

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

WRIT PETITION NO.4118/2021

1. Dainik Bhaskar Corporation Limited,
Through its Managing Director,
Shri Sudhir R. Agrawal,
R/o Plot No.6, Dwarka Sadan,
Press Complex, MP Nagar,
Bhopal (MP).
2. Manager-HR & Admin,
Through Anwar Ali,
Maharashtra Dainik Divya
Marathi, D. B. Corp Ltd.,
Motiwala Complex, 2nd Floor,
Jalna Road, Aurangabad – 431005,
Dist – Aurangabad.
3. Manager-Production Head,
Through Ashish Vishwakarma
Dainik Divya Marathi,
D. B. Corp Ltd., Motiwala Complex,
2nd Floor, Jalna Road, Aurangabad-431005,
Dist- Aurangabad.
4. Production Manager,
Through Abhishek Kumar,
Dainik Divya Marathi Press,
Near Banarasi Press, Near
Banarasi Dhaba, Boregaon (Manju)
Tq. Dist. Akola.

PETITIONERS

// VERSUS //

Kapil Prabhakar Khandhar,
Age 35 yrs, Occ – Service,
Address – Pramod Nagar,
Kaulkhed, Akola,
Tq. Dist. Akola.

.... RESPONDENT

Mr. A. A. Naik, Advocate for petitioners.
Mr. N. R. Saboo, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATED : 01/12/2021

ORAL JUDGMENT :

1] **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2] Heard Mr. Naik, learned counsel for the petitioners and Mr. Saboo, learned counsel for the respondent.

3] For the sake of convenience, parties are referred in the nomenclature and status in which, they stood before the learned Industrial Court.

4] The petition challenges the order dated 16.08.2021 passed by the learned Industrial Court, Akola, whereby the application under Section 30(2) of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred as 'MRTU & PULP'), filed by the complainant against the respondents for interim relief, has been allowed and the transfer order dated 12.02.2021 and relieving order dated 18.02.2021 issued to the respondent, is stayed with a further direction to the respondents, to continue the services of the complainant at his original place of posting at Akola, till the final disposal of main complaint.

5] The facts giving rise to the present petition, in brief, can be summed up as under:

(i) The complainant was appointed as an Assistant Machine Man by the order dated 13.06.2013 with effect from 08.06.2013 with the respondents and was stationed at Akola.

(ii) The complainant was promoted as a Machine Man by an order dated 25.07.2015, with effect from 01.04.2015.

(iii) On 12.02.2021, the complainant was transferred on promotion as a Senior Management Associate to the establishment of the respondents at Aurangabad.

(iv) The complainant by a communication dated 13.02.2021 (pg 120), for the first time made a demand to the respondents, seeking difference in wages on account of applicability of the Majithiya Wage Board Award.

(v) It is further contended that by way of e-mail on 18.02.2021, the complainant was informed that he had given up his claim for the benefits of the Majithiya Wage Board Award by submitting a declaration 20 (j) as required under the Majithiya Wage Board Award on 08.06.2013, and therefore, his claim for the said benefits was not tenable.

(vi) The complainant therefore, was requested to withdraw his claim for the Majithiya Wage Board Award as made in his

communication dated 13.02.2021. This communication further intimated the complainant that by an order dated 12.02.2021, the complainant stood transferred. This was replied by the complainant by his communication dated 19.02.2021 contending that any such declaration as contemplated by Clause 20 (j) of the Majithiya Wage Board Award was never submitted by him on 08.06.2013 as claimed in the letter dated 18.02.2021.

(vii) It was further submitted that at the time of his appointment signatures on blank documents have been taken which have been used for preparing the 20 (j) declaration. It is further stated that being annoyed by the claim made by the complainant on account of the benefits of the Majithiya Wage Board, the services of the complainant were transferred on 12.02.2021.

(viii) It is further contended that for the first time by the e-mail dated 22.02.2021, the complainant came to know that he was transferred at Aurangabad, consequent to which, on 24.02.2021, a complaint came to be filed before the learned Industrial Court, who by an ad interim *ex parte* order on the same date granted interim relief in favour of the complainant.

(ix) It is further submitted that till that point of time the transfer order was never communicated to the complainant and the complainant

came to know about the transfer order for the first time when the transfer order was filed by the respondents before the learned Industrial Court along with their reply-cum-written statement. It is pursuant thereto, that the petitioner issued a letter dated 20.04.2021, indicating that he was not inclined to accept the promotion and therefore, was foregoing the same and should be continued on the same post as Machine Man at Akola.

(x) The learned Industrial Court, by the impugned order granted the application for interim relief and stayed the transfer order during the pendency of the complaint.

6] Mr. Akshay Naik, learned counsel for the original respondents submits that it is the bounden duty of every litigant to approach the Court with clean hands and make a full and candid disclosure of all the relevant and material facts which are necessary for deciding at the *lis*. Learned counsel submits that any suppression of any fact or making of a false statement, would clearly dis-entitle the complainant from any interim relief, which is discretionary in nature. Learned counsel submits that the plea which is raised by the complainant to the effect that he was not aware of the transfer order till the time it was placed before the learned Industrial Court by the respondents along with their reply-cum-written statement, is in fact a

false statement, which would be indicated from a perusal of the communication of the complainant himself dated 19.02.2021, in which he signs as a Management Associate. It is contended by learned counsel that if the plea put forth by the complainant is examined in this context the claim made that the complainant was not aware of the transfer order till 07.04.2021, as is indicated from his communication dated 20.04.2021 is clearly falsified on account of his earlier communication dated 19.02.2021. Learned counsel therefore, submits that the learned Industrial Court ought not to have exercised discretion in favour of the complainant. He further submits that the transfer order was in fact received by the complainant on 12.02.2021 itself which was evinced from the signature of the complainant at the right hand bottom of the transfer order at record page 36.

7] He further submits that perusal of the impugned order would indicate that the entire reasoning of the learned Industrial Court is based upon a plea that the transfer order was issued on account of claiming of benefit of the Majithiya Wage Board Award recommendations by the complainant and the impugned order does not disclose any other reason for holding against the respondents. He further submits that the question of comparison of signatures on the transfer order dated 12.02.2021 of the complainant at the *prima facie* stage did not arise at all and the impugned order, on this ground could not be

sustained. He further submits that the finding of the learned Industrial Court that the transfer order was issued to defeat the claim of the complainant under the Majithiya Wage Board Award, cannot be sustained for the reason that the declaration 20 (j) was dated 08.06.2013 and from that date onwards till the date of transfer, till 13.02.2021, no claim in this regard of whatsoever nature was raised by the complainant. He submits that even otherwise if the complainant was aggrieved by the same nothing prevented the complainant from approaching the appropriate Court with the said claim. The very fact that in spite of the communication dated 13.02.2021 raising a grievance regarding non grant of the benefit under the Majithiya Wage Board Award, no such complaint has been filed even today, according to him is telling. He further submits, that the transfer can only be stayed on account of malice being demonstrated to be in existence, however, the entire complaint does not contain any allegation about malice.

8] He therefore, submits that the impugned order which ignores the settled legal position that the transfer is an incidence of service, cannot be sustained, as there is no finding in the impugned order regarding the transfer being malafide. Reliance is placed on the judgment of this Court in **Writ Petition No.3461 of 2021, Lokmat Media Private Limited through its Managing Director Shri Devendra Vijay Darda and others Vs. Tushar Ganpatrao Hande, decided on 14/09/2021**

and *Rajneesh Khajuria Vs. Wockhardt Limited and another*, (2020) 3 SCC 86, paras 13, 14 and 15.

9] Mr. Saboo, learned counsel for the complainant submits that though the complainant was not entitled to promotion, two persons senior to the complainant, in the same Cadre have been bye-passed and the complainant promoted, which in itself would indicate that the transfer was malafide. He further submits that as the complainant, had given up his claim for promotion, the complainant ought to have been retained at the same place.

10] Having heard the learned counsel for the parties, it is material to note that though the complainant comes to the Court with a plea that the transfer order dated 12.02.2021 was not served upon him and was received by him only on 07.04.2021, when the counsel for the complainant was supplied with the copy of the reply-cum-written statement which contained a copy of the transfer order, this contention is belied from the communication of the complainant dated 19.02.2021 itself, in which the complainant signed himself of as Management Associate. This clearly indicates that as on 19.02.2021, the complainant was clearly aware of the transfer order dated 12.02.2021 and the terms contained therein. The averments made in the reply dated 20.04.2021

and so also the complaint, which indicate a plea otherwise, is clearly a plea which is contrary to his own communication dated 19.02.2021. It is inconceivable that in absence of the receipt of the transfer order dated 12.02.2021, wherein for the first time the post to which the complainant has been transferred has been mentioned as Senior Management Associate, the complainant, would come to know that he was a Management Associate, as on 19.02.2021, as against his statement as pointed out earlier. The subsequent e-mail dated 22.02.2021 by the respondents has to be read in the context of the transfer order dated 12.02.2021 and the communication of the complainant dated 19.02.2021. The contention that the complainant for the first time on 07.04.2021 came to know about the transfer order dated 12.02.2021, is therefore, palpably incorrect. It is thus apparent, that the complainant, came to the learned Industrial Court, setting up an incorrect plea that the complainant was not aware of the nature of the transfer order or that he had not received the same. The communication dated 19.02.2021 speaks otherwise. This being the case, the exercise of discretion by the learned Industrial Court, in not taking the above position into consideration, clearly is flawed.

11] That apart, the entire reasoning of the learned Industrial Court, appears to be based upon the acceptance of the contention that

the transfer was actuated on account of the complainant demanding the benefits of the Majithiya Wage Board Award. It is material to note in this regard that the 20 (j) declaration was dated 08.06.2013 and in case the complainant had any grievance regarding the same, he could have instituted appropriate proceedings for claiming the said benefits. The Majithiya Wage Board Award was passed on 11.11.2011, however, since that date, till 13.02.2021, the complainant has not lodged any claim either to the effect that his signatures were taken on blank papers at the time of joining or for that matter that the complainant was entitled to the benefit of the said award. Not only that, even as of date no legal proceedings have been instituted by the complainant either challenging the 20 (j) declaration or the denial of the benefits of the Majithiya Wage Board Award, to which he claims himself entitled to. Even if, such a proceeding may have been lodged, as Mr. Saboo, learned counsel for the respondents, is not sure of this position, even presuming so, that by itself would indicate that the complainant being aware of his rights was legally prosecuting the claim for the said benefit, and therefore, that could not have been considered to be a ground by the learned Industrial Court to hold that the transfer order was actuated on account of denial of the claim.

12] It is a settled position of law that transfer is an incidence of service and such transfer, either on the same post or promotion, is at the discretion of the management and for the purpose of better management of the business, which discretion cannot be interfered with by the Court, unless it is pointed out that the transfer was actuated by malice. In the instance case, except for the plea that the transfer was effected on promotion due to the demand of the complainant of the benefits of the Majithiya Wage Board Award, there is no other plea regarding malafide, contained in the complaint. The finding that the transfer is malafide, as recorded in para 36 of the impugned order is also based upon the alleged claim of denial of benefit of the Majithiya Wage Board Award to the complainant. As pointed out above, the claim of denial of the benefits of the Majithiya Wage Board Award, could not possibly be considered as a ground to infer malice, in view of the facts, that the 20 (j) declaration is dated 08.06.2013 and from 2011 till 13.02.2021, even the complainant himself, did not raise any such claim. The finding therefore, that the transfer was malafide, as based upon the plea of denial of the benefits of the Majithiya Wage Board Award is clearly not sustainable in law, for which reason also reliance upon *Press Trust of India Ltd. and another Vs. Press Trust of India Employees Union (Western India) and another*, 2002 (4) Mh. L. J. 653 by Mr. Saboo, learned counsel for the complainant is also misplaced. The further

contention that the complainant was granted double promotion only to ensure that his claims for the benefits of Majithiya Wage Board Award was defeated and as the complaint had foregone the promotion the transfer therefore was malafide, clearly does not hold water, for the reason that the right of the employer to transfer an employee either on promotion or otherwise for better management of its business cannot be denied, as it is the Management/employer, which is singularly well suited to judge the capacity and caliber of an employee and what work is to be extracted from him. If every employee who was transferred on promotion, was held to be entitled to remain at the same place, on foregoing the promotion, then in a given situation the Management/employer would not be able to transfer anyone, which would adversely affect the management of the business, which ought not to be permitted. The complainant, when he joined was aware that the employer had several establishments/branches in other places, and therefore his services were transferable which being the position, the employee now cannot be heard to say that he is not liable to be transferred, unless the transfer is malafide, for which as already stated, there is no material on record.

13] The learned Industrial Court went to great pains to compare the signature of the complainant on the 20 (j) declaration and admitted

signature to infer that there was difference in the admitted signature and the signature on the 20 (j) declaration and thus infer motive against the respondents, which in my considered view, was not permissible at a prima facie stage, as this position will have to be tested on the basis of evidence which may be led in the complaint.

14] Considering the above position, and the fact that the complainant was clearly aware of the transfer order dated 12.02.2021, as reflected from communication dated 19.02.2021 and the discussion made above, I am of the considered opinion, that the impugned judgment, as passed by the learned Industrial Court, cannot be sustained. The impugned order dated 16.08.2021, is hereby quashed and set aside and the application at Exh.U-2, is dismissed. Considering the circumstances, there shall be no order to costs. The writ petition is allowed in above terms. Rule is made absolute in the aforesaid terms. No costs.

15] It is made clear that the observations made in this order shall not come in the way of the learned Industrial Court in deciding the matters on merits.