



2024:DHC:4676



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 27th May, 2024**
+ W.P.(C) 11727/2005 & CM APPL. 8626/2005 & CM APPL.
1278/2006
THE MGMT. OF M/S PATEL ON BOAR Petitioner
Through: Dr. M. Y. Khan, Advocate
versus
THE SECRETARY (LABOUR) & ANR Respondents
Through: Mr. Ram Kumar, Advocate for R-2
(Through VC)

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition has been filed on behalf of the petitioner under Articles 226 and 227 of the Constitution of India seeking the following reliefs:

*“i) issue a writ of certiorari or any other appropriate writ, order or directions of like nature for quashing the impugned, award dated 27.05.2005, passed by the Ld. Industrial Tribunal-II, Delhi, in I.D. No.229 of 2001,
ii) pass any other or further order or directions as this Hon'ble Court may deems fit and proper under the facts and circumstances of the case.”*



2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

- a) The respondent no.2 (“respondent workman” hereinafter) was appointed by the petitioner i.e., M/s Patel on Board Couriers Ltd. (“petitioner entity” hereinafter) at the post of an ‘Operation Supervisor’ on 1st April, 1993. Thereafter, on 1st October, 1993, the services of the respondent workman were confirmed and he was handed a confirmation letter for the same.
- b) In the year 1998, the respondent workman was promoted by the petitioner entity to the post of ‘Operation Supervisor Grade C-1’. Thereafter, the respondent was served upon a transfer letter dated 2nd February, 2000 whereby, he was promoted to the post of ‘Operation Supervisor Grade-SR’ and his services were transferred from the Delhi office to the Lucknow branch office (having its regional office in Delhi) of the petitioner entity.
- c) Aggrieved by the above, the respondent workman did not join the transferee location and filed a civil suit challenging the aforementioned transfer order, which was later on withdrawn by him on 25th April, 2000. The respondent workman also filed an application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 seeking ad-interim *ex-parte* stay on the said transfer order, which was dismissed by the Trial Court *vide* order dated 6th April, 2000.
- d) Subsequently, the respondent workman raised the above grievance before the conciliation officer by filing a statement of claim dated 8th



April, 2000. Thereafter, as the matter could not be resolved before the conciliation officer therefore, *vide* reference order dated 29th June, 2001, the dispute was referred to the learned Industrial Tribunal in the following terms:

“whether the transfer of Shri Satbir Singh from Delhi to Lucknow is illegal and unjustified and/or malafide and if so, what directions are necessary in this respect?”

- e) The learned Industrial Tribunal, after completion of pleadings, on 14th August, 2002, framed three issues, and thereafter, passed the Award dated 27th May, 2005 (“impugned Award” hereinafter) holding that the transfer of the respondent workman from Delhi to Lucknow is illegal and unjustified and he is entitled to be deemed to be treated in service on the same status on which he was prior to his promotion in the Grade-SR.
- f) Aggrieved by the aforementioned Award, the petitioner entity on 16th August, 2005, has preferred the instant writ petition seeking setting aside of the same.
3. Learned counsel appearing on behalf of the petitioner entity submitted that the learned Tribunal erred in passing the impugned Award as the same has been passed without taking into consideration the entire facts, circumstances and the settled position of law relating to the present matter, therefore, the same is liable to be set aside.
4. It is submitted that the learned Tribunal erred by failing to take into consideration the terms of the letter of appointment dated 1st April, 1993,



whereby, paragraph No. 5 expressly states the applicability of the terms and conditions as provided for in the accompanying sheet. It is further submitted that the said terms and conditions clearly provide that the petitioner entity is at liberty to transfer the respondent workman throughout the country, hence, the said order of transfer is legal and justified.

5. It is submitted that the learned Tribunal erred in law by failing to take due note of the contentions raised by the witnesses that appeared on behalf of the petitioner entity, especially the fact that the respondent workman although was transferred from Delhi to Lucknow but was to operate from the Lucknow (regional office) situated at Delhi itself.

6. It is submitted that it is the respondent workman who failed to report for duty at the transfer location and rather chose to file a civil suit challenging the same. It is further submitted that it is a settled position of law that transfer is an incidence of service and any challenge to the same must only be entertained post the transferred person reports for duty to the transferred location.

7. It is submitted that the transfer of the respondent workman from Delhi to Lucknow was as per the terms, conditions and procedure prescribed in the service manual, applicable to all the employees of the petitioner entity therefore, the learned Tribunal ought to have considered the evidence placed on record while passing the impugned Award.

8. It is submitted that it is a settled position of law that transfer is an administrative function and the same has been initiated as per the requirements of work and in accordance with the terms of appointment



therefore, the learned Tribunal failed to apply its judicial mind as it ought to have considered the judicial dictum cited by the petitioner entity before passing the impugned Award. To substantiate the same, the learned counsel appearing on behalf of the petitioner entity has placed reliance upon the judgments passed in *M/s Pearlite Liners Pvt. Ltd. Vs. Manorama Sirs* 2004 (14) AIC 16 (SC), *U.P. State Sugar Corporation Ltd., Lucknow Vs. Bipin Kumar Mishra* 1993 Lab. 10 2566 (ALL), *J.P. Sharma Vs. State Bank Of India* 2002 (92) FLR 591(DELHI) and *Gyan Chand Vs. Secretary (Labour), Delhi Administration* 1995 (1) LLN 328 (DELHI).

9. It is submitted that the learned Tribunal failed to take into consideration the fact that the respondent workman has started a courier business of his own in Delhi under the name of Courier News Times wherein he is the 'Chief Reporter', which led him to challenge the order of transfer, as he would not be able to cater to his business anymore from Lucknow.

10. It is further submitted that the learned Tribunal erred by taking into consideration the reasoning afforded by the respondent workman for his transfer i.e., the Union activities carried out by him against the petitioner entity, as he failed to even produce a single document to substantiate that he ever represented any grievance on behalf of the union.

11. It is submitted that the learned Tribunal erred in law by presuming that the services of a Union leader cannot be transferred and quashed the promotion granted to the respondent workman *vide* the said order of transfer. To substantiate the same, the learned counsel appearing on behalf of the



petitioner entity has placed reliance upon the judgment passed in ***Kishori Lal Verma Vs. Hindustan Zinc Ltd. 1994 Lab. Ic 2617 (Rajasthan)***.

12. It is also submitted that the petitioner entity in its preliminary submissions averred that the respondent is not a workman under the definition of Section 2(s) of the Industrial Disputes Act, 1947 as the nature of duties carried out by him are of supervisory nature and the same is evident from the post held by him i.e., 'Operation Supervisor'. It is further submitted that the learned Tribunal erred by not framing any issue about the same thus, the impugned Award suffers from illegality and the same must be set aside.

13. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the reliefs be granted, as prayed.

14. *Per contra*, the learned counsel appearing on behalf of the respondent workman vehemently opposed the instant petition submitting to the effect that the award impugned by the petitioner entity is well reasoned and has been passed after profoundly considering all factors and evidence placed before the learned Court below.

15. It is submitted that the petitioner entity has disputed several questions of fact contrary to those recorded by the learned Tribunal thus, the same being impermissible under the writ jurisdiction of this Court, the instant petition may be dismissed at the outset.

16. It is submitted that the instant writ petition is a gross misuse of law as the petitioner entity intends to drag the dispute in question by way of



prolonged and unnecessary litigation. It is further submitted that the respondent workman has been out of employment since 2nd February, 2000 thus, the present writ petition is nothing but a tool to tire out the respondent workman.

17. It is submitted that the petitioner has contended before this Court that the respondent workman is bound by the terms of appointment as prescribed in appointment letter dated 1st April, 1993. It is further submitted that the said contention is an attempt to mislead this Court as the learned Tribunal duly recorded that the said letter of appointment was never issued to the workman.

18. It is submitted that it has been alleged by the petitioner entity that the respondent workman was transferred from Delhi to Lucknow on the behest of being promoted in the Grade-SR whereas the respondent has been working in the said capacity since the last several years. To substantiate the same, the learned Counsel for the respondent workman has placed reliance upon the Identity Card issued to him for the period 3rd May, 1998 to 3rd May, 1999.

19. It is submitted that it has been strongly averred by the petitioner entity that the transfer of the respondent workman was in accordance with the terms of appointment and the provisions contained in the service manual whereas there exists no service manual rather, the same has been concocted by the petitioner entity to mislead this Court.

20. It is submitted that the respondent workman falls well within the preview of Section 2(s) of the Industrial Disputes Act, 1947, thus, the



petitioner entity is conveniently disputing the same before this Court when the same has already dealt with by the learned Tribunal.

21. It is submitted that it has been wrongfully submitted by the counsel for the petitioner that the respondent workman had challenged the said order of transfer as he had started with a courier business of his own in Delhi under the name of Courier News Times. It is further submitted that the said submission is incorrect and misleading as the respondent workman has been out of employment since 2nd February, 2000 hence, the instant petition is nothing but a gross misuse of law.

22. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent prayed that the present petition, being devoid of any merit, may be dismissed.

23. Heard the learned counsel for the parties and perused the record.

24. It is the case of the petitioner entity that the impugned Award is bad in law as the same has been passed without taking into consideration the entire facts, circumstances and the settled position of law. It has been submitted that as per the settled law, a transfer is an incidence of service and any challenge to the same must only be entertained post the transferred person reports for duty to the transferred location. It is also contended that the learned Tribunal failed to apply its judicial mind as transfer is an administrative function and the same has been initiated as per the requirements of work and in accordance with the terms of appointment.

25. In rival contentions it has been submitted on behalf of the respondent that the impugned Award is well reasoned and has been passed after



profoundly considering all factors and evidence. It has also been submitted that the petitioner entity has disputed several questions of fact contrary to those recorded by the learned Tribunal and the same is impermissible under the writ jurisdiction of this Court. It has been further contended that there exists no service manual that governs the workmen and the submissions of the petitioner entity contending otherwise are false and fabricated. Moreover, the transfer from Delhi to Lucknow was on the behest of being promoted in the Grade-SR whereas the respondent workman claims to be already discharging his duties on the said designation.

26. At the outset, it is imperative to understand the scope of a Writ Court's jurisdiction in interfering with the labour or workman disputes. The Hon'ble Supreme Court in a catena of cases has reiterated time and again that the learned Court below is the final Court of fact in the disputes between a labour or workman and an employer or an industry.

27. In this backdrop, this Court deems it imperative to briefly reiterate the scope of a writ court's jurisdiction under Article 226 of the Constitution of India in interfering with findings of the Court below *qua* the following circumstances. *Firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, in matters wherein the Court below adjudicated after having gone in the details of both fact and law while carefully adducing the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law has occurred. *Thirdly*, judicial



review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene with the order/award passed by a Court below only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the Courts below is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene with the order passed by the concerned court. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice. *Lastly*, the punishment imposed can be challenged on the ground of violation of doctrine of proportionality.

28. The petitioner has approached this Court seeking setting aside the findings of the learned Tribunal passed *vide* the impugned Award dated 27th April, 2005, therefore, before delving into the averments advanced by the learned counsel appearing on behalf of the parties, in order to adjudicate upon the present matter, this Court deems it imperative to analyse the findings of the impugned Award and ascertain the reasoning afforded by it. The relevant paragraphs of the impugned Award are reproduced herein below:

“.....**ISSUE No. 1**

6. *This issue is with regard to espousal of the cause of workman. The onus to prove the issue is on the workman. To prove the Issue WW-2 Sh. Naresh Sharda entered into witness box, filed his affidavit dated 27.7.2004 and relied upon the*



documents Ex.WW2/1. In his affidavit he deposed that he is President of Rashtriya Trade Employees Congress which is a registered trade union. He deposed that the workman Satbir Singh joined the union along with about 20-25 other employees of the management. He deposed that in February 2000, the workman was transferred out of Delhi and workman brought this matter to the notice of the union. He deposed that he called a meeting of the members and office bearers of the union at his residence on 12.3.2000 which was attended by about 16 members of the union, which were the employees of the union. He deposed that a resolution condemning the transfer of workman was passed and It was resolved to take up the cause of the workman. He has proved the resolution passed by the union as Ex.WW2/1.

7. I have gone through the document Ex. WW2/1, copy of resolution passed In the meeting, of the union held on 12.3.2000. In the meeting it was resolved to raise the dispute of the workman Satbir Singh with regard to his transfer to Lucknow. In the meeting of the union, It was further resolved that the union was authorised to raise the dispute on behalf of the workman. There is nothing contrary to the statement made by WW-2 and document Ex. WW2/1, from the side of management. The management has failed to show that the cause of workman has not been espoused properly, rather it has been established on the record that the cause of workman has been duly espoused by the union. Issue is accordingly decided in favour of workman.

ISSUE No.2

8. This Issue is to the effect whether the transfer of workman from Delhi to Lucknow is Illegal and unjustified. The case of the workman is that he has been working with the management since 1.4.1993 In Delhi office as operational staff. It is submitted that at the time of joining the management the workman made clear that he would not accept any transfer and he was assured that he would not be transferred out of Delhi.



The workman was initially. appointed as Operation Assistant but no written appointment letter was issued to him. The management confirmed the services of workman w.e.f. 1.10.1993. On 3.5.1998, the workman was promoted as Operation Supervisor, but the management has not provided any appointment letter. The management was not paying the minimum wages to Its employees and also compelling the employees to do overtime for long hours but no compensatory leave or compensation was given to the employees. It is further submitted that the workman along with other co-employees of the management joined the union namely, Rashtriya Trade Employees Congress. The workman was elected Vice President of the union in 1996. It is further submitted that the management with a view to teach lesson to the workman, Issued a show cause notice cum Suspension order dated 14.2.1996 to him. Vide letter dated 23.3.1996, the show cause notice cum suspension order was withdrawn and workman was advised to report on duty. It is further submitted by the workman that he has been raising the demands on behalf of the workers. Thereafter, the management transferred the workman to Lucknow vide letter dated 2.2.2000 mentioning therein that he was promoted as Operation Supervisor Since 3.5.1998. The workman protested against the order of transfer. The management refused duty to workman in Delhi. It is submitted by the workman that the transfer of workman is illegal, mala fide and an act of victimization. The transfer order is not bona fide as there is no requirement of Operation Supervisor in Lucknow and there is no vacancy available. The workman has categorically taken the plea that he was transferred because his trade union activities, his transfer order is Illegal, unjustified, with mala fide Intention to victimize him to teach him lesson being a union activist.

9. On the other hand the case of the management is that the right to transfer an employee is based on the terms of employment as stipulated In the service manual applicable



upon all the employees. The transfer of the employee has been made due to administrative reasons and as per the requirement of the management at the work place. The management has provided him increments from time to time and last increment was granted vide letter dated 7.8.1999. It is submitted that the employee was transferred from Delhi to Lucknow as per the exigency of work and as per the terms and conditions mentioned in the service manual, therefore, the claimant cannot refuse the administrative direction of the management. The workman Joined the services with the management vide appointment letter dated 1.4.1993. It is submitted that as per the appointment letter, the claimant could be transferred transfer from one city to another and anywhere in India. The employee was promoted as Grade C- Supervisor. The management has taken the plea that the management always paying more than minimum wages to its employees and management was not taking any overtime from Its employees. The management Is granting all the statutory facilities to Its employees. The claimant had been promoted to post of Grade C-I and till the date of his transfer he was working in Grade C-I. The claimant was placed and was posted by way of transfer. The transfer was made the requirement of the person of SR Grade at Lucknow and the claimant was directed to report at Lucknow while giving him promotion, but the claimant has not reported on the transferred place. It will be appropriate to quote the transfer order Ex. WW1/1 which reads as under:

"Dear Mr. Satbir,

The vacancy of Operation Supervisor has arised in Lucknow Branch, and we find your candidature suitable for this position.

The Management is pleased to inform you that you are being transferred to Lucknow. Branch with promotion as Operation Supervisor in Grade SR.

You will report at Lucknow office on Wednesday, March 01, 2000 at 9.30 am and report to Mr. Sidharth Shukla,



Branch Manager Lucknow. The address of Lucknow Branch is Room No.31, Prince Complex, N.K. Road, Hazratganj, Lucknow-1. Telephone No. 237115.

You will be paid transfer benefits as applicable to you, in accordance with the company policy.

The Management is pleased to revise your compensation package. Your revised compensation package w.e.f. March 01, 2000, on your reporting to Lucknow Branch is as per details enclosed in Annexure-A.

Wishing. you all the success in your new establishment.

Best regards."

10. To appreciate the case of the parties, I have gone through the material available on record. The case of the workman is that he has been raising the demands of workers. The stand taken by the workman is that due to his trade union activities, the management became annoyed and transferred him from Delhi to Lucknow. The case of the workman is that there is no vacancy at Lucknow against which he was transferred and the work at Lucknow was being done through contractor and apart from the posting of claimant, no other employee was transferred to Lucknow. He further submitted that he was transferred under garb of promotion just to victimize him and placing him out of Delhi with the mala fide intention. Whereas the management has claimed that the transfer was due to administrative exigencies against the vacant post at Lucknow without any mala fide intention to victimize the claimant, rather the claimant was sent to Lucknow on the promotion by giving the posting at Lucknow without any intention to victimize or to punish the claimant. The perusal of the record shows that no employee was working at Lucknow against whom or whose vacancy the claimant was transferred, nor any administrative exigency has been shown which compel the management to transfer/post the claimant at Lucknow. Admittedly, the work of the management has been got done through the contractor at Lucknow.



13. I have carefully gone through the material supplied by the parties. The admitted position is that the management passed the order of the transfer posting the claimant by giving the promotion in the scale of Grade SR against the vacant post. I am of the considered opinion that no unionist/trade union leader or the office bearer of the union should be forcibly given the promotion and then to post out of place of working i.e. Delhi in the present case. The management has failed to establish that the claimant has accepted the promotion order with the transfer in any other place than Delhi. The claimed service rule was never made the part of the appointment or the term of the appointment in the case of claimant and it was never conveyed to the claimant. In such a situation, there can hardly be any legality and justification in the transfer of the claimant.

13. So, Keeping in view discussion made above, it is held that the transfer of workman from Delhi to Lucknow is illegal and unjustified. Issue is accordingly decided in favour of workman.

ISSUE No.3

14. Keeping in view the findings on issue no.2, it is held that the transfer of Sh. Satbir Singh from Delhi to Lucknow Is illegal and unjustified and workman is held to be entitled to be deemed to be treated in service on the same status i.e. in Grade Cl in which he was working prior to his promotion as operation supervisor in Grade SR and he shall not be entitled for any benefit given vide transfer letter Ex. WW1/1. The management is required to be directed accordingly. The award is passed accordingly. The award shall be enforceable w.e.f. 26.7.2005 after the expiry of the period of sixty days from today.....”

29. Upon perusal of the aforementioned extracts of the impugned Award, it can be summarily stated that the issues before the learned Tribunal to adjudicate upon were, *firstly* whether the cause of the respondent workman has been espoused properly, *secondly* whether the action of the petitioner



entity in transferring the respondent workman from Delhi to Lucknow is illegal and unjustified and *lastly* as per the terms of reference.

30. *Qua* issue no.1, the learned Tribunal noted that the onus to prove the validity of the espousal is upon the respondent workman. The respondent workman produced WW-2 Shri Naresh Sharda who was the then president of a registered Trade Union namely 'Rashtriya Trade Employees Congress'. The WW-2 relied upon Exhibit-WW2/1 which is a copy of the resolution passed by sixteen members of the said Union whereby, the cause of the respondent workman was espoused. The learned Tribunal, taking note of the evidence and the deposition, opined that the onus has been duly discharged by the workman as there is enough material to establish that the cause of the respondent workman had been properly espoused.

31. Whilst adjudicating upon the issue no.2, the learned Tribunal noted that it is the case of the respondent workman that the issuance of a transfer order is due to the fact that the workman was a leader of the Union who had been representing the grievances of the workmen thus, it is in this light that the management became annoyed and transferred him from Delhi to Lucknow. It was asserted by the workman before the learned Court below that there exists no vacancy at the Lucknow branch as the work at that site was being carried out by a contractor. The workman further deposed that no other employee apart from the respondent was transferred to Lucknow, therefore, the said transfer is a tool to victimize the respondent under the garb of promotion.



32. In rival contentions the petitioner entity asserted that the said transfer was on account of administrative exigencies against a vacant post in Lucknow thus, no *mala fide* could be inferred as it is an admitted fact that the respondent was also given a promotion *vide* the said transfer order.

33. *Qua* issue no.2 the learned Tribunal, taking into account the facts and contentions, and evidence, decided the issue in favour of the respondent workman and against the petitioner entity observing that the petitioner entity could neither establish any administrative exigencies and nor could it show that a post was vacant at the Lucknow branch. Rather, the learned Court below categorically noted that as per the records, no employee was working at the Lucknow branch against whom or whose vacancy the claimant was transferred. It further observed that Unionist/Trade Union leader or the office bearers of the Union should not be forcibly given a promotion and then transferred out of Delhi. The learned Tribunal also observed that the management has failed to establish that the respondent workman ever accepted the promotion and transfer order hence, the said transfer order is illegal and unjustified.

34. *Qua* issue no.3 the learned Tribunal, taking into consideration the reasoning afforded *qua* issue no.2, opined that the transfer of the respondent workman from Delhi to Lucknow is illegal and unjustified. It was also held that the respondent workman is entitled to be treated in service at the same post that he held prior to his promotion to the Grade-SR.



35. At this juncture, bearing in mind the reasoning afforded by the learned Tribunal, this Court deems it imperative to state the legal position regarding a transfer of an employee.

36. It is a settled position of law that ordinarily, transfer of an employee is an incidence of service, and the employer is the best judge regarding the requirement and posting of its employees. A transfer order is not just a requirement of service but also a consequence of service. The authority concerned is well within its jurisdiction to determine as to which individuals should be transferred and what may be their destination.

37. The scope of judicial review of a transfer order is very limited and the said transfer can only be challenged under the following circumstances. *Firstly* when the transfer is an act of *mala fide* on the part of the employer and *secondly* when it violates the provisions of any statute.

38. The Hon'ble Supreme Court in its recent judgment in ***Rajneesh Khajuria v. Wockhardt Ltd., (2020) 3 SCC 86***, extensively dealt with the settled position of law with regard to when must there be a judicial review of an order of transfer and detailed out the nature and scope of *mala fides* that may warrant such review. The relevant extracts of the same is reproduced herein below:

“.....16. The act of transfer can be unfair labour practice if the transfer is actuated by mala fide. The allegations of mala fides have two facets — one malice in law and the other being malice in fact. The challenge to the transfer is based upon malice in fact as it is an action taken by the employer on account of two officers present in Conference. In a judgment in State of Bihar v. P.P. Sharma [State of Bihar v. P.P. Sharma, 1992



Supp (1) SCC 222 : 1992 SCC (Cri) 192] , this Court held that mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions of the Act, the transfer by itself cannot be said to be an act of unfair labour practice unless it is actuated by mala fides. Therefore, to sustain a plea of mala fides, there has to be an element of personal bias or an oblique motive. This Court held as under: (SCC pp. 260 & 264-65, paras 50-51 & 59)

“50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It



must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer, cannot be held to be a colourable exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information report was not lodged in good faith. State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the FIR. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the mala fides and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesitatingly, I hold that the findings of the High Court [Prem Prakash Sharma v. State of Bihar, 1990 SCC OnLine Pat 105 : (1990) 2 PLJR 404 (2)] that FIR gets vitiated by the mala fides of the Administrator and the charge-sheets are the results of the mala fides of the informant or investigator, to say the least, is fantastic and obvious gross error of law.”



17. In another judgment in Prabodh Sagar v. Punjab SEB [Prabodh Sagar v. Punjab SEB, (2000) 5 SCC 630 : 2000 SCC (L&S) 731] , it was held by this Court that the mere use of the expression “mala fide” would not by itself make the petition entertainable. The Court held as under: (SCC p. 640, para 13)

*“13. ... Incidentally, be it noted that the expression “mala fide” is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances. We ourselves feel it expedient to record that the petitioner has become more of a liability than an asset and in the event of there being such a situation vis-à-vis an employee, the employer will be within his liberty to take appropriate steps including the cessation of relationship between the employer and the employee. The service conditions of the Board's employees also provide for voluntary (sic compulsory) retirement, a person of the nature of the petitioner, as more fully detailed hereinbefore, cannot possibly be given any redress against the order of the Board for voluntary retirement. There must be factual support pertaining to the allegations of mala fides, unfortunately there is none. Mere user of the words “mala fide” by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e. exactly what the High Court has done and that is the reason why the narration has been noted in this judgment in extenso.
... ”.....”*

39. Upon perusal of the aforementioned judicial dictum, it can be summarily stated that an act of transfer can be considered to establish unfair



labour practice by the employer if the transfer is actuated by *mala fide*. The employer/management, while effectuating a transfer order, must act in a *bona fide* manner and shall not fulfil their ulterior motives under the guise of a transfer by improperly exercising the discretion conferred upon them.

40. The Hon'ble Supreme Court also observed that while determining a plea of *mala fide*, the Court must seek answers to two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. The Hon'ble Court further observed that malice or *mala fide* can only be appreciated from the facts and records of given case and malice in law could be inferred from doing of a wrongful act intentionally, without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power.

41. In light of the above, this Court is of the considered view that although ordinarily, a transfer order is an incidence of service, and it must be complied with by the employee/workman to whom the same is issued, however, the employee is well within his rights to initiate a grievance against the said order if it is tainted by *mala fide* and/or violates the provisions of a statute.

42. This Court is further of the view that unless the employee is able to satisfy the Court, it must not intervene with a transfer order as it is an administrative discretion, however, in order to seek judicial review of the same the employee must substantiate his claim by providing sufficient



reason and evidence before the Court, thereby, corroborating *mala fide* upon the employer.

43. Adverting to the facts of the case in hand, the learned Tribunal had noted that perusal of the record categorically shows that no employee was working at the Lucknow Branch against whom or whose vacancy the claimant/respondent workman was transferred and with regard to the same, the petitioner entity could neither establish any administrative exigencies on account of which the said transfer was said to have been effectuated, nor could it show that a post was vacant at the Lucknow Branch.

44. The learned Tribunal also observed that it is an admitted position that the work at the Lucknow Branch was carried out by a contractor and that no leader of the Trade Union or the office bearers of the Union, shall be forcibly promoted and then transferred out of Delhi. It is further observed that the service rule claimed to be applicable upon the respondent workman were never made the part of the appointment or the term of the appointment and were never conveyed to the claimant, therefore, there can hardly be any legality and justification in the transfer of the claimant.

45. In this backdrop, bearing in mind that it has been categorically noted by the learned Court below that the work at the Lucknow Branch was carried out by a contractor and no employee was working at the Lucknow Branch against whom or whose vacancy the claimant was transferred and the petitioner entity failed to establish any administrative exigencies, this Court, is of the view that the said order of transfer reeks of *mala fide*.



46. It is observed that the premise of the above lies in the fact that admittedly there is no vacant position at the Lucknow Branch of the petitioner entity and on the pretext of promoting the respondent workman, the petitioner entity has made an attempt to transfer him which is against the settled principles of law.

47. This Court is further of the view that there is nothing on record to show as to what was the administrative exigency on account of which the order of transfer was issued to the respondent workman. The petitioner entity had sufficient opportunities to show its *bona fides* with regard to the said transfer order and since it failed to substantiate the genuineness of the order of transfer, this Court is not inclined to entertain the contentions advanced by the petitioner entity thereto.

48. This Court is of the view that as the scope of its writ jurisdiction is limited and is to be exercised sparingly, and it cannot undertake an exercise impermissible for this Court in exercising the writ jurisdiction such as by re-appreciating the evidence and drawing conclusions purely on questions of fact as this Court is not sitting in an appellate jurisdiction over the awards passed by the learned Tribunal.

49. It is perceptible from the findings of the learned Tribunal that it had gone into depth of the material placed before it, therefore, this Court discerns no material to establish the propositions put forth by the petitioner entity. It is held that there is no material to characterise the impugned Award as perverse and the learned Court below is well justified in passing the same.



2024:DHC:4676



50. In view of the foregoing discussions of facts material placed on record and law, this Court finds no infirmity or illegality in the impugned Award dated 27th May, 2005, passed by the learned Presiding Officer Industrial Tribunal-II Karkardooma Courts, Delhi in I.D No. 229/2001, and the same is upheld.

51. Based on the aforementioned observations, this Court does not find any merit in the instant petition, and accordingly the same stands dismissed along with pending applications, if any.

52. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 27, 2024
GS/DA/RYP