
(2000) 08 MP CK 0080

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4529 of 2000

Krishna Kumar Verma

APPELLANT

Vs

M.P. Electricity Board and Others

RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Citation : (2000) 87 FLR 732 : (2002) 4 LLJ 612

Hon'ble Judges : S.K. Kulshrestha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Kulshrestha, J.—By this petition, the petitioner has challenged the order dated June 13, 2000 (Annexure-P/8), by which he has been transferred from Sarni to Gandhi Sagar with immediate effect in the same capacity.

2. The petitioner is an employee of the first Respondent-M.P. Electricity Board and was posted as Senior Operating Officer in the Satpura Thermal Power Station, Sarni in Madhya Pradesh on the date of his transfer. It is not disputed that the petitioner is the Secretary of one of the labour unions and had participated in the demonstrations staged by various unions in protest against the non-payment of the dues to the employees to the tune of Rs. 13 crores and the strike was withdrawn/suspended on assurance of the first respondent that a sum of Rs. 1.75 to 2.00 crores would be released by July 10, 2000 and the release of the remaining amount towards arrears shall follow soon thereafter. The petitioner had earlier been transferred by order dated January 1, 2000 (Annexure-P/1) but on his representation, it was cancelled by order dated March 10, 2000 (Annexure-P/4). Thus, the petitioner had continued in one or other posting at Sarni for 31 years out of the total 33 years service rendered by him. There is also no dispute that the first Respondent has formulated the policy dated June 7, 1996 (Annexure-P12) for regulating the transfers of its employees which permits normal transfers after completion of three years of posting at a place. The policy also provides that in the event an employee is retiring within

two years, endeavour should be made as far as possible, to post him in his home town if administratively feasible. It is further not in dispute that the State Government has imposed a total ban on transfers upto April 1, 2001 by order dated January 18, 2000 (Annexure-P/10) except in the cases excepted by the said order and the said decision has been adopted by the Board by order dated June 20, 2000 (Annexure P/11) with condition that in exceptional cases, if any, approval of the full Board may be obtained for transfer.

3. The case of the petitioner is that although the petitioner is due for retirement in August, 2001 and there was no administrative exigency compelling transfer of the petitioner from Sarni to a distant place Gandhi Sagar, the petitioner has been transferred only because the petitioner as the officer-bearer of one of the Unions had espoused the cause of the employees and had staged and participated in demonstrations against the unlawful withholding of the legitimate dues of the workmen. The petitioner has also stated that despite assurance to release part of the amount and to thereafter release the entire dues when the Respondent-Board failed to fulfil its promise, the petitioner had again voiced the demand and it is with a view to prevent the petitioner from the legitimate union activities, the said order has been passed in colourable exercise of the power. The petitioner also contends that while the policy requires the Board to consider cases for posting in the home towns of employees who are to retire within two years, in transgression of the spirit of the policy, the Respondents have passed the order to send him away from the place near his home town with full awareness that the petitioner is due for retirement in August, 2001. The transfer order has also been assailed on the ground that it has been passed during the period of ban without the approval of the Board and without there being any exceptional circumstances in existence. The petitioner has also questioned the propriety of the transfer to Gandhi Sagar on the ground that the post of Senior Operating Officer in the Thermal Power Station does not exist in Hydro Power Station at Gandhi Sagar although the order transfers him in the same capacity.

4. The Respondents have filed a Return to open the case of the petitioner. The Respondents have stated that earlier the petitioner was transferred by order dated January 15, 2000 on administrative ground but on his representation about his personal family problems and assurance to refrain from unlawful activities, the order was cancelled on March 10, 2000 with a view to give an opportunity to the petitioner to mend his ways. However, the petitioner continued to incite the employees and disrupt the working of the Board despite the restraint order (Annexure-R/1) of the Labour Court, Betul. It is stated by the Respondents that the transfer has been made on administrative exigency and since the petitioner had proceeded on leave from June 22, 2000 to June 25, 2000 and on July 1, 2000 and was thereafter unauthorisedly absent from July 12, 2000 to July 19, 2000, he was relieved by order dated July 19, 2000. The Respondents have also submitted that the transfer order has been passed with full approval of the Board in the interest of the first Respondent for administrative exigency and does not call for interference as the wheels of the administration should be allowed to

run smoothly. The petitioner has also filed additional affidavit along with some documents.

5. Learned counsel for the petitioner has submitted that the transfer order Annexure-P/8 apart from mentioning that the petitioner has been transferred from Sarni to Gandhi Sagar, does not state any reason to spell out any exceptional circumstances requiring his transfer during the ban period and in view of the categorical admission in the Return that the petitioner has been transferred only on account of his trade union activities, the administrative exigencies clearly contra indicated. Learned counsel has further pointed out by reference to Annexures-P/6 and P/7 that when admittedly the amount was due, claim made by the union could not have been branded as illegal and, therefore, the contention that the petitioner was engaged in any illegal activity is demonstrably false. Learned counsel has further contended by reference to the decision of the Hon'ble Andhra Pradesh High Court in Ramchandra Rao v. A.P. State Co-operative Union Ltd. and Ors. 1993 (3) SLR 1, that transfer in such a situation was vitiated on account of the arbitrariness and mala fides. Learned counsel has further referred to the decision of the Supreme Court in Vice-Chancellor, L.N. Mithila University Vs. Dayanand Jha, and urged that although it is stated that the petitioner has been transferred in the same capacity, there being no post of Senior Operating Officer in the Hydro Power Station, it cannot be said that the petitioner had been transferred on any equivalent post.

6. Learned counsel for the Respondents, in controversion of the claim of the petitioner, has pointed out that the transfer policy is merely for the guidance of the authorities and does not create any corresponding right in the employee to challenge the order of transfer on the ground that it violates any provision thereof and in the case of the petitioner, in view of the exceptional circumstances emerging from his unlawful activities of instigating the employees to go on illegal strike, the approval of the Board as required under Annexure-P/11 had duly been obtained. Learned counsel has referred to the decision of the Supreme Court in Union of India and Others Vs. S.L. Abbas, in support of his contention. Reliance has also been placed on the decision of the Hon'ble Karnataka High Court in Jayamma v. General Manager (Personnel), Karnataka Silk Industries Corporation Ltd. and Ors. 1996 (74) FLR 240 (Kant) that where mala fide have not been shown, it cannot be said to be a case of victimisation on account of any trade union activity.

7. It is not disputed that the petitioner is an office bearer of one of the trade unions which had participated in the strike/demonstration in pressing for the demand of the employees for release of their dues and the Respondent-Board had also acceded to the demand by promising immediate release of a sum of Rs. 2 crores with assurance to release the balance shortly thereafter. The petitioner was holding the post of Secretary in one of the Unions unlike in the case of Jayamma (supra) who was only a member of the Executive Committee and not a principal office bearer. The activity obviously relates to the period prior

to the injunction granted by the Labour Court on July 19, 2000. The Respondents have not placed any material in support of their claim of administrative exigency for transfer of the petitioner. Nothing has been stated as to the immediate necessity of posting of the petitioner from Thermal Power Station to Hydro Power Station in which the post of Senior Operating Officer is not available though it is stated by the respondents that the petitioner although posted as operating Officer was mainly dealing with the work of Civil nature in the plant. It has also not been shown that there was any pressing need for posting of an employee in the Hydro Power Station at Gandhi Sagar to do the work which the petitioner was performing at Sarni. The transfer order has, thus, clearly been passed only with a view to shift the petitioner from Sarni to a distant place so that he is removed from the trade union activities. While it is true that by merely being an office bearer of a trade union, a person does not earn immunity from transfer and does not denude the management of its right to utilise his services at a place where he is best suited, yet when on the face of the transfer order, it is manifest and patent that the only purpose of transfer is to prevent such a person from pursuing the legitimate demand of the employees, the order is clearly actuated by considerations other than the one professed. It is not disputed that the amount for which the demand was made by the various unions was in fact due and indeed a promise had been made in writing to release part of the amount and the strike had been called off. One can also not be oblivious of the fact that although the guidelines contained in the transfer policy provide for consideration of posting in the home towns of employees who are shortly to retire, the petitioner has been transferred from a place near his home town to a distant place. While it is true that such transfer policies neither create an obligation on the part of the employer nor any right in the employee to seek transfer in accordance therewith as held by the Supreme Court in *S.L. Abbas (supra)*, yet when this aspect is taken into consideration along with the reason for which the petitioner has been transferred, the irresistible conclusion is that the transfer order has been ordered for consideration other than any administrative exigency and is clearly mala fide. It is true that normally the Court would not interfere in transfer matters as the utilisation of the service of the employees in the best interest of the organisation being a managerial function should be left to the discretion of the management, yet when mala fides in transferring an employee are writ large, in exceptional cases of rare nature such as the present one, interference can be made.

8. In the result, this petition is allowed. The order of transfer (Annexure-P/8) as also the order relieving the petitioner in pursuance thereof are, both, quashed. There shall be no order as to costs.