

(2003) 09 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 185 of 2003

Indra Kumar Patel

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 107, 31(3), 67

Citation : (2003) 4 MPHT 517

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : Sameer Beohar, for the Appellant; P.C. Chandak, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the pregnability of the order passed by Presiding Officer, Industrial Court, Jabalpur in Case No. 40/MPIR/2002, dated 19-12-2002 whereby it had set aside the order dated 5-10-2002 (Annexure P-2) passed by Presiding Officer, Labour Court, Jabalpur in Case No. 129/2002 allowing the application of the petitioner u/s 107 of the M.P. Industrial Relations Act, 1960 (in short "the Act").

2. No exhaustive statement of facts are necessary for the disposal of this writ petition. Suffice it to say that the petitioner who is an employee has invoked industrial jurisdiction of Labour Court by filing an application u/s 31 (3) of the Act challenging his transfer order dated 9-7-2002 (Annexure P-I) whereby he was transferred from Jabalpur to Haldia. An interim application u/s 107 of the Act was also filed and it was prayed therein that till the decision of the main application filed under the Act, operation of transfer order (Annexure P-I) be stayed. Labour Court vide order dated 5-10-2002 (Annexure P-2) stayed the operation of the transfer order. Feeling aggrieved by the said order, the respondents herein preferred an application u/s 67 of the Act before the Industrial Court who vide impugned order (Annexure P-5) allowed it and set aside the order of Labour

Court. Hence this petition.

3. In this petition, Shri Sameer Beohar, learned Counsel for the petitioner has contended that the Industrial Court exceeded in its jurisdiction while setting aside the order passed by the Labour Court which was interim in nature and hence the order passed by the Industrial Court be set aside. His further contention is that the Labour Court was in its wisdom to decide the application because discretion vests in it and after exercising the discretion, the Labour Court passed the order staying his transfer order. In support of his contention, learned Counsel has placed heavy reliance on the Division Bench decision of this Court in the case of Navalkishore Narayan Bhargava v. Madhya Pradesh Road Transport Corporation, Indore and another, 1975 MPLJ 251.

4. Per contra, Shri P.C. Chandkya, learned Counsel appearing for the respondents has submitted that the order passed by the Labour Court was per se illegal and it was passed beyond the scope of Section 107 of the Act and, therefore, the same has been rightly set aside by the Industrial Court by invoking its jurisdiction conferred to it u/s 67 of the Act.

5. After having heard the learned Counsel for the parties, I am of the view that this petition deserves to be dismissed.

6. In the case of M.P. State Road Transport Corporation v. Virendra Singh Yadav and others, 1990 mpLJ 66, the Division Bench while considering the power conferred to Labour Court u/s 107 of the Act in Para 7 has held as under :--

"7. Coming to the contentions urged on merits, the application for interim relief was filed u/s 107 of the Act, which reads as under :--

"107. Powers of Board, Industrial Court, etc., to pass interim orders.-- In any proceedings before it under this Act, a Board, the Industrial Court or a Labour Court may pass such interim orders including a prohibitory order or a stay order as it may consider just and proper."

The object of the interlocutory injunction is to protect a party against an injury or violation of his legal right. It can not be disputed that a Labour Court while exercising powers u/s 107 of the Act, must find three pillars, i.e., prima facie case, irreparable injury and balance of convenience. Therefore, a Labour Court must not only find that there is a prima facie case in favour of the petitioner, but must take into account irreparable injury that is likely to be caused and also has to consider balance of convenience. If any of the three ingredients is missing, the Labour Court will stay its hands in passing the order. For a prima facie case, the Court must not only be satisfied that the claim is not superfluous or vexatious but has to see that there is a serious question to be tried. After finding that there is a prima facie case, the Court has to consider whether the party seeking extraordinary relief of injunction could be compensated in terms of money. So far as the doctrine of relative or comparative injury is concerned it rests upon particular or peculiar circumstances of each case. Thirdly, the Court has to consider

whether balance of convenience lies in favour of a party in granting the injunction or in favour of the opposite party by its refusal. The extra-ordinary nature of the remedy by injunction calls for careful application of this guiding principle and it can safely be said that rarely injunctive relief will be granted, when it operates inequitably or to control the real justice of the case, in case of employer and employee whether it affects discipline. Besides, there are host of considerations, and one of them is that while granting interim relief, the whole relief is not granted without enquiry or trial of the case."

On going through the above said decision, it has become luminously clear that Section 107 of the Act is at par with the provision of Order 39 Rules 1 and 3 of the Code of Civil Procedure. If that be the position, then so as to invoke the power u/s 107 of the Act, it is for the employee to demonstrate that he has a prima facie case, he would suffer irreparable loss if the relief sought by him is not allowed and the balance of convenience is also in his favour. Indeed these are the three pillars on which the roof of the order passed u/s 107 of the Act rests and if any of the pillar is missing, the entire structure would fall down. In the present case though it has been contended by Shri Sameer Beohar, learned Counsel for the petitioner that the petitioner is having a prima facie case in his favour, even if it is assumed that he is having a prima facie case, he has to demonstrate that how he would suffer irreparable loss if the order of transfer is not stayed. The learned Counsel failed to demonstrate how the petitioner would suffer irreparable loss if the transfer order is not stayed. As the petitioner failed to demonstrate any case of irreparable injury, the powers could not have been exercised by the Labour Court u/s 107 of the Act, hence the order passed by the Labour Court was arbitrary and contrary to the well settled principle of law and in my view the Industrial Court did not commit any error in setting aside the stay order while exercising the jurisdiction conferred to it u/s 67 of the Act. However, before parting with the case, I would like to mention that the case is pending before the Labour Court since 2002, it has been stated by learned Counsel for the parties that the issues have been framed. Looking to the entire controversy in the case, it would be proper to direct the Labour Court to decide the case within a period of six months from today.

7. The petition is devoid of any substance and is hereby dismissed with the observations made hereinabove.