

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

WRIT PETITION NO.13987 OF 2022

Dipak Keru Devrukhkar ...Petitioner
vs.
Raigad Zilla Parishad and Others ...Respondents

Ms. Divya Wadekar, for the Petitioner.
Mr. Anish Khandekar, for the Respondents.

CORAM : N. J. JAMADAR, J.
DATE : JUNE 08, 2023

P.C.:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order passed by the learned Member, Industrial Court, Thane on an application for interim relief (Exhibit U-2) dated 15th October, 2022 in Complaint (ULP) NO. 154 of 2022 whereby the application for interim relief restraining the respondents from giving effect to the order of transfer of the petitioner from Mahad to Panchayat Samiti, Shreevardhan dated 21st July, 2022 came to be rejected.
3. The petitioner was posted as Jr. Assistant (Clerk) in the office of Sub Division, Mahad. Purportedly on the basis of complaint received against the petitioner, he came to be transferred to Panchayat Samiti, Shreevardhan after obtaining the approval of the

competent authority. The petitioner filed a complaint under section 28 read with item 3, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 alleging inter alia that the transfer was mala fide and under colourable exercise of the authority. In the said complaint, the petitioner prayed for interim relief.

4. By the impugned order, the learned Member, Industrial Court was persuaded to reject the application for interim relief holding that the transfer of the petitioner prima facie did not appear to be punitive, and it was effected in larger public interest. Thus, neither a prima facie case was made out nor the balance of convenience tilted in favour of the petitioner.

5. Being aggrieved the petitioner has invoked the writ jurisdiction.

6. I have heard Ms. Divya Wadekar, learned counsel for the petitioner, and Mr. Anish Khandekar, learned counsel for the respondents.

7. The learned counsel for the petitioner would urge that the

transfer is the outcome of the complaint made by a political functionary. The authorities have not conducted an independent inquiry on the basis of the complaint. The transfer is also mala fide. The learned counsel took the Court through the copy of the complaint and the impugned order. It was urged that the learned Member, Industrial Court did not properly appreciate the grounds raised in the complaint. In any event, according to the learned counsel for the petitioner, the transfer is based on political considerations and, therefore, the petitioner deserves to be protected.

8. In opposition to this, the learned counsel for the respondents would submit that the respondents have followed the procedure prescribed for effecting transfer and no case is made out to interfere with the discretionary order passed by the Industrial Court.

9. It is trite that the transfer is an incidence of service. Where transferability is a condition of service, the Court or Tribunal would not be justified in interdicting an order of transfer unless it is mala fide or in violation of the statutory conditions. It is equally recognized that the mala fide are easy to allege than prove. In the case at hand, indeed there is material to show that the complaints

were made against the petitioner by persons having political background. However, there is also a report to indicate that the competent authority had inquired into those complaints and the immediate superior of the petitioner had reported that grievances raised in those complaints were found correct. Thereupon, the Divisional Commissioner granted the approval and the petitioner came to be transferred.

10. In the circumstances of the case, the learned Member, Industrial Court has correctly exercised the discretion not to interdict the order of transfer. Neither a clear case of malafide is made out. Nor there is violation of the statutory provisions in transferring the petitioner mid-term. Thus, no case is made out to interfere with the order in exercise of extraordinary writ jurisdiction.

Hence, the following order.

ORDER

The petition stands dismissed.

(N. J. JAMADAR, J.)