

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8178 OF 2023

Shri. Raosaheb Sonaji Mankape

...Petitioner

VERSUS

1. M/s. Videocon Industries Ltd.,
Chitegaon, Tq. Paithan, Dist. Aurangabad.

2. Shri. Abhijit Guhathakurta
Resolution Professional,
Dist. Aurangabad.

...Respondents

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Mr. G.S. Telangre, Advocate for the petitioner.
Mr. V.P. Golewar, Advocate for the respondents.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th JULY, 2023

ORDER :

1. Not on board, on mentioning taken on board.

2. The petitioner is aggrieved by the order passed by the learned Member, Industrial Court, Aurangabad, below Exhibit-U-2 in Complaint (ULP) No. 32/2023, thereby rejecting the prayer of the petitioner for grant of stay to the transfer order impugned in the complaint.

3. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the memo of writ

petition, annexures thereto, impugned order and the citations relied upon by the learned advocate for the petitioner.

4. Learned advocate for the petitioner assailed the impugned order on various grounds including that said order is malafide, the wages of the petitioner are reduced to Rs. 7,000/- and he is being transferred at distant place out of State without there being any communication between the management at the transferred place and the management in the present factory where the petitioner is working. He submits that the transfer of the petitioner amounts to change in service condition, which is in violation of section 9A of the Industrial Disputes Act, 1947. It is further argued that the transferred place i.e. Kashipur factory situated in Uttarakhand State is also under Corporate Insolvency Resolution Process (CIRP) before NCLT and no work is available there, workmen there are sitting idle and therefore, transfer on deputation is not at all warranted in these circumstances.

5. Learned advocate for the respondents on the other hand supported the impugned order. He states that the petitioner wants to remain at home and get salary instead of joining at the transferred place and work there. On a query by the Court, learned advocate for the respondents on instructions

of Senior Executive, Mr. Sunil Bukele makes a statement that the factory where the petitioner is presently working is not in operation whereas the factory at Kashipur is functioning.

6. Learned advocate for the petitioner disputed the statement made by the learned advocate for the respondents.

7. Admittedly, the petitioner is workmen of respondent No. 1 and respondent No. 2 is a Resolution Professional. The petitioner has joined respondent No. 1 pursuant to the appointment order dated 07.10.2006. Clause 'C' of the said order covers transfer and deputation, which reads thus:

"C. TRANSFER AND DEPUTATION

1. Your services are liable to be transferred to any department/group/line, as well as any establishment/ division/ branch/factory of the company, in India, on temporary or permanent basis, depending upon the company's priorities of work, at the sole direction of the company.

2. The company may depute you work in any other company under the group anywhere in India as per the exigencies of work/business requirements, on the same terms and conditions of employment with us. You shall promptly accept such deputation orders, without claiming other extra remuneration benefits."

8. In the light of said clause, transfer order was issued to the petitioner on 08.03.2023, thereby asking him to go on deputation at Techno Electronics Pvt. Ltd. Kashipur, w.e.f. 13.03.2023.

9. Since, there is specific clause of transfer and deputation in the appointment order of the petitioner, the transfer order issued to the petitioner, thereby directing the petitioner to go on deputation at Techno Electronics Pvt. Ltd., Kashipur, cannot be faulted with.

10. While appreciating the case laws relied upon by the learned advocate for the petitioner, which were also cited before the Industrial Court, it is observed that '*Hon'ble Supreme Court and the Hon'ble High Court have consistently held that if there is condition of transferability in condition of service or appointment order, no fault can be found with the order of transfer, unless it is mala fide or there is violation of statutory provisions. So, no stay was granted to the impugned transfer orders.*'

11. In the case in hand, it is clear that the petitioner has failed to make out prima facie case and balance of convenience in his favour. If the transfer order is stayed it would cause

inconvenience and prejudice to the respondents. Considering the fact that factory at which the petitioner is presently working is not in operation and factory at Kashipur, where the petitioner is sent on deputation is in operation, though under CIRP, petitioner is required to go there and join the duty.

12. The Industrial Court has appreciated the contentions raised by the parties and has passed a reasoned order. There is no illegality or perversity in the order impugned in the present petition. The impugned order does not suffer from any jurisdictional error or error of law. There is no merit in the writ petition. Writ petition is therefore dismissed. No costs.

13. At this stage, learned advocate for the petitioner prays for continuation of interim protection granted by the Industrial Court, for a period of four weeks. For the aforesaid reasons, said prayer is rejected.

[NITIN B. SURYAWANSHI, J.]