
(2005) 02 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 136 and 137 of 2005

T.V. Sundaram Iyengar and Sons Ltd. and Others

APPELLANT

Vs

Sanjay Kumar Jadhav

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Madhya Pradesh Industrial Relations Act, 1960 — Section 1(3), 107, 31, 61, 62

Citation : (2005) 106 FLR 514 : (2005) 3 LLJ 829 : (2005) 2 MPLJ 570

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : K.N. Gupta and Girdhari Singh Chouhan, for the Appellant; B.P. Singh and Alok Sharma, for the Respondent

Judgement

Rajendra Menon, J.

Petitioners by Shri K.N. Gupta, senior advocate with Shri Girdhari Singh Chouhan, advocate. Respondents/employee by Shri B.P. Singh and Shri Alok Sharma, advocate. As common questions and orders identical in nature passed by the Industrial Court are challenged in both these petitions being W.P. Nos. 136/2005 and 137/2005, they are being disposed of by this common order. On the ground that services of respondent/employees are required at Indore and Rewa in view of the requisition Annexure-P/6 dated October 11, 2004 received in the matter, respondents/ employees were transferred to Rewa and Indore respectively by orders of transfer Annexure-P/2 dated October 26, 2004. Challenging the aforesaid transfer orders to be illegal on the grounds of mala fide, contrary to their service condition and being by expressing certain personal difficulties in the matter pertaining the education of their children being adversely affected by transferring them in mids of the academic session both the employees filed applications u/s 31 read with Sections 61 and 62 of the M.P.I.R. Act before the Labour Court No. I, Gwalior. Along with the application challenging the order of transfer application u/s 107, M. P. Industrial Relations Act, 1960 was

filed seeking stay of the order of transfer. Notices were issued, replies were filed by the respondents-employee and on the basis of the material and documents that came on record Labour Court vide order Annexure-P/7 dated December 9, 2004 passed a common order in both the cases holding that no prima facie case is made out. It was held by the learned Court that transfer of the employees are in accordance with the terms and conditions of their appointment, mala fide pleaded, has not been established and finding no ground available after assessment of prima facie case, balance of convenience and irreparable loss in favour of the employees rejected their prayer for stay. Being aggrieved by the aforesaid orders, respondents/employees preferred Miscellaneous Application purported to be u/s 67 of the M.P. Industrial Relations Act before the Industrial Court, Gwalior vide Annexure-P/8. The aforesaid applications were allowed by the impugned order Annexure-P/9 dated January 4, 2005 and holding that the transfer in the midst of the session is contrary to the observations of the Supreme Court in the case of Director of School Education, Madras and Ors. v. O. Karuppa Thevan and Anr. 1997 MPLSR 657. Industrial Court interfered in the matter and directed for stay of the order of transfer. Being aggrieved by the aforesaid order of Industrial Court, this petition has been filed by the petitioners. Shri K.N. Gupta, learned senior counsel inviting my attention to terms and conditions of appointment of the employees as contained in their order of appointment Annexure-P/1 argued that contract of appointment stipulates a condition of transfer from one Branch to another, from one department to another and as transfer in the present case was necessitated because of the requirement of trained mechanics in Indore and Rewa and keeping in view the requisition received vide Annexure-P/6, the respondents-employees were transferred in the interest of administration. It is stated that wrongly applying the judgment in the case of Director of School Education (supra) Industrial Court committed material irregularity in interfering in the matter. Shri K.N. Gupta, learned senior counsel argued that provisions of M.P.I.R. Act are not applicable to the petitioner/establishment, no mala fide was proved and ignoring the well settled principle of law with regard to judicial review in a matter of transfer placing reliance on the following judgments, Shri Gupta, learned senior counsel argued that interference made by the Industrial Court was not proper. The judgment relied upon by learned senior counsel are:

Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and Ors. 2004 LLR 1103, Public Services Tribunal Bar Association Vs. State of U.P. and Another, , State of Rajasthan and Others Vs. Anand Prakash Solanki, .

Refuting the aforesaid Shri B.P. Singh, learned Counsel appearing for respondents-employees have filed the reply and have contended that considering the provisions of Section 1(3) of the M.P. Industrial Relations Act and keeping in view the law laid down by the Bench of this Court in the case of Bharat Chand Chaturvedi Vs. State of M.P. and Others, (MP) contention of the petitioners that M.P.I.R. Act does not apply is not correct. Pointing out the total number of employees working in various offices and Branches of petitioners/establishment

in the State of M.P. respondents have tried to demonstrate that the provisions of M.P.I.R Act are applicable to petitioners establishment, being an "Engineering Industry" as included in the schedule to the M.P. Industrial Relations Act. That apart, bringing on record the order of suspension issued in case of employees so also the action taken for suspending them illegally for a period of 10 days contrary to the provisions of Standard Standing Orders. Shri B.P. Singh, learned Counsel argued that mala fides are established in the matter and Industrial Court having exercised its inherent jurisdiction interference into the interlocutory order at this stage by this Court exercising power under Article 227 of the Constitution is not warranted. It is the case of the respondents that once it is found that transfer is being effected in the mids of the academic session, no interference is called for. Accordingly, learned Counsel supported the order passed by the Industrial Court and sought dismissal of this petition.

I have heard learned Counsel for the parties and perused the records. The question of applicability of provisions of M.P.I.R. Act need not be looked into by this Court in these proceedings the same has to be considered by the Labour Court where the applications filed by respondents are pending adjudication on merits. 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 u/s 67 of the M.P.I.R. Act was in accordance with law or not. A perusal of the order passed by the Labour Court dated December 9, 2004 indicates that Labour Court in Para 5 has formulated three questions while deciding the application u/s 107 of the M.P.I.R. Act. Labour Court has assessed the prima facie case, balance of convenience and irreparable loss, each and every principle required for grant of injunction has been assessed and it has been held by the Labour Court that transfer is a condition of service, mala fide are not established and accordingly finding none of the three ingredients required for grant of injunction being available rejected the application u/s 107 of M.P.I.R. Act.

Industrial Court while considering the application filed by the respondents/ employees exercising power u/s 67 has merely held that transfer in the mids of the session is not proper and therefore passed the impugned order, while doing so Industrial Court has not given any reason as to how and in what manner the order passed by the Labour Court is illegal, assessment of prima facie case, balance of convenience and irreparable loss made by the Labour Court has not been taken note of by the Industrial Court. Industrial Court has merely interfered with in the matter on the ground that transfer is in the mids of the session. Admittedly, the Industrial Court was exercising powers u/s 67 of the M.P.I.R. Act and it has been held by the Division Bench of this Court in the case of Naval Kishore v. M.P.S.R.T.C. and Ors. 1975 MPLJ 251 that while exercising power of Superintendence (sic) u/s 67 of the M.P.I.R. 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 Labour Court has acted in excess of jurisdiction vested in it. In the instant case it is seen that Industrial Court has not exercised its jurisdiction u/s 67 properly. Without holding or finding any error of

jurisdiction in the order of Labour Court, Industrial Court has merely interfered in the matter holding that the transfer in the mids of the session is not permissible. In doing so also the Industrial Court has not read the judgment of the Supreme Court in the case of Director of School Education (supra) in its totality. In that case Supreme Court has not laid down any proposition that transfer in mids of academic session in all cases is illegal, it has only been observed that transfer in the mids of sessions without there being exigency of service is not proper. The observation made by the Supreme Court was in the facts and circumstances of the said case and in the present case application of the aforesaid principle was not called for when the petitioners had brought on record the requirement of the employees at Rewa and Indore on the basis of requisition Annexure-P/6.

Accordingly, it has to be held that 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 u/s 67 of the M.P.I.R. Act in interfering in the matter.

Accordingly, petitions are allowed. Impugned orders are quashed. During the course of hearing Shri B.P. Singh, learned Counsel submitted that considering the fact that respondents' children are studying and examinations are in progress, they be not relieved. As the petitioners have not agreed to keeping the transfer in abeyance, it would not be appropriate for this Court to pass an order on the personal difficulties of the employees, their inability to carry out the order of transfer on the ground of education of children are to be considered by the employer and therefore it would be for the respondents to move appropriate representation before the petitioners and it would be for the competent authority of petitioners to take a sympathetic view in the matter of permitting the respondents to remain at Gwalior till the academic session.

In case any salary and TA/DA are required to be paid to respondents, the same be paid immediately to enable the respondents to go to place of posting.

Petitions stand allowed and disposed of.

Certified copy as per rules.