
(1997) 04 MAD CK 0059
In the Madras High Court
Case No : Writ Petition No. 18081 of 1996

Kamaraj T.

APPELLANT

Vs

Dharani Cements Ltd. and another

RESPONDENT

Date of Decision : 12-04-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 18(1), 9A

Citation : (1997) 04 MAD CK 0059

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Judgement

1. Aggrieved against the order of transfer transferring the petitioner from Ariyalur, Trichy District to Madras by the impugned order dated

November 12, 1996, the petitioner has approached this Court to quash the said order on various grounds.

2. The case of the petitioner is briefly hereunder :- The petitioner belongs to Trichy District and studied upto S.S.L.C. The first respondent have got a cement factory at Trichy.

They have engaged Security Guards through the second respondent which is a benami for the first respondent. It is actually being engaged by one

Nagarajan, who is working as a Clerk in the Legal department of the first respondent. The petitioner was interviewed for the post of Security

Guard for Dharani Cements at Trichy by the Personnel Manager of the first respondent. He was given appointment order under the letter head of

the 2nd respondent where he has signed for the second respondent. The petitioner was appointed on a consolidated salary of Rs. 400/- plus a

Dearness Allowance of Rs. 50/- a month. He was asked to indicate the probable date when he will be joining the cement Unit in Reddipalayam

near Ariyalur of Trichy District, the cement unit referred to being the cement unit of 1st respondent. There was no provision in the order of

appointment or elsewhere for any transfer. On such low salary one could not expect such a clause to be imposed. Therefore, the petitioner was

recruited as Security Guard for the cement unit of the first respondent at Ariyalur. Since there was some problem with regard to payment of

Deepavaii bonus, he made representation to the management on behalf of the other Security Guards. On November 12, 1996 the petitioner was

transferred over night to Appu Hotels Limited, 1, G.S.T. Road St. Thomas Mount, Madras-16. The petitioner further contended that his wife died

prematurely leaving behind his child and his parents. The petitioner was given this appointment order specifically for providing security service to

the first respondent factory at Reddipalayam, Ariyalur, Trichy. There was no provision in the order of appointment that he was liable to be

transferred. Now by transferring him to Madras, they are altering his service condition without even giving him a notice u/s 9-A of the Industrial

Disputes Act read with IV schedule directing the petitioner to go to Madras Unit for merely having represented with regard to bonus, which is so

monstrous. With these averments, he approached this Court for quashing the order of transfer.

3. The second respondent in the impugned writ petition has filed counter affidavit disputing various averments made by the petitioner. The service

of the petitioner was required at Madras to provide security services to factory. Apart from this, the petitioner is liable to be transferred from one

place to another depending upon the exigency of services. The present writ petition is not maintainable inasmuch as the petitioner is the private

limited company and not amenable to writ jurisdiction under Article 226 of the Constitution of India and apart from this, the petitioner company is

not a "State" as defined under Article 12 of the Constitution of India. Hence the present writ petition is not maintainable either on facts or on law. It

is not open to the petitioner to challenge the order of transfer unless the same is vitiated by mala fide. In the instant case, the petitioner was

transferred on the ground that his services are required at Madras and not on any mala fide intention.

4. In the light of the above pleading, I have heard Mr. N. G. R. Prasad, learned counsel for the petitioner and Mr. A. L. Somayaji, learned senior

counsel for the 2nd respondent.

5. To appreciate the contention of the learned counsel for the petitioner, I hereby extract the appointment order passed by the second respondent

appointing the petitioner as Security Guard :

Columbia Security Service

(Under incorporation)

No. 1, Venous Colony Second Street,

Madras-600 018

Tel. 456670, 456672

Ref : CSS/GOP/APPNT/178/89

Date 1-12-1989

To

Mr. T. Kamaraj

Reddipalayam, Ariyalur Taluk,

Trichy District.

Sub : Provisional Appointment as Security Guard.

With reference to your application dated and the subsequent interview had with us on November 16, 1989, we are pleased to inform that you

have been provisionally selected for the post of Security Guard on an all inclusive consolidated salary of Rs. 400/- (Rupees Four Hundred only)

and Dearness Allowance of Rs. 50/- (Rupees Fifty only) per month.

The Detailed Appointment order setting out the various terms and conditions will be issued at the time of your joining duty. You must make your

own arrangements for stitching the uniform i.e. Tericotton Khaki colour at the time of your joining duty. Please confirm your probable date of

joining the Cement Unit in Reddipalayam near Ariyalur of Trichy Dist.

We welcome you to our Security Services and wish you a successful career with us.

Your faithfully,

for Columbia Security Services.

(V. Venkataraman).

The above order of appointment was passed by the second respondent on

December 1, 1989. By the impugned order dated November 12, 1996, the petitioner was transferred to Appu Hotels Limited, Madras. The impugned order of transfer is also relevant and the same is extracted :-

Columbia Security Services Private Ltd.,

Unit at : Dharani Cements Ltd.

Ref : CSS/ARI/TRAN/96

Date 12-11-1996

To

Mr. Kamaraj,

Head Guard,

Columbia Security Services,

Ariyalur.

Dear Mr. Kamaraj,

Sub : Transfer Order

You are hereby transferred to Madras with immediate effect to Appu Hotels Limited site where we are providing security services. Please report

for duty to the Security Officer at the site office of Appu Hotels Ltd. at No. 1, GST Road. St. Thomas Mount, Madras-6000016.

Yours faithfully,

for Columbia Security Services Pvt. Ltd.

6. There is no dispute that the second respondent is a private concern. It is neither an Authority nor State in terms of Article 12 of the Constitution

of India amenable to the writ jurisdiction of this Court. However, Mr. Prasad heavily relied on a Division Bench decision of this Court reported in

Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and others, . In the said decision, after considering various earlier

decisions of this Court as well as the Apex Court in para 48, the Division Bench has formulated the following propositions in order to attract the

jurisdiction and the interference of this Court under Article 226 of the Constitution of India and the same is hereby extracted :-

On an analysis of the above rulings, the following propositions emerge :

1. A private body which is not a "State within the meaning of Article 12 of the Constitution of India is not generally amenable to Article 226 of the

Constitution.

2. A writ will issue against a private body to protect the fundamental rights declared under Part III of the Constitution of India.

3. A writ will issue in extraordinary circumstances if the monstrosity of the situation warrants it.

4. A mandamus will be issued against a private body, if there is no equally convenient remedy and if there is a public duty.

5. The implementation of a settlement u/s 12(3) of the I.D. Act is not a public duty and no writ will lie against a private body.

If the features are patent and they establish gross violation of the mandate of law, the jurisdiction under Article 226 of the Constitution could be

exercised to quash a settlement u/s 18(1) or Section 12(3) of the I.D. Act.

Mr. Prasad contended that inasmuch as the impugned order of transfer is so monstrous, the third proposition formulated by the Division Bench in

the above said decision is applicable to the petitioner's case, hence, he can approach this Court by way of writ petition under Article 226 of the

Constitution of India. Relying on proposition 6 in the said decision, he also submitted that inasmuch as the impugned order is in violation of Section

9-A and item 1(7) of the V Schedule to Industrial Disputes Act, 1947, the petitioner can very well maintain the present writ petition.

Further, he also relied on B. Varadha Rao Vs. State of Karnataka and Others, . Relying on the said decision, he contended that the frequent

transfer is possible in is the case of superior or more responsible post. However, the same is not applicable to the employees of Class 3 and Class

4 who stand on a different footing. He also relied on the Division Bench decision of this Court reported in T. Chandrasekaran Vs. The Committee

of Management of Pachaiyappa's Trust and Others, and submitted if a condition of service is not expressly provided by the statutory prescription,

then it must be taken to find excluded or denied or prohibited. According to him, the petitioner was appointed as a Security Guard only for the

cement unit of the first respondent at Trichy District, hence it is not open to the 2nd respondent to transfer him to Madras. By pointing out a

passage from Alfred Avins Employees' Misconduct he submitted that the liability to transfer is an implied term of service whether it is a specific

term of the service conditions or not, but so far as low-paid employees like peon

and fitters are concerned, it would be reasonable and proper to hold in the absence of specific service conditions to the contrary that they are not liable for transfer. He also submitted that in view of Section 9-A and item (7) of the V Schedule of Industrial Disputes Act, 1947, it is not open to the respondents to change the service conditions without following the mandatory provisions mentioned in the above provision.

7. On the other hand, Mr. A. L. Somayaji, learned senior counsel appearing for the 2nd respondent submitted that inasmuch as the second respondent is a private limited company not amenable to writ jurisdiction under Article 226 of the Constitution of India, nor it is a State as defined in Article 12 of the Constitution of India, the present writ petition cannot be maintained. Alternatively, he also submitted that when there is a need of Security Guard at Madras, the 2nd respondent considering the experience of the petitioner, bona fide transferred him to Madras and there is no mala fide in the order of transfer, hence the action of the 2nd respondent is not monstrous as contended by the learned counsel for the petitioner. In such circumstances, the action of the 2nd respondent may not attract any one of the propositions formulated by the Division Bench in the Binny Mills case referred above. Relying on State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, , the learned senior counsel for the second respondent submitted that in as much as the impugned order of transfer is passed without mala fide intention, the Court cannot go into the question of relative hardship. It would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. By referring a decision of the Supreme Court reported in Union of India and Others Vs. S.L. Abbas, it is submitted that unless the order of transfer is vitiated by mala fide or is made in violation of any statutory provision, the Court cannot interfere with it. He further cited a decision of this Court reported in T. Chandrasekar v. The C. M. P. Trust and others (Supra) and submitted that it is distinguishable to the facts of the present case. He further submitted that the impugned order is only an order of transfer simpliciter and the second respondent has not made any change in the conditions of service applicable to him. There is no question of any application of either Section 9-A or item 1 sub clause 7 of V Schedule to Industrial Disputes Act, 1947.

8. I have carefully considered the rival submissions.

9. I have already extracted the order of appointment as well as the impugned order of transfer. Though the learned counsel for the petitioner

submitted that the second respondent and the first respondent are one and the same, the same has been denied by the respondents and the order

of appointment as well as the impugned order of transfer does not support the above contention. I have already extracted both the orders of

appointment as well as transfer. The appointment order was made by the second respondent even as early as on December, 1989 and he was

appointed as Security Guard. No doubt he was asked to join the cement unit in Reddipalayam near Ariyalur of Trichy District. After nearly six

years, now the petitioner has been transferred to Appu Hotels, Madras, In order to take charge of the post of Security Guard at No. 1, G.S.T.

Road, St. Thomas Mount, Madras-16, the reason for transfer, according to the learned counsel for the petitioner, is since the petitioner had

represented other security Guards and made complaint with regard to payment of Deepavali bonus before the management, the next day he was

subjected to the order of transfer. After hearing the arguments of both sides and after carefully perusing the impugned order and the subsequent

correspondences I am unable to accept the argument of the learned counsel for the petitioner. No doubt, it is true that even on November 12,

1996 the petitioner made a representation to the second respondent requesting them to retain him with the first respondent cement factory at

Ariyalur. However, on November 14, 1996 within 2 days, the second respondent sent a reply in the following manner :-

Columbia Security Services Private Ltd.,

Dt :- November 14, 1996.

(Vernacular matter omitted)

A reading of the above letter clearly shows that the second respondent in order to expand its activities and considering the past experience of the

petitioner, the respondent transferred him to Madras. It is a new assignment for the 2nd respondent company. In those circumstances, it is not

possible to hold that in order to victimise the petitioner the second respondent transferred him to Madras. In such circumstances I am unable to

accept the argument that the action of the second respondent is monstrous and

this Court can entertain the writ petition even against a private limited company. Considering the order of appointment in the year 1989, subsequent order of transfer in the month of November, 1996, the reply given by the second respondent with reference to the request for reconsideration, I am satisfied that no motive can be attributed for the order of transfer and it is not vitiated by mala fide. If such conclusion is arrived at, undoubtedly as per the law laid down by the Division Bench of this Court in the Binny Mills case (supra), the petitioner cannot maintain the present writ petition and he has to work out his remedy in accordance with law available to him.

10. It is true that the Apex Court in D. Varadha Rao v. State of Karnataka and others (supra) clarified that Class III and Class IV employees are not subjected to an order of transfer. In this case, the second respondent is running security services. Their nature of work is to provide security personnel to various companies or persons depending on their need and requirement. Since the 2nd respondent have to provide security service, for their client at Madras, the second respondent have transferred one of its security guards to Madras. Considering the nature of business by the second respondent though in principle Class III and Class IV employees are not subjected to transfer, I do not find any error in the order of the 2nd respondent. No doubt, if the petitioner has any grievance with regard to his emoluments and other perks it is always open to him to set right his grievance with the second respondent. As stated earlier, considering the nature of business being run by the second respondent, they are entitled to transfer their personnel from one place to another hence the decision reported in T. Chandrasekaran Vs. The Committee of Management of Pachaiyappa's Trust and Others, may not have any assistance for the petitioner's case.

11. I have already referred to the decision of the Supreme Court reported in State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, wherein Their Lordships have held that the High Court or the Tribunal cannot go into the question of relative hardship. They have also held that it would be for the administration to consider the facts of the given case and mitigate the real hardship in the interest of good and efficient administration. As already stated, I am satisfied that neither any mala fide so

intention in the order of transfer, nor violation of any of the statutory provisions, hence none of the propositions laid down in the Division Bench decision reported in Madras Labour Union Vs. Binny Ltd.

(Buckingham and Carnatic Mills) and others, is applicable to the petitioner's case. Consequently, the writ petition is dismissed as not maintainable

It always open to the petitioner to set right his grievance if any in accordance with law applicable to his case. No order as to costs.