
(2008) 08 GAU CK 0013
In the Gauhati High Court

Indian Potash Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25U, 33C

Citation : (2008) 119 FLR 367 : (2008) GLT 741 Supp : (2009) 1 LLJ 673

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. L.P. Sharma, learned Counsel appearing for the petitioner. Also heard Mr. S.N. Sarmah, learned Sr. advocate representing the workman/respondent No. 2.

2. The writ petitioner/management by filing this petition challenges the award dated April 12, 2002 in Reference Case No. 38/1997 given by the learned Labour Court, Guwahati holding the management guilty of unfair labour practice because of the transfer/deputation order dated May 13, 1997, issued against the workman. The learned Labour Court has also directed that the workman be permitted to resume his duty at Guwahati with full back wages. Permission for prosecution of the Management u/s 25U of the Industrial Disputes Act (hereinafter referred to as "the I.D. Act") has also been granted by the award impugned before this Court.

The workman who was appointed on November 2, 1981 as a driver under the writ petitioner-company is the beneficiary of the award under challenge.

3. The award came to be passed in pursuant to a reference made by the Government on the following two issues:

(a) Whether the management of Indian Potash Ltd. was justified in issuing transfer order on deputation to Shri S.K. Bhattacharjee, driver Audio Visual Van

from Guwahati to Chhinndwara, Madhya Pradesh, under the State Project Manager, Environment Improvement in Rain-fed Areas Project and releasing him from Guwahati?

If not, what relief the workman is entitled to?

(b) Whether the management of Indian Potash Ltd. has committed Unfair Labour Practice, as alleged by the Marcentile Employees Union in the matter of Shri S.K. Bhattacharjee, driver, Audio Visual Van, Guwahati?

If so, what action is called for?

4. It is contended by Mr. L.P. Sarma, learned Counsel appearing for the Management that the workman in terms of the appointment order issued to him was liable to be transferred to any office/field location within India as may be decided by the Company and under such circumstances, the refusal by the workman to comply with the transfer order dated May 13, 1997 whereby he has been transferred from Guwahati to Chhinndwara, Madhya Pradesh would not at all be justified and therefore, the interference by the Labour Court with the said transfer order on a reference made is liable to be interfered with by this Court.

5. The Management's counsel also contends that by giving direction for reinstatement with back wages, the Labour Court has travelled beyond the issues referred for adjudication by the Labour Court and under such circumstances, the award is vitiated in law.

6. It is also contended by Mr. L.P. Sarma on behalf of the Management that the transfer of the workman to Chhindwara from Guwahati cannot be described as a case of victimization in as much as, as many as 17 employees of various locations have been transferred to Chhinndwara to work in a project to be implemented by the petitioner company.

7. The learned Counsel has also referred to a decision given by the Rajasthan High Court on April 20, 1999 in a case filed by an employee of the writ petitioner-company to challenge a transfer order to a distant place where the High Court dismissed the writ petition to show that another High Court in a similar case did not entertain the writ petition of a workman under the petitioner-company.

8. Mr. S.N. Sarma, learned senior counsel representing the workman on the other hand contends that the transfer order was passed only to victimize the workman who has been fighting a long legal battle with the management following his dismissal from service in the year 1985 and the transfer order,, under no circumstances can be described as an innocuous transfer order passed by the Management.

9. The learned Counsel has also referred to the relevant clause in the appointment order dated November 2, 1981 issued to the workman to contend that under the said order of appointment, the workman can only be transferred to a location where an office of the establishment exist and since there is no

office existing at Chhinndwara, Madhya Pradesh, the transfer order cannot be justified on the strength of the terms of the appointment order.

10. The learned Counsel also contends that the workman is lowly paid driver and his transfer to a distant place like Chhinndwara, Madhya Pradesh may not be justified.

11. It is also contended on behalf of the workman that by the order dated 13.5.1997, the workman is not being transferred but is being deputed to a project and as the deputation order itself indicates that there is uncertainty as to whether the Management will take him back in service at the end of the deputation period, since it is incorporated therein that only in the event of requirement by the Management, he will be reverted back to the services of the writ petitioner-company. Thus it is contended that there is likelihood of the workman losing his position as a regular employee under a regular establishment.

12. In order to appreciate the rival submissions of the learned Counsels, it may be necessary to take note of some of the relevant facts.

The petitioner while rendering service as a driver under the Management met with an accident on July 22, 1985 while on duty and as he was not able to immediately resume his duties because of medical treatment, the Management did not permit him to join his duties and he was verbally told in the year 1985 that his services were terminated.

A dispute was thus raised and a reference was made to the Labour Court. By the award dated September 19, 1989 in the said Reference Case No. 37/1987, the Management was directed to reinstate the workman with all his back wages from July, 1985 till his date of reinstatement.

13. The award of reinstatement came to be challenged by the Management by filing C. R. No. 259/1990 and this Court by judgment and order dated March 12, 1996 dismissed the Management's writ petition and upheld the award dated September 19, 1989.

14. The workman was thereafter reinstated in service on April 2, 1996 but according to the workman the entire consequential benefits were not paid to him. Accordingly he took recourse to the provisions of Section 33C(2) of the Act for computation of the monetary benefits due to him from the Management by filing Misc. Case No. 5/1997.

15. When the workman initiated the proceeding u/s 33C(2) of the Act by filing Misc. Case No. 5/1997, the Management issued the transfer order dated May 13, 1997 (served on the petitioner on May 26, 1997) communicating the Company's decision to post the workman to the Environment Improvement in Rainfed Areas Project (EIRA) at, Chhinndwara, Madhya Pradesh. The workman immediately gave a representation against the transfer order. But the Management in response, issued order on May 26, 1997 releasing the workman from his duties at Guwahati.

16. Consequent to the transfer order and the release order, an industrial dispute was raised and reference of the dispute was made by the Government to the Labour Court.

17. The learned Labour Court took note of" the fact that the order dated May 13,1997 is an order of transfer on deputation and no option for deputation was sought from the workman and commensurate deputation allowances were also not being offered. Accordingly, the Labour" Court held that the order dated May 13,1997 is not sustainable in law.

18. The learned Labour Court also referred to the judgment of the Rajasthan High Court. dated April 20, 1999, relied upon on behalf of the Management in the case Gopal Tiwari v. Indian Potash Limited, wherein the Rajasthan High Court directed the reconsideration of transfer of a Class IV employee of the petitioner-company to a distant place.

19. Considering that the workman is a Class IV employee with petty salary, the learned Labour Court also found that the decision to post him at Chinndwara, Madhya Pradesh tantamount to throwing him out of" employment and it is a case of unfair labour practice.

20. While the petitioner-company challenges the above award dated April 12, 2002, it seeks to additionally sustain the transfer order dated May 13, 2007 on the strength of provisions of Clause 4 of schedule 1-B of the industrial Employment (Standing Orders) Central Rules, 1946. But I find that the said model standing order notified under Schedule 1-B of the Central Rules will have no application in the instant case as the Central Rules may not apply to the writ petitioner Company. This view is also supported by the judgment passed by this Court on June 8,2006 in W.P. (C) No. 7329/2004 Management of Steeliworth Pvt. Ltd. v. State of Assam wherein the High Court held that in such Industrial establishments of Assam, the provisions of the Assam Industrial Employment (Standing Orders) Rules, 1947 will apply and the Central Rules will have no application. Therefore, the support sought by the Management's counsel from Clause 4 of the model standing Order under the Central Rules, cannot be accepted to be justified in the instant case.

21. While examining the legality of tire impugned award, the Court has to consider whether the findings of the Labour Court are perverse? No doubt, an employer has a right to transfer and post its employees as per its requirements but in the instant case, the history of long litigation fought by the workman for about 13 years prior to the issuance of the posting order dated May 13. 1997 cannot be overlooked and it cannot be said that the transfer is being issued only in exigencies of service. This is the finding given by the Labour Court and I do not find any justification to consider the said findings to be a perverse finding which justifies any interference by the writ Court.

22. As regards the contentions made that the Labour Court traversed beyond the reference, I find that it was directed in the reference to decide as to whether the

Management was justified to issue the transfer order and if not, what relief the workman is entitled to. The direction is now given by the Labour Court for reinstatement of the workman after holding the transfer order to be unjustified. Therefore, in my view the award cannot be described as an order passed in excess of the reference made to the Labour Court.

23. This Court cannot also be oblivious of the petty wages drawn by the workman. The Management has ordered his transfer to Chinndwara, Madhya Pradesh in a project related temporary work where no office of the Management exists. The petitioner under the circumstances may have to leave his family behind and be called upon to provide for two establishments on his meager pay. This itself might force him to resign the job which might have also been the Management's idea.

24. Cloud was also cast on the status of the petitioner's employment as a regular employee under a regular establishment as he was posted for a temporary project related work.

25. The vindictive attitude of the Management is also discernable from the fact that the workman was asked to draw transfer advance for undertaking the transfer journey from Guwahati to Chhinndwara, Madhya Pradesh by drawing advance from the Regional Office of the Company located at Calcutta.

26. The back-drop of the long litigation between the Management and the workman following termination of service of the workman in the year 1985 and the consequent legal battle ending in favour of the workman because of the dismissal of the Management's writ petition and the consequent responsibility cast on the Management to take back the workman into service and pay his back wage appear to be the main factor which prompted the issuance of the transfer order dated May 13, 1997.

27. Therefore, the conclusion reached by the learned Labour Court that this was an act of unfair labour practice, in my view is a reasonable view in the matter and I find no justification to interfere with the said finding given in the impugned award dated April 12, 2002.

In view of above discussion, this writ petition is held to be without any merit and the same is accordingly dismissed.