

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12207 OF 2021

ANKUSH VASANTRAO BHARAD
VERSUS
THE SUPERINTENDENT ENGINEER (DISTRIBUTION) MAHARASHTRA
STATE ELECTRICITY DISTRIBUTION COMPANY LTD

Mr.A.R.Tapse, Advocate for the petitioner.
Mr.U.S.Malte, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE , J.)

DATE : MARCH 15, 2022

PER COURT :

1. By this petition, the petitioner seeks to challenge an interlocutory order dated 21.10.2021 passed by the Industrial Court, rejecting Exh.U-2 in Complaint (ULP) No.40/2021.

2. Heard at length.

3. The petitioner has been transferred on his own request from Hingoli to Parbhani Circle in District Parbhani at Kasapuri. His wife is in employment at Parbhani and he therefore wanted a transfer from District Hingoli to District Parbhani. Considering his request and the

rules applicable, he was transferred which he accepted and then filed Complaint (ULP) No.40/2021 wherein he has prayed for a declaration of ULP under Items 3, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971.

4. The grievance of the petitioner as set out in the pleadings in his complaint indicates that he has branded his transfer as being a mid-term transfer since the employer desires to harass him. His wife is in the Government Health Department at Parbhani. He alleges that there is no administrative exigency for his transfer and there is no need for an operator at Kasapuri 33KV Station. His son is 14 years of age. He is the only earning member of his family (which is apparently a false statement). His wife is in the service of the Health Department of Parbhani Zilla Parishad. Several grounds are put forth, save and except the statement that he was transferred on his request to Dist.Parbhani.

5. The petitioner has relied upon the judgment delivered by the Hon'ble Supreme Court in Shaikh Nausad Rahaman and others Vs. Union of India and others, dated 10.03.2022, in Civil Appeal No.1243/2022. Reliance is placed upon paragraph Nos.52 and 53

which read as under :-

"52. The circular dated 20/09/2018 has taken into account, what it describes exceptional circumstances such as extreme compassionate grounds. Leaving these categories undefined, the circular allows for individual cases to be determined on their merits on a case by case basis, while prescribing that transfers on a loan basis may be allowed subject to administrative requirements with a tenure of three years, extendable by a further period of two years. while prescribing ICTs which envisage absorption into a cadre of a person from a distinct cadre, the circular permits a transfer for a stipulated period on a loan basis. Whether such a provision should be suitably enhanced to specifically include cases involving

[i] postings of spouses ;

[ii] disabled persons; or PART D

[iii] compassionate transfers, is a matter which should be considered at a policy level by the Board.

53. In considering whether any modification of the policy is necessary, they must bear in mind the need for a proportional relationship between the objects of the policy and the means which are adopted to implement it. The policy above all has to fulfill the best of legitimacy, suitability, necessity and of balancing the values which underlie a decision making process informed by constitutional values. Hence while we uphold the judgment of the Divisional Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting

of spouses, the needs of the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Articles 14, 15 and 16 and Article 21 of the Constitution are duly protected. The appeals shall be disposed of in the above terms."

6. The learned Advocate representing the respondent/Company submits that this is not the first time when this petitioner has challenged his transfer. In fact, he himself sought a transfer from Dist.Hingoli so as to be closer to his wife who works in the Parbhani Zilla Parishad Health Department. Yet the petitioner has averred in the complaint that he is the only earner in the family. Since a Full Time Operator at the Kasapuri 33 KV Sub Station was required and the petitioner had made a request for transfer due to couple arrangement, his application was considered favourably. Now his grievance is that he should be posted in the Parbhani City in a particular Department. He relies upon the judgment delivered by the Hon'ble Supreme Court in **Bank of India Vs. Jagjit Singh Mehta [(1992) 1 SCC 306]**.

7. I called upon the learned Advocate for the petitioner to state whether he has reported at the place of transfer. He submits that he

has left Hingoli District after his transfer dated 08.09.2021. He goes to the Office of the respondent in Parbhani City since he wants to mark his presence in the City Office. He is however not discharging his duties at Kasapuri. As a consequence of which, he is not being paid his salary.

8. Having considered the submissions of the learned Advocates for the respective sides and on perusing the material placed before the Court, this case is a classic example of an employee trying to foist his desires on an employer notwithstanding the fact that transfer is a normal incidence of service. His service is transferable throughout the State of Maharashtra. His wife is in Parbhani District. Though he submitted his joining report on 02.09.2021, he has not joined at the Kasapuri Sub Station which posting was given to him on 08.09.2021. Vide the transfer order dtd.05.08.2021, the petitioner was transferred to the Parbhani Circle, Nanded Zone. As he is posted at the Sub Station Kasapuri, he is not attending his duties at that place since he insists that he would work only in the City Office in Parbhani.

9. I have gone through the impugned interlocutory order passed by the Industrial Court, Jalna. It is apparent that the petitioner now

contends that his transfer at Parbhani may be sustained, since it is on his request owing to couple arrangement, and he should not be posted at Kasapuri. Hence, he is not marking his attendance at Kasapuri and he is also not discharging his duties there.

10. In the facts and circumstances of this case, the judgment cited by the petitioner in Shaikh Nausad (supra), would hardly advance his case. The petitioner has been transferred to Parbhani on his request and he has gladly accepted the same. He now prays that the said transfer be maintained, but his place of work be changed.

11. Considering the above, I find that this is a fit case wherein the petitioner deserves to be deprived of his daily salary for having refused to report for duties at the place of posting and on creating a picture that he is attempting to mark his presence in the Parbhani City Office, where he has not been posted for duties.

12. This petition is, therefore, dismissed.

13. In the facts and circumstances of this case, it would be justified to

impose costs of Rs.25,000/- for suppression of material facts. However, I am not imposing the costs for the reason that the petitioner would not be earning his wages for having refused to work at the place of posting and until he continues to remain absent, he would not be entitled for such wages.

(RAVINDRA V. GHUGE, J.)