

(2009) 09 GAU CK 0016
In the Gauhati High Court
Case No : Writ Petition (C) No. 3175 of 2006

Management of Maijan Tea Estate	Vs	APPELLANT
Workmen and Others		RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(4)

Citation : (2009) 5 GLT 361

Hon'ble Judges : A.C. Upadhyay, J

Bench : Single Bench

Advocate : S.N. Sharma, T. Baruah and P. Sarma, for the Appellant; G.A. and B. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Upadhyay, J.—This writ petition has been filed challenging the award-dated 29.12.05 passed by the Labour Court at Dibrugarh in Reference Case No. 9 of 2003, under Industrial Dispute Act, 1947.

2. Facts leading to the filing of this writ petition may be summarized, in brief, as follows:

The Petitioner M/s Maijan Tea Estate, situated on the bank of river Brahmaputra, suffered loss of cultivable land due to erosion experienced over the years since 1969 and thus for having found it difficult to sustain the tea estate with low crops and large numbers of staff, proposed to transfer excess workers to different Tea gardens. Accordingly, the management proposed to transfer excess workers of Maijan Tea Estate to different Tea gardens in phase manner and accordingly issued transfer order to 125 workman of the garden.

3. It may be pointed out in this context that after the transfer order was issued by the Management on 25.1.02 in respect of 125 workers, the affected workmen being aggrieved, filed a civil suit in the Court of Civil Judge (Sr. Div.) at Dibrugarh challenging the transfer orders to be illegal, unwarranted and without

basis with a prayer for declaration that the transfer order of 125 workers as redundant, void and not binding on the said workers and also prayed for perpetual injunction restraining the Management of the Tea Estate, from giving effect to the transfer order.

4. On 06.02.02, on the prayer for injunction, the Learned Civil Judge (Sr. Div.), Dibrugarh issued order to maintain status quo in favour of the workmen. However, on 30.3.02, the learned Civil Judge (Sr. Div.), Dibrugarh, passed an order holding that it had no jurisdiction to decide the issue relating to Industrial Disputes. The workmen preferred an appeal before the learned District Judge, Dibrugarh and accordingly the learned District Judge admitted the appeal and on conclusion of the hearing set aside the impugned order of the learned Civil Judge (Sr. Div.), Dibrugarh, holding that the Civil Court had jurisdiction to try the subject matter under dispute and sent down the case records to the Court of the learned Civil Judge (Sr. Div.), Dibrugarh, for trial and disposal. The Petitioner Tea Estate preferred an Appeal before Hon''ble High Court against the order passed by the learned District Judge, Dibrugarh in Misc. Case No. 237/02 in RSA No. 156/2002) and obtained a stay order, which is still pending adjudication.

5. In the meantime, during the pendency of the appeal before the learned District Judge, out of 125 workmen identified for transfer in the first phase, the management selected and singled out 15 workmen for violating the transfer order issued by the management and proceeded against them hurriedly and tried to complete the enquiry so that the workmen are dismissed from employment. However, the workmen asserted that as the entire subject matter relating to transfer was sub-judice in the appellate Court and thus enquiry was illegally held. The Management of the Petitioner garden did not stay the domestic enquiry proceeding, even in spite of getting specific information in writing from all 15 workmen facing charge in the Departmental proceedings, regarding the pendency of the case relating in respect of the same sub-ject matter before the learned District Judge, Dibrugarh. The petition was allegedly rejected by the Enquiry Officer of the Petitioner''s garden on the plea that no appeal was pending.

6. Learned Labour Court held that on 30.4.02 the Management of the garden had knowledge that the appeal was pending in the Court of learned District Judge, Dibrugarh, even in spite of the fact that the domestic enquiry was held by the Management for wilful disobedience of the transfer order by the workmen and thus issued charge sheet against 15 workmen for violating the transfer orders.

7. Ultimately domestic enquiry was held against only 15 workmen. Admittedly ex-parte domestic enquiry was held on 12.6.02 and on 17.6.02. On completion of the enquiry, the Petitioner Tea Estate holding all aforesaid 15 workmen guilty of misconduct for defying transfer orders dismissed them from service.

8. The State Government, thereafter, referred the Industrial Dispute to the Labour Court at Dibrugarh in Reference Case No. 9/03. In the written statements before the learned Labour Court, the Petitioners stated that the Management of

the garden is not expected to bear the burden of excessive labour without corresponding product to sustain the financial liability. Therefore, the learned counsel submitted that the transfer of workers from one garden to another is compulsive necessity of the garden and also stated that it is the prerogative of the employer to transfer its employees to utilize their services wherever it felt necessary by the Management. It is also submitted on behalf of the Petitioners that such an action on the part of the Management cannot be interfered with by any other authority when there is no malafide intention in such action.

9. On the other hand the Respondent Union of the workmen alleged malafide action of the Petitioner Tea Estate mainly on the ground that (i) there was virtually no loss of land of the Petitioner Tea Estate due to erosion in the river Brahmaputra for last 25 years, (ii) the workmen were dismissed from service without giving the opportunity of hearing, (iii) the charge sheet and enquiry was hurriedly completed by singling out 15 workmen out of 125, on the same subject matter against which an appeal was pending before the learned District Judge which was finally decided in favour of the workmen by the learned District Judge.

10. On receipt of the Reference from the Government of Assam vide Notification No. GLR. 137/21003/2 dated 04.06.2003, the Presiding Officer, Labour Court, framed the following issues for consideration and decision in terms of the reference aforesaid:

(i) Whether the management of Maijan Tea Estate is justified in terminating services of 15 Nos. of workmen of Nagaghoolie Division w.e.f. 22.7.2002?

(ii) If not, whether they are entitled to reinstatement with full back wages or any other relief in lieu thereof?

11. The learned Labour Court held that the workmen were denied natural justice by depriving them from contesting the domestic enquiry held by the Management against them. The learned Labour Court held as follows:

...It is a case of clear violation of natural justice. And the whole process is illegal. The management urged that as there was no stay order they carried the enquiry and other steps taken to dismiss the workmen. Unfortunately they have preferred an Appeal before our Hon"ble High Court wherein (Misc. Case No. 237/02 in RSA No. 156/2002). The management filed the Memo of Appeal ext. "J" and in para 11 of the petition management has stated "that because of the impugned judgment dated 18.9.2002 the Petitioner/Defendant No. 2 is not in a position to give effect to the transfer order dated 25.1.2002 and consequently Maijan Tea Estate is having 450 surplus workers without their being corresponding production of tea for which the Maijan Te Estate is suffering irreparable loss and injury." Leaving that dismissed 15 persons another enquiry was held for next group of 15 persons but due to pendency of the case before Hon"ble High Court the Enquiry could not be held. So management admitted that they are not in a position to give effect to the transfer order dated 25.1.2002 due to impugned judgment dated 18.9.2002 i.e. by District Judge, Dibrugarh yet the

management held enquiry in spite of knowing that the same case is pending before District Judge, Dibrugarh they carried out the process and realized afterwards only that they cannot give effect to the transfer order dated 25.1.2002 if they may be the case why management held an enquiry against 15 persons while the case is sub-judiced. So whole the procedures maintained by management is illegal, void and liable to be rejected. They have shown utmost disregard to judicial process and deliberately went against it and by making irrational discriminate classification selected on 15 numbers of person out of 125 for slaughter and thereby complete violation of natural justice.

In light of the above discussion, I find that the management of Maijan Tea Estate is not justified in terminating the services of 15 Nos. of workmen of Nagaghoolie Division w.e.f. 22.7.2002 and they are entitled for reinstatement with full back wages.

12. Mr. S.N. Sharma learned senior Counsel for the Petitioner submits that the Labour Court at Dibrugarh wrongly placed the burden on the management to prove that the transfer order was a necessity for management and found fault with the management for having failed to demonstrate sufficient evidence about erosion and resultant loss of tea cultivation. It is contended by the learned Counsel that the Labour Court decided the matter as if it was an appellate Court against the action of the management. It is submitted that management of the garden is in the best position to judge how to distribute its employees between the different tea estates of the management. The learned Counsel submitted that the learned Labour Court should be very careful before interfering with the order made by the management in discharge of their managerial functions. But the learned Labour Court at Dibrugarh without considering the aforesaid aspect of the matter and without having sufficient and proper evidence arbitrarily held that the transfer order, being not genuine and legal and as such not binding on the workmen.

13. It transpires from the record of the proceedings that basic foundation of the mass transfer order of workmen as stated by the management was loss of the cultivable land of the garden due to erosion by river Brahmaputra. Therefore, when malafide is alleged by the Union in selecting and choosing a few among many workmen by the Management of the garden it cannot avoid the responsibility of establishing erosion and resultant loss of tea cultivable land during recent years in order to exalt its own stand which, according to the management, triggered mass transfer of the workmen. But the evidence laid by the management in the enquiry before the learned Labour Court do not reveal if there had been erosion during the past 20 years and any major erosion of the cultivable tea garden land since the year 1952. If there was no erosion of the garden area during past many years, the underpinnings of the cause set up by the management for initiating transfer order of the workmen would not inspire confidence. If the cause for which transfer of the workmen fails to inspire confidence, resultant action of the management against the workmen cannot be

free from malafide alleged by the Union.

14. Mr. S.N. Sharma, learned Sr. Counsel contended on behalf of the Petitioner that misconduct on the part of the workmen being deliberate, question of victimization or unfair labour practice cannot be said to have been proved against the management of the Tea garden. It is, further, submitted that transfer order is normal incident of service and violation of a transfer order amounts to insubordination for which termination of service may be a possibility which rests within the discretion of the management and an injunction against the employee restraining it from conducting an enquiry, if granted, would indirectly mean that the Court is assisting the workmen in continuing their employment with the management, which is nothing but enforcing a contract of personal service and such a relief cannot be granted as it dehorse the settled principle of law. The learned Counsel for the Petitioner has pointed out that it was within the knowledge of the Workmen that an enquiry proceeding was initiated against them but even in spite of such knowledge, the Respondents Workmen refused to co-operate with the Management and accordingly the Enquiry Officer found all the workmen guilty of misconduct.

15. The learned Counsel for the Petitioner submitted that it is the prerogative of the authorities to decide about the transfer of an employee and the Court normally should desist from interfering with such transfer order issued by the concerned authorities.

16. In support of his contention, learned Counsel relied on the decision reported in State of U.P. and Others Vs. Gobardhan Lal, relevant paragraphs of which are as follows:

7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer

any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fide or is made in violation of any statutory provision.

17. Learned Counsel for the Petitioner submitted that the learned Labour Court overstepped its jurisdiction to decide a dispute, which was not referred to it by the Government and submitted that the Labour Court, being creature of the reference, cannot adjudicate matters beyond the purview of the dispute referred to it. In support of his contention, the learned Counsel relied on a decision of Mukand Ltd. Vs. Mukand Staff and Officers" Association, In paragraphs - 23 and 95 the Apex Court held thus:

23. We have already referred to the order of reference dated 17.2.93 in paragraph supra. The dispute referred to by the order of reference is only in respect of workmen employed by the Appellant Company. It is, therefore, clear that the Tribunal, being a creature of the reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of reference. In the facts and circumstances of the present case, the Tribunal could not have adjudicated the issue salaries of the employees who are not workmen and the Act nor could it have covered such employees by its award. Even assuming, without admitting, that the reference covered the non-workmen, the Tribunal, acting within its jurisdiction under the Act, could not have adjudicated the dispute insofar as it related to the "non-workmen."

95. The Industrial Tribunal did not have jurisdiction to adjudicate the present dispute inasmuch as it pertains to the conditions of service of non-workmen. The learned Single Judge and the Division Bench of the High Court failed to appreciate the parties cannot by their conduct create or confer jurisdiction on an adjudicating authority when no such jurisdiction exists. We have already noticed that the Division Bench has erred in holding that there is community of interest between the workmen and the non-workmen and holding further that the workmen could raise a dispute regarding the service conditions of non-workmen.

18. The learned Counsel, further, submitted that the workmen who did not participate in the departmental proceeding initiated against them cannot turn around to submit on the plea that a case was pending for adjudication in the Court and as the workmen did not participate in the departmental proceeding knowing fully well about the continuance of the proceeding, such proceeding cannot be invalidated.

19. Controverting the submissions advanced by the learned Counsel for the Petitioner, the learned Counsel for the Respondent contended that though Section 10 of the Industrial Dispute Act, 1947 provides that Courts and Tribunals are to confine their adjudication as per the reference, however, Section 10(4) indicates that to deal with the points and matters incidental thereto, Court has ample jurisdiction to discuss and decide issues beyond the reference, if the issue is relating to nature of employment of workmen. In support of his contention, the learned Counsel for the Respondents submitted that the learned Labour Court

can very well decide whether workmen are employees of the management to ascertain the nature of their appointment. In support of his contention, he also cited a decision reported in *Indian Farmers Fertilizer Cooperative Ltd. Vs. Industrial Tribunal I, Allahabad and Others*, wherein Hon''ble Supreme Court held as follows:

When the stand of the Appellant is that the workmen were not employees of the Appellant but they were working under a contractor, necessarily the issue arose as to the nature of their employment inasmuch as the relief that would be granted to them would depend upon the same. In the circumstances, the nature of their employment, whether directly under the Appellant or through the contractor, was necessarily to be decided. Even otherwise, a full reading of the reference would show that there was no indication that they had been employed by a contractor by their services had been terminated from the respective date shown against them and whether the same was justified or not. In such a case, when a question was raised that the workmen in question were not the employees of the Appellant, necessarily the Tribunal had to go into the question whether they were the employees of the Appellant or not. On due appreciation of evidence, the Tribunal came to the conclusion that they are the employees of the Appellant and that finding of fact was based on evidence. In our opinion, the conclusion reached by the Tribunal could not be seriously assailed by the learned Counsel for the Appellant. We find no justification to interfere with the award as affirmed by the High Court.

20. In another decision reported in (2001) 2 SCC 695 *Managing Director A.P. State Road Transport Corporation v. Presiding Officer, Industrial Tribunal, Ramkote, Hyderabad and Ors.* a reference before the Tribunal was to decide whether transferred workers were entitled to benefits granted to the present workers in terms of the agreement where the Tribunal in deciding the case framed four additional issues though it was alleged by the management that the learned Tribunal had travelled beyond the issues, however. Hon''ble Supreme Court turned down the plea so taken by the management.

21. In another decision reported in *Food Corporation of India and Another Vs. Union of India (UOI) and Others*, it was held that learned Tribunal had rightly decided the case as the workmen were illegally discriminated which was evident from the plea and evidence of the parties.

22. In *Union of India v. Prafulla Kumar*, (1983) 1 LLJ 304 it was held by the Hon''ble Supreme Court that the terms of reference be construed liberally and not pedantically.

23. The rival submissions with supporting decisions referred to above in *Mukand Ltd. v. Mukand Staff & Officers'' Association* (supra), 2. *Indian Farmers Fertilizers Co-op Ltd. v. Industrial Tribunal Allahabad and Ors.* (supra), 3. *Managing Director A.P. State Road Transport Corporation v. Presiding Officer* (supra) have been duly considered. Though learned Counsel for the Petitioner submitted that the

direction given by the Tribunal is far beyond the scope of the reference, however keeping in view the contention raised in the respective pleading of both parties and evidence adduced thereto do not spell out that the Tribunal travelled beyond the scope of reference. There is no scope to uphold the contention raised by the learned Counsel for the Petitioner.

24. Admittedly the disciplinary proceeding was initiated in the absence of the Respondents workmen. The Hon'ble Supreme Court in *Novartis India Ltd. Vs. State of West Bengal and Others*, held as follows:

16. When an employee does not join at his transferred place, he commits misconduct. A disciplinary proceeding was, therefore, required to be initiated. The order of discharge is not a substitute for an order of punishment. If an employee is to be dismissed from services on the ground that he had committed a misconduct, he was entitled to an opportunity of hearing. Had such an opportunity of hearing been given to them, they could have shown that there were compelling reasons for their not joining at the transferred places. Even a minor punishment could have been granted. Appellant precipitated the situation by passing a post haste order of termination of their services.

Admittedly, initially injunction order was issued by a Court of competent jurisdiction.

25. Though the principles of natural justice do not require that the employer should wait for the decision of the Court before taking disciplinary action against the employee, but at the same time, when admittedly the issue relating to transfer of all 125 workmen was under challenge in a Civil Court of competent jurisdiction imputing mala fide action involving serious questions of fact and law, it would have been proper for the management to await the decision of the Civil Court, before initiating disciplinary action followed by removal.

26. It is desirable that if the entire incident giving rise to a charge framed against a workman in a domestic enquiry is under examination in a Civil Court of competent jurisdiction, the management/employer should stay the domestic enquiry till the final disposal of the civil case, to enable the workmen to participate in the departmental proceedings. After all the dispute was subjudice. After the conclusion of the trial and there would not have been any misgivings in the minds of the workmen and there would have been no allegations of violation of natural justice.

27. The core argument on behalf of the Petitioner is that in the case of *State of U.P. and Ors. v. Gobardhan Lal (supra)*, the Apex Court had held that transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, shown to be vitiated by malafide or is made in violation of any statutory provision.

Further, as against the alleged malafide action, the Petitioner did not reveal the rationale for resorting to selective treatment, in drawing up departmental

proceedings against 15 workmen out of 125 of them ordered to be transferred in the 1st phase. Such selective treatment of the employer without reason would hint at biasness and unfairness in the attitude of the management. Domestic enquiry for violation of transfer orders against only 15 workmen during the pendency of the civil proceedings out of 125 employees transferred in the 1st phase does not seem to be a justified action. Apparently, as contended such action without basis or reasoning would initiate heart burning among the workmen for transferring them to a distant garden. Obviously, if the cause for transfer of the workmen, which was under challenge in the Court of law fails, resultant order of termination of the workmen for violation of transfer order may not be appropriate. If the order of transfers were to be set aside, they would be deemed to be in service. Therefore, on face of the above situation the Petitioner could not remove the blemish of malafide alleged by the Respondents.

28. It is contended by the learned Counsel for the Petitioner that the decisions on the reference made by the Government has been given by the learned Labour Court, Dibrugarh, without having collected sufficient materials on record. It is further submitted that the burden of proof was wrongly placed by the learned Labour Court on the management of the garden in respect of sufficiency of evidence about the erosion of the garden. Learned Counsel for the Petitioner also emphasized that the transfer order of the workmen was a genuine necessity for better management of the garden, more particularly, for erosion of cultivable land of the tea garden. However, on perusal of the records of the proceedings, it appears that burden was solely on the Petitioner to adduce sufficient evidence to support and establish its stand regarding erosion of garden land on the backdrop of malafide alleged by the union; which apparently was not discharged by the Petitioner before the learned Labour Court. Therefore, the Petitioner cannot find fault in the Labour Court, for its own failure to adduce sufficient evidence before the Labour Court to discharge the burden.

29. In view of the above discussion, on the backdrop of malafide alleged against the Petitioner, coupled with pendency of civil litigation in the District Courts, followed by injunction order against the management and resultant termination of service of only 15 workmen out of 125 during the pendency of the Civil Court proceedings, I do not find any justification to interfere with the findings given in the impugned award dated 29.12.2005.

30. In view of the above discussion, this writ petition is held to be without any merit and accordingly, dismissed.