

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO. 13056 OF 2022

M/s. Zeco Aircon Ltd. and ors. ..Petitioners

VS.

Mumbai Labour union ..Respondent

Dr. Dashrath S. Hatle a/w Mr. D.P. Jamsandekar, for
petitioners.

Ms. Jane Cox i/b Mr. G.R.Thombare, for respondent.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 15, 2022

P.C. :

1. Heard learned counsel for the petitioners-employer and learned counsel for the respondent-employees. Learned counsel for the employer was at pains to point out that the complaint of unfair labour practice was filed after the orders of transfer dated 10/11/2021 and 16/11/2021 in respect of three employees was effected. In such view of the matter, the Industrial Court should not have allowed the application filed by the respondent-union for grant of interim relief. Relying on the decision of this Court in the case of

Mahindra & Mahindra Limited Vs. Dwarkadas Babaji

Dalvi¹, learned Counsel submitted that the interim order passed by the Industrial Court is contrary to the well established principles for grant of interim relief. In his submission, neither the prima facie case or that of irreparable loss is made out nor the balance of convenience is in favour of the employees. Shri Hatle submitted that the employees were working in the factory at Shahapur. The exigency of the company required the employees to work at Haryana and Karnataka and therefore they were transferred. It is his submission that for administrative convenience, if the employees are transferred, by no stretch of imagination it can be said that the transfers are vindictive or malafide. Shri Hatle further submitted that because the transferred employees joined union and gave a letter to that effect was a reason for the transfer is also not a finding based on materials. Shri Hatle submitted that the Industrial Court has relied upon the interim order dated 18/11/2021 passed in another Complaint (ULP) No. 204 of 2021 to infer that the transfer is effected because the employees joined

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the respondent-union, which is an erroneous premise. In his submission, the order of transfer was effected prior to the interim order dated 18/11/2021 in Complaint (ULP) No. 204 of 2021 and therefore this could not have been the basis for rendering the finding against the employer. Shri Hatle further submitted that the transfer was the implied condition of service and the employer was in the process of issuing appointment letters. It is further submitted that based on the forged and fabricated letters of appointment, two of the employees claimed that there is no clause in the conditions of the service regarding transfer of employees. My attention is invited to the findings rendered by the Industrial Court to submit that the same are perverse and contrary to the evidence on record.

2. Learned counsel for the respondent, Ms. Jane Cox supported the order passed by the Industrial Court. She placed emphasis on the findings recorded at paragraphs 27 to 30 of the Industrial Court's order.

3. Heard learned counsel for the parties. I have gone through the record and the order passed by the Industrial

Court. Two of the employees were transferred from Shahapur in Maharashtra to Haryana, almost at a distance of more than 1000 km. One of the employee was transferred to Karnataka which is also far away from Shahapur, Maharashtra. If transfer is the condition of service, no right can be claimed by the employees transfer being incident of service unless it is contrary to the statutory rules or malafide. In the present case, two of the employees have relied upon the appointment letters which the employer contends as being false and fabricated. In the said letter of appointment, there is no clause as regards the power of the employer to effect transfer. The Industrial Court was justified in placing reliance on the terms of letter of appointment. It is not possible for me at this stage to discard the appointment letters relied by these two employees only on the plea of the employer that the same are false and fabricated. Though it is the case of the employer that they have been transferring employees, the Industrial Court has recorded a finding that in the past 7 years, only one employee has been transferred. Factually,

two of the employees are the office bearers of the respondent-union and one of the employee is an active member. Prima facie, on the basis of the Complaint (ULP) No. 204 of 2021 filed by the union in collateral proceedings in which the interim order dated 18/11/2021 came to be passed, the Industrial Court was of the opinion that the employer had knowledge about the formation of the union. It is the contention of learned counsel for the employer that the company did not have knowledge of the formation of the union and therefore the order of transfer is not the result of the employees forming the union.

4. Suffice it to observe that in close proximity to the order of transfer, there were proceedings between the employer and the union and it is also the case of the employees that the orders of transfer were received by them after 18/11/2021. Learned counsel for the employer submitted that there are materials to indicate that the orders of transfer were served immediately on 10/11/2021 on two employees and on 16/11/2021 on the other employee.

5. Taking an overall view of the matter, I find the view taken by the Industrial Court at the interim stage that prima facie the transfer of the workmen does not appear to be bonafide is a possible view. The Industrial Court has observed that the transfers are effected in respect of three employees with intention to break the union activities in the company.

6. The decision in **Mahindra & Mahindra Limited** (*supra*) does not assist the petitioner in the facts of the present case. In fact, the three requirements for grant of interim relief viz., prima facie case, irreparable loss and balance of convenience are borne out from the facts of the case. I do not see any perversity in the order passed by the Industrial Court so as to warrant interference. The petition therefore stands rejected. No order as to costs.

7. The Industrial Court is requested to decide the Complaint (ULP) No. 222 of 2021 expeditiously, preferably by the end of July 2023.

(M. S. KARNIK, J.)