
(2010) 03 OHC CK 0087
In the Orissa High Court

K.N. Singh and Another

APPELLANT

Vs

G.M. (Personnel), M.M.T.C. Ltd. and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Citation : (2010) 110 CLT 35 : (2010) 126 FLR 965 : (2011) 1 LLJ 655 : (2010) 2 OLR 99

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Judgement

A.S. Naidu, J.—An interesting point is raised for adjudication in the present Writ Petition, i.e., as to whether the Petitioners, who are Class-IV employees can be transferred outside the State.

2. The Petitioners were initially appointed in the establishment of Mica Trading Corporation of India Ltd., in short, "MITCo", which was a fully owned subsidiary of MMTC Ltd. In the year 1992, MITCo became economically crippled & sick. Thereafter, the matter was referred to the Board for Industrial & Financial Reconstruction, in short, "BIFR" as per the provisions of the SICA Act, 1985. After prolonged hearing, BIFR came to the conclusion that it was no more possible to rehabilitate MITCo on its own. Therefore, it was decided for amalgamation of MITCo with MMTC Ltd. Consequently, MITCo merged with MMTC Ltd. with effect from 14.4.1994 & the same became a division of MMTC. After merger, the employees working in MITCo were treated as the employees of MMTC under the scheme.

3. After such merger, it is submitted that the Petitioners discharged their duties under MMTC Ltd. While matter stood thus, by Order Dated 24.6.2009, Petitioner No. 1 was transferred to Cochin & Petitioner No. 2 was transferred to Chennai. The said transfer order is assailed by the Petitioners mainly on the ground that in Consonance with the service regulation of MMTC, Class-IV employees are not akin to transfer & as such, the order under Annexure-1 transferring the Petitioners to far off places like Cochin & Chennai is contrary to the service

conditions. The Petitioners have prayed to quash the order of transfer under Annexure 1.

4. After receiving notice, Opp. Parties have appeared & filed counter affidavit. The fact that MITCo merged with MMTC is not in dispute. Relying upon the relevant portion of BIFR scheme, the Opp. Parties submitted that MMTC has a right to exercise option if warranted to transfer such number of workers of the erstwhile MITCo to any other units of MMTC as may be deemed necessary. Accordingly, the Opp. Parties who were found to be surplus at their present place of posting were transferred. In support of such statement, numbers of documents are annexed to the counter affidavit. In short, according to the Opp. Parties, they have a right to transfer the Petitioners to any other unit in India if no work is available at their place of posting.

5. Admittedly, both the Petitioners are at present posted at Paradip under the MMTC. The Petitioners have also filed rejoinder repudiating the stand taken in the Writ Petition. The Opp. Parties in addition to the counter affidavit have also filed additional counter affidavit enclosing several other documents in support of their stand that the management of MMTC has a right to transfer the Petitioners, who were found to be surplus staff at Barsuan Branch to any other place in the State.

6. We have heard Learned Counsel for the parties diligently. We have also perused the documents attached to the pleadings meticulously. There is no dispute that both the Petitioners were the erstwhile employees of MITCo & in consonance with the scheme framed by BIFR, the said organization has merged with MMTC. After merger though they are considered to be the employees of MITCo, but then as per the scheme, they are guided by the service conditions of MITCo so far as the same is not detrimental to their Interest. Learned Counsel for both parties strenuously placed before this Court different Clauses of the agreement in support of their arguments. According to the Petitioners, the order of transfer from paradip to Cochin so far as Petitioner No. 1 is concerned & to Chennai so far as Petitioner No. 2 is concerned, is not only meant to harsh them but also is otherwise contrary to the procedure agreed to be followed by the management of MMTC. It is submitted that the Petitioners are low paid employees, they are getting a paltry amount of Rs. 5,000 per month towards their salary. In spite of specific provisions, the MMTC authorities are not enhancing their salary & bringing in par with the salary & Ors. benefits applicable to their counterparts, who are regular employees of MMTC. Consequently, the Petitioners are subjected to stringent financial difficulties. It is further submitted that they are not entitled to any house rent allowance & are only paid a lump sum amount towards T.A. & D.A. Consequently, if they are made to transfer from paradip to Cochin or Chennai, as the case may be, they will be greatly prejudiced.

7. Perusal of the scheme framed by BIFR, the service conditions of MITCo vis-a-vis the service conditions of MMTC & Ors. documents, gives an impression that the Petitioners can be transferred from one place to the other if certain

conditions are fulfilled in fact, after taking over the management of MITCo, Petitioner No. 1 was transferred to Bhilwara Unit from Giridih Unit in the year 2001 & thereafter from Giridih to Jindal Mine, Barsuan in the year 2004 & from Barsuan to Paradip in the year 2006 & vide Annexure-1 he has been transferred from Paradip to Cochin. Similarly Petitioner No. 2 in the year 1981 was transferred from Abhraknagar to Gudur & in the year 2004 he was transferred from Gudur to Paradip & thereafter by Annexure-1 he has been transferred from Paradip to Tuticorin situated in Chennai. Being confronted with such position, Learned Counsel for the Petitioners submitted that in consonance with the service conditions only when the unit is closed, the employees are transferred. It is stated that in the past as & when units were closed for some reason or the other, the Petitioners were transferred & posted in other units. Such conditions are however not satisfied as the unit at Paradip is still functioning & work is available. Thus, it is stated that the order of transfer being unjustified needs interference.

8. It is no more *res integra* that transfer & posting of an employee is within the domain of the employer, who is to take a decision when, where & at what point of time the employee is to be transferred from his present posting. Transfer is not only an incident of service but an essential condition of service. The employee does not have the vested right to work at a particular place as the order of transfer does not affect his legal rights. Law is also well settled that the Court should always be slow to interfere with the order of transfer.

9. It may so happen that an order of transfer may cause great hardship as the employee would be forced to have a second establishment at far distant places, the education of his children may be adversely affected, he may not be able to manage his affairs & look after his family. But then, it is not permissible for the Court to go into the relative hardship of the employee unless under exceptional circumstances. In the case of *State of Madhya Pradesh Vs. Shankar Lal and Ors*, , the issue of transfer of a low paid employee was considered by the Supreme Court. After considering the provisions of the Act & the Rules governing in the field, the Court came to the conclusion that unless statutory rules put an embargo for transfer of Class-IV or low paid employees, there can be no bar to transfer the said employee. However, the Court observed that such a power should be exercised sparingly. The relevant observation of the Supreme Court reads as follows:

...theoretically, therefore, the power does exist in the State Government to transfer them. We must, however, hasten to add that in case of employees getting small emoluments the power seems to be meant to be sparingly exercised under some compelling exigencies of a particular situation & not as a matter of routine. If it were to be liberally exercised, it will create tremendous problems & difficulties in the way of employees getting small salaries....

10. In the case of *B. Varadha Rao Vs. State of Karnataka and Others*, , while dealing with the issue of transfer, the Apex Court considered various aspects &

observed as under:

One cannot but deprecate that frequent, unscheduled & unreasonable transfers can uproot a family, cause irreparable harm to a Government servant & drive him to desperation. It disrupts the education of his children & leads to numerous other complications & problems & results in hardship & demoralization. It therefore follows that the policy of transfer should be reasonable & fair & 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 & 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 & 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.

11. After going through the authoritative pronouncement, this Court feels that in case of Class-IV or low paid employees, the power of transfer should be used sparingly when required under administrative exigencies & not in a routine manner. More so, the power has to be exercised in good faith, not arbitrarily & the employer should try to accommodate the low paid employee at nearby places as his transfer to a far distant place may cause him & his family great financial hardship & make his survival difficult.

12. In view of the aforesaid discussions, we dispose of this Writ Petition with a direction that if the Petitioners submit a fresh representation before the Opp. Party authorities, the said authority shall consider the same in the light of the discussions made above by adopting humanitarian, approach. If the representation is filed within a period of two weeks from today, we trust, the authorities shall take a decision in the light of the discussions made & the law enunciated above as expeditiously as possible. Till the decision is taken, status quo as on date shall be maintained.

B.N. Mahapatra, J.

I agree.