



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 5342 of 2021

Sh S/o Suryabhan Chandankhede ..vs.. Uttam Value Steel Ltd., Bhugaon link Road, Wardha
through its President, R. K. Sharma (HR and admin)]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. G. N. Mohite, Advocate for the petitioner
Mr. V. P. Marpakwar, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 10-10-2024

On previous date, following order was passed.

“On 17-12-2021, following order was passed.

*“Heard Ms. Mohite, learned counsel for
the petitioner.*

2. The petition challenges the order dated 17.11.2021 passed by the learned Industrial Court, Nagpur whereby the complaint filed by the petitioner seeking cancellation of the order of transfer dated 21.01.2014 and 15.10.2015 (pg 138), whereby the petitioner has been transferred from the establishment of the respondent at Bhugaon, Wardha to Murbad, Thane has been rejected and it has been directed that in case the petitioner fails to report for work at Murbad by 31.12.2021, the claim of the petitioner to reinstatement shall be deemed to be extinguished and necessary legal consequences shall follow. Learned counsel submits, that even if the learned Industrial Court was not inclined to grant the relief sought, it could not have passed the sweeping direction regarding the extinguishment of the claim for reinstatement, as such a claim was adjudicated by the learned Labour Court in Complaint ULP No. 05/2001 by virtue of Judgment dated

20.03.2006 which was confirmed up to this Court in Writ Petition No. 2150 of 2007, dated 21.06.2012. She therefore, submits, that such a direction cannot be sustained in law and needs to be quashed and set and aside. Insofar as the transfer is concerned, the learned counsel submits that the petitioner is the senior most person at Bhugaon, Wardha and as such ought to have been retained. It is further submitted that the petitioner has been victimized for having approached the learned Labour Court earlier challenging the illegal termination, and therefore, the petitioner cannot be permitted to be transferred in such a manner. A further plea is raised that in case the petitioner is joined at Murbad, his salary would be reduced. Learned counsel submitted that all these contentions have not been properly appreciated by the learned Industrial Court, and therefore, the impugned order be set aside.

3. Insofar as the plea regarding transfer is concerned, I do not see any merit in the contention for the reason that transfer is an incidence of service and it is open for an employer having multiple establishments to transfer an employee to a place where the skills of the employee can be best used. In such matters, the employer is the best judge of the situation. Insofar as the contention that the petitioner upon joining at the place of transfer will be getting a lesser salary nothing has been brought to my notice which could substantiate such a claim. The claim of victimization on account of the petitioner having instituted proceedings earlier, cannot be a ground to infer victimization as the petitioner stands reinstated. I, therefore, do not feel it necessary to interfere in the impugned order; insofar as, it refuses to interdict the transfer order. The petitioner, therefore, shall be liable to join at the place of

transfer or suffer the consequences which may ensue on account of his not joining.

4. Insofar as the directions as contained in the impugned order in para 2 of the operative order, which states that in case of failure of the petitioner to join, the claim to reinstatement shall be deemed to be extinguished I am in agreement with the learned counsel for the petitioner; as the learned Industrial Court cannot extinguish any right, of reinstatement which has been granted in favour of the petitioner by the learned Labour Court in ULP No.5/2001, decided on 20.03.2006, which has been subsequently confirmed by this Court in Writ Petition No.2150 of 2007, decided 21.06.2012.

5. Issue notice to the respondent only to the extent of the portion of para 2 of the operative order which directs that on failing to join at the transferred post the claim to reinstatement shall be deemed to be extinguished, returnable in three weeks.

6. The petitioner to serve the respondent, by all modes permissible in law. In the meantime, there shall be stay to the aforesaid directions as contained in para 2 of the impugned order.

7. It is made clear, that the transfer of the petitioner from Bhugaon, Wardha to Murbad, Thane, has not been stayed.”

When enquired, learned counsel for the petitioner submits that the petitioner has not joined at Murbad as he is not willing.

This petition is liable to be dismissed on this count alone. Learned counsel for the petitioner, however, seeks time to take instructions.

Stand over to 10-10-2024.

Interim relief to continue till then.”

2. Learned counsel for the petitioner submits that the petitioner's mobile is switched off and, therefore, she could not contact her client.

3. This appears to me to be yet another reason to further prolong the issue. As noted in the earlier order, the petitioner has not joined the transferred place on the count that he is not willing to join the post. This act itself may attract the disciplinary proceedings against the petitioner.

4. With the above observations, the petition is dismissed.

5. At this stage, learned counsel for the petitioner makes a request to stay the effect and operation of the order as petitioner intends to challenge the same. It is surprising that the petitioner, who has not given instructions to his Advocate in compliance to order dated 17-12-2021 read with order dated 30-9-2024, has informed his counsel that he intends to challenge the order. This speaks volume about the conduct of the petitioner. The request is accordingly refused.

(Anil L. Pansare, J.)