

(2016) 04 GUJ CK 0124

In the Gujarat High Court

Case No : Special Civil Application No. 12331 of 2011

Harishankar Janji Gupta

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Citation : (2016) 2 CLR 749

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : Mr. T.R. Mishra, Advocate, for the Appellant; D.S. Aff. Not Filed (R) and Ms. Reeta Chandarana, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

K.M. Thaker, J.(Oral) - Heard Mr. T.R.Mishra, learned advocate for the petitioner, and Ms. Chandarana, learned advocate for the respondent ? railways.

2. The petitioner has challenged order dated 15.4.2011 transferring him from Baroda to Godhra. The petitioner has challenged the said order on diverse grounds. One of the contentions raised by the petitioner is that transfer order was passed malafide and only because the petitioner, as union representative, had served notice intimating that if the problems of the workmen are not resolved, then they will resort to strike and because the petitioner had initiated Dharna he has been transferred.

3. While admitting the petition and granting interim relief vide order dated 10.10.2011, this Court passed below quoted order:-

"1. An employee from the Railway is before this Court challenging an "order of transfer" from "Baroda" to "Godhra". Prima-facie, one may feel that when an employee is transferred from one place to another that too on "promotion", the same should not be the subject matter of any litigation. But, there are cases and cases. In this case the Railway Administration has thought it fit to contest the petition ? challenging the transfer from "Vadodara" to "Godhra" tooth and nail.

2. Learned Advocate for the petitioner pointed out that the employee transferred is the "Divisional Secretary" of "Pashchim Railway Karmachari Parisad" (herein after referred to as "PRKP" for short). He is also Vice President at the Zone Level. It is the case of the petitioner that he is a "protected workman" and therefore the Railway Administration ought not to have transferred him. Besides, it is also the case of the petitioner that he is neither "senior most" nor "junior most" in the list of employees promoted and posted vide letter dated 21/04/2011, a copy of which is produced at Annexure ? D (Page No.22 to 25). The list of the employees promoted and posted is of 25 workmen, Sr. No.1 and 2 are shifted from one working section to another but are retained at Baroda itself i.e. CTCC at Baroda to ELS at Baroda. Similarly workman at Sr. No.4 is transferred from CTCC to ELS, but retained at Baroda. Then, comes the petitioner who is transferred from CTCC Baroda to CTCC, Godhra. The workman at Sr. No.24 is also transferred from CTCC, Baroda to CTCC, Godhra. Thus, except the petitioner and a workman at Sr. No.24 no other workman is sent out of Vadodara.

2.1 The challenge is on two count. One that the petitioner is "protected workman" and therefore he should not have been shunted out of Vadodara, more particularly, when it is the case of the petitioner that he is a "Divisional Secretary" & "Zonal Vice President" of "PRKP". Learned Advocate for the petitioner invited attention of the Court to the award passed by the Industrial Tribunal (Central) at Ahmedabad in Reference (ITC) No.74 of 1991 dated 18/08/1994. The operative part of the award and order reads as under:

"The reference is allowed. The First party Railway is hereby directed to grant special leave and other privileges to the representatives of the second party Union for attending conciliation etc., at par with the members of the recognised Unions..."

(emphasis supplied)

2.2 Learned Advocate for the petitioner submitted that this award was the subject matter of challenge in SCA No.8069 of 1997 which came to be decided by a Division Bench of this Court (Coram: Hon"ble Mr. Justice K G Balakrishnan & Hon"ble Mr. Justice J M Panchal, as they then were) by order dated 11/02/1998. For ready perusal the order reads as under:

"Union of India represented through General Manager, Western Railway is the petitioner. The petitioner challenges award dated August 18, 1994 passed by the Industrial Tribunal (Central) at Ahmedabad in Reference (ITC) No.74 of 1991. The respondent-Union is not a recognised Union. They claimed certain privileges like grant of special leave for attending conciliation, at par with members of the recognised Unions. In the award passed by the Industrial Tribunal it is held that the respondent-Union is entitled to this sort of special privileges. The Standing Counsel for the petitioner contended that the respondent Union being not a recognised Union is not entitled to such privileges. The Tribunal considered

various aspects of the matter and held that the members of unrecognised Union are entitled to privileges like grant of special leave etc. for attending conciliation proceedings at par with members of the recognised Unions. For the reasons mentioned in Para-8 of the award, we are of the opinion that members of the respondent-Union are entitled to get special leave and other privileges for attending conciliation proceedings etc. at par with members of the recognised Unions. The award passed by the Tribunal is in accordance with law. In view of limited scope of interference under Article 227, petition cannot be entertained. The petition is, therefore, dismissed."

(emphasis supplied)

2.3 Learned Advocate for the petitioner submitted that this order passed by the Division Bench of this Court was challenge before the Hon"ble the Apex Court by way of Civil Appeal No.504 of 1998 (sic Civil Appeal No.5047 of 1998) and the relevant part of that order by which the Hon"ble the Apex Court was pleased to dismiss the appeal, reads as under:

"We have gone through the award made by the Industrial Tribunal and the order made by the High Court. We are satisfied that the Industrial Tribunal has given cogent reason for the decision. We cannot filed that there can be any distinction between office bearers representing recognised unions when they espouse the cause of the workmen in proceedings before the Tribunals, Courts or authorities for the purpose of adjudication of Industrial dispute. Hence we think the limited relief granted by the Tribunal as affirmed by the High Court does not call for any interference. The appeal is therefore dismissed."

(emphasis supplied)

2.4 In view of the aforesaid position it does not lie in the mouth of the Railway Administration to say that the "privileges" of "protected workman" can be given only to the members of the recognised Unions. It was requested to the learned Advocate appearing for the Railway Administration as to whether there is any material on record to show that what is this term "other privileges" mean. Learned Advocate for the respondent is not able to point out anything to show that the status of "protected workman" is not included in those "other privileges". Therefore, the first ground of contesting the petition does not survive.

3. So far as the second part is concerned, learned Advocate for the petitioner invited attention of the Court to circular dated 28th Jan. 1970 of the Railway Department, a copy of which is produced at Annexure ? F. Paragraph No.2 and 3 of the said circular reads as under:

"2. A doubt has arisen whether an employee placed at the cotton in a unit of seniority due to transfer being at his request also be transferred on contraction of cadre according to turn in inverse order.

3. It has been decided by the Railway Board vide their letter No.E(Rep) I-68 AN12-230 dated 14.5.69 that transfer should take place strictly according to the

seniority of the staff including such cases. A note however should be kept for re-transfer of such staff to station from where transferred as and when vacancies arise in future."

(emphasis supplied)

4. This circular issued by the Railway Board makes it clear that in the matter of transfer the Railway Administration has no choice and it has to strictly follow the seniority in the cadre. In the present case, no material is placed before this Court to convince that the petitioner is transferred on the ground of he being either "senior most" or "junior most".

4.1 As discussed herein above, his name appears at Sr. No.17 and the other person who is transferred, at Sr. No.24, otherwise out of 25 persons, 23 persons are retained in the same city. That being so, this Court has no reason for not upholding the contention that this is a case of victimisation by the Railway Administration and the only reason which could be seen, is his union activities and that being so it does fall within the ambit of "unfair labour practise".

5. This Court is of the opinion that petitioner has not done anything unusual in moving this Court directly because even though when the Assistant Labour Commissioner (Central) Vadodara by its communication dated 20/06/2011 did write to the Railway Administration to as many as four officer/s viz., (i) The Divisional Railway Manager, Western Railway, Pratapnagar, Baroda; (ii) The Sr. Divisional Engineer (TRO), Western Railway, Pratapnagar, Baroda; (iii) The Sr. Divisional Engineer (TRO), Western Railway, Baroda Yard and (iv) The Sr. Section Engineer, T.I. Shet, Baroda Yard, but the authorities have not paid any heed to the contents of the said communication. Those contents are as under:

"...The dispute raised by the "PRKP" was seized in conciliation. The name of Shri H.J. Gupta is appeared at Sr. No.18 in the list of protected workman which submitted by the President of the union to the General Manager, Western Railway, Mumbai vide his letter No.SBI/11/1 dated 25.4.2011. In view of the above, you are requested not to proceed the transfer of the workman Shri H.J. Gupta during the pendency of Conciliation Proceedings as per the provisions of Section 33 of the Industrial Disputes Act, 1947...

(emphasis supplied)

6. In view of the aforesaid discussion, matter requires consideration. RULE. This Court is of the opinion that interim-relief as prayed for is not granted that will result into injustice to the petitioner. Interim-relief in terms of paragraph No.14(B). Direct Service permitted."

4. Since then, the petition is pending and the implementation and operation of the transfer order dated 15.4.2011 has remained stayed by virtue of interim order dated 10.10.2011.

5. Almost 5 years have passed since the authority passed the order and almost

4? years have passed since operation of the order has remained stayed.

6. Having regard to the aforesaid facts and circumstances, Ms. Chandarana, learned advocate for the respondent, upon instructions from Mr. Siju, Law Officer, submitted that with passage of time, the order is rendered infructuous and having regard to the lapse of time and also having regard to the fact that almost 4? years have passed since that order, the authority will not implement or insist for enforcement of the said order, without prejudice to the respondent's right in accordance with applicable rules.

7. Mr. Mishra, learned advocate for the petitioner, submitted that in view of the statement by learned advocate for the respondent that the authority will not act upon or enforce the order dated 15.4.2011 transferring the petitioner from Baroda to Godhra, cause to prosecute the petition does not survive and the petition is, in light of the said statement by learned advocate for the respondent, rendered infructuous and may be disposed of accordingly. In view of the said statement by Ms. Chandarana, learned advocate for the respondent railways, and submission by Mr. Mishra, learned advocate for the petitioner, the petition is disposed of as infructuous. Rule is discharged.