



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

24 WRIT PETITION NO. 13277 OF 2023

**PRIYA FULCHAND GAIKWAD
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
OSMANABAD THROUGH ITS DIVISIONAL CONTROLLER**

....
Advocate for Petitioner : Mr. Girish N. Kulkarni (Mardikar)
Advocate for Respondent : Mr. A.B. Dhongade

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 11th DECEMBER, 2023

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard both the learned counsel finally at the admission stage.
2. The petitioner is challenging judgment and order dated 03.04.2023, passed by learned Member, Industrial Court, Latur, dismissing the Complaint ULP No. 195 of 2019 which was filed challenging an order of transfer dated 26.10.2019.
3. Petitioner is the original complainant and the respondent is employer who effected transfer.
4. The petitioner is working as a Class IV employee as Conductor in the respondent - Corporation. By order dated 26.10.2019, she was transferred from Osmanabad to Paranda, within the Division. That was challenged by petitioner in a complaint on 10.03.2019, under

Section 28 (1) and Item 3, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1961, before the Industrial Court. She was given protection by interim orders dated 26.11.2019 and 16.03.2020. By the impugned judgment and order her complaint was dismissed. The protection was continued till 30th April, 2023.

5. Learned counsel for the petitioner informs that in the month of May, 2023, she joined at a transferred place i.e. Paranda.

6. Learned counsel for the petitioner submits that the transfer is against circular no. 2 of 2017 as well as Rules of 2014. By referring to the circular no. 1 of 2017, it is submitted by the learned counsel that first two instances of default of petitioner of collecting fare amount and not issuing tickets, are compromised by imposing penalty. For that, he refers to the office orders dated 22.11.2017, 23.09.2019. For the third default of the same charge, the respondent issued charge sheet and departmental enquiry is under way. For that purpose, the correspondence which is at page no. 68 is referred indicating pendency of enquiry against the petitioner.

7. Learned counsel submits that when respondent is conducting disciplinary action for the same charge, issuing transfer by impugned order amounts to penalty. The petitioner has already paid

penalty for initial faults. It is submitted that as per Rule 8 (e) (2) of Rules of 2014, the impugned order is unsustainable and patently illegal.

8. Learned counsel for the petitioner submits that the learned Member of the Industrial Court misread the ratio laid down in the judgments referred in paragraph nos. 11 and 14 of the impugned judgment and order. According to him, learned Member erred in holding that the petitioner was involved in misconduct affecting primary source of income and was liable to be transferred. He further erred in holding that the transfer was not outcome of the vindictive action amounting to unfair labour practices. He seeks to rely upon the judgment which are annexed at Exhibit J as well as judgment of Supreme Court in the matter of *Somesh Tiwari Versus Union of India and others*, (2009) 2 **Supreme Court Cases 592**.

9. The respondent has opposed the submissions. Affidavit-in-reply has also been filed today. It is the submission of the respondent that the transfer of the petitioner is on administrative grounds. The petitioner was not punctual and committed 41 defaults of misconduct on different occasions. For that purpose, a reliance is placed on the list of the instances annexed along with reply. Learned counsel submits that the respondent has shown generous attitude towards the petitioner but considering the persistent default of misconduct, it is not conducive to keep such an employee at Osmanabad. Despite compromising first two defaults, the petitioner has not shown any improvement.

10. Learned counsel submits that the respondent was constrained to transfer him. He has relied upon judgment rendered by this Court in the matter of *The Divisional Controller MSRTC, Osmanabad Versus Sirajuddin Abdul Mogul*, **W.P. No. 10337 of 2019 decided on 21.08.2019.**

11. I have considered rival submissions of the parties.

12. The judgment rendered in *The Divisional Controller Versus Dyandeo Ganpat Akolkar*, passed by this Court in Writ Petition No. 8941 of 2016 is concerned, the facts are different. In that case interim order of stay was challenged in High Court. The employee had good track record of 25 years of service. He was penalized only on one occasion. He was transferred due to influence exerted by minister. Considering the gravity of allegations in the present matter, the principles can not be applicable.

13. The judgments in the matter of *Ku. Mamta Vitthalrao Gavhane Versus Maharashtra State Road Transport Corporation and another*, passed by High Court Bench at Nagpur in Writ Petition No. 6465 of 2018, cannot be made applicable. In that case, the transfer order was found to be outcome of vindictiveness and *mala fides*. In *Bajaj Auto Ltd. Versus Shrikant Vinayak Yogi and others*, **2006 (3) Mh.L.J. 557**, the transfer orders were found to be actuated by *mala fides* and colourable exercise of powers. The facts are distinguishable. The principles laid down in both these judgment can not be applied.

14. The judgments rendered by this Court in the matter of *he Divisional Controller MSRTC, Osmanabad Versus Sirajuddin Abdul Mogul* (supra) also refers to clause no. 8 (e) (2) of the Rules of 2014. The paragraph nos. 10 and 13 are as follows :

10. It cannot be ignored that Clause 8 (e) (2) of the Rules empowers the MSRTC to by pass the normal procedure of general transfers, in cases involving employees who are charged with grave misconducts, and move out such employees in order to avoid commission of further misconducts.

11. Considering the past record of the respondent and keeping in view that the respondent, who is only 32 years of age today and would have 26 more years in employment, permitting him to work as a bus conductor keeping in view that 8 serious misconducts are committed in 5 years, would probably sound alarm bells for the Corporation, (See *Bajaj Auto Ltd., Aurangabad Vs. Kalidas Devram Patil, Aurangabad*, 1999 II CLR 1108).

12. The above factors should have been taken into account by the Industrial Court rather than blindly following an order passed in the peculiar facts of a particular case and interfere with a transfer order after 8 months of the employee having been relieved.

13. It is in the above peculiar facts and circumstances of this case, that I am causing an interference in the order passed by the Industrial Court, Latur by recognizing the power of the MSRTC to

issue transfer orders to such errant employees under Clause 8 (e) (2) of the Rules.

14.

15.

16. Considering that the respondent herein appears to be an employee habitually indulging in misappropriation, that I permit the petitioner to allot him any other work befitting his category of employment and by protecting his last drawn salary, so as to keep him away from the duties of a bus conductor or any such duties which would have any connection with handling of cash or money, till the pending ULP Complaints are decided."

15. The circular no. 2 of 2017 empowers the respondent to transfer employee who is involved in third default. For first two defaults of misappropriation action of imposing penalty is contemplated. Rule of 2014 also empowers respondent to transfer employee for special reasons or for exceptional circumstances. There is no provision in the circular or the Rules which indicates that no transfer can be effected if a delinquent is facing Departmental Enquiry. On the contrary, an enquiry is contemplated if an employee is involved in the third or the fourth default. Transfer is not by way of punishment. The purport of the policies of the respondent is to curb the menace of misappropriation by the deterrent methods of imposing penalty or conducting enquiry.

16. Pertinently, it is a case of respondent that the petitioner is involved in 41 instances of misconduct. This is very alarming and glaring. Just because there was an imposition of penalty for first and second instances and for the third instance a disciplinary action is under way does not mean that respondent is precluded from transferring the petitioner. Clause no. 8 (e) (2) of Rules of 2014 covers the situation. There are allegations of repetitive misappropriation against the petitioner. Respondent is, therefore, conducting an enquiry. It is not conducive to keep the petitioner at Osmanabad.

17. The submission of the petitioner that once the respondent has initiated disciplinary action, it is not permissible to effect the transfer, cannot be countenanced. Rather, when the respondent has decided to conduct disciplinary action for the third default, it is not proper to keep the petitioner at that place.

18. Learned Member of Industrial Court has rightly appreciated the facts and the circulars in question. He has taken a plausible view which is based upon material on record. I do not find any perversity or error of jurisdiction in dismissing the complaint.

19. It is very glaring that there are 41 instances against the petitioner. The list produced by the respondent on record indicates that more than eight defaults / instances occurred after the initiation of

disciplinary action. Learned counsel for the petitioner is unable to justify this conduct. The respondent is justified in transferring the petitioner.

20. I am of the considered view that respondent is justified in effecting the transfer because there are in all 41 instances of misconduct of the petitioner. The above referred judgment in the matter of *he Divisional Controller MSRTC, Osmanabad Versus Sirajuddin Abdul Mogul* (supra) has been rightly applied by learned Member of the Industrial Court, in dismissing the complaint.

21. Learned counsel has cited a judgment of Supreme Court in the matters of *Somesh Tiwari Versus Union of India and others* (supra). He has specifically referred paragraph no. 16. The principles enumerated in paragraph no. 16 is undisputed. However, in the facts and circumstances of the present case the order of transfer cannot be faulted. The petition is devoid of merit. Writ Petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]