

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6905 OF 2022

Williams Control India Pvt. Ltd.

..Petitioner

Versus

Sushma Vijay Walgude

..Respondent

Mr. Kiran Bapat i/by Gaurav Gawande for the Petitioner.

Mr. Mayuresh D. Nagle, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 24th November, 2022

PC.

1. Heard.

2. The respondent, was appointed as a Trainee Associate on 3rd June, 2014. The condition No.1 of her appointment order reads thus:-

“Your job title is Trainee Associate. Your primary place of work will be at Pune at the above address. However, your services are liable to be transferred, at the sole discretion of the Company, from one location to another in India and to any units/companies/affiliates/subsidiaries of the Williams Controls Group, worldwide. In case of such a transfer, you will be governed by the rules and

regulations applicable to the assigned department or the establishment where you are posted. In addition, you will work at, and travel to, such locations as may be necessary for the proper discharge and fulfillment of your duties.”

3. Subsequent thereto services of the respondent were retrenched for want of availability of work. However, she was given re-employment vide order dated 28th December, 2020, in the Manufacturing Department vide order dated 1st December, 2021 which is questioned by her in complaint ULP No.247 of 2021.

4. In the application Exhibit.U-2 for the grant of an interim relief, it is alleged that there is a change in the service condition without there being a notice of change as her posting is done in different department, where she will be made to work in shifts. She has recently been blessed with a child and as such, working in shifts will cause her a lot of hardship. It is also even claimed that has been victimized as she has initiated industrial disputes.

5. The Industrial Court vide order dated 12th April, 2022 has allowed the application for the interim relief with directions to allow the complainant to work in questioning her retrenchment which is pending before the competent Court in Quality Assurance Department. The employer as such, feeling aggrieved has preferred

this petition.

6. The contentions of Mr. Kiran Bapat, learned counsel appearing for the petitioner i.e. the employer are :-

(a) That in past it was never promised to the respondent i.e. employee that through out her service with the petitioner, she will be posted only in Quality Control Department.

(b) Her service will be transferable, which fact was within her knowledge, as could be inferred from the condition of the appointment

(c) The proceedings taken out by the respondent against her retrenchment are still pending. As such, there is no element of the *mala fide* on the part of the petitioner particularly, when she is offered re-employment without any change in service condition.

7. The prayer is opposed by the counsel for the respondent employee. According to him, after the appointment order dated 3rd June, 2014, respondent was throughout posted in the Quality Control Department till her retrenchment.

8. According to him, if the respondent was granted re-employment pursuant to provisions of Section 25(H) of the Industrial Disputes Act, 1947. Hence, she ought to have been posted in Quality Control Department only. His further contentions are, there is change in the nature of work viz in the Quality Control

Department and the present Manufacturing Department and as such, service condition changes.

9. He would invite my attention, pertaining to the nature of job the respondent will be required to perform as reflected in part 18 and 23 of his affidavit in reply. As such, drawing support from the Division Bench Judgment of Madras High Court in the matter of ***T. Rajamanickam v/s Binny Ltd. (B & C. Mills), Madras*** reported in ***2009 I CLR 179***, he would urge and re-employment in contravention to the settlement arrived at or changing the service condition without their being any notice of change, the order of transfer is rightly inferred by the Industrial Court. He would urge that the petition is liable to be dismissed.

10. I have appreciated the said submissions.

11. The respondent entered in the service on 3rd June, 2016 when she was already put to the condition of her job being transferable one. Though her services were retrenched the recourse was taken to section 25(H) of the Industrial Disputes Act thereby offering re-employment which choice was rightly so exercised by the respondent employee by joining the Manufacturing Department.

12. It appears that the respondent was taken in the employment and was given posting in the Manufacturing

Department. The fact remains that, it was never assured by the petitioner that the re-employment will be in the Quality Control Department of the petitioner employer. Rather what was offered post retrenchment was the re-employment with the petitioner and not a posting in particularly department or section.

13. Apart from above, though it is claimed by the counsel for the respondent that the working hours will be changed. However, in rejoinder affidavit by the petitioner, it is assured that the respondent will be required to work for a period from 9.00 A.M. to 5.30. P M..

14. In the aforesaid background, in my opinion, it cannot be inferred that there is change in the service conditions of the respondent/employee. The respondent/ employee is posted in very same premises only there is a change in the section i.e. from Quality Control Department to that of the manufacturing section as such, it cannot be said that there is change in service condition as it has been held by the Industrial Court in the order impugned. It cannot be said that respondent/employee is likely to be affected because of her posting.

15. As such, the order impugned warrants interference in extraordinary jurisdiction as the Industrial Court has exceeded its jurisdiction. That being so, the order dated 12th April, 2022 passed

below Exhibit.U-2 in complaint ULP No.247 of 2021 by the Industrial Court Pune, is hereby quashed and set aside.

16. The application Exhibit.U-2 stands rejected.
17. The petition stands allowed in all above terms.

[NITIN W. SAMBRE, J.]