

(2018) 04 MP CK 0018
In the Madhya Pradesh High Court
Case No : W.P No.4128 OF 2017

M/S. Business Standard Pvt. Ltd

APPELLANT

Vs

State Of Madhya Pradesh & Ors And Others

RESPONDENT

Date of Decision : 06-04-2018

Acts Referred:

Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 3, 17(1)
Industrial Disputes Act, 1947 — Section 33, 33(1)(a)

Citation : (2018) 04 MP CK 0018

Hon'ble Judges : SUJOY PAUL, J

Bench : Single Bench

Advocate : Kunal Thakre, Rajesh Tiwari, Manjeet P.S. Chuckal

Final Decision : Allowed

Judgement

This petition filed under Article 226/227 of the Constitution, takes exception to the order dated 28.01.2017 (Annexure-P/1) whereby the Dy. Labour

Commissioner, Bhopal directed the petitioners to maintain status quo in relation to service condition of respondent No.3.

2. Draped in brevity, the relevant facts are that the petitioner No.1 is a private company employed respondent No.3.

The respondent No.3 preferred an application under Section 17(1) of the Working Journalists and Other Newspaper Employees (Conditions of

Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as "W.J. Act") before respondent No.2. The respondent No.3

contended that the employer is not paying him wages and allowances as per the Majithia Wage Board. The respondent No.2 has taken cognizance

of the said application preferred by the respondent No.3 and issued notice to employer. In turn, the petitioner No.1 has filed its reply before the

respondent No.2 on 25.01.2017 (Annexure-P/10).

3. Thereafter, the respondent No.3 filed a fresh complaint before the respondent No.2 with a prayer to set aside his order of transfer on the ground

that the said order was passed because he prayed for grant of Majithia Wage Board's rate of wages. This complaint dated 17.01.2017 is filed

as AnnexureP/11 with the writ petition. Learned Dy. Labour Commissioner by impugned order directed the parties to maintain status quo in relation to

service condition of the respondent No.3.

4. Shri B.N. Joshi, learned counsel for the petitioners submits that the Industrial Disputes Act, 1947 is intricately connected with W.J. Act. Section

3 of W.J. Act provides that the provisions of I.D. Act shall apply to all the working Journalists under the W.J. Act. In para 6.1 of the petition, the

petitioners have drawn parallel between various provisions of I.D. Act and W.J. Act. It is contended that the transfer is a managerial function and

respondent No.2 has no authority, jurisdiction and competence to pass an order like impugned one. Reliance is placed on the interlocutory order dated

08.05.2017 passed by this Court with the prayer to make the same absolute. Shri Joshi further contended that during the pendency of the case, the

claim of respondent No.3 to grant Majithia Wage Board's wages is referred for adjudication before the appropriate Court. The said adjudication

may take place in accordance with law. The impugned order cannot be countenanced because it is passed by the respondent No.2 without authority

of law.

5. Per contra, Shri Rajesh Tiwari, learned Government Advocate supported the impugned order on the basis of return filed in the present case.

Learned Government Advocate submits that the application preferred by the respondent No.3 under Section 17(1) of the WJ Act was considered and

upon taking cognizance of said application, notice was issued to the Newspaper-institution. On 17-01-2017, the application was preferred by the

respondent No.3 relating to his transfer on which Deputy Labour Commissioner wrote a letter to the present petitioner that since the case of applicant

is pending before him, no change in service condition of applicant be made. Thereafter, in Para 6 the respondents averred as under:-

6. It is further submitted that said letter was wrongly interpreted by the newspaper institution and has filed instant writ petition for quashment of

the same, whereas Dy. Labour Commissioner has not passed any order for maintaining status quo. Infact, Dy. Labour Commissioner has discharged

his official duties and simply instructed the newspaper Institution not to change the service conditions of the applicant.â??

(Emphasis supplied)

6. On the strength of a notification filed by respondent No.6 dated 03-03-1984 (Annexure R3-6), the government counsel contended that the Deputy

Labour Commissioner was competent to pass the impugned order.

7. Mrs. Manjeet P.S. Chuckal, learned counsel for the respondent No.3 contended that the application of respondent No.3 is pending final adjudication

for demand of wages as per Majithia Wage Board and, therefore, present petition against an interlocutory order is not maintainable. She attacked the

transfer order on the merits of the case and contended that the transfer order was issued because the petitioner demanded wages as per Majithia

Commission. She also placed reliance on the same notification (Annexure R/3-6) to bolster her submission that the Deputy Labour Commissioner is

competent to pass the impugned order.

8. The reference is made to judgment of Supreme Court dated 19-06-2017 in the Annexure R3-9 (Avishek Raja vs. Sanjay Gupta). It is urged that the

question relating to interference with transfer/termination was left open to be decided by the appropriate authority either under WJ Act or under

cognate provisions of Industrial Disputes Act. Thus, the Competent Authority/ Deputy Labour Commissioner has rightly passed the impugned order.

Lastly, it is submitted that during the pendency of this case, by order dated 17-01-2018, the Deputy Labour Commissioner has already referred the

dispute about payment of wages for adjudication before a Labour court. The terms of reference is as under:-

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funsZâ??k fn;s tkus pkfg, \^^

9. In the light of aforesaid, Mrs. Chuckal, learned counsel for the respondent No.3 contended that no interference is warranted against the impugned

order.

10. No other point is pressed by the parties.

11. I have heard the parties at length and perused the record.

12. Indisputably, the respondent No.3 filed an application under Section 17 (1) of the WJ Act on 17-01-2017 and filed yet another application seeking

protection from transfer. The core issue is whether learned Deputy Labour Commissioner had any jurisdiction in directing the petitioners to maintain

status-quo in relation to service conditions of respondent No.3. The respondents have justified the action on the basis order dated 03-03-1984. A plain

reading of this document shows that the Labour department of Government of M.P. authorized the Deputy Labour Commissioner to exercise power

under Subsection 1 of Section 17 of the WJ Act and issue recovery certificate. This order does not give any authority to Deputy Labour

Commissioner to pass orders directing the petitioner to maintain status quo.

13. The matter can be viewed from another angle.Â As per section 3 of W.J Act, the provisions of I.D Act, 1947 were borrowed.Â Section 33(1)(a)

reads as under :-

â??33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings-(1) During the pendency of any

conciliation proceeding before a conciliation officer or a Board or of any proceeding before (an arbitrator or) a Labour Court or Tribunal or National

Tribunal in respect of an industrial dispute, no employer shall(a) in regard to any matter connected with the dispute, alter, to the prejudice of the

workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(Emphasis supplied)

14. Section 33 aforesaid protects the workmen during pendency of conciliation proceedings or proceedings before the Labour Court to some extent.Â

The protection is granted in relation to a matter connected with the dispute so that the employer cannot change the condition of service applicable to

the workmen before commencement of such proceedings.Â The object behind section 33(1) was considered by Supreme Court in (1972) 1 SCC-814

(AIR-India Corporation, Bombay Vs. V.A.Rebellow and another).Â The Apex Court opined as under :-

10. The basic object of these two sections broadly speaking appears to be to protect the workmen concerned in the dispute, which form the subject

matter of pending conciliation proceedings or proceedings by way of reference under s. 10 of the Act, against victimisation by the employer on account of raising or continuing such pending disputes and to ensure that those pending proceedings are brought to expeditious termination in a peaceful atmosphere, undisturbed by any subsequent cause tending to further exacerbate the already strained relations between the employer and the workmen. To achieve this objective a ban, subject to certain conditions, has been imposed by Section 33 on the ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services under the general law governing contract of employment and Section 33A provides for relief against contravention of Section 33, by way of adjudication of the complaints by aggrieved workmen considering them to be disputes referred or pending in accordance with the provisions of the Act. This ban, however, is designed to restrict interference with the general rights and liabilities of the parties under the ordinary law within the limits truly necessary for accomplishing the above object. The employer is accordingly left free to deal with the employees when the action concerned is not punitive or malafide or does not amount to victimisation or unfair labour practice. The anxiety of the legislature to effectively achieve the object of duly protecting the workmen against victimisation or unfair labour practices consistently with the preservation of the employer's bonafide right to maintain discipline and efficiency in the industry for securing the maximum production in a peaceful harmonious atmosphere is obvious from the overall scheme of these sections. Turning, first to Sec.33, subsection(1)of this, section deals with the case of a workman concerned in a pending dispute who has been prejudicially affected by an action in regard to a matter connected with such pending dispute and sub-s. (2) similarly deals with workmen concerned in regard to matters unconnected with such pending disputes. Sub-section (1) bans alteration to the prejudice of the workman concerned in the conditions of service applicable to him immediately before the commencement of the proceedings and discharge or punishment whether by dismissal or otherwise of the workman concerned for misconduct connected with the dispute without the express permission in writing of the authority dealing with the pending proceeding.

(Emphasis supplied)

15. Even a cursory reading of this para makes it clear that the protection flowing from Section 33(1)(a), is confined to such actions which are

connected with the dispute and alteration of such service conditions may cause prejudice to the workmen.Â Otherwise, liberty is reserved to the

employer to deal with the employees when action is not punitive or malafide or does not amount to victimization or unfair labour practice.

16. This Court in *Dainik Naveen Duniya Vs. Labour Court-1990 SCC Online MP-92* considered the judgment of Supreme Court in the case of

Bhavnagar Municipality Vs. Alibhai Karimbhai (1977-II L.L.N.-1) wherein following features were held to be essential for invoking Section 33(1) (a).

These features are :-

(1) There is a proceeding in respect of an industrial dispute pending before the Tribunal.

(2) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceedings are altered.

(3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.

(4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.

(5) The alteration of the conditions of service is to the prejudice of the workmen.

(Emphasis supplied)

17. If the present case is tested on the anvil of principles laid down in aforesaid cases, it will be clear that the transfer order is not an action which is

connected with the dispute and such order has not altered the service condition of respondent No.3 to his detriment.Â It is not the case of the

respondent No.3 that transfer was not his service condition and his services were not transferable. Thus, it cannot be said that by transferring

respondent No.3, petitioners have violated the legislative mandate ingrained in Section 33(1)(a) of the I.D. Act.

18. In 2012 (1) LLJ 888 (*Wimco Ltd. vs. Wimco Employeeâ?? Union & Others*) Dr. Justice D.Y. Chandrachud (as his Lordship then was) dealt

with Section 33 of the I.D. Act, 1947. In the said case, Industrial Court granted interim stay of an order of transfer without recording any finding that

transfer order was malafide or an outcome of victimization. Indeed, the finding was given that there is no malice in the transfer order. In the instant

case also, in the impugned order there is no finding that the transfer order is an outcome of malice or victimization by the employer. In Wimco Ltd.

(supra), the Bombay High Court opined as under:-

4. The Industrial Court has negated the argument of the union that the transfer was contrary to the provisions of S. 33 of the Industrial Disputes

Act, 1947. There is no substance in the submission urged on behalf of the union on this issue since S. 33(1)(a) contemplates that during the pendency

inter alia of a reference to the Labour Court or Tribunal in regard to any matter connected with the dispute no employer shall alter to the prejudice of

the workman concerned in such dispute the conditions of service applicable to the workman before the commencement of the proceedings. The

conditions of service are those provided for in the letter of appointment which expressly contemplates that the workman can be transferred and that

upon transfer he will be governed by the rules and regulations of the unit or establishment to which he is transferred. 5. There is, therefore, no

alteration in the conditions of service within the meaning of S. 33(1) (b). Having regard to the aforesaid situation, I am of the view that this was not

one of those exceptional cases where the Industrial Court should have at the interim stage interfered with the order of transfer. In the circumstances,

the impugned order passed by the Industrial Court is liable to be quashed and set aside.

6. In view of this judgment also, it cannot be said that the relevant transfer order attracted of Section 33 of the I.D. Act.

19. In view of aforesaid analysis, it is clear that the respondents have failed to show that the Deputy Labour Commissioner was competent and

justified in issuing the impugned order. Resultantly, the said order cannot sustain judicial scrutiny. Consequently, the impugned order dated

28.01.2017 (Annexure P/1) is set aside. Petition is allowed.