
(2011) 10 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 4850 of 2011

Afsar Khan

APPELLANT

Vs

Managing Director, S.T. Cooperative Bank Ltd. and Another

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2)

Citation : (2012) 132 FLR 914 : (2012) LLR 341

Hon'ble Judges : Vasanti A. Naik, J

Bench : Single Bench

Advocate : B.M. Khan, for the Appellant; V.G. Wankhede, for Respondent Nos. 1 and 2 Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Vasanti A. Naik, J.—Heard the learned counsel for the parties. By this petition, the petitioner impugns the order passed by the Industrial Court, Nagpur on 7th September, 2011, rejecting the application filed by the petitioner u/s 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, seeking interim relief for staying the transfer order dated 26th July, 2011. transferring the petitioner from Nagpur to Chandrapur. The petitioner was working as a Clerk in the Nagpur branch of the respondent-bank since the year 1999. The respondent No. 1 had issued the transfer order dated 27th June, 2011 transferring the petitioner from Nagpur to Wardha, but that order was not served on the petitioner and instead, the present order transferring the petitioner from Nagpur to Chandrapur was passed. The petitioner challenged the transfer order in Complaint (ULP) No. 252/2011 and also sought stay of the transfer order by moving an application u/s 30(2) of the Act of 1971. The Industrial Court, however, by the impugned order dated 7th September, 2011, rejected the application.

3. On hearing the learned counsel for the parties and on perusal of the impugned

order dated 7th September, 2011, it appears that the Industrial Court was justified in not granting interim relief in favour of the petitioner. Though, it was the case of the petitioner that the Model Standing Orders prevail over the Certified Standing Orders, the industrial Court found that when the petitioner joined the services of the Bank, the Certified Standing Orders were in force. The petitioner had never raised any objection to the applicability of the said Certified Standing Orders. In fact, the petitioner had accepted his appointment as per the terms and conditions mentioned in the Certified Standing Orders. Moreover, on an earlier occasion, the petitioner was transferred in view of the provisions of the Certified Standing Orders, but he never raised any objection to his earlier transfer on the ground raised in the present complaint. In such a background, the Industrial Court held that the petitioner was not entitled to interim relief. The Industrial Court observed that the petitioner had not challenged the transfer clause in the Certified Standing Orders at any point of time and hence, the Industrial Court prima facie held that the Certified Standing Orders framed under B.I.R. Act were binding on the petitioner.

4. The Industrial Court also considered the fact that the petitioner was posted at Nagpur for a period of almost 12 years and was due for transfer. Moreover, according to the Industrial Court, the transfer was on administrative ground and not only the petitioner, but other employees of the Bank were transferred from one branch to another at the same time. The Industrial Court found that there was no material to prima facie show that the transfer was mala fide and vindictive. The Industrial Court observed that all the other employees, who were also transferred on administrative ground, had joined at the transferred place and in this background, it was necessary to reject the application filed by the petitioner for grant of interim relief. The judgment reported in 1988 (56) FLR 478 (Kishor Jaikishandas Icchaporia v. M.R. Bhope, Presiding Officer and others) and relied on by the learned counsel for the petitioner, was also considered by the Industrial Court while rejecting the application for grant of interim relief. Moreover, the case in the reported judgment does not relate to transfer, but relates to the suspension of an employee. Since, there is no merit in the writ petition, the same is dismissed with no order as to costs.