

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2438 OF 2023**

1. The Indian Express (P) Limited,
A Company incorporated under the
provisions of the Companies Act, 1956
and having its registered office at 7th
floor, Mafatlal Centre, Ramnath Goenka
Marg, Nariman Point, Mumbai-400021.

 2. Ms. Vaidehi Thakar, of Mumbai
Indian Inhabitant, Director of The
Indian Express (P) Limited and having
its registered office at 7th floor,
Mafatlal Centre, Ramnath Goenka
Marg, Nariman Point, Mumbai-400021.

 3. Mr. Nitin Jumde, of Pune Indian
Inhabitant General Manager of the
Indian Express (p) Limited having
his office at 1205/2/C, 1st floor,
Express House, Shirole, Off J.M.
Road, Pune-411 005.
- PETITIONERS.**

VERSUS

1. Mr. Ganesh Gopinath Rane,
Age-42 of Mumbai Indian Inhabitant,
residing at Room No. 1, Vijay Niwas,
Jangal Mangal Road, Bhandup (W)
Mumbai-400078.
2. Mr. Vivek Gajanan Sagvekar,
Age-43 of Panvel Indian Inhabitant,
residing at c/o Shreya Sagvekar,
Flat No. 404, Swarn Shilp, Plot No. 1032,
Pal Naka, Panvel,
Dist. Raigad-410206.

....RESPONDENTS

Mr. Darius Khambata, Senior Counsel, a/w Mr. Amol Joshi,
Ms. Tejaswi Ghag, Mr. Shivam Singh i/b Poorvi Kamani, for
Petitioners.

Ms. Jane Cox i/b Mr. Ghanshyam Thombare, for
Respondents.

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 5th APRIL, 2023

PRONOUNCED ON:- 5th JUNE, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2) By this Petition the petitioners take exception to an order dated 28th November, 2022, passed by the learned Member, Industrial Court at Thane on an application for interim relief (Exhibit-U-2) in Complaint (ULP) No. 219 of 2022, declaring that the petitioners engaged in unfair labour practices under items 9 and 10 of Scheduled-IV of The Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 (“the Act 1971”), and temporarily restraining them from indulging in such unfair labour practices and staying the orders dated 7th November, 2022, of deputing the respondent Nos.1 and 2 to the offices at Lucknow and Chandigarh, respectively, till the final disposal of the complaint.

3) The petition arises in the backdrop of the following facts.

(a) Petitioner No.1 is engaged in Print Media. It publishes, *inter alia*, newspapers, “the Indian Express” and “Loksatta”. One of its printing presses is located at Mahape, Navi Mumbai. Respondent Nos.1 and 2 are designated as Senior Printers and posted at Mahape.

(b) Petitioner No.1 asserts, on account of intense competitive atmosphere in media business and the situation which arose due to Covid-19 pandemic, the operations at Mahape Printing Press have been considerably affected and instead of three shifts work is being carried out thereat in one shift only. In order to better utilise the workforce, without disturbing the personal and family life of its employees, the Petitioner No. 1 decided to send experienced Printers on six months deputation to the printing presses at other locations. Thus, to best deploy available resources and have smooth and effective operations, under an order dated 7th September, 2022, Respondent No. 1 was deputed to work at Lucknow press with effect from 15th November, 2022. Likewise the respondent No. 2 was deputed to work at Chandigarh press. The petitioners made provisions for reimbursement of the travel expenses, suitable accommodation at the places to which respondent Nos.1 and 2 have been ordered to be deputed and deputation allowance of Rs.2,000/-, per month.

(c) The respondent Nos.1 and 2, upon being served with the deputation orders, lodged a complaint of unfair labour practices under items 3, 5, 9 and 10 of Schedule-IV of the Act 1971,

alleging, *inter-alia*, that the orders were in effect transfers disguised as deputation.

(d) It was alleged that the respondent Nos.1 and 2 were being victimized for having lodged an earlier complaint being complaint (ULP) No.160 of 2022. In the said complaint by an order dated 19th September, 2022, the Industrial Court had directed the petitioner - employer to give seven days advance notice to complainants therein before they were transferred. Yet, under two months of the said interim order, by the impugned order, the respondent Nos. 1 and 2 were sought to be displaced and harassed under the guise of deputation as the employer could not have effected the transfer of respondent No.1 and 2. The action was, thus, clearly *mala fide* and also with an oblique motive to circumvent the interim order passed by the Industrial Court in complaint (ULP) No.160 of 2022.

(e) It would be contextually relevant to note that, in complaint (ULP) No.160 of 2022, the principal grievance of the complainants therein was that the employer was interfering in the union activities and elections and had made an endeavour to influence the election so that the Union was represented by pliant representatives.

(f) In the complaint, respondent No.1 and 2 moved an application for interim relief, seeking stay to the deputation order dated 7th November, 2022.

(g) The petitioners resisted the application for interim relief by filing an affidavit-in-reply. It was categorically denied that the deputation order was issued either to circumvent the interim order passed in complaint (ULP) No.160 of 2022, or to victimise the respondent Nos.1 and 2. It was contended that, deputation was necessitated by business exigency. Deputation did not amount to transfer. Neither there were any change in the duties, which the respondent Nos.1 and 2 were discharging at Mahape. Nor any change in the conditions of service.

4) The learned Member Industrial Court after appraisal of the pleadings, material on record and import of the order passed in complaint (ULP) No. 160 of 2022, was persuaded to hold that a *prima-facie* case of unfair labour practice was made out and the respondents-employees were entitled to interim protection. The learned Member was of the view that the deputation order was issued under two months of the interim order passed in complaint (ULP) No.160 of 2022, and it appeared to have been issued as a retaliatory measure to the lodging of the said complaint. In the wake of the allegations of the

employer interfering with the employees Union election. It was further held that by way of deputation, the respondent Nos.1 and 2 were professed to be assigned duties of Administrative or Supervisory nature at a distant place. In substance, though the learned Member reckoned that the deputation ordinarily does not amount to transfer, yet, in the backdrop of the circumstances of the case, an element of victimization was *prima-facie* made out. Holding thus, the Industrial Court stayed the effect and operation of the deputation Orders.

5) Being aggrieved the petitioners have invoked the writ jurisdiction.

6) An affidavit-in-reply is filed on behalf of respondent Nos.1 and 2 in support of the impugned order.

7) I have heard Mr. Khambata, the learned Senior Counsel for the petitioners, and Ms. Jane Cox, the learned Counsel for respondent Nos.1 and 2 at some length. With the assistance of learned counsel for the parties, I have also perused the material on record including the orders passed by the industrial court.

8) Mr. Khambata submitted that the learned Member Industrial Court misdirected himself in staying the deputation orders despite recording that deputation ordinarily does not amount to transfer. Mr. Khambata strenuously submitted that

deputation of an employee to meet the business exigencies is within the province of the authority of an employer and, ordinarily, is not susceptible to interference by Courts and Tribunals. In the case at hand, according to Mr. Khambata, the circumstances did not warrant interference by the industrial court. Amplifying the submission Mr. Khambata would urge that, firstly, the ground of victimization for lodging complaint (ULP) No. 160 of 2022, could not have been pressed into service as admittedly respondent No.2 was not one of the complainants and, thus, no case on that count could have been countenanced.

9) Secondly, according to Mr. Khambata, the learned member Industrial Court was in error in observing that there was change in the nature of duties and the respondents were being called upon to discharge administrative or supervisory duties, while they are posted as Senior Printers.

10) Thirdly, victimization could not have been attributed to the petitioners as the other employees had been sent on deputation prior to the respondent Nos.1 and 2, and, on account of the impugned order, in place of respondent Nos. 1 and 2, other employees have been deputed. In any event, according to Mr. Khambata, the foundational premise of the alleged interference

by the management in the affairs of the Union is unsustainable as it was essentially a dispute between two groups of the employees. Therefore, on none of the grounds the order of the Industrial Court deserves to be sustained.

11) Per contra, Ms. Cox, learned counsel for the respondent Nos.1 and 2 submitted that there is no such perversity in the impugned order, which would warrant interference in exercise of writ jurisdiction. The learned Member Industrial Court has ascribed justifiable reasons for grant of interim relief. Such order is not susceptible to interference in exercise of extraordinary jurisdiction, especially where the Industrial Court has exercised the discretion in favour of the employees, submitted Ms. Cox.

12) Ms. Cox urged with tenacity that the instant proceeding can not be appreciated independent of and disjointed from the allegations in the complaint (ULP) No.160 of 2022. A clear case of interference in the Union activity was made out, which impelled the same learned Member Industrial Court to grant interim relief in that complaint. Since the management was restrained from transferring the complainants therein without seven days prior notice, the management resorted to seemingly innocuous device of deputation but equally effective in

displacing and harassing the respondent Nos.1 and 2, submitted Ms. Cox.

13) Controverting the submissions on behalf of the Petitioners that there was exigency of the situation, Ms. Cox would urge that the work professed to be assigned to respondent Nos. 1 and 2 at the place of deputation detracts materially from the said claim. The duties which the respondent Nos. 1 and 2 are to perform at the place of deputation, are distinctly administrative and supervisory in nature and bear no co-relation to duties of the Senior Printers, now being performed by respondent Nos. 1 and 2 at Mahape. Therefore, the learned Member Industrial Court was fully justified in staying the effect and operation of the impugned deputation order, submitted Ms. Cox.

14) Ms. Cox would further urge that there can be no deputation at different offices under the same employer. At any rate such deputation can not be without the consent of the deputationist. To bolster up this submission, Ms. Cox placed a strong reliance on the judgment of Supreme Court in the case of **Ms. Sarita Singh Vs. M/s. Shree Infosoft Private Limited**¹.

15) I have carefully considered the rival submissions canvassed across the bar. Few uncontroverted facts deserve to be noted to

¹ 2022 SCC Online SC 65.

narrow down the controversy. Indisputably, respondent Nos.1 and 2 are presently posted at Mahape as Senior Printers. There is not much controversy over the fact that a complaint (ULP) No.160 of 2022, was lodged alleging unfair labour practice under the Act, 1971, and in the said complaint an interim order came to be passed on 19th September, 2022, directing the employer to give seven days clear notice before effecting any transfer.

16) It would contextually relevant to note that the fact that respondent No.2 is not the complainant therein could not be contested. However, an affidavit is affirmed by respondent No.2, in this Petition that he was also present in the meeting held to elect the office bearers of the Union on 8th August, 2022, and had objected to the election of the officer bearers who, according to respondent Nos.1 and 2, are pliant. Issue and service of the deputation orders dated 7th November, 2022, deputing the respondent No.1 at printing press Lucknow and Chandigarh, respectively, are not in dispute.

17) As considerable submissions were canvased on the alleged change in the nature of duties and the terms of orders of deputation, it may be necessary to extract the relevant part of the order, in respect of Ganesh Rane, respondent No. 1. It reads as under:-

“This is to inform you that you have been deputed to Lucknow Press in the Rotary Department for a period of six months beginning from 15/11/2022 due to exigencies of work. Your key result areas during your deputation are:

- (a) Monitoring the quality of product and ensure deadlines are met.
- (b) Work towards improving the quality in terms of density, registration and ink control of the product.
- (c) To ensure proper make ready checks to reduce start up waste and also time in between chageovers.
- (d) Strive to achieve/improve and maintain print waste target.
- (e) Identify recurring problem affecting smooth production and minimizing them in coordination with the maintenance team.

Please find below the Lucknow Press address.
The Indian Express (P) Ltd
1/8, Vivekkhand, Gomati Nagar,
Lucknow-226010 ”

18) The orders further provide that the respondent Nos.1 and 2 would be entitled to receive deputation allowance of Rs.2,000/-per month, along with monthly salary, and their traveling expenses would be reimbursed and suitable accommodation would be also provided to them. It was further added that ‘all other terms and conditions of the service of respondent Nos.1 and 2 would remain unchanged’.

19) Respondent No.1 was initially appointed as trainee “Semi-Skilled Baller” with effect from 1st April, 2003. Respondent No.2 was initially appointed as “Senior Semi-Skilled Baller” with

effect from 1st December, 2006. It is incontrovertible that transfer to any place / department in India in any of Petitioner No.1's office, associate concern or publication or allied offices then in existence or to be established later, was an express term of employment of both Respondent Nos.1 and 2 in the respective appointment orders.

20) In the context of the express term of transferability, the challenge to the order of deputation as a *mala fide* exercise and an instrument of victimization deserves to be appreciated. The broad submission on behalf of the respondent Nos.1 and 2 that the impugned orders dated 7th November, 2022, are, in effect, transfers and not "deputation", deserves to be considered first.

21) On first principles, in my view, the said challenge does not carry much conviction in the face of an express term of transferability. If an employee can, under the terms of the contract, be transferred to any place in India, a fortiori the employee can be posted by way of deputation. Nonetheless, the challenge deserves to be appreciated on the anvil of juridical connotation of the term, "deputation".

22) In the case of Ms. Sarita Singh (supra), the Supreme Court after adverting to the previous pronouncements in the

cases of **State of Punjab Vs. Inder Singh**², **Umapati Choudhary Vs. State of Bihar**³ and **Union of India Vs. S.N. Maithy**⁴, in which the juridical connotation of the term, “deputation” was expounded, enunciated that a deputation was a tripartite consensual agreement between the lending employer, borrowing employer and the employee. Specific rights and obligations would bind the parties and govern their conduct. A transient business visit without any written agreement detailing terms of deputation will not qualify as a deputation unless the respondent were to lead cogent evidence to indicate that the appellant was seconded to work overseas on deputation.

23) The aforesaid observations were made in the backdrop of the peculiar facts of the said case wherein the appellant therein was sued by the employer for having tendered resignation within a certain period of her overseas stint for a period of 82 days, as under the terms of the contract appellant therein was required to serve the respondent-company for a certain period depending upon the period of overseas deputation.

24) In the case of **Inder Singh** (Supra), the question before the Supreme Court was whether the Police personnel who were on

2 (1997) 8 SCC 372

3 (1999) 4 SCC 659

4 (2015) 4 SCC 164

deputation with CID Punjab Police for years together should be permitted to be repatriated to their parent cadre, on a relatively lower position. In that context, the Supreme Court expounded the concept of 'deputation' as under :-

"...18. The concept of "deputation" is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be...."

25) In the case of **Umapati Choudhary** (supra), the question before the Supreme Court was, whether the appellant therein should be treated as a permanent employee of the Bihar Sanskrit Shiksha Board or he was on deputation to the Board from Kameshwar Sirigh Darbhanga Sanskrit University. While

answering the question in favour of the appellant and treating him to be a permanent employee of the Board, the Supreme Court explained the import of the term 'deputation' as under :-

"...8. Deputation can be aptly described as an assignment' of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled...."

26) In the case of **S N Maity** (Supra), the distinction between "transfer on deputation" and "appointment on deputation" was adverted to, by the Supreme Court, and the following observations were made:

"15. The controversy that has emerged in the instant case is to be decided on the touchstone of the aforesaid principles of law. We have already opined that it is not a case of simple transfer. It is not a situation where one can say that it is a transfer on deputation as against an equivalent post from one cadre to another or one department to another. It is not a deputation from a Government Department to a Government Corporation or one Government to the other. There is no cavil over the fact that the post falls in a different category and the 1st respondent had gone through the whole gamut of selection. On a studied scrutiny, the notification of appointment makes it absolutely clear that it is a tenure posting and the fixed tenure is five years unless it is

curtailed. But, a pregnant one, this curtailment cannot be done in an arbitrary or capricious manner. There has to have some rationale. Merely because the words 'until further orders' are used, it would not confer allowance on the employer to act with caprice....”

27) The aforesaid pronouncements, with respect, were rendered in a completely different fact-situations. Undoubtedly, the connotation of the term, “deputation’ in service law, was expounded in each of the aforesaid cases. Few broad features of deputation were spelled out. However, it would be difficult to accede to the broad submission that there can be no deputation at a different office, simplicitor, under the same management. It does not seem to be an immutable rule that the deputation must be to an establishment under a different employer. In my view, the concept of “deputation” is elastic enough to cover, in its fold, even a case where an employee is deputed to work at another office under the control of the same management. Thus, the primary challenge sought to be raised by Ms. Cox does not merit acceptance.

28) This takes me to the aspect of alleged victimization. The learned Member, Industrial Court was of the view that since the impugned order of deputation came to be issued under two months of the interim order passed in complaint (ULP) No. 160 of 2022, it *prima facie* appeared to be an exercise in

circumvention of the said order and, thus, amounted to victimization.

29) Mr. Khambata endeavored to draw home the point that since respondent No.2 was not the complainant in complaint (ULP) No. 160 of 2022, the said impugned deputation order could not have been interdicted on that ground. I am not persuaded to take such a technical view of the matter. Since respondent No.1 was indubitably one of the complainants in the said complaint and respondent No.2 has affirmed an Affidavit joining the cause with the complainants in the said complaint, I deem it appropriate to deal with the substance of the challenge to the deputation.

30) It is a common ground that the genesis of the said complaint (ULP) No. 160 of 2022, was the alleged interference by the management in the election to the employees Union. A specific allegation is made that the petitioner No.3 - General Manager of petitioner No.1 declared himself as the Election Officer and, ignoring the objections of the rest of the employees, declared that only eleven nominations were received and office bearers were elected unopposed.

31) This allegations, even if taken at par, in my view, relate to a matter of moment. There is substance in the submission of

Mr. Khambata that the disputes were essentially between the groups of employees. Having regard to the nature of the dispute, it would be difficult to sustain the allegation of *mala fide* for a length of time. Moreover, the grievance raised by the complainants as regards to the election came to be rejected by the Sub-Registrar under the Bombay Industrial Relations Act, 1946, by an order dated 28th March, 2023. Thus, *prima facie*, in the context of a dispute between the group of employees over the rival claims to the office beararship of the Union, *mala fide* can hardly be attributed to the management.

32) Ms. Cox would then urge that the duties which the respondent Nos. 1 and 2 were supposed to discharge at the place of deputation are primarily of administrative or supervisory nature. Inviting the attention of the court to Schedule – III of the Order dated 11th November, 2011 issued by the Government of India after Acceptance of the Majithia Wage Boards Grouping of Non-Journalist Newspaper Employees-Factory Staff, it was urged that the Senior Printers and Supervisors are distinct posts and their duties are not interchangeable.

33) Mr. Khambata, on the other hand, would urge that the Senior Printers and Supervisor are included in one and the

same group and a Senior Printer is excepted to supervise the printing machines. Therefore, according to Mr. Khambata, there is no change in the duties, which the respondent Nos. 1 and 2 would be required to perform post deputation.

34) The duties under the caption 'key results area', in the deputation order, are extracted above. On a careful perusal of the key results areas, which the respondent Nos. 1 and 2 are expected to achieve during the deputation, one gets an impression that the articulation is of efficient discharge of the duties. The underlying theme is quality control and efficient output.

35) I find it rather difficult to agree with the submissions that the respondent Nos. 1 and 2 are called upon to discharge administrative or supervisory functions far detached from the work, which the respondent Nos. 1 and 2 now perform as Senior Printers.

36) The conspectus of the aforesaid consideration is that, *prima facie*, the order of deputation does not seem to be actuated by *mala fide*. The learned Member Industrial Court lost sight of the pivotal fact that transferability was an essential term of employment. The deputation, in the circumstances of

the case, appeared to be in pursuit of the optimum and better utilization of the available resources.

37) The learned Member also lost sight of the fact that the respondent Nos. 1 and 2 were not singled out and discriminatory treatment was meted out to them. Petitioners have affirmed that two Senior Printers, Mr. Vaibhav Palav and Mr. Sharad Pawar had been transferred to Chandigarh and Lucknow, respectively, and were reposted at Mahape.

38) The duration of deputation was also not adequately considered by the learned Member Industrial Court. The deputation for a short period to meet the exigency of the situation can be said to be a normal incidence of employment. In any event, to rule out the possibility of the respondent Nos. 1 and 2 being displaced for a long period under the guise of deputation, the petitioners were directed to file an affidavit. Thereupon an affidavit is filed by the petitioner No. 2.

39) The petitioner No. 2 has affirmed that the respondent Nos. 1 and 2 and such other employees at Mahape establishment/ printing press who are/ shall be sent on deputation for a period not exceeding six months to other industrial establishments/printing presses of the Petitioner No.1-company, their term of “deputation” would not be extended and

at the end of the period of deputation, those persons shall return to their duties at Mahape establishment/printing press.

40) At this juncture, a reference to the judgment of this Court in the case of **Vidyut Metallica Pvt Ltd Vs. Maharashtra Rajya Rashtriya Kamgar Sangh and Another**⁵ may be necessary. In the said case, it was observed that it is an inherent power of the employer to depute its employees to meet specific exigencies and so long as the said deputation is not being ordered to transfer the employees under the guise of managerial authority, there was no case to interfere with the order of deputation.

41) The upshot of aforesaid consideration is that the learned Member Industrial Court committed an error in restraining Petitioners from giving effect to the order of deputation for a period of six months. Since the discretion was exercised on an incorrect premise and without correctly appreciating the legal position, interference is warranted in exercise of writ jurisdiction. Hence, the Petition deserves to be allowed.

42) Thus, the following order.

:-ORDER:-

- i) The Petition stands allowed.
- ii) The impugned order stands quashed and set aside.

⁵ (2002) 2 LLJ 829

iii) If the petitioners still consider it to be necessary to depute the respondent Nos. 1 and 2, in accordance with the orders dated 7th November, 2022, the respondent Nos. 1 and 2 shall be given 15 days time to join at the place of deputation.

iv) In that eventuality, the petitioners shall abide by the undertaking in the affidavit of petitioner No. 2 dated 30th March, 2023 that the deputation of any employee will not be extended beyond six months and they will be reposted at Mahape Printing Press after the end of six months deputation.

v) It is hereby made clear that this order shall not construed as an authority to the petitioners to post the other employees on deputation at other establishment/press and in case the legality and validity of any such order is questioned, it shall be decided on its own merit and in accordance with law.

vi) Rule made absolute in the aforesaid terms.

No order as to costs.

[N. J. JAMADAR, J.]