

Sulzer Pumps India Pvt.Ltd & ors .. Petitioners
Versus
Jayendra Arun Jog .. Respondent

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Mr. Jamshed P. Cama, senior counsel with Mr. Shrinivas Deshmukh and Mr. Sunilkumar Neelambaran i/b Mulla & Mulla & Craigie Blunt & Caroe for the petitioners.

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

CORAM: RAVINDRA V. GHUGE, J.

DATED : 3rd FEBRUARY, 2022

P.C:-

1 By this petition, the petitioner Management has challenged an interlocutory order dated 24/9/2021 passed by the learned Industrial Court, Thane below Application Exhibit-U2 in Complaint (ULP) No. 138/2020, vide which, the transfer of the respondent has been stayed pending decision on the status of the complainant.

2 I had extensively heard the learned Senior Advocate
on behalf of the petitioners and the learned counsel on behalf of
the respondent, yesterday. The submissions continued even
today.

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3 Considering the order that I intend to pass, I would not be adverting to the entire submissions of the counsel for the respective sides. It would suffice to refer to the issues framed by the learned Court and the answers offered thereon, which are glaring, and hence, reproduced as under :-

No.	Points	Answer
1	Whether the complainant proves that the alleged act of transfer is in violation of conditions of service?	Not answered at present
2	Whether the complainant has strong prima facie case and prima facie establishes commission of Unfair Labour Practice?	Not answered at present
3	Whether balance of convenience lies in favour of the complainant ?	Not answered at present
4	Whether irreparable loss would be caused to the complainant ?	Not answered at present.
5	What order ?	As per final order.

4 It is pointed out that the impugned order has been passed by the in-charge learned Member of the Industrial Court at Thane since the regular Presiding Officer is not available for a long time.

5 The issue that was brought before the Industrial Court in the ULP Complaint by the respondent employee was that he has been transferred vide order dated 30/10/2020 to Chennai, malafide. Vide an ex-parte order dated 3/11/2020, the Transfer Order was not given effect to, until 25/11/2020. The

Application Exhibit U-2 was not decided thereafter. It is informed that the Industrial Court was on leave for some time. Thereafter, the matter was adjourned and from June 2021, the Court was vacant.

6 It is settled law that a Transfer Order cannot be interfered with, or casually on surmises or conjectures. The issues reproduced above, indicate that the Industrial Court neither dealt with the objection that the complainant not a workman u/s.2(s) of the Industrial Disputes Act, 1947, nor did it decide the application Exhibit U-2. It is well settled that unless, prima facie, the Industrial Court concludes that the employer is guilty of unfair labour practices covered by Item 3 Schedule IV, there could not be an interim order of granting relief to the complainant.

7 In the above backdrop, as the impugned order was not sustainable, I called upon the learned counsel for the respondent complainant to take instructions as to whether the complainant would either forego wages for three months and stay at Thane, until the issue of whether he is a workman and application Exhibit U-2 are decided together, or whether he would join at the place of transfer without prejudice to his rights and no equities would be created in favour of the Management on account of his joining duties. The learned counsel sought a pass

over and informs today that the complainant is agreeable to waive the wages for three months and wholeheartedly co-operate with the Industrial Court to get the issue of whether he is a workman and Exhibit U-2, decided. However, he would reserve his right to claim these wages ultimately if the transfer order is quashed and set aside.

8 The learned Senior counsel representing the petitioner submits that it is under fortuitous circumstances that the complainant is at Thane. He is being foisted upon the employer, despite he having been transferred at Chennai due to work exigencies. He might, as well join at Chennai and draw his wages, subject to the decision of the Industrial Court on his status and on the Application Exhibit U-2. It is the worker who is refusing work though it is offered to him at the place of transfer. He further submits that vide a reported judgment of this Court, the law has been settled that in such cases, the complainant must first report at the place of transfer and thereafter, he could initiate litigation for assailing the transfer.

9 In view of the above, this Petition is partly allowed. The impugned order dated 24/9/2021 is set aside with the following directions :-

(a) The Industrial Court (in-charge Industrial Court if a Presiding Officer is not yet appointed at Thane) shall frame an

issue as to 'whether the complainant proves that he is a workman u/s.2(s) of the Industrial Disputes Act, 1947' within two weeks from today.

(b) The Industrial Court thereafter shall allow the litigating parties to lead evidence and the recording of evidence shall be concluded on or before 15/3/2022.

(c) Thereafter, the parties would be at liberty to address the court in between 25/3/2022 and 31/3/2022, as per the convenience of the Industrial Court, on the issue of status of the complainant as well as on the Application Exhibit U-2.

(d) Thereafter, the Industrial Court would proceed to deliver an order on or before 30/04/2022, on the status of the complainant. Needless to state, if the Industrial Court concludes that the complainant is a workman, it shall deliver an order simultaneously below Application Exhibit U-2, on merits. If the Industrial Court concludes that the complainant is not a workman, naturally, the complainant would be rendered untenable in law and a formal order disposing off the complaint U-1 could be passed by the Industrial Court.

(e) Until 30/4/2022 or till the Industrial Court delivers it's orders, as above, whichever is earlier, the complainant would be deprived of the wages.

(f) In this period, until the order is passed by the Industrial Court, the complainant need not report at his place of work at Thane.

(g) However, he would have the option of joining duties at the place of transfer without prejudice to his rights set out in Complaint (ULP) 138/2020. If he joins duties at Chennai, he would be entitled for his salary package and no equities would be created in favour of the Management to oppose the ULP complaint on the ground that the complainant has already reported at the place of transfer.

10 It is expected that the litigating parties would render wholehearted co-operation to the Industrial Court so as to comply with the above directions within time frame.

RAVINDRA V. GHUGE, J