
(1992) 03 KAR CK 0009
In the Karnataka High Court
Case No : W.A. No. 1203 of 1991

Management of Nippani Urban Co-operative Bank Ltd. APPELLANT
Vs
Workmen RESPONDENT

Date of Decision : 12-03-1992

Acts Referred:

Citation : (1992) 65 FLR 213 : (1992) ILR (Kar) 1211 : (1992) 2 KarLJ 136

Hon'ble Judges : Bharucha, C.J.;Shivashankar Bhat, J

Bench : Division Bench

Advocate : B.C. Prabhakar, for the Appellant; M.C. Narasimhan, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bharucha, C.J.—The learned single Judge made the Writ Petition filed by the respondent to the Appeal absolute. He quashed the order passed by the Labour Court and the order of transfer made by the appellant in respect of two of its workmen - DP. Dabode and G.P. Bhilawade.

2. Briefly stated, the facts are these:

At the time when the said two workmen were employed by the appellant as clerks, the appellant was functioning as a Bank only at Nippani. It had no branch whatever. A branch at Benadi was opened subsequently; and, on 29th December 1978, the said workmen were transferred to work in the Benadi branch with effect from 1st January 1979. The said workmen did not join duty at the Benadi branch, but raised an industrial dispute contending that the appellant had no power to transfer them to work in the Benadi branch in the absence of any agreement which permitted a transfer. The Labour Court rejected the contention. The decision of the Labour Court was impugned by the trade union of the workmen in the Writ Petition. The learned single Judge, relaying upon the Judgment of the Supreme Court in Kundan Sugar Mills Vs. Ziyauddin and Others, held that the appellant had no power to transfer the said workmen and passed the order

which we have indicated earlier.

3. It was submitted by Mr. B.C. Prabhakar, learned Counsel for the appellant, that the management of the appellant had inherent power to transfer the said workmen and, therefore, as and when a branch was opened, that power of transfer could validly be exercised. The only touchstone to decide upon the validity of the order of transfer was its bonafides. It was only if the transfer was effected malafide that the Court could intervene. The Decision in the case of Kundan Sugar Mills applied only where the place to which a workman was transferred was a different business and different service conditions prevailed.

4. in the case of Kundan Sugar Mills the workmen were employed in the year 1946. At that time the Kundan Sugar Mills was a partnership concern which owned a sugar mill only at Amroha. In 1951, the partners purchased the building, machinery and equipment of a sugar mill at Kiccha in the district of Nainital. They closed the mill at Kiccha and started it at Bulandshar. In January 1955 the General Manager of the Kundan Sugar Mills ordered the transfer of the workmen to the new mill at Bhulandshar. The transfer was resisted. The workmen were subjected to an enquiry and they were dismissed from service. The contention that was raised before the Supreme Court was that the right to transfer an employee by an employer from one of his concerns to another was implicit in every contract of service and also that, the State Industrial Tribunal having held that both the mills at Amroha and the mills at Bulandshar formed one unit, the Appellate Tribunal had no jurisdiction to set aside such finding. In relation to the first submission, the Supreme Court observed that the argument that the right to transfer was implicit in every contract of service was too wide of the mark. Apart from any statutory provision, the rights of an employer and an employee were governed by the terms of the contract between them or by the terms necessarily implied therefrom. It was conceded that there was no express agreement between the Kundan Sugar Mills and the workmen where-under the former had the right to transfer the latter to any of its concern in any place and the latter the duty to join the concerns to which they might be transferred. Could it then be said that such a term had to be necessarily implied? When the workmen were employed by Kundan Sugar Mills, it was running only one factory at Amroha. There was nothing on record to indicate that at that time it intended to purchase factories at another place or to extend its activities in the same line at different places. It was also not suggested that, even if it had had such an intention, the workmen had knowledge of the same. Under such circumstances, without more, it would not be right to imply any such term between the contracting parties. Ordinarily, the workmen would have agreed only to serve in the factory then in existence and the employer would have employed them only in respect of that factory. The Supreme Court went on to observe that the matter did not stop there in the case before it, the two factories were distinct entities situated at different places and to import a term conferring a right on the employer to transfer the workmen to a different concern was really to make a new contract between them. The cases cited did not hold that every employer

had the inherent right to transfer his employees to another place where he chose to start a business subsequent to the date of employment. The Supreme Court, therefore, held that it was not a condition of service of employment of the workmen, either express or implied, that the employer had the right to transfer them to a new concern started by him subsequent to the date of their employment.

5. The learned Single Judge was right in basing himself upon this Judgment. It applies four square to the facts of this case.

6. The argument of Mr. Prabhakar that an employer has an inherent power to transfer an employee is, to use the words of the Supreme Court, wide of the mark. It is relevant to note that at the time when the said workmen were employed by the appellant, the appellant had only one office at Nippani and no branch. It is nobody's case that at the time when the said workmen were employed the appellant intended to branch out or that, in any event, the workmen were told that there was a possibility of such branching out and of their transfer in such contingency. The said workmen, when employed, would, to use the words of the Supreme Court again, have agreed to serve only in the Nippani office then in existence and the appellant would have employed them only in respect of that office. There is, here, no contract of service that contains an express power of transfer. Upon the facts stated and having regard to the Decision in Kundan Sugar Mills, no such power can be implied.

7. Our attention was drawn by Mr. Prabhakar to the Judgment of the Supreme Court in B. Varadha Rao Vs. State of Karnataka and Others, It was there held that "it is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post". This Judgment can have no application to the facts of the case before us because it related to a Government servant and it is well settled that a transfer is a normal incident of Government service.

8. Mr. Prabhakar then cited the Judgment of the Supreme Court in The Management of the Syndicate Bank Ltd. Vs. The Workmen, This related to an employee of a bank that had branches. There was no dispute that a transfer was a normal incident of the service of the employee concerned. It was, in these circumstances, held that an order of transfer should be interfered with only if it was made malafide or for some ulterior purpose.

9. This Judgment does not support the broad submission that the only touchstone upon which interference with an order of transfer can be justified is if

it is mala fide. The true proposition is that if a transfer is an incident of service, then an order of transfer may be interfered with only in circumstances that show that the power to transfer has been used malafide or for some ulterior purpose.

In the result, the Appeal fails and is dismissed.