

(1994) 07 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 24 of 1990

R.M.P. Security Organisation Method Consultants Pvt. Ltd.	APPELLANT
Vs	
S.V. Nevagi and Another	RESPONDENT

Date of Decision : 18-07-1994

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42, 46
Contract Act, 1872 — Section 10, 4
Industrial Disputes Act, 1947 — Section 25

Citation : (1995) 2 BomCR 105

Hon'ble Judges : E.S. Da Silva, J

Bench : Single Bench

Advocate : F. Rebello, for the Appellant; D.Y. Sawant, for the respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

E.S. DA Silva, J.—The controversy in this petition lies within a narrow compass. The limited issue which arises in this case is regarding the transfer of the respondent No. 2 (hereinafter called to as "the respondent") from Zuarinagar (Vasco da Gama) to Bombay and whether this transfer is or not legal, proper and justified.

2. The petitioner is a Private Limited Company having its registered office in Bombay and various branches in India. The petitioner provides security guards, fireman drivers, security supervisors and inspectors to various companies for watch and ward and Fire Fighting Department on contract basis. The respondent is employed by the petitioner at its Bombay Office and temporarily posted at Zuarinagar, Goa and his services were transferred to Bombay pursuant to company's letter dated 7-11-1983.

3. The case of the petitioner is that on 6-1-1983 there was an advertisement published in Navbharat Times in Bombay for the post of Supervisor in its security establishment being at Headquarters in Bombay. On 7-1-1983 the respondent

applied for the said post. On 8-1-1983 there was an interview in Bombay and the respondent was selected for the job after which he gave an undertaking in Bombay that he was prepared to be transferred to any company's branch or unit in India. On the same day an offer of appointment for the post of Security Inspector was given to the respondent and he accepted the same. He was posted at Zuarinagar Branch and he was told that he should report to the Security Administrator as soon as possible and that he would be given a formal letter of appointment by him in Goa. On 10-1-1983 the respondent was offered a temporary employment by letter of the Security Administrator of Zuarinagar unit from 10-1-1983 to 8-3-1983. Thereafter he was again re-employed also on temporary basis from 14-3-1983 to 11-5-1983. Thereafter a fresh temporary employment was given to him from 9-6-1983 to 9-8-1983, then from 11-8-1983 to 8-10-1983 and the last temporary employment was given from 13-10-1983 to 10-12-1983. During this last period of employment a letter from the petitioner's Chief Executive at Bombay was addressed to the Security Administrator at Zuarinagar. It is dated 1-11-1983 asking him to direct the respondent to report back immediately to the Bombay office after the receipt of the letter since he was very much required at Bombay. On 7-11-1983, pursuant to this letter, the Security Administrator issued a letter to the respondent asking him to report to Bombay from 8-11-1983 and to collect his dues including his transport charges. The respondent did not accept the payment of any charges but accepted the letter of transfer. However, he did not report to the Bombay Head Office neither did he report for work at Zuarinagar. Thereafter a dispute was raised on his behalf by the Union consequent upon the fact of the Government refusing to make a reference to the Industrial Tribunal.

Then the Union filed Writ Petition No. 204 of 1985 against the respondent challenging the letter dated 1-8-1984 whereby the Government refused to make a reference. By judgment dated 7-7-1987 this Court held that it was not for the Government to decide on the merits of the respondent's claim and that the reference should be made to the Tribunal. The writ petition was therefore allowed and the Court observed that the Tribunal should not be bound by any observations made in the judgment of this Court directing the Government to make a reference. All other issues were left open for final decision. In that reference the Union filed a statement of claim and the petitioner also filed a reply. Thereupon the Union has made an amendment to the statement of Claim and the petitioner also filed an additional reply to the amendment. The Tribunal then passed its impugned Award dated 26-7-1989 which is being challenged in this petition under Articles 226 and 227 of the Constitution.

4. Mr. Rebello, learned Counsel for the petitioner, has invited my attention to the application of the respondent dated 7th January, 1983 seeking for a job of Supervisor with the petitioner and the endorsement seen on its bottom with regard to his selection and the posting at Zuarinagar office on 8-1-1983 on temporary basis. He also sought my attention to the undertaking given by the respondent on that very day, i.e., on 8-1-1983 wherein it is seen that the

petitioner has been posted at Zuarinagar Branch wherein he was supposed to report on 9-1-1983 and that he could be transferred for the purpose of his employment to any unit of the Company in India. According to the learned Counsel this shows that the respondent had applied for the post of supervisor in the petitioners company in Bombay, was interviewed for that post also in Bombay and ultimately selected in Bombay. Thereupon the letter of the petitioner dated 8th January, 1983 which is the offer of appointment given to the respondent clearly makes reference to his application dated 7-1-1983 and the subsequent interview he had with the petitioner. By the said letter the petitioner informs the respondent that he has been selected as a Security Inspector and posted for the time being at Zuarinagar, Goa till further instructions. The last part of the letter reads that a formal appointment letter would be issued to the respondent by their Security Administrator of Goa on reporting. The respondent is directed to join duty at his earliest. A copy of that letter has been marked to one P.S. Parekh, Security Administrator at Zuarinagar. With this regard there is an endorsement addressed to the Security Administrator authorizing him to issue a temporary appointment letter to the respondent as he is to be called back depending upon the exigencies of work on the petitioner's side. According to the learned Counsel this indicates that the petitioner has been already informed at the time of the offer of appointment made to him that he was likely to be transferred to Bombay and placed at the service at the Head Office if need arises and that he had agreed through an undertaking given before the petitioner. It was submitted by the learned Counsel that thus the placement and posting of the respondent in such job involving security is always contingent and dependent upon various factors including demands for such jobs at different places and other exigencies of service.

The learned Counsel has also stated that the Tribunal thereupon based upon the Statement of Claim framed issues on 23-8-1988 on the matter of reference, the relevant issue being issue No. 7. From the statement of Claim made by the respondent it can be seen that the respondent himself was aware that his posting in Goa was only accidental and temporary. In the said statement of claim the respondent has set on his challenges against the order of transfer and the only relevant challenge which is relevant to the petitioner is challenge No. c) which makes a grievance that the transfer order is illegal and unjustified. This because, the learned Counsel says, the Tribunal was not concerned with challenges a) and b) which refer to the fact of the order of transfer being malafide or vindictive or issued with a spirit of victimisation since no issues were framed by the Tribunal in this regard. The learned Counsel pointed out that the statement of claim of the petitioner would show that the respondent continued to be in their employment till 23-5-1988, the date of the filing of their reply, and he could have joined service in Bombay as disciplinary proceedings had been kept in abeyance. Further the petitioner had raised in its statement of claim that till March, 1987 the Union had no locus standi to spouse the cause of the respondent and hence the Tribunal had no jurisdiction to entertain the grievance of the Union on his

behalf.

5. Mr. Sawant, learned Counsel for the respondent, while joining issue with the submissions of Mr. Rebello, has contended that the letter dated 8-1-1983 was never given to the respondent because there is no endorsement either in the letter or anywhere in this respect which fact has otherwise been admitted by the petitioner's own witness K.S. Chadda. The learned Counsel has also urged that the Standing Certified Order of Government of Goa was very much in force since 6-11-1982 and was applicable to the employees of the petitioner's Zuarinagar establishment much before issuance of formal letter of appointment to the respondent on 8-1-1983. Hence, the said standing order was to be followed in respect of his appointment in Goa.

The next contention of the learned Counsel was that the respondent was not selected to any job in Bombay nor was he posted by the petitioner in Goa. Instead his job in Goa was given to him by Mr. Parekh himself when he personally approached Parekh after being informed by the peon of the petitioner's establishment in Bombay about the existence of vacancy in Goa. Thereafter when he appeared before Parekh and applied for this job he was interviewed and selected by Parekh after which he was given the appointment. Therefore, the learned Counsel submitted, neither the petitioner in Bombay nor Parekh in Zuarinagar had any authority to issue any order of transfer from Zuarinagar unit to the Head Office in Bombay in view of the Certified Standing Order prevailing in Goa according to which no transfer of employees was permissible beyond the various sections or department of the concerned unit.

6. I have heard learned Counsel of both the parties at length and I am satisfied that there is indeed a lot of substance in the grievances made by Mr. Rebello against the impugned Award of the Tribunal which held that the action of the petitioner's management transferring the respondent from Zuarinagar to Bombay was illegal and not justified.

7. So far the first submission of Mr. Sawant regarding the denial by the respondent that he had received the letter from the petitioner dated 8-1-1983 in concerned, there is, in my view, sufficient evidence on record to conclusively disprove such plea of the respondent. First of all from the evidence of the petitioner's witness Chadda who is the person who allegedly wrote the said letter and was examined by the petitioner before the Tribunal it is seen that he has made a positive statement without any challenge that the original letter dated 8-1-1983 was given hand delivery to the respondent and a copy of that letter posted to Parekh. It is true that in cross-examination of Chadda it is seen that he has stated about that letter that there is no record showing that Pandey has received it or accepted the Terms and Conditions therein. However, immediately thereafter Chadda has categorically denied the suggestion put by the respondent that such a letter was never given to Pandey thus showing that Pandey has been given the letter of appointment by the petitioner.

8. I have perused the original records of the trial Court, namely, the respondent's application made to the petitioner for the post of Supervisor which is dated 7-1-1983. The said letter shows on its reverse a remark purportedly done by the petitioner's management to the effect that the respondent was selected as S.I. which appears to mean Security Inspector for Z.A.C.L. which appears to mean Zuari Agro Chemicals Limited and posted on 8/1 which means 8th January, 1983 on temporary basis. Chadda who was allegedly the Interviewing Officer of the respondent consequent upon his application was examined in the Court when the said application had been already produced on the record earlier. In spite of that there is no challenge made before Chadda on the part of the respondent to this or a suggestion put to him that this endorsement was false. The respondent also did not deny challenge before him the Chadda's statement that it is he who selected the respondent and posted him in Zuarinagar unit in Goa.

9. Further and with regard to the undertaking purportedly given by the respondent I have also gone through the documentary evidence available on the file. The said undertaking carries the signature of the respondent which he at no time has denied to be his own signature. Normally an undertaking would not be given by a person to his employer unless he has been selected for any post or job to which he had applied. Hence the contention of the respondent that he was not selected by the petitioner for any job and instead he was appointed by Parekh at Goa for a post to which he applied for after a competent interview is no doubt impermissible. The said document shows on the right side under the signature of the respondent that he has accepted to work as Security Inspector for the petitioner with effect from 1-8-1983 and besides other commitments assured to the petitioner that he was accepting the possibility of being transferred to any unit of the Company in India. On its left side the same document on which the petitioner's photograph is pasted and carries his fingerprints indicates also under the signature of the respondent the various details of his bio-data, namely, his age, date of birth and marital status as well as the date of his appointment which is shown as 8-1-1983 and also his posting at Zuari Agro Chemicals from 8-1-1983. It thus follows that the respondent would not have signed this bio-data and the undertaking as well unless he had been selected and appointed by the petitioner at Bombay, once there is no dispute that the said document has been prepared and completed by the petitioner at Bombay itself. None of the entries in the document were signed by the respondent have been challenged except the one in red ink which is shown encircled in the original document and wherein it is mentioned that the respondent was to report at Zuari Agro Chemicals Limited by 9-1-1983. The remaining entries had not been denied by the respondent, namely, the one which shows that the petitioner was supposed to join on 9-1-1983 and report to the post at Zuari Agro Chemicals Limited in Goa. All these facts thus suggest that the respondent was very much present on 8-1-1983 at Bombay when the said document was purportedly signed by him and he was aware that he had been

recruited as Security Inspector and posted at the Zuarinagar unit at Goa on temporary basis. Therefore, and since all the other blue ink entries in the document are consistent with the entries in red ink which is the only one under cloud and is being challenged by the respondent, even assuming that the said entry which appears to have been made in red ink after something has been erased from that portion of the document, does not appear to make any difference as far as the post to which the respondent seems to have been selected and appointed and also with regard to the place of his posting and the date of his reporting to that posting is concerned.

10. This being the position and once the respondent has not challenged his signature the same has to be held as genuine and hence the document signed by the respondent is to be deemed as proved and accepted by him. In the light of this document the contention of Mr. Sawant that the letter dated 8-1-1983 was not given to him in its original, contrary to what has been stated by Chadda that the said letter was supplied to him hand delivery, has to be examined.

Admittedly the said letter reflects all the details of a document which was admitted by the respondent and which is a document wherein his undertaking was recorded and the bio-data collected by the petitioner. The said document was admitted by the respondent and therefore there was no question of the letter dated 8-1-1983 having been subsequently fabricated for any hidden purpose. Further it is seen that Chadda himself who is the maker of the letter has been cross-examined by the respondent and the only suggestion which was put to him is that the letter was an afterthought. It was at this stage that Chadda has produced the original records regarding the Outward Register of the petitioner's Bombay office wherein there is an entry to show that the letter dated 8-1-1983 was given hand delivery to the respondent on 8-1-1983 and a copy was posted to Parekh on the same day. The production of the register and the entries contained therein were also not denied or challenged by the respondent in the cross-examination. It thus follows that in such circumstances it would not lie in the respondent's mouth, namely, of his learned Counsel, to argue that the letter dated 8-1-1983 has not been supplied to the respondent and its contents were unknown to him.

11. So far the second submission of the learned Counsel that the service of the respondent is to be regulated by the Certified Standing Order applicable in Goa it is to be seen that the alleged transfer of the respondent was not done by the incharge of the Goa Office, namely, Mr. Parekh, who is the Security Administrator of the Zuarinagar unit. Indeed the letter dated 1st November, 1983 indicates that the said move by Parekh was ordered by the Chief Executive of the petitioner's company whereby Parekh was directed to make the respondent to report back to the Bombay office immediately since his services were required at Bombay. It was in pursuance of the said directive of the Head Office that Parekh has issued the so-called letter of transfer dated 7th November, 1983. Therefore the Award of the learned Tribunal insofar it holds that the respondent although selected at

Bombay has been appointed and re-appointed by the Security Administrator of the Zuarinagar unit and that the position of the respondent's appointment by the Head Office would be binding on the respondent only on the first appointment which was ending on 8th March, 1983 appears to be based on a sheer misconception. In his evidence the said Parekh, who is the Security Administrator, has clearly stated that he has no power to transfer the respondent to Bombay and he has only complied with the orders and directives of the Head Office. Being so the question of the appointment of the respondent being made by Parekh consequent upon his selection done in Bombay and therefore the said appointment not binding the Head Office after his appointment in Goa is no doubt a fallacious argument which is thus to be summarily rejected. The learned Tribunal appears to be inconsistent when a little further it admits or at least concedes the right of the Head Office to issue any order of transfer to the respondent. When the letter dated 1-11-1983 clearly shows that the respondent's transfer was ordered by the Head Office because his services were required in Bombay and in the aforesaid letter there is also a reference to the offer of appointment letter dated 8-1-1983, it is impossible to submit that this letter is an afterthought which has been fabricated for the purpose of justifying the illegal transfer of the respondent from Zuarinagar to Bombay. Thus the letter under challenge dated 7-11-1983 is to be construed only as a letter giving effect to the orders of the Head Office meant to relieve him from his duties in Goa wherein he has been admittedly selected and posted on purely temporary basis. In other words, the said letter cannot be said to be a letter of transfer but merely a letter whereby the respondent was asked to report back to the Head Office wherein he had been selected for the post. The award to the learned Tribunal is therefore to be held as been based on the wrong footing that the transfer of the respondent was done by Parekh and not by the Head Office when Parekh has only acted upon the directive of the Head Office. Therefore the contention of Mr. Sawant that the Standing Certified Order in Goa was to be applied to him and consequently the respondent could not be transferred or sent back to Bombay cannot be said as well conceived or deserving acceptance. Mr. Sawant appears to try to take advantage from the observations of the judgment of this Court in the Writ Petition No. 204 of 1985 filed by the Union on behalf of the respondent against the Government and the petitioner to challenge the refusal of the Goa Government to make reference to the Tribunal. Indeed some observations appear to have been made in the said judgment dated 7th July, 1987 but these are obviously made in different context and set of circumstances. The issue before the Court was whether the Government was justified in its refusal to make a reference. However, the High Court in the aforesaid judgment has expressed no opinion on the matter and further made it clear that any observations made should not bind the Tribunal while disposing of the reference. It thus follows that since the evidence on record conclusively establishes that the respondent was selected in Bombay and appointed to the post on 8-1-1983 also in Bombay after which he was posted at Zuarinagar unit in Goa on a temporary basis the petitioner was only entitled and justified in recalling him back to the Head Office

when exigencies of service or convenience of the Management so required. Being so the question of the standing certified order in Goa applying in this case to the respondent as his condition of service under which he could not have been transferred outside Goa is to be answered in the negative.

12. With regard to the last contention of Shri Sawant that the respondent was selected and appointed in the Goa unit by Mr. Parekh no evidence has been adduced by the respondent to substantiate such submission of the learned Counsel which does not also find any support in the respondents pleadings. It is a settled position that no submission can be entertained by the writ Court with regard to a fact which has not been pleaded. On this count alone this contention is to be rejected.

13. In the result this petition must succeed and the impugned award of the Tribunal is bound to be unsettled. Hence the award dated 26th July, 1989 of the Industrial Tribunal is quashed and set aside and the transfer of the respondent by the petitioner is hereby held as legal and justified.

Rule accordingly made absolute with costs.