulged into, in the absence of such specific averments made in the complaint the learned Industrial Court not have ignored the said requirement, while passing the impugned order.

16. The reliance by Mr. Bhangde, learned Senior Counsel for the petitioners on *M/s. Wockhardt Ltd.* (supra), is well placed, as it was necessary for the respondent no.1 to have joined at the place transferred and then raise whatever grievance he had. No employee can claim a right not to be transferred and it is within the exclusive domain of the employer to decide where, when and for what work an employee, should be transferred, even though there may be vacancies available at the place from which the employee is being transferred, unless the employee is able to demonstrate that such transfer was mala-fide or was on account of victimization, which *prima facie*, in the present matter, does not appear to be so.

17. The learned Industrial Court, by passing the impugned order, has clearly travelled beyond its scope by entering into an arena which was not permissible inasmuch as it has directed restoration of *status quo ante* when the respondent already stood relieved on

21.1.2019, which is an admitted position by respondent himself, as is reflected in para 8 of the Complaint before the learned Industrial Court. It is thus apparent, that the order of *status quo* which was passed on 25.1.2019, did not have the effect of continuing in the employment of the respondent at Akola, due to which, the respondent was neither working at Akola nor had admittedly joined at Alibag the place at which he was transferred. The impugned order therefore, for the reasons stated above, clearly suffers from an infirmity which is not permissible in law and the same is therefore, quashed and set aside.

18. In the result, the petition is allowed.

19. The application Exh. U-2, filed by the respondent is rejected.

20. Mr. Thakur, learned Counsel for the respondent submits the direction be given to the learned Industrial Court to decide the matter within a time bound period. I am afraid such a direction cannot be granted, considering the pendency of matters before the Courts below on account of the Covid – 2019 pandemic.

JUDGE