

(1996) 08 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 3835 of 1989

Executive Engineer, Mechanical Division, Ahmednagar and
others

APPELLANT

Vs

Madhav Narhari Walake and another

RESPONDENT

Date of Decision : 27-08-1996

Acts Referred:

Citation : (1997) 2 BomCR 145 : (1997) 2 LLJ 1068 : (1996) 2 MhLj 922

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : V.P. Malvankar, for the Appellant; P.V. Patil and Ranjit V. More, for the Respondent

Judgement

1. This writ petition under Article 227 of the Constitution of India impugns an order of the Industrial Court, Solapur, dated September 28, 1988 made in Complaint (ULP) No. 187 of 1986 under the provisions of the Maharashtra i Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act")

2. The petitioners are the Officers of the 10 State Government. The first respondent is an 1 employee working as "Helper" on Ujjani Calial Division, Mechanical sub-division, Pandbarpur. By office Order No. 950 dated October 31, 1986 the first respondent was transferred to the office of the Executive Engineer, Vishnupuri Pump House Division, Nanded, and directed to report there within the given time. Instead of complying with the transfer order, the first respondent rushed to the Industrial Court at Solapur and moved Complaint No. 187 of 1986 invoking Item 3 of Schedule IV of the Act and obtained an order restraining the petitioners from transferring him out of Pandbarpur. The Industrial Court tried the complaint and by its order dated September 28, 1988, held that the order of transfer was an unfair labour practice within the meaning of Item 3 of Schedule IV of the Act, quashed the transfer order and directed the petitioners to retain the complainant as "Helper" in Ahmednagar Division. Being aggrieved, the

petitioners are before this Court by the present writ petition.

3. After having perused the record and heard the submissions of the counsel on either side, it appears to me that there was no case of mala fide at all made out before the Industrial Court and the Industrial Court's order is based on nothing but surmises and conjectures.

4. In order to prove an unfair labour practice within the meaning of Item 3 of Schedule IV of the Act the complainant has to first allege that he has been transferred mala fide from one place to another under the guise of management 2 icy and thereafter prove the said allegation EOY, cogent evidence before the Industrial Court. In paragraph 4 of the Complaint the only case of mala fide alleged was that one R. N. Shedar working as Deputy Engineer, had made demands for supply of grains and other articles from the complainant and, as the complainant failed to fulfil such demands, he had been transferred. This allegation is specifically denied in paragraph 4 of the written statement. That this 3 case of malafides did not find favour with the Industrial Court is apparent from the observations in paragraph 15 of the Industrial "Court"s order dismissing the allegation by saying "it may not be free from being outcome of surmises 3 and conjectures." Unfortunately, the Industrial Court embarked upon speculative considerations and, based upon sheer surmises and conjectures, took the view that the order of transfer was not in good faith and, therefore, it was mala 4 fide. On this reasoning, the Industrial Court has set aside the order of transfer.

5. It must be remembered that transfer is a normal incidence of transferable service, particularly service under the Government, as in the instant case. As long as the transfer order is not shown to be contrary to any applicable service rules, or mala fide, it is impermissible for the Industrial Court to interfere under Item 3 of Schedule IV of the Act by arrogating to itself the power to make policy decision as to who amongst the employees would have been the best fitted for transfer. The issue as to how many employees are required in the establishment, is a matter best left to the Administrative decision of the Government. The Court should be slow to interfere with such an Administrative decision, at any rate under the provisions of the Act, unless a clear cut case of main fides is established. In the present case, in my view, no such case has been established and the Industrial Court, therefore, had no jurisdiction to entertain the complaint, much less, give any relief.

6. I am of the view that the Industrial Court erred in allowing the complaint and setting aside the impugned order of transfer. The writ petition is, therefore, liable to be allowed.

7. Writ petition is allowed and the impugned order of the Industrial Court dated September 28, 1988, is hereby quashed and set aside. Since the order of transfer dated October 31, 1986 has now become stale and outmoded, the petitioners shall not revive the said order. However, the petitioners are at liberty to pass any appropriate. order of transfer as provided under the Rules, if the

occasion so demands.

8. Rule accordingly made absolute with no order as to costs.