
(2006) 01 KAR CK 0096
In the Karnataka High Court
Case No : Writ Appeal No. 99 of 2006

Lakkappa

APPELLANT

Vs

Govt. Tool Room and Training Centre(r)

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33 (3), 33 (4)

Citation : (2007) ILR (Kar) 2617 : (2007) 4 KCCR 233 SN

Hon'ble Judges : Cyriac Joseph, C.J.;R. Gururajan, J

Bench : Division Bench

Advocate : D. Leelakrishna and R. Shivacharan, for the Appellant;

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—This appeal is filed against the judgment dtd. 15-12-2005 passed in WP No. 23549/2005 which was dismissed by the learned Single Judge.

2. Appellant is the petitioner in the writ petition. The challenge in the writ petition was against the transfer of the petitioner from Government Tool Room and Training Centre, Bangalore to KGF Sub-center as per annexure-A office order dtd. 5-10-2005 issued by the respondent. The petitioner raised three contentions in the writ petition.

a) The petitioner is a protected workman and therefore he was not liable to be transferred from the main centre at Bangalore to the Sub-center at KGF.

b) Impugned transfer was vitiated by malafides.

c) Transfer was in violation of the standing orders applicable to the respondent-industrial establishment.

Learned Single Judge considered all the three contentions and rejected them holding them to be devoid of merit.

3. Having heard the learned Counsel for the appellant and having considered the

facts of the case and the material placed on record, we do not find any merit in this appeal.

4. The first contention raised by the appellant is that he being an office bearer of a registered union, is a protected workman and hence he was not liable to be transferred. The learned single Judge on considering this contention, rejected the same holding that no material was placed on record to show that the petitioner is a protected workman and that merely because he is an office bearer of a trade union, he would not become a protected workman unless he is recognised as such in accordance with rules made in this behalf.

Learned Counsel for the appellant invited our attention to Section 33 of the Industrial Disputes Act of 1947 ("the Act" for short). Learned Counsel particularly referred to Sub-section (3) and (4) of Section 33 of the Act, which are extracted hereunder;

(3) Notwithstanding anything contained in Sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute-

a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation- for the purpose of this sub-section, a) "protected workman" in relation to an establishment, means a workman who, being a member of the executive or other office bearer or a registered trade union connected with the establishment, is recognised as such in accordance with Rules made in this behalf.

4. In every establishment, the number of workmen to be recognised as protected workmen for the purposes of such Sub-section (3), shall be one percent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen for the aforesaid purpose. The appropriate government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen."

As per explanation to Sub-section 3 of Section 33 of the Act, a protected workman, in reference to an establishment means a workman who, being a member of the executive or other office bearer or a registered trade union connected with the establishment, is recognized as such in accordance with Rules made in this behalf (emphasis supplied). Either along with the writ petition or

with the writ appeal, the appellant has not produced any material to show that the petitioner/appellant was recognised as a protected workman in accordance with Rules at the relevant time. Therefore, the claim of the petitioner that he was a protected workman was rightly rejected by the learned Single Judge. Moreover, even assuming that the petitioner-appellant was a protected workman, there is nothing in Section 33, which confers any protection on the petitioner/appellant against transfer. Sub-section 3 of Section 33 extends certain benefits to the protected workman, only during the pendency of any proceeding in respect of an industrial dispute. The petitioner-appellant has no case that at the relevant time there was any proceeding in respect of an industrial dispute relating to the appellant. For this reason also, the petitioner cannot challenge the transfer on the ground that he was a protected workman. Learned Counsel for the appellant invited our attention to a Government letter, dtd 16-5-2003 (Annexure-C) wherein the Secretary, Government of Karnataka requested the Chairman cum Managing Director of the respondent establishment to consider the request for cancellation of the transfer of some office bearers and executive committee members of the union as they are protected workmen. This Government letter as such cannot establish or prove that the petitioner-appellant was a protected workman. As already observed, even assuming that the appellant was a protected workman, it did not confer any right on him which protect him against transfer.

5. Regarding the allegation that the impugned transfer order is vitiated by malafides, the learned single Judge observed that the allegations were too bald and was not supported by any material placed on record. The contention of the learned counsel for the appellant was that the appellant was transferred in view of the rivalry between the different unions and with a view to favour the rival union. There is absolutely no material to support the allegation. Hence the learned Single Judge was right in rejecting the contention that the impugned transfer was vitiated by malafides.

6. The main argument of the learned Counsel for the appellant is based on Certified Standing Orders a copy of which is produced as Annexure-R6. In this context, it is necessary to note the contention of respondent as contained in the statement of objections filed by the respondent. It is stated in paragraph-1 as follows;

The petitioner was appointed as a clerk cum typist as on 18-1-1994 and now, he is redesignated as Assistant Grade III. The copy of the appointment letter dtd 18-1-1994, appointing the petitioner as clerk typist is produced as annexure-R1. The Government of Karnataka sanctioned opening of Six Sub-centers at various places. Sine the services of some experienced employees became necessary, office order dtd 5-10-2005 was issued to three such employees. As per this office order, these three employees were required to report for duty in the KGF Sub-centers on 17-10-2005. Copy of this order has been furnished by the petitioner as per annexure-A. The petitioner came to duty on 5-10-2005 and on coming to

know that he will be served with transfer order, he left the work place without any permission and did not turn up at all. Therefore the said order was sent to him by post which he received on 14-10-2005.

In paragraph 7 of the statement of objections it is stated as follows;

With regard to the averments made in para 6(b) of the petition, it is submitted that it is very clear from the copy of the appointment letter produced, to which the petitioner has given his consent that he is liable to be transferred to any of the Sub-centers of the Respondent Organisation. It is submitted Clause-11 of the Certified Standing Orders does not in any way bar or prohibit the respondent from transferring its employees to its Sub-centers. It is submitted that the term "centre" includes the factory and the Sub-centers and has been defined in Clause 2(1) of the Certified Standing Orders. Since the Sub-centers are part of the centre, transfer of the petitioner amounts to transfer from one department/section to the other within the centre.

According to the definition in Clause 2 of the Certified Standing Orders, "Centre" means the Government Tool Room and Training Centre and includes the Factory and the Sub-centers. According to Clause-11, depending upon the exigencies of work, employees may be transferred from one Department to another or from one section to another or from one job to another provided that their emoluments and service conditions, seniority and promotion are not affected. Admittedly, the respondent has opened a Sub-center at KGF and as per the impugned order the appellant was transferred to the said Sub-center, In view of the definition of "Centre" contained in the Certified Standing Orders the respondent is right in contending that the appellant's transfer from Bangalore to KGF is a transfer within the centre from one department to another. Clause-11 of the Certified Standing Orders permits such transfer from one department to another in the exigencies of work. Therefore there is no merit in the contention of the appellant that the impugned transfer is in violation of the Certified Standing Orders.

7. The respondent has a contention that in view of the terms and conditions contained in the appointment order, the appellant is not entitled to challenge the impugned transfer. It is pointed out that as per Clause-5 of the letter of appointment dtd. 18-1-1994 (annexure-R1), the appellant will have to work in any one of the departments/sections of the Centre and he will also be required to work in any branch where it is in existence or to be established later if decided so by the management. It is contended that Sub-center at KGF is a branch of the respondent and therefore the appellant was liable to be transferred to KGF Sub-center in view of Clause-5 of the letter of appointment. However, learned counsel for the appellant relying on the decision in *Western India Match Company Ltd. Vs. Workmen*, contended that the terms of the standing orders would prevail over the corresponding terms in the contract of service. According to the learned counsel for the appellant, the respondent could not include in the appointment order any condition which was in violation of the Certified Standing Orders. In

the Western India Match Company's case, when Certified Standing Orders contemplated a probationary period of only two months, the company appointed the respondent workmen on probation for a period of six months. Such prescription of probation for an excess period of four months was found to be contrary to the Certified Standing Orders and it was held that the provisions regarding probation contained in the Certified Standing Orders would prevail over the condition regarding probation in the appointment order. In the present case, Certified Standing Orders provide for transfer of an employee in the exigencies of service from one department to another and the expression "Centre" would mean the Government Tool Room and Training Centre and include the Factor and the Slab-Centres. The impugned transfer of the appellant was from the Government Tool Room and Training Centre at Bangalore to the Sub-center at KGF which can be understood only as a transfer from one department to the other department of the respondent industrial establishment. In this view of the matter, there is no contradiction between the conditions contained in the appointment letter and the provisions of the Certified Standing Orders. At any rate, there is no violation of the provisions contained in the Certified Standing Orders.

8. For the reasons stated above, we hold that there is no merit in the appeal and the appeal is dismissed.