

(2004) 11 DEL CK 0110

In the Delhi High Court

Case No : Writ Petition (C) No. 6771 of 2002

Dharambir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Citation : (2005) 106 FLR 644 : (2005) 3 LLJ 615

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Atul Nagarajan and Vijaya Singh, for the Appellant; Sanjay Katya and Sandeep Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—C.M. 2881/2004 moved by the petitioner seeks revocation of the order transferring him to Faridabad and a direction posting him at New Delhi.

2. C.M. 5883/2004 moved by respondent No. 2 for vacation of the order dated March 10, 2004 by which the closure notice dated December 19, 2003 in respect of Faridabad Unit was stayed. Both the above C.Ms are listed for today.

3. It is common ground between the parties that with the disposal of above applications, nothing further would survive in the writ petition. Accordingly, with the consent of the parties, writ petition itself is taken up for disposal.

4. Petitioner had been working as Fitter Grade-II with respondent No. 2 at its Daily Bread Unit, Delhi (DBU in short). Petitioner assails the order dated October 17, 2002 passed by respondent No. 2 transferring and posting the petitioner to the Roller Flour Mill, located at N.I.T., Faridabad. Learned Counsel for the petitioner submits that service conditions of the petitioner are governed by Industrial Employment (Standing Orders) Act. The said Standing Orders were certified on December 30, 1980. The relevant clause relating to transfer is as under:

"28-A Transfer

A workman shall be liable to be transferred from one department to another and from one section to another within the same department at the discretion of the company."

5. The main plank of petitioner's submission is that for workman, the only transfer permissible is from one department to another and from one section to another within the same department. In other words, transfer within the same unit counsel, Therefore, submits that petitioner could not have been transferred from DBU at Delhi to another unit at Faridabad. Learned Counsel submits that respondent No. 2 cannot take resort to the provisions of appointment letter. It may be noted that Clause 5 of the appointment letter is in the following terms:

"You will be liable to serve in any of the offices of the Company in India or outside India (including High Seas)"

In Para 4.3 of the writ petition, the above clause has not been correctly reproduced. Counsel for the petitioner submits that Standing Orders are framed pursuant to the statute. Hence will prevail over the terms of the appointment letter which in any case was one sided and unconscionable. He submits that respondent No. 2 has failed to seek any amendment in the standing orders, which was permissible. Hence it would be the standing orders which shall prevail.

6. Learned Counsel for the petitioner submits that petitioner had duly reported for duty at his place of posting. Petitioner was not being assigned duty and was being pressurized to accept VRS. When the petitioner resisted, respondent No. 2 became vindictive and issued closure notice dated December 19, 2003 thereby resorting to another stratagem to get rid of the petitioner.

7. Petitioner, Therefore challenges his transfer order, i.e., posting at Faridabad as well as closure notice which are stated to be manifestation of mala fides and vindictive action against petitioner and accordingly stand vitiated. In support of his contention that the transfer of the petitioner was a mala fide act, learned Counsel has placed reliance on document Annexure R/3 filed by respondent No. 2. The tabulation shows that on December 19, 2003, there were two regular workers in Production unit two workers in Engg. unit and one worker in Acctt. and Admn. In the remarks column, it is mentioned that total five workers were retrenched. Learned Counsel submits that there was no work going on in December, 2003, when the petitioner was posted at the said unit and which thereafter got closed down. Despite this he was posted at Faridabad Unit. Hence the transfer from Delhi to Faridabad Unit was with the sole object of getting rid of petitioner's services.

8. Learned Counsel for respondent No. 2 in response has placed reliance on Cipla Ltd. Vs. Jayakumar R. and Another, to submit that there is no conflict between the provision in the Standing Orders regarding transfer and the provision in the appointment letter enabling transfer at any of the units/offices in India. Relying

on Cipla Ltd. v. Jaya Kumar R. (supra), counsel submits that while transfer from one department to another or one section to another would have to be in accordance with the provisions of Standing orders, the appointment letter further provided for transfer from one location to another, from one office to another all over India and there was no conflict between the two. The submission being that terms of appointment letter were complementing the terms of the Standing Orders and were not in derogation of the same. There is merit in this submission.

9. As regards the contention of the learned Counsel for the petitioner that RFM at Faridabad was not functional and had only six workmen on October 7, 2004 even then four workmen were transferred from Delhi Unit. Learned Counsel for respondent No. 2 submits that as per petitioner's own averment, nine other workmen other than the four transferred workmen from Delhi Unit were working. Hence reference to workmen being removed in the month of October under VRS, does not appear to be correct. Mr. Prabhakar submits that in fact six persons who were relieved under VRS were in addition to the strength mentioned.

10. In any case, Mr. Prabhakar submits that the number of persons who were employed at the time of closure of Unit are questions which would be gone into in the appropriate forum and would be decided on evidence being led. He submits that though Faridabad Unit of the company had been facing difficulties, it was only after April, 2003, when UP Government stopped its supply order, the Unit had to be closed by issuance of notice dated October 19, 2003. He submits that challenge of the petitioner to the closure would need adjudication under the Industrial Disputes Act and cannot be agitated in these proceedings. He places reliance on U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, , wherein it was held that at p. 12 of LLJ:

"5. We are of the firm opinion that the High Court erred in entertaining the writ petition of the respondent-Union at all. The dispute was an Industrial dispute both within the meaning of the Industrial Disputes Act, 1947 as well as the U.P. Industrial Disputes Act, 1947. The rights and obligations sought to be enforced by the respondent-Union in the writ petition are those created by the Industrial Disputes Act. In The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , it was held that when the dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the claimant is to get adjudication under the Act. This was because the Industrial Disputes Act was made to provide speedy, inexpensive and effective forum for resolution of dispute arising between workmen and their employers...."

There is merit in this submission.

11. Learned Counsel further submits that this was not an isolated case. There were others who were also transferred along with the petitioner. In CW 6403/2002, this Court had refused to quash the transfer order and the petitioners therein were given only three months time to report for duty at

Faridabad. It is submitted that in these circumstances, transfer of the petitioner from Delhi Unit to Faridabad Unit which was then working and closed down subsequently, cannot be regarded as mala fide or a vindictive one. Besides petitioner had also joined and reported for duty. Transfer was in the exigency of service and respondent No. 2 had duly exercised the same. Besides, it is urged that respondent No. 2-Company has since been fully dis-invested and the equity in respondent No. 2 is now owned by Hindustan Lever Limited which would be a company not amenable to writ jurisdiction.

12. I find considerable merit in the submissions of learned Counsel for respondent No. 2. The submission of the petitioner that the transfer was barred under the Standing Orders 28-A is not correct. The said provision caters and enables transfer within sections and departments of the same unit, It cannot be construed as barring the transfer outside the unit. This is especially so in view of the decision of Supreme Court in *Cipla Ltd. v. Jaya Kumar R. and Anr.* (supra) as noted and discussed above. Moreover, the petitioner in this case had joined at the transferred location and was performing his work. The fact that Faridabad Unit was also subsequently closed down following the withdrawal of the supply order by the U.P. Government, an inference of the transfer being mala fide and made with the object of getting rid of the petitioner cannot be drawn. The transfer was not an isolated one. The respondent company itself was facing financial crisis. Besides, the respondents had also produced on record log books entries showing the work done and assigned to the petitioner during November to March, 2003. Challenge to the closure notice cannot be made in a petition primarily challenging the transfer. The same has to be adjudicated under the Industrial Disputes Act in appropriate forum as held in *Uttar Pradesh State Bridge Corporation Ltd. v. Uttar Pradesh Rajya Setu Nigam S. Karamachari Sangh* (supra). The challenge to the transfer order by others who were transferred along with the petitioner failed in W.P.(C) No. 6403/2002 and dealt with by a learned single Judge, when, only time was granted to report for duty.

13. In view of foregoing discussion, writ petition has no merit and is dismissed leaving the petitioner to avail his remedy under the Industrial Disputes Act in respect of alleged closure of the Unit.

14. Interim order stands vacated.