

(2000) 10 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 4068 of 2000

First Flight Couriers Limited

APPELLANT

Vs

Karnataka Courier and Cargo General Employees Union and
Others

RESPONDENT

Date of Decision : 10-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10 (4), 11, 151

Citation : (2001) 89 FLR 277 : (2000) ILR (Kar) 4751 : (2001) 3 KarLJ 404 :
(2001) 3 LLJ 881

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri S.N. Murthy and Sri Somashekar, for the Appellant; Sri T.S. Anantharam, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Chinnappa, J. 1. The brief facts leading to this case are that the petitioner as the management appointed amongst others, the 2nd respondent on 12-9-1996 as and when he was also a member of the 1st respondent-Union. There was a strike and in that connection there was an agreement with the Union and consequently the Union called off the strike and the workers entered into a memorandum of understanding and agreed to restore normalcy and co-operation to the Management. Similarly, the Management also agreed to negotiate with the Union their charter of demands and both the parties strove hard to arrive at a mutual understanding, etc. Thereafter, the management transferred 22 employees to various places. The Government was pleased to refer the said dispute to the Industrial Tribunal as per Annexure-A which reads:

When this matter was pending adjudication before the Tribunal, the petitioner issued an order of transfer insofar as the 2nd respondent to Gulbarga on the ground that one Miss. Savita A. Jolekar who was working in Gulbarga resigned

from the post and consequently she was transferred. Respondents 1 and 2 filed application before the Industrial Tribunal under Order 39, Rules 1 and 2 of the CPC read with Sections 151, 10(4) and 11 of the Industrial Disputes Act, 1947 read with Rule 10-B of the Industrial Disputes Act and Rules to stay the operation of the order of transfer issued to the 2nd respondent herein. After hearing both the parties, the Industrial Tribunal, Bangalore, in Industrial Disputes No. 89 of 1999, dated 19-1-2000 allowed the application. Being aggrieved by this order, the petitioner-Management filed this writ petition under Articles 226 and 227 of the Constitution.

2. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

3. The learned Counsel at the very outset submitted that the Industrial Tribunal had no jurisdiction to grant interim order as sought for by the respondents. This contention was not raised either in the objection or before the authority when the matter was argued. Therefore, as rightly pointed out by the learned Counsel for the respondent, this is not open to the petitioner to contend that the Industrial Tribunal had no jurisdiction.

4. The learned Counsel for the respondent submitted that the writ petition itself is not maintainable as the same is filed against the interim order passed by the Tribunal.

5. It is well-settled law that no writ petition lies against an interim award or order as it is open to the parties to agitate it in the main petition. Further, there are no exceptional circumstances warranting this Court to interfere under Articles 226 and 227 of the Constitution, Be that as it may, it is now necessary to find out as to whether on merit the petitioner is entitled for any relief in this petition. It is not in dispute that the 2nd respondent has been working right from 1989.

6. The learned Counsel for the petitioner submitted that the 2nd respondent was transferred from Hub Office at Airport Road to the Hub Office at Peenya-II Br. And subsequently, at his request he was transferred to Subramanyanagar.

7. The learned Counsel for the respondent submitted that this shifting cannot be termed as a transfer because it is within the city and it pertains to same Management.

8. It is also no doubt true that the petitioner has different branches in various places and all over India. Under those circumstances, shifting one employee from one Hub Office to another cannot be construed as a transfer as pointed out by the learned Counsel for the respondent. Be that as it may, the learned Counsel for the petitioner has vehemently argued that the Management has every right to transfer the employee to different places as it is already mentioned in the appointment order. This argument also was advanced before the Industrial Tribunal and the Tribunal has rejected the same on the ground that the appointment order was not issued in favour of the 2nd respondent, on the other

hand, only an endorsement was made in the application filed by the 2nd respondent seeking appointment. It has also come to the conclusion that the subsequent appointment order said to have been issued incorporating Clause 4 is nothing but a concocted document. According to Clause 4 of this appointment order, the management has reserved its right to transfer the employees to various places. This is the main issue. Under the circumstances, at this juncture, the Court cannot go into that aspect. The petitioner has not produced any standing order to show that during the relevant time when the 2nd respondent was appointed, the standing order was in force as far as the petitioner is concerned. Therefore, it is clear that there is neither a standing order nor is there an appointment order reserving liberty to transfer its employees to various places.

9. The learned Industrial Tribunal has even compared the signatures found in the appointment order and held that the 2nd respondent has not signed the appointment order. However, at this stage the Tribunal could have not given a conclusive opinion in regard to the signature found in the appointment order. But however, the Tribunal has formed an opinion in regard to the signature found in the appointment order and he has also stated that the appointment order came into being subsequently only to transfer the 2nd respondent.

10. The most moot question in this petition is as to whether the respondent could approach the Industrial Tribunal by filing LA. No. I in a reference made by the Government insofar as transfers of 22 workmen.

11. In *Khagendra Prasad Patra v D.T.M., S.T.S. Koraput and Another*, the Division Bench has held:

The word "concerned" means "interested; engaged; involved; having a connection with". In order to substantiate the claim of contravention u/s 33(I)(a) the workman therefore has to show that he was concerned with the pending dispute in any of the manners envisaged by the expression. The burden of providing this will naturally be on the workman.

The mere fact that the petitioner-workman was member of the Union which had taken up a pending dispute of another workman, will not make him a workman "concerned" in the dispute within the meaning of Section 33(I)(a). It is the dispute that the workman has to be concerned with and not only with the parties to the dispute. It is after ascertaining the nature of the pending dispute that the Court can reach the conclusion whether the workman is "concerned" with it or not".

As stated above, the respondent 2 also is a "concerned" workman as the question of transfer policy is pending adjudication before the Industrial Tribunal.

12. In *Rajagopal (deceased) and Others v E.I.D, Parry Limited and Another*, the Madras High Court has held that the workman dismissed during pendency of dispute sponsored by union relating to suspension of another workman -

dismissed workman is not concerned with the dispute relating to suspension. Therefore, the dismissed workman not bound by outcome of award in suspension dispute of other workmen and not connected with the same. Therefore, it held that no permission u/s 33(2)(b) is necessary before dismissing a workman.

Therefore, on facts itself it is clear that the workman in the case before the Madras High Court was not concerned with the outcome of the award relating to suspension of a dispute.

13. In this case, the respondent 2 is very much bound by the outcome of the dispute pending before the Industrial Tribunal. Therefore, this decision also is not applicable to the case on hand.

14. The Rajasthan High Court in Hindustan Copper Limited v The Central Industrial Tribunal, Jaipur and Others, held that onus is on the workman to prove that he is concerned with the other earlier disputes.

15. In Indian Oxygen Ltd. Vs. Their Workmen, , the Supreme Court has held:

"Company having establishments in different parts of country, workmen employed at one of its establishments applying for referring certain disputes reference of dispute by Government to Tribunal - Award would be operative to workmen of aforesaid establishment and not other establishments".

16. In that case, the company was an All India complex having establishments in different parts of the country and certain disputes had arisen between the company and its workmen employed in the factory at Jamshedpur, the company and the workmen represented by their Union called the Indoxco Labour Union, Jamshedpur, made a joint application dated 7-9-1963 to the Government of Bihar for a reference u/s 10-B(2) of the Industrial Disputes Act, 1947. The Supreme Court held that the Tribunal was in error in making its award effective not only to the said workmen at its Jamshedpur factory but also the workmen at its other establishments and that in doing so, it acted beyond its jurisdiction.

17. In this case as noted above, the reference was made by the Government as to whether the transfer of 22 employees was just and reasonable and subsequently this respondent 2 also was transferred, Under the circumstances, I am of the view that the Tribunal had jurisdiction to grant relief as sought for as it would adversely affect the case espoused by the Union and if such relief is not granted, the petitioner would be able to transfer other workmen also whereby they would be victimised and exploited.

18. In New India Motors (P) Ltd. New Delhi Vs. K.T. Morris, , their Lordships of the Supreme Court have held:

"During the pendency of an industrial dispute, status quo should be maintained and no further element of discord should be introduced. That being the object of Section 33, the narrow construction of the material used in Section 33(1)(a) would tend to defeat the said object. If it is held that the workmen concerned in

the dispute of only those who are directly or immediately concerned in the dispute, it would give liberty to the employee to alter the terms and conditions of the remaining workmen and that would inevitably introduce further complications intended to. Similarly, it would lead to other problems and raise disputes and that again is not desirable. Thus the main object underlying Section 33 would be consistent with such narrow construction. Even as a matter of construction pure and simple there is no justification for assuming that the workmen concerned in such disputes must be workmen directly or immediately concerned in such disputes. There is no justification for adding the further qualification of direct or immediate concern which the narrow construction necessarily assumes. In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself and if an industrial dispute can be raised only by a group of workmen acting on their own or through their union, then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. Such constructions would be harmonious with the definition prescribed by Section 2(s) and with the provisions of Section 18 of the Act. Hence the expression "workmen concerned in such dispute" could not be limited only to such of the workmen who are directly concerned in the dispute in question but would include all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute".

19. From a perusal of the reference referred to above, it is clear that the reference is pertaining to 22 employees. After the reference came into being, the petitioner transferred this employee. Though a specific number of employees are mentioned as per the list enclosed therein, the main object of reference is to find out as to whether the transfer order passed by the Management was just and proper. Under those circumstances, the respondents had no other alternative but to approach the Tribunal to redress grievances. Therefore, it cannot be said that the reference is only pertaining to those 22 employees and not to the respondent 2's order of transfer. If that restricted meaning is given, that will ultimately lead to a confusion and the 2nd respondent will be without remedy. We have to see the main object of the reference to give relief to the employees. The union also is a party wherein the 2nd respondent is a member of the Union. The Union is espousing the cause of the workmen working under the petitioner-Management. Therefore, this argument of the learned Counsel for the petitioner is also liable to be rejected. Therefore, it is clear that the respondents have made out a prima facie case before the Tribunal that the order of transfer against the 2nd respondent is affecting the very service condition of the respondent 2.

20. The next question that arises for consideration is as to whether the balance of convenience weighs in favour of the respondents who made the application. It is not in dispute that the -2nd respondent has been in Bangalore. There are only two types of workmen. They are called as field staff and operation assistants. The nature of the work of "field staff is to pick up and deliver the articles and the

nature of work of "operation assistants" is sorting out the articles and there is no need to transfer them from one place to other, that too outside Bangalore. Therefore, it is clear that these two types of work cannot be considered to be skilled work. On the other hand, a layman can attend to this sort of work if one possess the required education to read the addresses. He is working as an operation assistant. Therefore, it cannot be said that if the 2nd respondent does not take charge of the place of his transfer, the Management cannot run the business. On the other hand, taking into consideration the nature of the work, any person can attend to the said work. Therefore, the contention of the petitioner that because of essential or exigencies of work, he was transferred to Gulbarga does not arise. In addition to that, he is getting a meager salary of Rs. 2,250/- p.m. and if he is transferred, he has to manage with the said income. The only extra amount is ordered to be paid to the 2nd respondent is Rs. 450/- p.m. In addition to that, the learned Counsel also submitted that language also is important to discharge the work at Gulbarga. From this it is clear that the balance of convenience also weighs in favour of the 2nd respondent.

21. The learned Counsel for the petitioner also submitted that no injury or muchless irreparable injury would be caused to the respondent. As indicated above, with a meager income if he is transferred from Bangalore, where he has permanently settled, naturally he would be put to inconvenience and irreparable loss would be caused to him. Besides that, the matter is pending adjudication before the Industrial Tribunal in regard to policy decision of the management in regard to effecting 22 transfers. Under the circumstances, if the transfer order of the petitioner is not stayed, naturally it will adversely affect the interest of the other employees including 22 employees whose transfer is being questioned before the Industrial Tribunal. Thus, irreparable loss also would be caused to the respondents 1 and 2 as they would be left without remedy. Even on that ground also, the petitioner has failed to make out that no injury would be caused to the respondents 1 and 2. On the other hand, the respondents ought to have approached the Industrial Tribunal, fully established that the balance of convenience is in their favour. Greater inconvenience would be caused to the respondents. Further, irreparable injury would be caused to them if the order of transfer is not stayed.

22. The learned Counsel for the petitioner placed reliance on a decision rendered by the Allahabad High Court in Sompal Singh Vs. Artificial Limbs Mfg. Corpn. of India, , wherein it is held that the order of appointment consisting of provisions for "transfer of employee" -standing orders subsequently certified did not contain provision for transfer. The certified standing orders will prevail over terms and conditions contained in appointment order employee cannot be transferred.

23. In Workmen of Mysore Paper Mills Limited, Bhadravathi, represented by Secretary, Mysore Paper Mills Staff Union v Management, M/s. Mysore Paper Mills Limited, represented by Managing Director , the point of dispute before the Division Bench of this Court was:

"Is the Management of Mysore Paper Mills Limited, Bhadravati justified in confirming the following seven foremen in different grades and different rates of salary, thereby discriminating one against other with effect from the year 1940 and onwards, even though the nature of work and degree of responsibility is the same?"

Considering the dispute, this Court has held that discrimination of these workmen on the one hand and the other workmen who were not named in the reference could not be taken as being incidental to the reference. The question relating to the discrimination of the seven workmen on the one hand and the other workmen was beyond on scope of the reference. Therefore, from the facts itself the decision is not applicable to the facts of this case.

24. In Management of Cipla Limited v R. Jayakumar and Another, their Lordships of the Supreme Court held that the transfer of workmen from Bangalore to Mumbai would not amount to change in condition of service. The Industrial Tribunal was not justified in directing the management not to give effect to transfer order. In the circumstances, their Lordships have held:

"While reading the relevant clauses of appointment letter and the provisions of Standing Orders together there is no conflict. Whereas the Standing Orders provide for the department wherein a workman may be asked to work within the establishment itself at Bangalore. Clause 3 of the letter of appointment, on the other hand, gives the right to the management to transfer a workman from the establishment at Bangalore to any other establishment of the company in India. Therefore, as long as the respondent was serving at Bangalore he could be transferred from one department to another only in accordance with the provisions of the Standing Orders but the Standing Orders do not in any way refer to or prohibit the transfer of a workman from one establishment of the appellant to another. There is thus no conflict between the said clauses".

In this case as stated above, there is no clause in the appointment letter reserved and liberty to transfer the employee. Further, there is no standing order wherein it gives power to the Management to transfer the employee, more so when the matter was pending before the Industrial Tribunal.

25. The learned Counsel for the respondent however placed reliance on a decision in H.N. Desai and Others Vs. M/s. Bhor Industries Ltd. and Others, , wherein the Bombay High Court has held that the right to transfer is not always implicit in every contract of service. If the transfer is held tainted, interim relief of stay of transfer can be granted.

26. From a perusal of the order which is impugned in this petition, it cannot be held that the same is either perverse, arbitrary or injudicious calling for interference by this Court, more so while acting under Articles 226 and 227 of the Constitution. Therefore, viewed from any angle this petition is liable to be dismissed.

27. Accordingly, the petition stands dismissed confirming the order passed by the Industrial Tribunal.