

(1996) 08 DEL CK 0079

In the Delhi High Court

Case No : Civil Writ Petition No. 2430 of 1996

GAIL's Employees Association, Gas Authority of India Ltd.

APPELLANT

Vs

Chief Labour Commissioner (Central)

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 6

Citation : (1996) 63 DLT 824 : (1996) 39 DRJ 578

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Jitendra Sharma, Gunwant Dara, Kulbhushan, Raj Birbal and Poonam Lao, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition is directed against the order dated February 14, 1996 of Chief Labour Commissioner (Appellate Authority) under the Industrial Employment Standing Orders Act, 1946 (hereinafter referred to as "the Act"). The petitioner filed an appeal u/s 6 of the Act against two clauses 8.7 and 16 dealing with Transfer and Maintenance of essential services. These clauses of the certified Standing Orders of M/s Gas Authority of India Ltd (GAIL), respondent No.2 herein read as follows:

"8.7TRANSFER: A workman may be transferred from one place to another place or location according to exigency of work provided that grade and continuity of service of the workman are not adversely affected by such transfer. 16. Maintenance Of Essential SERVICES;

(2) The management may detain or ask any number of workmen to come on duty on any National or Festival Holidays or on any day as may be required by the Management owing to continuity of manufacturing process, stoppage of which is injurious to the equipment and industry and also to maintain essential supplies and utilities like water line, power, sanitation, medical, transport, fire,

security services etc. However, for the work done the workmen shall be entitled for extra wages for the holiday so worked."

(3) The petitioner is firstly aggrieved with clause 8.7. The Labour Commissioner has held that it may not be possible for the Company to transfer employees within the same State and even in States where there are more than one establishment transfer from one establishment to another may not be feasible in view of the exigencies of work. Therefore an all India Organisation like respondent No.2 is justified in having a clause relating to the transfer of employees from one place to another, as provided in the Standing Orders.

(4) The learned counsel for the petitioner has vehemently argued that this policy will cause undue hardship to Class Iii and Class Iv employees and the clause requires modification. It has, however, been fairly conceded that the letter of appointment which has since-been filed, clearly carries with it the liability to serve in any part of India or abroad. The clause in specimen letter of appointment of all workers reads as under:

"THE appointee carries with it the liability to serve in any part of India or abroad."

(5) Faced with this situation the learned counsel has argued that the employees were not in a position to negotiate with the employer when they accepted the terms of appointment. It has to be now considered as to whether this clause is arbitrary, unreasonable and it is open for this Court to decide this question.

(6) Respondent No.2 has filed the counter affidavit, wherein it is reiterated that the Chief Labour Commissioner considered the clause and found no infirmity in the same. The following plea is taken as will be indicated in paragraph 5 of the counter affidavit:

"THE Respondent is an All India Organisation having its units and branches all over the country. In the reply filed before the Appellate Authority by the respondent it was clarified that the respondent a company wholly owned by the Government of India under the Ministry of Petroleum & Natural Gas, is engaged in optimally utilising natural gas and building necessary infrastructure to facilitate effective utilisation of this precious resource in national interest vitally affecting national economy. The activities of the company include laying and maintaining of cross country gas pipeline for transportation of natural gas to fertilisers plants, power plants etc. in different parts of the country. The respondent is also involved in extraction of Lpg from natural gas. Gas pipelines have been laid across the states of Gujarat, Madhya Pradesh, Uttar Pradesh, Rajasthan, Haryana and Delhi, Andhra Pradesh and Tamil Nadu. The total flow of gas is through a complex network with Compressor and intermediate stations linked with each other and the pipeline network functions as an integrated system involving high technology. The respondent is also engaged in setting up a gas cracker unit with a petroChemical plant at Pata in District Etawah U.P. It utilises natural gas fractions for extracting Lpg and other fuels like Propane which are part of Gas processing activities and which are extremely tal for keeping the wheels of the

nation constantly moving."

(7) Similarly, it has been stated that the respondent is in the process of setting up new installations of national importance in the core sector in India. Since the pipeline network functions as an integrated system, there should be continuity of operation as there are pipelines and installations passing through different cities/towns in various States. Even on transfer, the employees are given sufficient joining time plus transfer allowance and benefits and wherever it is inconvenient the respondent will not transfer an employee without due application of mind and without considering the claim of such an employee who professes to face hardship. There is, accordingly, nothing wrong in clause 8.7 which clearly lays down that the transfer will be effected according to the exigencies of work provided the grade and continuity of service of workmen are not adversely affected by such transfer.

(8) The learned counsel for the petitioner has placed strong reliance on the judgment of the Supreme Court as reported in *Canara Banking Corporation Ltd. Vs. U. Vittal*, where the Supreme Court was considering the Sastry Award on the question of transfer. In this case, the question of bank employee who was transferred from one station to another came up for consideration and it was contended by the appellant/petitioner that the order of Labour Court which held that the transfer of respondent was against the Sastry Award which provided that a clerk could not be transferred outside the State or the language area in which he had been serving except with his consent. The relevant portion of Sastry Award, which has been cited in the judgment, reads as follows: "We direct that in general the policy should be to limit the transfers to minimum consistent with the banking needs and efficiency. So far as members of the subordinate establishment are concerned there should be no transfers ordinarily and if there are any transfers at all, they should not be beyond the language area of the person so transferred. We further direct that even in the case of workmen not belonging to the subordinate staff, as far as possible there should be no transfer outside the State or the language areas in which the employee has been serving except, of course, with his consent."

(9) The Court came to the conclusion that the management of the Bank is in best position to judge how to distribute the manpower or whether a particular transfer can be avoided or not. The relevant portion of the judgment may be reproduced as follows: "This brings us to the question whether in the present case the appellant contravened the direction in the award in transferring the respondent outside the Maharashtra State in which he was serving and also outside the language area in which he had been serving. It is necessary to remember in this connection that a bank which has branches in different parts of the country has to distribute its total man power between these different branches in accordance with the needs of these branches and with an eye to its business interests. To attain the best results it becomes necessary to transfer workmen from one branch to another. The best interests of the bank may require at times

that the transfer should be made outside the State or the language area in which a particular workman had formerly been employed. We have found above that the right of the Bank to distribute its workmen not belonging to the subordinate staff to the best advantage, even though this may involve transfers outside the State or the language area in which a particular workman had been serving, was left unimpaired by the Sastry Award, except that such transfers have to be avoided, if they can be avoided without sacrificing the interests of the bank. The management of the bank is in the best position to judge how to distribute its man-power and whether a particular transfer can be avoided or not. It is not possible for industrial tribunals to have before them all the materials which are relevant for this purpose and even if these could be made available the tribunals are by no means suited for making decisions in matters of this nature. That is why it would ordinarily be proper for industrial adjudication to accept as correct any submission by the management of the bank that an impugned transfer has been made only because it was found unavoidable. The one exception to this statement is where there is reason to believe that the management of the bank resorted to the transfer mala fide, by way of victimization, unfair labour practice or some other ulterior motive, not connected with the business interests of the bank."

(10) This judgment, Therefore, on the contrary, supports the contention as made by learned counsel for respondent No.2 who has very fairly conceded that in any case, no employee shall be transferred except in case of exigencies of service and all individual cases shall be considered on their own merits. The employee, in this situation, can always resort to challenge the transfer on the ground of mala fide. The present case is filed by the Union in its anxiety that the transfer may not be done bona fide and clause 8.7 needs to be amended. There is no challenge to any specific action in respect of a particular case.

(11) Reference has also been made to the judgment of the Supreme Court as reported in B. Varadha Rao Vs. State of Karnataka and Others, which dealt with the transfers. The relevant portion as stated in paragraph 6 of the judgment reads as under:

"ONE cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It Therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and Therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of class Iii and class Iv employees stand on a different footing. We

trust that the government will keep these considerations in view while making an order of transfer."

(12) The learned counsel for respondent No.2 has similarly argued that it has no intention to dislocate the class Iii and class Iv employees and each and every transfer will only be done on the basis of exigencies of service or for promotion of the employees. I am sure the said respondent will keep the consideration as expressed in the above case in view while effecting transfer of an employee and will desist from the same in case it causes undue hardship.

(13) The next clause which has been impugned is 16 which gives powers to the Management to detain or ask any number of workmen to come on duty on any National or festival holidays or on any day, as may be required by the Management owing to continuity of manufacturing process, stoppage of which is injurious to the equipment and industry and also to maintain essential supplies etc. The Chief Labour Commissioner has interpreted this clause to hold that an organisation like Gas Authority of India, which is charged with the Management of Gas, which is a hazardous substance and whose supply is a continuous process industry, a clause in the Standing Orders on maintenance of Essential Services is warranted. There seems to be no error in this finding. The learned counsel for the respondents has also contended that the essential services have to be maintained and the value of plants which runs into Crores of rupees have to be protected. The power as vested by clause 16 will be strictly used on the basis of an emergency and for maintenance of essential services. The liberty to detain or ask for any number of workmen to come on duty in this eventuality cannot be denied particularly when the workmen so deployed shall be entitled for extra wages for holidays so worked. The clause is elaborate and gives the situations and full details of the eventualities in which the workers shall be asked to man the services. There is no error in the same and finding of the Appellate Authority that the Managements' freedom is necessary so that essential services could be attended in the interest of safety and in the interest of continuous operation of the undertaking is based on cogent grounds.

(14) The learned counsel for the petitioner has lastly argued that the letter of appointment where the worker has agreed to work anywhere in the country is of no consequence as the ultimate conditions of service have to be governed on the basis of standing orders, as framed under the provisions of the Act. Reference is made to the judgments as reported in The U.P.State Electricity Board and another v. Hari Shankar Jain and others and Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd. and Others, ; of the judgment as reported in Sudhir Chandra Sarkar (supra) reads as follows: "II. The Parliament enacted the Industrial Employment (Standing Orders) Act, 1946 (1946 Act" for short). The long title of the Act provides that it was an act to require employers in industrial establishments formally to define conditions of employment under them. The preamble of the Act provides that it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of

employment under them and to make the said conditions known to workmen employed by them. By Section 3, a duty was cast on the employer governed by the Act to submit to the Certifying Officer draft standing orders proposed by him for adoption in his industrial establishment. After going through the procedure prescribed in the Act, the Certifying Officer has to certify the draft standing orders. Section 88 requires the Certifying Officer to keep a copy of standing orders as finally certified under the Act in a register to be maintained for the purpose. Sub-section (2) of Section 13 imposes a penalty on employer who does any act in contravention of the standing orders finally certified under the Act. The Act was a legislative response to the laissez-faire rule of hire and fire at sweet will. It was an attempt at imposing a statutory contract of service between two parties unequal to negotiate, on the footing of equality. This was vividly noticed by this Court in *Western India Match Company Ltd. V. Workmen* as under : (SCC para 10,p.334 : Scc (L&S) p.536). In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith. The intendment underlying the Act and the provisions of the Act enacted to give effect to the intendment and the scheme of the Act leave no room for doubt that the Standing Orders certified under the 1946 Act become part of the statutory terms and conditions of service between the employer and his employee and they govern the relationship between the parties. *Workmen v. Firestone Tyre & Rubber Co., Workmen v. Buckingham and Carnatic Mills and Glaxo Laboratories v. Presiding Officer, Labour Court, Meerut.*"

(15) The learned counsel for the respondents accept the position, as referred to above, but contends that clauses 8.7 and 16 of the standing orders do not in any manner create any inconvenience and hardship for the workers as the management will consider each and every case on its own merits and the worker will have the right to represent in case of hardship. Such representation will be sympathetically considered and plea will not be taken that the worker carries with it the liability to serve in any part of India or abroad, as accepted in the letter of appointment. The members of the petitioner's Union can, Therefore, impugn the transfer on mala fide grounds. In view of the above reasons, this petition is devoid of any merit. The same is dismissed in limine. There will be no order as to costs.