

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

WRIT PETITION NO.3162/2020

Temsu s/o Maroti Andel,
aged about 51 years, Occ. Service,
r/o Ankisa, Tq. Sironcha,
Dist. Gadchiroli.

.....PETITIONER

...V E R S U S...

The Chief Executive Officer,
Zilla Parishad Gadchiroli,
Tq. Dist. Gadchiroli.

...RESPONDENT

Mr. M. R. Pillai, Advocate for petitioner.
Mrs. M. P. Munshi, Advocate for respondent.

CORAM:- V. M. DESHPANDE, J.
DATED :- 01.02.2021

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith.

2. By this writ petition, the petitioner is challenging the order passed by learned Member, Industrial Court, Chandrapur below Exh.U-2 in Complaint (ULP) No.65/2018, whereby the learned Member of the Industrial Court rejected the application seeking stay to said order of transfer dated 31.05.2018.

3. The petitioner was working at Primary Health Centre, Ankisa, District Gadchiroli as Health Assistant. By order dated

31.05.2018 issued by Chief Executive Officer, Zilla Parishad, Gadchiroli, he was transferred to Primary Health Centre, Laheri, Tq. Bhamragarh, District Gadchiroli. The said was challenged by the petitioner by approaching to the Industrial Court by filing the complaint, making allegation therein that his order of transfer is nothing but a colourable exercise of powers. The said complaint was registered as Complaint (ULP) No.65/2018. Along with the said complaint, he filed an application for interim relief. On 05.12.2018, the learned Member granted stay to the order of transfer until further orders.

4. The respondent herein appeared before the Industrial Court and filed reply opposing the application for stay to the transfer order. After hearing the counsel for the complainant as well as respondent, the learned Member, Industrial Tribunal, Chandrapur on 18.11.2019 passed the impugned order, rejecting the said application.

5. Heard Mr. Pillay, learned counsel for the petitioner and Mrs. Munshi, learned counsel for the respondent. The petitioner has, undisputedly, served in Naxal affected area from 17.06.2012

to 16.01.2014. That shows that he has not completed 3 years of continuous service in the Naxal affected area. This particular position is not at all in dispute. The bone of contention before the Court below was that he has already worked in Naxal affected area. However, as per Government Resolution dated 15.05.2014, an employee has to work for 3 years. In that view of the matter, earlier period of service for 1½ cannot be the ground to challenge the order of transfer.

6. The interim order was granted by the learned Member, Industrial Court in favour of the petitioner on 05.12.2018 and it was in operation till 18.11.2019. After rejection, the petitioner immediately approached to this Court on 04.12.2019 and this Court (Coram: Manish Pitale, J.) granted notice for final disposal and directed the parties to maintain status quo as on the said day.

7. According to petitioner, he was discharging duties at Primary Health Centre, Ankisa on the day when the order of status quo was granted by this Court. However, the said was disputed by respondent by pointing out order dated 27.11.2020 by which the petitioner was relieved on 30.11.2020.

8. Here, one important fact this Court wishes to note from the submissions made by learned counsel for the respondent that as on today, in place of the petitioner, nobody is transferred or posted at Primary Health Centre, Ankisa. In addition, Mr. Pillay, learned counsel for petitioner, makes a statement, on instructions from the petitioner, that if the petitioner is protected till the end of May-2021 and thereafter transferred by Chief Executive officer, Zilla Parishad, Gadchiroli, he will join on his transferred place.

9. In view of the position that as on today nobody is posted at Primary Health Centre, Ankisa and in view of the undertaking given by the petitioner that if after May-2021 he is transferred, he shall be obeying such a transfer order, I pass the following order.

Order dated 18.11.2019 passed by learned Member, Industrial Court, Chandrapur ,below Exh.U-2 in Complaint (ULP) No.65/2018 is hereby quashed and set aside. The respondent is directed to allow the petitioner to work as Health Assistant at Primary Health Centre, Ankisa, District Gadchiroli till 31.05.2021.

It shall be open for the respondent to issue fresh order of transfer if the respondent chooses to exercise powers of the

employer to transfer its employee, after 31.05.2021 and it shall be the duty of the petitioner to join the transferred place.

Since Complaint (ULP) No.65/2018 was only against transfer order dated 31.05.2018, in view of the directions *supra*, nothing survives in the said complaint. Hence, Complaint (ULP) No.65/2018, pending on the file of learned Member, Industrial Court, Chandrapur is disposed of.

Rule is made absolute in the above terms. No order as to costs.

JUDGE

kahale