
(2001) 11 MAD CK 0110

In the Madras High Court

Case No : C.R.P. No. 2951 of 2001 and C.M.P. No. 15651 of 2001

The Managing Director, Indian Express (Madurai) Ltd.
Chennai-2

APPELLANT

Vs

P. Srinivasan

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Citation : (2001) 11 MAD CK 0110

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : S. Vijayaraghavan, for the Appellant; Justin, for the Respondent

Judgement

Mrs. Prabha Sridevan, J.—This revision has been filed by the employer aggrieved by the order granting interim injunction of the order of transfer whereunder the respondent herein above was transferred from Chennai to Trivandrum. The respondent Tiled O.S. No. 7961/ 99 for a declaration that Clauses 7 and 8 of the contract of employment dated 15.08.1982 were unenforceable and consequently the transfer order dated 11.12.1999 was illegal and void. Pending suit, he prayed for interim injunction restraining the petitioner herein from giving effect to the transfer order. Interim injunction was granted in I.A. No. 20099 of 1999 and the same was confirmed in C.M.A. No. 45 of 2001.

2. Mr. Vijayaraghavan the learned counsel appearing for the revision petitioner attacked the order on various grounds. According to the learned counsel, the suit was for two declaratory relief?s, one that the contract of employment which gave the petitioner the power to transfer was unenforceable and also for a declaration consequently that the transfer order was illegal and void. When the respondent had not played for the relief of permanent injunction in the suit, it was not open to him to seek temporary injunction pending suit and the courts had exceeded their jurisdiction in granting the same. For this purpose he relied on a judgment of this Court in St. Aleysius Anglo Indian Higher Secondary School v. Association for Protection of Education (1991 (1) L.W. 564). The learned counsel would

submit that Court cannot sit in appeal over the reasons that compelled the employer to transfer the employee. These are purely administrative reasons and the employer alone can decide that an employee has to be transferred for better administration and for this purpose, he relied on a Division Bench judgment of this Court reported in *Tamil Nadu Electricity Board, Madras v. K. Raman and another* (1985) II LLN 184. and a judgment of the Supreme Court reported in *The State of Madhya Pradesh and another v. S.S. Kourav and others* (1997 (II) LLJ 199), and a Judgment reported in *G. Prabhakaran and Southern Petrochemicals Industries Corporation Ltd.* (1995) (II) LLJ 6). Further, he would submit that the Civil Court had no jurisdiction to decide issues which fell within the power of the tribunals constituted under the Industrial Disputes Act, and for this purpose, he relied on a Judgment reported in *Tamil Nadu Electricity Board, Vellore v. R. Sunder Rao* (1998 (III) CTC 19). Further assuming without admitting that the Civil Court has jurisdiction to try the suit, prima facie case was not made out and neither of the Courts below had spelt out the existence of the balance or convenience, hardship of injury warranting the exercise of power under order 39 of C.P.C.

3. The learned counsel also submitted that there was absolutely no averment regarding mala fide and it was another circumstance which would bar the Court from restraining the petitioner from effecting the order of transfer. The learned counsel further submitted that one circumstance which prevailed upon the Court below to grant the interlocutory relief was the fact that originally the Standing Orders that governed the petitioner included the power to transfer. Thereafter, the union went before the Joint Commissioner of labour seeking deletion of Clause 24 which provides for transfer; by proceedings dated 27.07.1990, this clause had been deleted. According to the learned counsel, this had prevailed upon the Courts below to come to the conclusion that the petitioner did not have the power to transfer. According to the learned counsel even in the absence of any Standing Order relating to transfer, the right to transfer existed under the contract of employment between the Management and the employee, and for this purpose, the unreported judgment in W.P. No. 14291 of 1992 was relied on, in which reference was made to other decisions in this regard. For all these reasons he would submit that the order of the Courts below must be set aside. One other factual matter was brought to the notice of this Court. According to learned counsel, the impugned order dated 11.12.1999, automatically relieved the employee from his position at Chennai asking him to take charge at Trivandrum immediately. Therefore, the question of restraining the petitioner from giving effect to the transfer did not arise.

4. Mr. Justin, the learned counsel appearing for the respondent, would however submit that the Civil Court's jurisdiction was not ousted. He pointed out to one of the earliest judgments on this point reported in *The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay* (1976 (1) SCC 496), in which the Supreme Court had held that where the dispute is one arising out of the right of liability under general or common law and not under the Industrial Disputes Act,

the suitor has the right of exercising his option and can elect the forum for redressal of his relevance. The learned counsel then relied on the decision reported in *Rajasthan State Road Transport Corporation and another v. Krishna Kant and others* (1995 (5) SCC 7) wherein again the Supreme Court had laid down the principles regarding the choice of forum of a person aggrieved in similar circumstances. Seven principles were laid down and it was held therein that when the dispute arises from general law of contract, the suit cannot be held to be not maintainable. It was also held in this judgment that even when the disputes involved recognition, observance of enforcement of rights and obligations created under sister enactment to Industrial Disputes Act, recourse to Civil Court is still open. According to the learned counsel therefore, it was not correct to state that the respondent was barred from approaching the Civil Court. The learned counsel also submitted that the decision relied on by the learned counsel for the petitioner with regard to the interlocutory application being beyond the scope was not applicable to the present case. According to the learned counsel when prayer in the plaint clearly seeks declaration that the transfer order is illegal consequent to the declaration that the contract of employment clauses 1 and 8 are unenforceable, there was no justification to deny the relief of injunction which flows from such declaration.

5. With regard to the other decision relied on by the learned counsel for the petitioner, the extent to which courts or tribunals can interfere with the orders of transfer, the learned counsel" submitted that in most of these cases, the employer was a statutory undertaking and therefore, those decisions may not apply to this case where the employer is not a governmental undertaking, but purely a private one. Further, reliance was placed on a decision reported in *Vazhapadi Textiles (P) Ltd. v. Durai and five others* (1999 (2) CTC 500) wherein the learned Judge has held that the jurisdiction of Civil Court is not ousted when the right asserted is pre-existing common law right. It was also submitted that the judgment reported in *Tamil Nadu Electricity Board Vellore v. R. Sundar Rao* (1998 (3) CTC 19) wherein this Court held that Civil Court has no jurisdiction to deal with the matter relating to conditions of service was not applicable to the present case, because there what was challenged was regarding the right of promotion and the Court held the promotion was not a vested right, it arose only under standing orders and service conditions, and it was in those circumstances, that the learned Judge came to that decision. In this case, the right of transfer was specifically deleted from the Standing Order. Therefore, that decision cannot have application to the facts of this case. The learned counsel also pointed out that the contract of employment was entered into in 1982. The deletion of the provision relating to transfer by the proceedings of the Joint Commissioner of Labour came into effect only in the year 1980. Therefore, the agreement entered into between the parties, got altered after the deletion of the provision of transfer from the standing orders. For all these reasons, the learned counsel submitted that there was no justification to interfere with the order.

6. With regard to the ouster of jurisdiction of the Civil Court, the principles laid

down by the Supreme Court as well as this Court show that certain questions that are covered purely by the Industrial Disputes-Act can be decided only by the forum, but where the right asserted falls partly under the right that was put by the tribunal under Industrial Disputes Act, and partly as a common law right, then the option is given to the suitor to choose his forum. At this stage, while dealing with the Interlocutory Application it will not be proper for this Court to decide that issue, and therefore, the question of jurisdiction is left open. The decision relied on by the learned counsel for the petitioner for the proposition that even in the absence of Standing Order giving the power of transfer, the employer still has the right to transfer may not be strictly applicable to this case, this is so because. when the contract of employment was entered into, the Standing Orders included the power of transfer, it was subsequent!) deleted, the effect the deletion had on the existing contracts, are also matters that have to be decided by the oral and documentary evidence at the time of trial and therefore this question is also left open.

7. As far as the ground raised by the learned counsel for the petitioner that the interlocutory relief exceeds the scope of the suit, it deserves some attention. The plaint deals in detail with the allegedly unenforceable Clauses 7 and 8 of the appellate order. It also deals with the proceedings initiated by the Joint Commissioner of Labour. Under the power vested in him, he ordered the deletion of the said provision. Even in para-8 of the plaint, it is clear that the respondent only seeks declaration that the said Clauses are unenforceable in view of the subsequent proceedings of the Joint Commissioner. No-where in the plaint has the respondent averred that the petitioner must be restrained from giving effect to the order of transfer. When it is not there in the body of the plant, leave alone in the relief clause it is very doubtful, if the respondent can get this relief in the interlocutory application. This clearly shows that what has not been claimed in the suit is sought for by way of an interim measure. It is possible that the respondent was aware even on the date of filing the suit that the impugned order had already come into effect and therefore, injunction, will not lie. Whatever may be the reason that compelled the respondent to frame his suit as he had done, the fact remains that there are absolutely no pleadings which would justify a decree for permanent injunction leave alone the order of temporary injunction. This aspect has totally escaped the attention of the Courts below. Courts will not normally interfere in orders of transfer. This is well settled as also demonstrated by the decisions relied on by the petitioner. Repeatedly Courts have held that tribunals and Courts cannot sit in appeal over orders of transfer which are decided on purely administrative grounds and that the wheels of administration should be allowed to run smoothly and the courts or tribunals shall not interfere with the working of the system unless they are vitiated by mala fide or extraneous consideration. One searches in vain for any pleadings regarding mala fides or extraneous consideration which vitiates the order of transfer. The grievance of the petitioner is that the order of transfer is illegal because of the proceedings of the Joint Commissioner whereunder the Standing Orders were

amended. In these circumstances too, the order of transfer cannot be interfered with. Further from the impugned orders, it is seen that the trial Court has granted injunction on coming to the conclusion that the Civil Court has jurisdiction to try the suit without considering the question of prima facie case, irreparable injury or injustice. The appellate Court has satisfied itself with concluding that there is no error in the decision of the trial Court because the Civil Court has got jurisdiction. When the remedy asked for is under Order 3.9 Rules 1 & 2 CPC, the Courts have to examine whether the factors that justify an interim injunction exist. For the reasons stated above, the impugned order is set aside. The Civil Revision Petition is allowed. No costs.