

(2016) 02 RAJ CK 0018

In the Rajasthan High Court

Case No : SB Civil Writ Petition Nos. 13524 and 10891/2015

Rajasthan Vidhyut Takniki Karmchari Association District Unit
Tonk and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, Section 33

Citation : (2016) 02 RAJ CK 0018

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Naina Saraf and Tanveer Ahmed, for the Appellant; Ankur Srivastava and Laxmi Kant Sharma, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—1. By these two writ petitions challenge is made to the order of transfer dated 30.6.2015.

2. Learned counsel for petitioners submit that the order of transfer suffers from mala fide. It is of none else but of Mr. Kanhaiya Lal Choudhary, Member of Legislative Assembly, Malpura, Tonk thus it deserves to be quashed on the aforesaid ground itself. The reference of an FIR lodged by one Mr. Abhimanyu Vijay, Technical Helper has been given to show involvement of the MLA concerned to pressurise petitioners to settle the case. When settlement was not made, petitioners have been made victim. They have been transferred from one place to another at the instance of the MLA concerned.

3. The other ground to challenge the order of transfer is due to accommodation of co-employees resulting in transfer of the petitioners. An information was sought from non-petitioners about all the transfers. It shows that many transfers have been made at the instance of the Minister, whereas, few on administrative ground and lastly on mutual basis and on applications of the co-employees. The

accommodation of the employees resulted in displacement of the petitioners, whereas, for accommodation of others, one should not have been transferred. In view of above, order of transfer deserves to be quashed.

4. It is further stated that transfer of the petitioners would affect their seniority inasmuch as if they seek their transfer again in the same Circle from where they have been transferred, will have to loose their seniority position. In view of above, petitioners have been made to suffer their seniority by virtue of the impugned order of transfer thus for the aforesaid reason also, order deserves to be quashed.

5. The petitioners have been made victim even on the ground of their involving in union activities. They gave demand charter to raise voice for technical employees and to settle the scores, petitioners have been transferred from one place to another. The reference of various documents have been given to show demands raised by the petitioners and thereupon order of transfer from one place to another. The order of transfer has been made to settle the scores with the office bearers of the union and otherwise in violation of the provisions of the Industrial Disputes Act, 1947.

6. In the case of petitioner - Mohd Arif (CW 10891/2015), an additional ground has been taken about his being a member of the CPF Trustee Board. He has been elected as representative of the employees and, by virtue of his transfer, his work would be affected. The employees cannot be made to suffer on account of his transfer. The reference of the settlement entered between the employees union and the management has also been given. The transfer needs to be regulated in the manner given therein. The impugned order of transfer has been made in violation of the settlement between the parties thus for the aforesaid reasons also, it deserves to be quashed.

7. I have considered the submissions and perused the record.

8. The order of transfer has been challenged on various grounds. The first ground is of mala fide. According to the petitioners, the order of transfer has been influenced by the MLA concerned, who has been impleaded as party respondent in both the writ petitions. To substantiate the argument, reference of the FIR No. 178/2015, Police Station - Malpura, Tonk has been given. The perusal of the FIR does not reveal name of the MLA concerned or the petitioners. The report was lodged by one Mr. Abhimanyu Vijay, who has not been transferred, as admitted by learned counsel for petitioners. It is however submitted that petitioners were supporting the cause of Mr. Abhimanyu Vijay thus made victim of transfer. The allegations have been made but no material exist to substantiate it. If the FIR would have been in the background of the order of transfer then Mr. Abhimanyu Vijay must have been transferred first as he is the complainant. However, he has not been transferred. The order of transfer does not otherwise show influence of the MLA concerned thus how the order of transfer has been made at the instance of the MLA could not be

substantiate by the petitioners. The perusal of the order of transfer does not reveal transfer of the petitioners alone, rather, as many as 106 employees have been transferred from one place to another and even subsequently also orders of transfer have been issued thus the first argument of mala fide is not made out.

9. The next argument is in reference to the settlement arrived between the union and the respondent-company and, for it, reference of settlement at annexure-8 in CW 13524/2015 has been given. The perusal of the settlement dated 26.1.1970 and the circular dated 16.3.1970 reveals it to be bi-party i.e. between the Rajasthan State Electricity Board and the Prantiya Vidhyut Mandal Mazdoor Federation. The petitioners are not members of the federation, as admitted by learned counsel for petitioners. As per section 18 of the Act of 1947, settlement applies to the parties if it is bi-party and, if it is tripartite settlement, it can apply to all concerned.

10. A reference of provision to show application of the settlement on them could not be given by learned counsel for the petitioners thus mere reference of the settlement between the two parties and issuance of the circular would not improve case of the petitioners. It is more so when transfer is made not of one or two employees but of more than 100 employees from one place to another. In view of aforesaid, argument raised by learned counsel for petitioners cannot be accepted. The violation of a circular cannot otherwise be a ground to challenge order of transfer of an employee. It can be when it suffers from mala fide or violation of statutory provisions.

11. The next argument is regarding seniority. It is not disputed that on transfer of the petitioners from one place to another due to administrative reasons, their seniority would not be affected. It is only when transfer is made on request of the employee one loses seniority. So far as the transfer herein is concerned, it would not affect seniority of the petitioners thus merely for the reason that in future the petitioners may make application for transfer and if it is accepted by the administration, they would lose seniority, the order of transfer cannot be quashed. It is purely a hypothetical situation.

12. The other argument is about petitioners' involvement in union activities and their transfer as a consequence thereof. Learned counsel have referred various documents to show demands raised by the union. In few demand letters, petitioners are also signatories. If the aforesaid could have been a ground to transfer employees from one place to another, non-petitioners would have transferred all the office bearers of the union and signatories of the demand letters referred in the writ petition.

13. It is a fact that all the office bearers or the signatories of the demand letters have not been transferred from one place to another. In the background aforesaid, it cannot be said that transfer of the petitioners has been effected due to their participation in the union activities.

14. It is admitted by learned counsel for petitioners that no order has been

issued in favour of the office bearers of the union to declare them as "protected workman" under section 33 of the Industrial Disputes Act, 1947. In absence of protected workmen, transfers of the petitioners cannot be said to be illegal.

15. It is otherwise a fact that transfer order does not include only office bearers of the union but include many employees and they are more than 100 as is coming out from the impugned order of transfer. It may be that it is in reference to the request made by employees also and for administrative reasons.

16. It is further submitted that most of the transfers are on request of the employees and not due to administrative reasons. It is also stated that transfer has been made on the desire of the Minister concerned thus in what manner transfers have been carried out, speaks volumes about action of the non-petitioners. The perusal of the document reveals that many employees have been transferred on their own request, whereas, others have been transferred due to administrative reasons apart from mutual transfers and lastly, on the desire of the Minister of the department.

17. In the matters of transfer, desire of the Minister of the department may exist. It is not that desire of the Minister suffers from mala fide. The request for transfer is made to the Minister concerned for justified reasons and is recommended, cannot be said to be suffering from mala fide or in violation of the statutory provisions. The transfer order can be interfered only when it suffers from mala fide or has been passed in violation of statutory provisions. In the light of the aforesaid also, I am unable to accept the argument of learned counsel for petitioners.

18. In the case of Mohd. Arif, additional ground has been raised in reference to his election as a member of the CPF Trustee Board to represent the employees. The petitioner - Mohd Arif was posted at Malpura yet was elected as member of the Board, which functions at Jaipur, as stated by learned counsel for petitioner. The petitioner used to come to Jaipur from Malpura as elected member of the Board. Same way, he can very well come to Jaipur from transferred place as per requirement. In the light of the argument made above, I am unable to accept any of the grounds taken by the petitioners.

19. The order of transfer can be interfered when it suffers from mala fide or has been passed in violation of statutory provisions. It is in view of the judgment of the Supreme Court in the case of "Mrs. Shilpi Bose & ors versus State of Bihar & ors", , AIR 1991 SC 532. Relevant para 4 of the said judgment is quoted hereunder for ready reference -

"4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority

do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders."

20. In the same manner, in the case of "State of UP and ors versus Gobardhan Lal", , AIR 2004 SC 2165, Similar view was taken by the Supreme Court. Relevant para 7 of the said judgment is quoted hereunder -

"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 no 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 fides or is made in violation of any statutory provision."

21. In view of the discussion made above, I do not find that a case of mala fide is made out. It is also not in violation of statutory provisions. Thus, I am unable to interfere in the order of transfer. Hence, both the writ petitions are dismissed.