

(1995) 03 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40006 of 1994 and 40121 of 1994

Tarkeshwar Pandey and Others

APPELLANT

Vs

General Manager,U.P.State Mineral Development Corporation
Ltd.Lucknow and Others

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Citation : (1995) 03 AHC CK 0058

Hon'ble Judges : Aloke Chakrabarti, J

Final Decision : Allowed

Judgement

A. Chakrabarti, J.—By the present writ petition transfer orders dated 2101993, 4101993 and 5101993 have been challenged. The subsequent orders passed pending the writ petition have also been challenged in the rejoinder affidavit.

2. The case involved herein has a chequered career. The petitioners were appointed in various posts of Challan Supervisors, Junior Assistant, Pass Clerk, Typist, Security Guard, Despatch Supervisor and Road Supervisor at a consolidated salary at Allahabad Unit of U. P. State Mineral Development Corporation Ltd, Petitioners claimed regularisation and salary equal to that of the regular employees and having been granted no relief moved a writ petition in this Court. The respondent No, 2 instead of granting the relief passed order of termination of their services by retrenchment under Section 25FF of the Industrial Disputes Act. The petitioners moved a fresh writ petition challenging retrenchment which was allowed by this Court by judgment and order dated 421991 (Annexure 1 to the writ petition). The Corporation filed petition for special leave before the Hon'ble Supreme Court which was dismissed though time for regularising the services of the petitioners was extended. As the regularisation was still not granted, contempt petition No. 312 of 1991 was filed. Orders were passed on 621992 regularising the services of the petitioners but benefits of regular salary and other benefits were still being withheld. In case of two similarly situated other employees similar orders and similar violations were

there compelling them to file Contempt Petition No. 1269 of 1992 wherein thus Managing Director and the General Manager of the Corporation had to appear before the High Court on 17/9/1993. This annoyed those officers. Order dated 21/10/1993 was issued whereby the petitioners No. 1 to 5 had been transferred to Hardwar and petitioners No. 6 and 7 had been transferred to Haldwani. Following this order, orders dated 4/10/1993 were issued directing the petitioners to join at the transferred post on 5/10/1993 and they were relieved on 4/10/1993. As the compliance was physically impossible, representation was made on 5/10/1993 whereupon orders were passed on 5/10/1993 relieving the petitioners on 5/10/1993 and directing them to join at Hardwar and Haldwani on 6/11/1993 in the morning. Further, representation dated 6/10/1993 did not produce result and the present writ petition had to be filed.

3. The respondents contested the proceeding filing counteraffidavit affirmed on 28/10/1993 denying the allegations of the petitioner and disclosing that retrenchment had been effected as Lalapur Unit, Allahabad was decided to be transferred to joint venture. It has been stated that regularisation was allowed on 4/2/1991 and consequential benefits were given. The first increment which became due to the petitioners in 1993 was being processed. The regularisation of the other two employees were delayed as sanction by the State Government was not received in time. Transfer two Hardwar and Haldwani had to be affected as work in Allahabad Unit was no more there as the lease expired. The work at Hardwar and Haldwani were to be completed at the earliest and the State Government imposed a ban on the fresh recruitment in the Corporation. In view of urgent requirement of employees at Hardwar and Haldwani petitioners were directed to report immediately.

4. Petitioners filed rejoinder affidavit affirmed on 15/11/1993 contending that having been compelled to regularise the petitioners under orders of the Court the respondents are harassing the petitioners in various ways including withholding of benefits of regularisation. It has also been stated that only those persons who had filed writ petition and were regularized under order of the High Court have been transferred. Harassment was further there when in spite of stay order by the High Court in respect of transfer the petitioners were not permitted to work at Allahabad and were not paid salary. Several persons who are senior and junior to the petitioners are still working at Allahabad.

5. The respondents filed a supplementary counteraffidavit affirmed on 22/12/1993. The contentions therein relevant to the present purpose are that the lease granted for work of minor minerals expired on 25/3/1992 and no other lease was granted in respect of the same resulting in the work at Allahabad Unit was completely stopped which required shifting of more than one-third staff on the Unit, it has also been stated that Corporation has subsisting lease of silica sand at Lalapur, Allahabad and some staff is required for the said work. New project started at Lalitpur Jhansi and for the same a large number of class III and IV were required. The State Government imposed a ban on recruitment employees and

so far mining project at Lalitpur requisition was sent to Head Office for sending class III and IV employees, Similar requirement was there for Dehradun Unit. It has also been stated that out of 31 employees regularised under the orders of the High Court five were transferred in July, 1992, by order dated 10121993 further twelve employees were transferred and such transfers were in the interest of the Corporation.

6. The petitioners filed a supplementary rejoinder affidavit affirmed on 131994. It has been contended therein that instead of transferring those persons who have been working at Allahabad for a long period, the respondents have picked up only those who have been regularised under the orders of the High Court and had filed contempt petition against superior officers of the Corporation. It has been contended further that the fact that the persons working for a long period at Allahabad and the fact that persons regularised under the order of the High Court had been picked up and chosen for transferring at distant places on the plea that Allahabad Unit has no work, show conclusively that the impugned orders of transfer are arbitrary and illegal particularly in the background of the case. In the said supplementary rejoinder affidavit the order dated 10121993 transferring the petitioners No. 1, 2, 4, 5, 6 and 8 has also been challenged.

7. Heard the learned Counsel for the petitioners and the learned counsel for the respondents. Parties have agreed that affidavits having been exchanged the writ petition may be finally disposed at this stage.

8. Petitioners' main contention is that in the background of the chequered history of the case, their claim for regularisation, filing a writ petition for regularisation, retrenchment instead of regularisation, setting aside of the retrenchment order by the High Court upon a finding that the action of retrenchment was mala fide, illegal and is liable to be quashed, noncompliance of the order of the High Court by the respondents, contempt petition and regularisation thereafter, the present transfer of the petitioners on 2101993 followed by the transfer order dated 10121993 are arbitrary, illegal and mala fide.

9. The learned counsel for the respondents contended that the case of mala fide cannot stand as persons against whom mala fide was alleged, have not been made party to the proceeding as held in various cases including the case of State of Bihar M. P. P, Sharma, AIR 1991 SC 1260, The second contention of the respondents is that lease of minor minerals working having expired in 1992 there was no work at Allahabad Unit and other Units having urgent "Work, transfers of the petitioners had to be effected particularly as the State Government imposed a ban on fresh recruitment.

10. The learned counsel for the petitioners replied to such contention of the respondents by contending that in the present case the actions challenged being the result of malice in law, not making any particular authority a respondent, does not render the contention not tenable. Reliance was placed on the cases of Regional Manager v. Pawan Kumar, AIR 1976 SC 1766 ; Smt. S. R.

Venkataraman v. Union of India, 1979 (2) SCC 491 and Mahabeer Auto Stores v. Indian Oil, AIR 1990 SC 1031. It has also been contended on behalf of the petitioners that the case made out by the petitioners in the rejoinder affidavit was that not only the persons who got their services regularised by writ court's order and filed contempt applications were transferred whereas neither the persons senior to them nor the persons junior to them at Allahabad were transferred. The same has not been dealt with by the respondent disclosing facts and figures and effectively disputing such contentions when the respondents filed their supplementary counter affidavit subsequent to the said rejoinder affidavit.

11. Upon considering the contentions of the parties, I find that the respondents have not effectively denied disclosing facts that any consistent policy was implemented in the matter of impugned transfer orders. When admittedly projects at Allahabad are available and working and persons both senior and juniors to the petitioners have been retained at Allahabad in various projects, I do not find any reason of choking the petitioners for being transferred at distant places at various other projects of the Corporation. In the background of the facts as stated in detail hereinabove, I also find that the impugned transfers orders are arbitrary there is no reason disclosed justifying transfer of the petitioners only when others have been retained in the background of the fact that the petitioners were the persons who had to be regularised under court's order after their termination was quashed by the High Court holding the action of the respondents to be mala fide. The respondents could not disclose any believable just cause or any reason for effecting the impugned transfers when admittedly various projects at Allahabad are functioning and several persons have been retained there and the petitioners have been transferred who were all regularised under the orders of the High Court. In the circumstances, I feel that malice in the present case can be gone into although the authorities have not been made parties by name. The admitted facts that the Managing Director and the General Manager of the Corporation had to appear before the High Court on 17/9/1991 under the direction of the High Court in a contempt proceeding, the transfer orders in the background of the case passed on 21/10/1993, communicated by order dated 4/10/1993 and relieving them on 4/10/1993 and asking them to report at Hardwar and Haldwani on 5/10/1993 in the morning, make the petitioners' case believable. The respondents have not made out any case nor could disclose any reason justifying such action.

12. In the circumstances aforesaid, I find that the impugned transfer orders dated 21/10/1993, 4/10/1993, 5/10/1993 and 10/12/1993 are liable to be set aside. I have also considered the law referred to by the respondents as settled in the case of Shilpi Base v. State of Bihar, AIR 1991 SC 532 ; Rajendra Roy v. Union of India, AIR 1993 SC 1237 and Sankaranarayanan v. State of Karnataka, AIR 1993 SC 763. I do not find that the law explained their debar the petitioners from the relief in the facts and circumstances of the present case.

13. Accordingly, the writ petition succeeds and is allowed. The orders dated

2101993, 4101993, 5101993 and 10121993 transferring the petitioners from Allahabad are set aside. However, I make it clear that this order will not prejudice the respondents from passing any appropriate transfer order in accordance with law. There will be no order as to costs.