
(1993) 08 AHC CK 0028
In the Allahabad High Court
Case No : Spl. Appeal No. 481 of 1993

U.P. State Sugar Corpn. and Another	APPELLANT
Vs	
Bipin Kumar Mishra	RESPONDENT

Date of Decision : 19-08-1993

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 3(2)

Citation : (1994) 1 AWC 70 : (1994) 1 LLJ 1004

Hon'ble Judges : S.C. Mathur, Acting C.J.; R.A. Sharma, J

Bench : Division Bench

Advocate : Ramesh Kumar Shukla and Rishi Ram, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Mathur, Ag. C. J.

1. U.P. State Sugar Corporation Ltd., for short "Corporation", a Government company within the meaning of Section 617 of Companies Act, 1956 (1 of 1956), and another have directed this Special Appeal against the judgment and order of a learned single Judge of this Court, who allowed the writ petition of the respondent Bipin Kumnr Mishra and quashed the order dated December 15, 1992 of the Corporation's Managing Director transferring the respondent from one unit of the Corporation to another.

2. Since 1979 the respondent was in the employment of Luxmi Devi Sugar Mills, Chitauni, District Dcoria. The mill was acquired by the State Government and vested in the Corporation under the provisions of the U.P. Sugar Under-takings (Acquisition) Act, 1971 (23 of 1971), for short "Act". By virtue of this acquisition, the mill became a unit of the Corporation. In July, 1987 the respondent was transferred, on his own request, to Ghalampur Sugar Factory, Ghatampur, District Kanpur Dehat. On December 15, 1992 when the respondent was working at Ghatampur in the Cash Department, the Managing Director of the Corporation issued the impugned order transferring him to another unit of the Corporation at

Pipraich in District Gorakhpur.

3. The aforesaid transfer order was challenged by the respondent on the following grounds:

i. The Sugar Factory at Ghatampur is registered under the Companies Act while the unit at Pipraich is registered under the Factories Act, 1948 and they are independent of the Corporation and, therefore, the Managing Director of the Corporation has no jurisdiction to effect the transfer:

ii. The respondent is a workman within the meaning of Section 2(2) of the U.P. Industrial Disputes Act, 1947 and his conditions of service are governed by the Standing Order, 1988 issued by the State Government vide Notification dated September 27, 1988 u/s 3(b) of the U.P. Industrial Disputes Act and the Standing Order, 1991 issued under the same provision vide Notification dated January 31, 1991. Neither of these two Standing Orders provides for transfer of a workman from one unit to another.

4. The appellant Corporation contested the respondent's claim and asserted that he was not a workman and that Ghatampur Sugar Factory was a subsidiary company of the Corporation and the employees of the company were in fact employees of the Corporation. Service conditions of the employees working at the headquarters and in the units are governed by the U.P. State Sugar Corporation Ltd. General Service Rules, 1988, Rule 27 of which provides for transfer throughout India.

5. In his judgment under appeal, the learned single Judge has held that the respondent is a workman and his service conditions are governed by the Standing Orders issued under the Industrial Employment (Standing Orders) Act, 1946. The schedule to the Act does not mention transfer and, therefore, the respondent cannot be transferred from one unit to another. In taking this view, the learned single Judge has relied upon a Division Bench decision of this Court in *Air Gases Mazdoor Sangh Vs. Indian Air Gases Ltd. and Others*,

6. In the present appeal, the learned Counsel for the Corporation has assailed both the findings of the learned single Judge—the finding that the respondent is a workman and the finding that the respondent cannot be transferred on account of lack of a provision in that behalf in the Standing Order framed under the Industrial Employment (Standing Orders) Act, 1946.

7. We may assume that the respondent is a workman. On this assumption, we proceed to consider whether standing order under the Industrial Employment (Standing Orders) Act was required to be framed in respect of transfer to clothe the employer with right to transfer a workman.

8. Section 3 of the Standing Orders Act provides that within six months from the date the Act becomes applicable in an industrial establishment, the employer shall submit to the certifying officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. Sub-section (2) lays

down that the draft submitted by the employer shall make provision for several matters set out in the schedule which may be applicable to the industrial establishment and where model standing orders have been prescribed, the draft shall, as far as practicable, be in conformity with such model. From this it would appear that standing orders can be framed in respect of matters specified in the schedule only. The schedule to the said Act contains several matters, but it does not contain the matter relating to transfer of an industrial worker from one place to another. The heading of the schedule is "Matters to be provided in Standing Orders under this Act." From the omission of the transfer matter from the schedule it is apparent that the Legislature did not intend any standing order to be framed in respect of transfer. Since under this Act there is no requirement to frame standing orders in respect of transfer, the employer cannot be denied the normal right available to him to transfer an employee from one place to another. The employer also cannot be denied the right to frame rules and regulations relating to transfer of his employees. The normal right of an employer to transfer his employees can, however, be curtailed by making a specific provision in the rules, regulations or statute.

9. In taking this view, we are fortified by the Division Bench decision of this Court in the case of *Air Gases Mazdoor Sangh*, (supra). In paragraph 5 of the report it has been observed (at p 505):

"In the absence of any such provision in the Act it is not open to the employer to make provision for the transfer of its workmen and the Certifying Officer had no jurisdiction to certify such a Standing Order."

This authority has been relied upon by the learned single Judge as laying down the law that in the absence of provision in the Standing Orders a workman cannot be transferred from one place to another, but a perusal of the judgment will show that it does not lay down any such law. On the contrary, it lays down that there is no provision in the Standing Orders Act to frame standing order in respect of transfer. In this case the concerned industrial establishment had framed a standing order which reserved right in the management to transfer an industrial worker from one factory to another. This standing order had been certified by the certifying officer. In exercise of the power conferred by the standing order, the industrial establishment passed an order transferring certain workmen from one factory to another. This order was challenged on the ground that the Standing Orders Act did not provide for framing standing order in respect of transfer of workmen. The challenge was upheld and the standing order was declared invalid and the order of transfer passed under the standing order was quashed. It does not appear to have been pressed before the Division Bench that the right of transfer existed even apart from the standing order as an incident of service. Therefore, the writ petition was allowed merely on the finding that the provision relied upon for transfer was invalid. This judgment cannot, therefore, be treated as an authority for the proposition that in the absence of a standing order authorising transfer, an industrial worker cannot be transferred.

10. As observed hereinabove, an employer is competent to frame rules and regulations in respect of transfer. The Corporation in the present case has framed rules known as "U.P. State Sugar Corporation Ltd. General Service Rules, 1988". Rule 27 of these rules reads as follows:-

"An employee may be posted or transferred to any place in India. When an employee is transferred or promoted from one post to the other involving a change of headquarters, he will be entitled to joining time, transfer allowances, etc., as may be determined by the Board. Provided that the Board may, in special circumstances, relax the provisions of this rule and permit such allowances etc, as it may consider necessary in any particular case. Provided further that when an employee is transferred at his own request, he shall not be entitled to any transfer allowances in respect of such transfer."

Under the above Rules, the Corporation is competent to post and transfer its employees anywhere in India. The impugned transfer order cannot, therefore, be said to be beyond the competence of the Corporation.

11. Our attention has been invited to certain decisions which support the view we have taken. They may merely be noticed. They do not require detailed examination.

12. State of Bank of India Vs. S. Vijaya Kumar, lays down that competence to pass an order has to be seen with reference to the date on which the order was passed.

13. Laxmi Shankar Misra v. Union of India 1992 AWC 1765 and Govind Pratap Singh v. Managing Director (Personnel), U.P. State Road Transport Corporation (1993) 1 UPLBC 421 lay down that transfer is an incident of service.

14. Apart from the rules framed by the Corporation, Section 16 of the U.P. Sugar Undertakings (Acquisition) Act, 1971 also reserve right in the Corporation to transfer an employee from one unit to the other. Thus there is statutory authority vested in the Corporation to transfer its employees from one unit to another. In view of the statutory provision contained in Section 16, it cannot be argued that the employee of a unit which is a subsidiary company registered under the Companies Act, cannot be transferred from one unit to another.

15. In view of the above, the appeal deserves to be allowed. Accordingly, the appeal is allowed and the judgment and order of the learned single Judge is hereby set aside and the writ petition filed by the respondent Bipin Kumar Mishra is hereby dismissed with costs to the appellants.