
(2018) 05 MP CK 0026

In the Madhya Pradesh High Court

Case No : Misc. Petition No.1149 of 2018

Sun Pharmaceutical Industries Ltd

APPELLANT

Vs

Gyansingh Thakur & 14 Ors

RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:

M.P. Industrial Relations Act, 1960 — Section 16, 31(3), 61, 62, 67, 107
Constitution of India — Section 227, Article 226, 227

Citation : (2018) 05 MP CK 0026

Hon'ble Judges : P.K.JAISWAL, J;S.K.AWASTHI, J

Bench : Division Bench

Advocate : Piyush Mathur, K. Patwardhan, Ajay Bagadiya, N. Gehlot, Mini Ravindra

Final Decision : Dismissed

Judgement

P.K. JAISWAL, J:-

By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging the order dated 23.2.2018, passed by M.P. Industrial

Court, Indore by which the learned Industrial court set aside the order dated 17.1.2018, passed by the Labour Court, Dewas and stayed the transfer

orders of the respondents No.1, 2, 6 and 14.

Â 2. The petitioner is a pharmaceutical company, engaged in the business of manufacturing of life saving drugs. Originally, the company was named

as Ranbaxy Laboratories Limited. Later on, on account of purchase of the company by M/s. Sun Pharma Industries Ltd, now it is owned and

controlled by M/s. Sun Pharma Industries Ltd.

3. The respondent No.15 is a representatives union for Drugs and Pharmaceutical Industries located in Dewas. The respondent No.15 served the

petitioner with a notice of change which ultimately ended in settlement, which was arrived at on 22.9.2017. Some of the employees were not happy

with the settlement, had raised their grievance before different authorities. The respondents No.1 to 14 and other employees of the petitioner â?

company raised number of objections against the representative union and also filed an application for cancellation of recognition under Section 16 of

the M.P. Industrial Relations Act, 1960 (in short 'MPIR Act'). On 1.1.2018, the respondents No.1 to 14 and 130 other employees of the petitioner â?

company constituted Drugs and Sun Pharma Majdoor Sangh, Dewas, with the affiliation of Bhartiya Majdoor Sangh (B.M.S.) and on 2.1.2018, they

filed an application before the Registrar for registration of their union.

4. No sooner the petitioner and the respondent No.15 came to know about that, they have issued a transfer order, transferring the respondents No.1,

2, 6 and 14, who are General Secretary, Secretary, President and Treasurer of Drugs and Sun Pharma, Majdoor Sangh, Dewas to Dadar Nagar

Haweli and Bhatorikala (Himachal Pradesh). At the time of their appointments, Dadar Nagar Haveli and Bhatorikala (Himachal Pradesh) factories

were not in existence. They filed an application under Section 31(3) read with Section 61 / 62 of MPIR Act where, it was alleged against the

petitioner that transferring other from Dewas to Dadra Nagar Haveli and Bhatorikala (Himachal Pradesh) amounting to victimization and unfair labour

practice. They also filed an application for seeking stay of the order of the transfer. The petitioner company filed their reply stating therein that

transfer of employees of different categories from one State to another is regular phenomena. Till date 50 manager and officers and nine workmen

have been transferred from Dewas Plant to other location of the company. They denied about transfer of the rest of the applicants. It is also stated

that the appointment letter issued to them specifically provide term regarding transfer. They accepted these terms and joined the services only

thereafter. It is also stated that the Certified Standing Orders are applicable to the petitioner plant, standing order No.32 provides that the Management

may at its discretion and keeping in view the exigency of work and service, transfer any technical / non-technical or any employee from the

establishment to any other unit / project or office of the company. In the long term settlement dated 12.9.2017, arrived at between representative unit,

it has been agreed upon that the management can transfer any employee and prayed for rejection of the order of the Labour Court.

5. The learned Labour Court by order dated 17.1.2018, dismissed the application of the respondents No.1 to 14. Being aggrieved by the aforesaid

order, the respondents No.1 to 14 / employees, prepared Misc. Appeal under Section 67 of the M.P.I.R. before the Industrial Court, Indore, along with

an application under Section 107 of the MPIR Act, for stay of their transfer order, on the ground that as they have formed another union along with

118 employees and, therefore, the petitioner just to victimize them adopted an unfair labour practice by transferring them (respondents No.1,2,6 and

14). It is also stated that the transfer order in respect of other employees are ready, but as the same has been challenged and, therefore, no transfer

order has been issued to them. The M.P. Industrial Court by impugned order dated 23.2.2018 allowed the application by observing that the transfer

has been made with a mala fide intention as they formed new union in the name and style of Drugs and Sun Pharma Majdoor Sangh, Dewas and the

respondents no.1,2,6 and 14 are post holders and other respondents are their proposal and supporters and, therefore, the transfer order has been

passed. Para 11 to 13 are relevant which reads as under :-

11- tgka rd ekud Lrjh; LFkk;h vkKkaW,] izekf.kr Lrjh; LFkk;h vkKkvksa ij izHkkfor gksxh vFkok ugha ,oa vukosnd Å?ekad 1 dks Lrjh; LFkk;h

vkKkvksa ,oa fu;qfDr vkns'k ds 'krksZ ds vk/kkj ij LFkkukarj.k djus dk vf/kdkj gSA ;fn rdZ ds fy;s ;g ekuk tkosa fd vukosnd Å?ekad 1 dks

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vf/kdkj gksrs gq, Hkh D;k mDr LFkkukarj.k nqHkkZoukiw.kZ vk'k; ls vuqfpr Je O;ogkj djrs gq, fd;s tk jgs gS mDr n`f""V ls izFke n`""V;k vfHkys[k ij ;g

izekf.kr gksrk gS fd vkosndx.k }kjk vukosndx.k ds e/; fd;s tk jgs le>kSrs dk fojks/k fd;k] vukosnd Å?ekad 2 dk ita h;u fujLr djus dh dk;Zokgh dh rFkk

uohu la?k dk xBu djus esa inkf/kdkfj;ksa }kjk lfÅ?; dk;Zokgh esa Hkkx fy;k gS] vr% izFke n`""V;k ;g izdV gS fd vukosnd Å?ekad 1 } kjk vkosnd

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gSa] vukosnd Å?ekad 1 us vkosndx.k dh mijksDr dk;Zokgh ls f[kUu gksdj LFkkukarj.k vkns'k ikfjr fd;s gS] ;s rF; lk{; dk fo""k; gS] blfy;s izkfjHkd

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U;k;ky;] mDr rF;ksa ij] vafre fujkdj.k ds le; muds le{k izLrqr dh xbZ lk{; ij fu""d""kZ fudkyus ds fy;s Lora= gSA

12- mijksDr foospuk ls izdV gS fd Je U;k;ky; us izFke n`""V;k izdj.k ns[kus ds rF; dh fof/k laca/kh Hkwy dh gSA vkosndx.k ds i{k esa izFke n`""V;k

izdj.k izdV gksrk gS] tgka rd lqfo/kk dk larqyu o vifjfer {kfr dk iz'u gS] fuf'pr :i ls nwljs LFkku ij LFkkukarfjr gksus ij deZdkjksa dks vlqfo/kk dk lkeuk

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13- ifj.kker% ;g fof/k O;ogkj okn Lohdkj fd;k tkrk gS rFkk iz'uxr~ vkns'k vikLr fd;k tkrk gS] vkosndx.k }kjk izLrqr vkosnu i= vUrxZr /kkjk 107

vf/kfu;e Lohdkj djrs gq, ewy izdj.k ds vafre fujkdj.k rd vkond Å?ekad 1] 2] 6] o 14 ds LFkkukarfj.k vkns'k LFkfxr fd;s tkrs gSA izdj.k dh ifjLFkfr;ksa

esa mHk; i{k bl fof/k O;ogkj okn dk O;; viuk&viuk Lo;a ogu djsaxsAâ??

6. Shri Piyush Mathur, learned Senior counsel for the petitioner has invited our attention to terms and conditions of the appointment of the employees

and argued that contract of appointment stipulates a condition of transfer from one unit to another unit and as the transfer in the present case was

necessitated and, therefore, they were transferred in the interest of administration. He further submitted that the exercise of power of interference

made by the Industrial Court was not in accordance with law. The Industrial Court while considering the application filed by the employees exercising

power under Section 67 of the MPIR Act, can interfere in the matter only if, the Labour Court is acted in a manner, which is not permissible in law

and if it is found that Labour Court is acted in excess of jurisdiction vested in it. He lastly submitted that no unfair practice was adopted by the

petitioner in transferring the respondents No.1,2,6 and 14 and prayed for setting aside of the impugned order.

7. Per contra, Shri Ajay Bagadiya, learned counsel for the respondents No.1,2,6 and 14 has submitted that on 1.1.2018, the employees have formed a

new union as they opposed the settlement made by the respondent No.1

contrary to the interest of employees and, therefore, the respondents No.1,2,6 and 14 who are post holders of the said union have been transferred to Himachal Pradesh and Dadar Nagar Haveli. The Industrial Court having exercised its inherent jurisdiction, interference into the interlocutory order at this stage, by this Court exercising power under Section 227 of the Constitution of India is not warranted and prayed for dismissal of the writ petition.

8. Under Article 227 of the Constitution, this court can only interfere in cases where there is an apparent error of jurisdiction or error apparent on the face of the record. The powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi judicial nature are no greater than the powers under Article 226 of the Constitution. Article 227 of the Constitution merely conferred the power of superintendence to keep the court or tribunal within the bounds of their authority. At this stage, this court is only required to consider as to whether exercise of power of interference made by the Industrial Court while considering an application under Section 67 of the M.P.I.R. Act was in accordance with law or not.

9. The Division Bench of this Court in the matter of Naval Kishore V/s. MPSRTC & Ors., reported as 1975 MPLJ 251 has considered the scope of Section 67 of MPIR Act and held that while exercising power of superintendence under Section 67 of MPIR Act, Industrial Court can interfere in the matter only if the Labour Court has acted in a manner which is not permissible under law and it is found that the Labour Court has acted in excess of jurisdiction vested in it.

10. The sole contention of the petitioner was that the exercise of power by the Industrial Court was made in a manner which is not permissible under law and Industrial Court has acted in excess of jurisdiction conferred on it under Section 67 of the MPIR Act in interfering in the matter. The transfer of the employees are in accordance with the terms and conditions of their appointment. Unfair labour practice pleaded has not been established.

11. In the instant case, it is not in dispute that the respondents No.1 to 14 employees were opposing the settlement, which was made by the respondent No.15 union against the interest of the employee and immediately after the settlement arrived at 12.9.2017 agitation was started and thereafter, they formed a new union and on 1.1.2018, they applied for their registration. No sooner the petitioner's employer came to know about the same, he

issued an order of transfer of the respondents No.1,2,6 and 14 from Dewas to Dadra Nagar Haveli and Bhatorikala (Himachal Pradesh) just to

victimize them. Learned Industrial Court rightly exercised the jurisdiction vested on it by passing the impugned order dated 23.2.2018.Â

12. In the case of Kishore Jai Kishandas Icchaporia V/s. M.R. Bhope, Presiding Officer & Others, 1988 (56) FLR 478, the Bombay High Court has

held that the normal rule should be that a Model Standing Order framed by an appropriate Government shall prevail over the certified standing orders.

In the case of Cipla Ltd. V/s. Jayakumar R. & Anr. reported as (1999) 1 SCC 300, the Apex Court has held that Standing Order of the establishment

where he was initially appointed providing only for intra-establishment transfer and mentioning nothing about inter-establishment transfer in such

circumstances, the provisions for transfer as contained in the letter of appointment, held, not in conflict with the contained in the Standing Orders and

held that interestablishment transfer of such employee is not violative of the standing orders. In the present case, the case of the respondents that the

order of transfer was passed with an ulterior purpose. It was contended that the respondents No.1, 2, 6 and 14 have formed a new union and they

were office bearers of the said new union and it is for this reason, they have been transferred by the petitioner. There is an averment in the pleadings

before the Labour Court as well as before the Industrial Court to this effect.

They were involved with the trade union activities and that their transfer was malafide reasons and amount to unfair labour practice. Counsel for the

employees took us through the pleadings and we find that there is specific averment made therein that so far as a transfer order passed in respect

ofÂ respondents No.1, 2, 6 and 14 and we are of the view that as they are colsely connected with the forming of a new union and were office

bearers of the new union.

13. For these reasons, we find that the conclusion arrived by the Industrial Court is just and proper. No case is made out to interfere with the

interlocutory order passed by the Industrial Court as prayed by the petitioner is made out. M.P.No.1149/2018, has no merit and is, accordingly,

dismissed.