



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

WRIT PETITION NO. 5531 OF 2020

**WOCHARDT EMPLOYEES UNION THROUGH ITS PRESIDENT
VERSUS
THE MANAGEMENT WOCHARDT LTD**

Mr. Y. I. Thode, Advocate for the petitioner
Mr. Y. R. Marlapalle, Advocate for the respondent

CORAM : R. M. JOSHI, J.

RESERVED ON: 21st JUNE, 2024

PRONOUNCED ON : 1st JULY, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to the impugned judgment dated 26/05/2020 passed the Industrial Court, Aurangabad in the Complaint (ULP) No. 340/2017, filed under Sections 26 and 28 read with Items 3 and 9 of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Labour Practice Act, 1971 (for short 'MRTU & PULP Act')
3. Parties are referred to as complainant and company for the sake of convenience.
4. Complainant is a registered trade union under the Trade Unions Act, 1926 and claims to be representing all 54 workmen working in

the establishment of respondent-Company at Chikhalthana.

5. It is the case of the complainant that there are 54 permanent workmen who are members of the union and there existed a settlement between complainant union and the company for the period from 01/01/2013 to 31/12/2016. The complainant issued notice of termination of settlement dated 28/10/2016 under Section 19(2) of Industrial Disputes Act, 1947. Thereafter on 09/11/2016 charter of demand with justification was forwarded to the company. Since there was no settlement between parties, conciliation proceedings were initiated before the Competent Authority. The said Authority filed failure report dated 25/09/2017. The appropriate Government referred the dispute for the adjudication to the Industrial Tribunal by order dated 10/10/2017 and the said proceeding was numbered as Reference (IT) No. 14/2017. Both parties appeared before the Tribunal on 13/11/2017.

6. It is the case of the complainant that on 27/11/2017 when as usual all workers went to the report for duty, they found main gate of the company being closed. They also found notice dated 24/11/2017 displayed at the gate stating that all 54 workmen working in the establishment are transferred. 20 workmen were transferred to Shendra, Aurangabad, 16 workmen were transferred to Walunj and 18 workmen were sent to Baddi, state of Himachal Pradesh. Individual transfer orders were said to have

been issued to the workmen. In the said transfer orders reasons are recorded that company is suffering financial losses for several years and that the manufacturing operation at the present site has come to a halt since July, 2017. The transfers are said to be effected for not being able to provide work for several months. It also claimed that instead of effecting retrenchment of the workmen they are transferred to other establishment. Complainant has specifically averred the malafides claiming that for false reasons transfer is effected and the same is done as the complainant has raised charter of demand and reference thereof is pending. It is also claimed that the transfer could not have been effected adverse to the workmen without obtaining permission of the Industrial Tribunal under Section 33(2)(a) of the Industrial Disputes Act. On the basis of these averments complaint of unfair labour practices came to be filed under item 3 and 9 of schedule II of MRTU and PULP ACT. During the pendency of the complaint the 36 workmen were transferred to Ankleshwar, Gujrat by issuing order dated 10/01/2018. Said orders are also challenged before the Tribunal.

7. Company filed written statement and raised objection with regard to the tenability of the challenge to the transfer orders issued on 10/01/2018 contending that the establishment which has effected the said transfer has not been arrayed as party and hence complaint is not maintainable. On merit the company denied the allegations/adverse

averments made in complaint. The company, however, did not dispute the employment, existence of previous settlement, termination thereof and submission of fresh charter of Demands by complainant. The pendency of Reference (IT) 14/2017 is also admitted. It is specific case of company that there was no production activity from July 2017 and as such there was no other option for the company but to transfer the services of the workmen to other establishment. It is specifically claimed that there exists service condition of transfer and as such there is no substance in the contention of the complainant about the same being malafide. As the transfer is incident of service there is no illegality in the said transfer. It is also claimed that it being incident of service and for want of change in service condition, there was no need to seek any permission from the Industrial Tribunal inspite of the pendency of reference under Section 33 of the Act. Inter alia, on these amongst other grounds dismissal of complaint is sought.

8. Complainant examined Bhanudas Gadekar, Jalil Siddiqui and Ujwala Kulkarni as its witnesses to prove the unfair labour practices committed by the company. Whereas the company examined sole witness Ajay Kulthe and relied upon documentary evidence such as change control report dated 24/12/2016 (Exhibit C-26), report dated 02/05/2017 (Exhibit C-27) and report (Exhibit 28). The learned Industrial Court dismissed the complaint by holding that the transfer is incidence of service and order of transfer cannot be termed as malafide. It is also held that as there is

admission given by the witnesses of the complainant that the relationship between the complainant, workmen on one hand and the company on other was cordial for last 35 years, no malafides can be attributed. It is therefore held that the company was within its right to effect the transfer of employees to other establishment and hence there is no unfair labour practices.

9. Heard oral submission as well as considered written submissions filed by both sides before this Court. Also have carefully gone through the case law relied upon.

10. In nutshell the contention of the complainant's counsel is that the learned Industrial Court has failed to take into consideration the relevant admitted facts which preceded the transfer orders. It is submitted that undisputedly termination of the settlement was effected resulting into furnishing fresh charter of demand and the said dispute is referred for its adjudication to the Industrial Tribunal vide Reference (IT) No. 14/2017. It is his submission that even if it is accepted for the sake of argument that the transfer is a service condition of the workmen, however, merely on that count no right gets vested in the company to effect the transfer of their service and when there is evidence to show that the reasons for transfer are false, the Industrial Tribunal ought to have held that the transfers are actuated by malafides. It is his submission that the Tribunal has

committed serious error in not considering the relevant evidence led on record and in particular suggestion made to the witness of the complainant that upto year 2017 the workers were doing overtime work and were also paid for the same. It is his submission that the said suggestion is the case of the complainant which amounts to admission conclusively shows that the work was available requiring overtime to be done by workmen. It is submitted that though the company has failed to prove the alleged reason for the transfer, the learned Industrial Court has failed to take into consideration the same and the judgment passed by the Court is perverse requiring interference therein.

11. At the outset, learned counsel for the respondents submits that considering scope of Writ jurisdiction this Court would not be correcting error of facts committed by Industrial Court. According to him once it is service condition of the workmen that they are transferable from one establishment to another, it is not open for them to challenge the order of the transfer. In furtherance of these submissions it is further canvassed that no permission was required from the Industrial Tribunal during the pendency of Reference (IT) No. 14/2017 since there is no change in the service condition of the workmen. As far as the evidence on record it is submitted that the company has led evidence indicating the complete halt of production and also in view of the admissions given by the witnesses of the complainant that there was no individual bias. According to him,

considering the cordial relationship of 35 years between the workers and company, no case of legal or factual malice is made out. He further submits that the law on the point of transfer is fairly settled to say that the order of transfer cannot be interfered by the Court/Tribunal unless malafides are proved. It is further argued that since it is mass transfer, malafides can be attributed to the company and to support the submission he relied on judgment of this Court in Janta Commercial Co-operative Bank, through its Managing Director, Akola Vs. Member, Industrial Court and another, 1997(1) LLN 688. To support his submission he also placed reliance on following judgment.

- i. Syed Yakoob Vs. K. S. Radhakrishnan and Ors. AIR 1964 SC 477 (only error of law and not error of fact can be corrected in a Writ Petition).
- ii. The Management of the Syndicate Bank Ltd. Vs. The Workmen, AIR 1966 SC 1283 (Tribunal should be careful while interfering with transfer effected of an employee by Bank)
- iii. State of U.P. and Ors. Vs. Gobardhan Lal (AIR 2004 SC 2165). (Unless transfer of malafide or in violation of rules, not to be interfered with)
- iv. Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Ors. AIR 2010 SC 3745. (No litigant to derive benefit of pendency of litigation)
- v. Rajneesh Khajuria Vs. Wockhardt Ltd. And Anr. AIR 2020 SC 629. (Considering right of Management to transfer employee, unless actuated by malafides, no interference)
- vi. ACC Ltd. Vs. Associated Cement Staff Union, 2009 II CLR 904. (Transfer of incident of service, so by effecting transfer workmen not adversely affected)
- vii. VIP Industries Ltd. Vs. Maharashtra Kamgar Karmachari Sanghatna, 2008 III CLR 22. (Matter of usage not prohibition)

against transfer and change of work place not adverse to workmen)

- viii. Sanjay s/o Late Ramesh Kumar Sinha Vs. Mineral Exploration Corporation Ltd., 2008(2) MLJ 27. (Judgment at interlocutory stage)
- ix. Cosmo Films Ltd., Aurangabad Vs. Sunil Vasudeorao Deshmukh, 2002(3) LLN 968. (Burden of proof of malafides and unfair labour practice on complainant)
- x. Shivaji A. More Vs. Estate Manager, Maharashtra State Farming Corp. Ltd., 1995 SCC OnLine Bom 527. (In matter of transfer employee must report transfer place and then to challenge it)
- xi. The Executive Engineer, Ahmednagar & Ors. Vs. Madhav Narhari Walake & anr. 1996(3) LLN 623. (In absence of transfer being against rules or malafide, no interference therein)
- xii. Janta Commercial Co-operative Bank, through its Managing Director, Akola Vs. Member, Industrial Court and another, 1997(1) LLN 688. (Transfer not condition of service but incident of service)

12. Before dealing with the factual controversy between the parties, it would be apposite to refer to certain undisputed facts which are reproduced herein below :-

- i) That the Respondent's establishment at Chikalthana engages 54 permanent workmen and they are members of complainant/union.
- ii) There existed settlement between union and company for the period from 01.01.2013 to 31.12.2016.
- iii) Complainant issued notice of termination of settlement under Section 19(2) of Industrial Dispute Act on 28.10.2016.
- iv) The charter of demand with statement was submitted on 09.11.2016.

- v) As there was no settlement between the parties, the matter was referred for conciliation which resulted into failure report dated 25.09.2017.
- vi) Appropriate Government refers the dispute for adjudication to Industrial Tribunal by order dated 10.10.2017 which was registered as Reference ID No. 14/2017.
- vii) Both the parties appeared in the said proceeding on 31.11.2017.
- viii) On 27.11.2017, a common notice was displayed on the main gate of the company informing the workmen that they are transferred to Shendra, Waluj and Baddi.
- ix) Individual transfer orders were also issued and the reason for transfer was financial loss for several years and manufacturing operations at Chikalthana came to halt since July 2017.

13. In the light of aforestated admitted facts, complaint came to be filed before the Industrial Court taking exception to the transfer orders issued to the workmen on the ground that the transfers are malafide. It is claimed that there is work available with the company and the purported reasons for transfer are false. It is also case of complainant that in view of Section 33(2)(a) permission is required to be obtained from the Tribunal for effecting transfer of the workmen. Initial burden, therefore, is on the complainant to prove these aspects. Complainant, in order to discharge the same, examined three witnesses viz., Bhanudas Ghodke, Jalil Siddique and Ujjwala Kulkarni. Apart from ocular evidence, the union has also relied

upon documentary evidence which is essentially in the form of correspondence exchanged with the company and other authorities.

14. Company on the other hand, supported the action of transfer of all the employees to various places contending that the company has incurred financial loss for years together and that since July 2017, production work at Chikalthana came to complete halt. It is claimed that instead of retrenching the workmen, they were transferred. It is specifically averred that transfer is the service condition of workmen and therefore, no permission was required to be obtained from the Industrial Tribunal inspite of the fact that reference ID No. 14/2017 was pending at that time. Respondent/company examined Ajay Kulthe as the sole witness and has relied upon documents Exhibit C-26 to C-28 which are production reports for the relevant period.

15. The law laid down by the Hon'ble Supreme Court in respect of scope to cause interference in order of transfer can be summarised as under :-

- i) Transfer is service condition/incidence of service.
- ii) There is no vested right in an employee to choose any particular place of work.
- iii) Scope of judicial review is restricted only if transfer is contrary to the statutory rules or actuated by malafides.

- iv) No person can seek annulment of the transfer order to avoid any personal inconvenience.
- v) There must be specific averment of malafides and evidence to prove the same.

Keeping in mind these principles of law with regard to scope of the Court to cause interference in any transfer order the facts and evidence of the present case are analysed.

16. As observed hereinabove, once complaint came to be filed with allegation that the Respondent has committed unfair labour practice, the initial burden is on the complainant to prove that the orders of transfer issued to the workmen are malafide and hence amounts to unfair labour practice. Evidence led by the complainant shows that there was settlement existing between the parties which came to an end on 31.12.2016. A fresh charter of demand was furnished to the company. Conciliation process was adopted and a Reference (ID) No. 14/2017 was initiated in that regard. Witnesses examined by complainant, specifically deposed that the reason for transfer is the submission of further charter of demand and that reasons mentioned in order of transfer are false. In the cross-examination a specific suggestion is made to Jalil Siddiqui to the effect that as and when there was increase in production, overtime was provided to workmen. It is further suggested that till 2017 overtime is paid. This worker himself has

done overtime till 2015-2016. These suggestions would have to be considered in the light of the case of the company that one of the reasons for transfer is inability of company to provide work at existing place for last several months. The evidence led by the complainant therefore is sufficient to discharge initial burden on them to prove that the orders of transfer issued to workmen were for reason of submission of fresh demand. It can not be expected from the complainant to lead evidence about reasons for transfer claimed by company and the onus therefore shifted on company to prove its case by justifying reasons for transfer.

17. It is trite that transfer is not condition of service, but incident of service. Similarly, a workman does not have any right to work at a particular place and change the place of work by itself does not amount to change in service condition. In such circumstances, though reference ID No. 14/2017 was pending, the company was not required to obtain permission from the Industrial Court under Order 33(2) of the Industrial Dispute Act while effecting transfer of the workmen.

18. Company examined sole witness Ajay Kulthe whose testimony shows that the according to him, the reports dated 24.12.2016 and 02.05.2017 show that there was no work and the production had come to standstill in the departments. He also claims that the workmen were sitting idle since May 2017 for want of work. In the cross-examination, a

specific question was asked to this witness that he has not produced any document to show that he worked as Executive and Assistant General Manager in production department. Thereafter it is suggested that he never worked therein. Though witness denied this suggestion but did not place before Court any evidence to substantiate that he did work in that department. Thus, there is no evidence to show that this witness has any personal knowledge of production department, in order to depose about it.

19. It is relevant to note that record placed before the Court indicates that the documents C-26 to C-28 placed on record are computerised sheets containing no signature of the author of the same. In such circumstances, in absence of the person who has maintained the said record is examined coupled with certificate under Section 65B of the Evidence Act, it was not open for the Court to read those documents in evidence. Industrial Court has also taken into consideration the report of the Deputy Commissioner of Labour on the basis of his visit to the establishment to Respondent/company on 29.08.2018 wherein he found that the manufacturing activities of the company were closed. Admittedly, the Deputy Commissioner of Labour who had submitted the said report was never examined before the Industrial Court and that the said report is not proved in accordance with the Evidence Act. Needless to say that before accepting the said report and to make the same as a ground for dismissal of the complaint, the Industrial Court ought to have ensured that the said

report is duly proved and that the complainant/union was given opportunity to cross examine the said authority. Though it is trite that the strict rules of evidence are not applicable to the labour jurisprudence, however, that does not permit the Court to give a complete go by to the basic rules of evidence and to accept the documents even without proof thereof.

20. For the transfer of all workmen of the undertaking at Chikalthana, company has given specific reasons of incurment of financial losses for several years, complete halt in the manufacturing activities for July 2017 and inability to provide work for several months and hence burden is on company to prove these reasons to show bonafides. Scrutiny of evidence of Ajay Kulthe does not show that he had any information with regard to the finance of the company nor he has deposed anything about financial status of the company nor there is evidence to show that for several past months of transfer, no sufficient work was available to be provided to workmen. There is no evidence to hold so. Pertinently, there is no communication made by company till filing of present complaint to any Authority under Labour laws, placing on record this fact. In absence of any cogent evidence to prove the reasons for transfer, serious doubt is created about the same.

21. According to company there is neither factual malice nor legal

malice shown in order to hold that transfer orders are actuated with malafides. Admission given by the witness of the complainant to indicate that for 35 years there were cordial relations between the management and workmen/union is relied upon and which is also accepted by Industrial Court. In this regard, it needs to be recorded that there cannot be any rule that because relationship between management and the company was cordial for number of years, the same cannot go sour at subsequent point of time. The Court was infact required to take into consideration the recent facts and circumstances in which the transfer order is issued. The case of complainant which is substantiated by evidence on record demonstrates that after termination of previous settlement, fresh charter of demand was submitted and there was no settlement arrived at between the union and the management and therefore, the same has resulted into making reference under the Industrial Dispute Act to the Industrial Tribunal. Thus, the complainant has shown that just prior to effecting transfer of the workmen to other places, there was dispute between the management and union. Perusal of the impugned order shows that the Industrial Court has completely ignored the said vital fact appearing from the evidence on record but has given undue importance to the admission given by the workmen about cordial relations for last 35 years.

22. In order to decide as to whether any action is malafide or actuated by malice, it needs to be seen as to whether such action is

bonafide and not for any extraneous reasons. As far as malice is concerned, there cannot be fixed formula which could be called as an act as malafide. Relevant facts and circumstances of the case would determine the same. No doubt, as per the evidence on record, transfer is service condition of the workmen and even otherwise it is incident of service. Thus, it can be said that it is a legal right of the company to effect transfer of the workmen, however, if such right is not exercised in good faith and if it is actuated by malafide then it is an act of malice.

23. Learned Industrial Court has refused to cause interference in the impugned transfer orders on the ground that since it is a mass transfer of all the workmen of the company, no malafides can be attributed in such case. Learned counsel for the company has relied upon the judgment of this Court in case of Janta Commercial Co-operative Bank vs. Member, Industrial Court and another (Writ Petition No. 3468 of 1995). It is his submission that by following the said judgment, those observations are made and hence there is no reason to cause any interference therein. Perusal of the said judgment shows that one employee of Janta Commercial Co-operative Bank has challenged his transfer from Akola to Manora. The facts of the said case suggest that 50 more employees were transferred from one place to another. In the light of these facts, this Court has observed thus :-

“5. Transfer is never a condition of service and rather it is an

incident of service and thus it is always open to the employer to transfer the employee in the interest of administration and no vested right is created in favour of the employee to a particular place of posting. Order of transfer is ordinarily not interfered with by the courts unless it is violative of Rules or is mala fide. By the order dated 15.06.1995 not only the present employee but also 50 other employees were transferred from their place of posting to some other places. Obviously and apparently it was not an isolation transfer but transfer of large number of employees and therefore the grievance of the employee that the transfer was mala fide inasmuch as the employee actively participated in the legal advice of the Union and that the Managing Director of the Bank apprehended that the brother of the employee was directly or indirectly helping a group which was opposed to the Managing Director, was unfounded. When mass transfer takes place inasmuch as 51 employees have been transferred by the order dated 15-6-1995, on its face there is no merit in the allegation made by the employee that the transfer order was actuated with ulterior motive and was not in the interest of administration.

A bare perusal of the facts of the said case and the observations made by this Court indicate that what has been held is that since there was transfer of other 50 employees, transfer of one of such employees was not considered as malafide or bias. This cannot be permitted to be read as in a case where there is mass transfer of workmen no malafides at all can be attributed. Industrial Court has failed to take into consideration the fact proved by the complainant that the action of

transfer of all the employees of the company was preceded by fresh charter of Demand and that the company has not been able to substantiate reasons for transfer. The findings recorded by the Industrial Court to the effect that in case of mass transfer of the workmen no malafides can be attributed cannot sustain.

24. So far as the judgment in the case of Shivaji A. More vs. Estate Manager, Maharashtra State Farming Corporation Ltd., MANU/MH/0363/1995, it is held that in the matter of transfer, the employee must report the transfer place and then can challenge it is concerned, it is established by the workmen that the transfer is actuated by malafides and therefore it amounts to unfair labour practice. Apart from this, evidence on record indicates that the provision of transportation is a condition of service of workmen. Overall evidence of the witnesses of the complainant coupled with the correspondence addressed to the company with regard to no arrangement being made in respect of transport facility indicates that there was a serious dispute with regard to the conditions of service being adversely affected. Complainant by leading evidence; oral as well as documentary; has substantiated the said fact. There is absolutely no evidence in rebuttal. In such facts and circumstances of the case, this Court is not inclined to hold that the order of transfer could not have been challenged before joining the transfer place.

25. Needless to say that there is no embargo on Court to go behind the order and to find out the real reason for transfer. Once such veil is lifted and the real reasons for transfer and malafide are seen, it is open for the Court to cause interference in the transfer orders. In the instant case, though there is right vested in the company to transfer workmen, the circumstances in which the order of transfer is issued and having regard to the fact that the reasons given for transfer are un-substantiated, it must be held that the orders of transfer are not bonafide but actuated with malafide. Once, the Court comes to the conclusion that the action of the company is malafide and is in colourable exercise of its powers, the only conclusion which can be drawn therefrom is that the company has committed unfair labour practice as covered by Item No. 3 of Schedule IV of MRTU and PULP Act.

26. As reflected from title of the Act itself, it aims at prevention of unfair labour practices. Section 27 of the Act specifically prohibits employer, employees or unions to engage in unfair labour practice. Thus, once it is held that any one of them have committed unfair labour practices it is incumbent on the part of Industrial/Labour Court to direct such party to desist/cease to engage into such unfair labour practices. In such case, Court must interfere in the impugned orders of transfer.

27. In view of above discussion, it must be held that the Industrial

Court has committed error in law by not considering the evidence on record in proper perspective led by complainant and wrongly placed reliance on evidence which is not admissible in law. It is therefore held that the complainant/union has proved that the transfer of all the workmen of the establishment at Chikalthana was not for administrative exigencies of company but it was reaction to charter of demands submitted by the union on their behalf and that the reasons recorded for transfer are false. Thus, company/employer has committed unfair labour practices under Item 3 of Schedule IV of MRTP & PULP Act. Consequently, the company is directed to desist from the unfair labour practices and orders of transfer issued to all 54 workmen of company from establishment at Chikalthana to other places stand set aside.

28. Learned counsel for the company submitted that in the year 2018 transfers are effected of some of the workmen to Ankaleshwar (Gujrat) and in absence of joining establishment which has transferred workmen, those orders cannot be challenged. This Court, finds no reason to accept the said submission as once the original transfer orders issued against the workmen are held to be malafide and they are set aside, the question of existence/implementation of further order does not arise. Those orders become inconsequential. Outcome of causing interference and setting aside said transfer orders would mean that work place of the workmen stands restored as on the date of issuance of transfer order. Workmen are

entitled to get all consequential benefits which follow from their terms of employment. Non grant of the benefits of service condition amounts to unfair labour practice under Item 9 of Schedule IV of MRTU & PULP Act. Hence, by setting aside impugned judgment, complaint ULP No. 340/2017 stands allowed, in terms of prayer clauses (a) to (e).

29. It is sought to be contended on behalf of the company that out of 54 workmen, except for 3, all others have settled their dispute with the company and therefore they are no more covered by the complaint. In this regard, it is pertinent to note that the complaint was filed on behalf of 54 workmen. Undisputedly, till the decision of the complaint, it is not the case of the company that some of the workmen have withdrawn themselves from the complaint. Moreover, even evidence led before the Industrial Court does not show that complainant/union has accepted the said contention of the company. Since the Industrial Court has taken into consideration the grievance of 54 workmen and passed the impugned judgment, this Court is only required to see as to whether the said judgment is sustainable in the eyes of law. This Court therefore does not wish to go into the issue as to whether workmen have settled the dispute with the company or not. The consequence of such settlement, if any, would bind parties in accordance with law.

30. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

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LATER ON :

1. Learned counsel for Respondent seeks stay to the order to move the Hon'ble Supreme Court.

2. This request is opposed by the learned counsel for the Petitioner on the ground that the workers are without wages for long period.

3. Since the order of dismissal passed by the Industrial Court is reversed by this Judgment and as workmen can be compensated in terms of money, to enable the Respondent to test this order before the Hon'ble Supreme Court, it stands stayed for a period of four weeks.

(R. M. JOSHI, J.)

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