

(1994) 11 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 31458 of 1994

V. Venkatesh

APPELLANT

Vs

Management, Karnataka Silk Industries Corporation Ltd.

RESPONDENT

Date of Decision : 15-11-1994

Acts Referred:

Citation : (1995) ILR (Kar) 175

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : V. Gopala Gowda and B.L. Hemavathi, for the Appellant; Subba Rao, for B.C. Prabhakar, for the Respondent

Judgement

Saldanha, J.—Heard learned Counsel on both sides. Rule. By consent of the parties, matter taken up for hearing.

2. It is seldom that the Court will interfere in a case relating to a transfer unless it is visibly demonstrated that the order is punitive or more importantly that the case involves malafides, vindictiveness or gross abuse of authority. The law takes note of the fact that for administrative reasons it may be necessary to post an employee at different work station. Undoubtedly such movement does result in a degree of dislocation and difficulty and it is therefore that certain well defined guidelines have emerged whereby it is essential that the transfer should be demonstrated to have been undertaken for an administrative exigency and in the public interest and conversely, that the order is not motivated nor can it be assailed on the grounds of malafides. The Courts, particularly in exercise of Writ jurisdiction were hitherto extremely slow in matters of interference with a transfer but experience in the recent past has indicated that the power of transfer is being grossly misused in a large number of instances resulting in rank injustice and it has therefore become imperative for the Courts to very carefully examine any case where a transfer is attacked on grounds of malafides and if there is a definite indication that the transfer constitutes a misuse of authority it will have to be struck down. Courts are conscious of the fact that the misuse of

the power of transfer could have disastrous consequence on the career not only of the poor employee but more so on his immediate dependants. For instance, an untimely transfer could seriously ruin the children's education, it could disrupt a family or finish a marriage and it could have other attendant fallouts of forcing the employee to maintain two establishments which he can ill-afford and often times, to suffer serious personal and health complications. Under these circumstances therefore, it becomes incumbent on a Judicial Authority to arrest the damage at the earliest point of time when it has been complained of. Equally important, is the need that where the transfer is perfectly justified, that it must not be interfered with.

3. Hitherto, it was well settled law that while applying the test as to whether a transfer is punitive or not, the Court would be inclined to hold in favour of the former if it has been demonstrated that the employee was involved in a problematic situation which preceded the transfer. Instances are many where an employee is a virtual trouble shooter and the Management finds no option except to shift the employee to another venue in the overall interest of the organisation and perhaps the employee himself, it cannot in such situations be argued that because of the particular background, the movement by way of transfer is punitive. It will have to be recorded, as an administrative correction.

4. The present case involves a situation wherein the petitioner who is an employee of the respondent-Corporation and is working at Channapatna has been transferred to T. Narasipur unit of the Corporation. The petitioner contends that he has been an active member of the KSIC Employees' Union and that he is also a Committee Member of that Body. According to him, pursuant to a charge sheet served on him alleging misconduct, he was placed under suspension from 13.11.92. An enquiry was held and by an order dated 10.10.94, punishment of withholding of two yearly increments was imposed on the petitioner. He joined his duties on 11.10.94. It is the petitioner's case that the respondents, not being satisfied with the imposition of the penalty on him, have thereafter transferred him immediately after he resumed his duties in order to further punish him. The petitioner has assailed the transfer order firstly on the ground of malafides contending that it is only because he is an active Union Member that he is being attacked and he also contends that since the respondents failed in their attempt to frame him since most of the witnesses in the enquiry hardly supported the charges, that the Management has misused its power of transfer by passing a punitive order against him. He pointed out that the period of suspension has been treated as such and he demonstrates that he is specially skilled for work in the Dressing Department in spite of which he has been sent to another City where the R.M.S. Department is located where his services would be of no avail to the Corporation and that it is quite clear that this has been done only to harass him.

5. On behalf of the petitioner, his learned Counsel contended that the power to transfer does not exist in so far as the Standing Orders do not make provision for

this. As far as this argument is concerned, I need to observe that it is not a specific requirement that there must be a definite provision indicating that the employee is liable to transfer. In this regard, the petitioner's learned Counsel relied on a Decision of this Court reported in Management of Nippani Urban Co-operative Bank Ltd. Vs. Workmen, Management of M/s Nippani Urban Co-operative Bank Ltd. v. Workmen wherein, while considering the case of a transfer, this Court intervened in the matter on the ground that at the point of time when the employee had joined, there were no branches in existence and therefore, in the absence of specific provision providing for transfer in the changed circumstances that it was not permissible. That Decision is distinguishable. The Corporation's Counsel Mr. Subba Rao has on the other hand drawn my attention to the Judgment in W.P. 15970/86 and 16017/87 2. Rame Gowda P. v. Karnataka Silk Industries Corporation and Anr., wherein this Court has upheld the practice of inter unit transfers without there being any specific provision for them. Mr. Rao submitted that it is well settled law that transfer is an exigency of service and that therefore, no definite provision is required to be incorporated in Rules of Standing Orders conferring the power on the Management to transfer employee. Judicial Decisions have virtually settled the law on the point in so far as it is not so much the aspect where the power needs to be specifically set out but the manner in which that power is exercised which is the crucial aspect that needs determination. Whereas the power to transfer cannot be questioned in most cases such as the present one, the manner in which the power is exercised would require serious scrutiny.

6. Responding to the charge that the petitioner is being subjected to double punishment for the same misconduct. Mr. Rao submitted on the basis of documents produced by him, that, the present transfer has nothing to do with the disciplinary proceedings but that it has been done in the interest of industrial peace in so far as the petitioner was found to be instigating the other workers in the unit. As regards the aspect of timing, Mr. Rao's defence is that admittedly the petitioner was under suspension until 11.10.94 and it is only when he resumed his duties, that the Management found that it was imperative to move him to another unit as this was an administrative decision taken in the interest of the Corporation. To this extent, he submitted that the transfer was certainly not punitive.

7. Normally, this Court would not have interfered with the present order except for the fact that the manner in which the power has been exercised leads to the irresistible conclusion that the order is punitive. Admittedly, the petitioner had been subjected to a Departmental Enquiry and had been under suspension right from 13.11.92. Mr. Rao relied on a letter dated 30.9.94 recommending the movement of the petitioner to another unit on the ground that his presence at Channapatna was undesirable. At this point of time, the petitioner was admittedly under suspension and therefore the question of his creating trouble in the unit or instigating the workers is a little far fetched. On the other hand, the enquiry had nearly concluded by then and the Management was aware of the fact

that the witnesses had not fared well in that proceeding. There is no basis to allege that the petitioner has misbehaved after he resumed his duties on 11.10.94 and it is therefore quite clear that the petitioner has been transferred because of the incidents that were the subject matter of the enquiry. There is a fine line between imposing punishment in a disciplinary proceeding and overstepping one's authority and extending the punishment into other spheres. In the present case, it is abundantly clear that the transfer was effected as a punitive measure and on this ground, the petitioner would be entitled to succeed. Once it is held that the action was punitive, it would be impossible to uphold the defence that it was an administrative correction simplicitor. On the facts of the present case, it is impossible to delink the two aspects of the matter though Mr. Rao did make a valiant effort to convince the Court that after the petitioner was punished and that proceeding was concluded, the Management thought it best to post him elsewhere in order to avoid any repetition of such incidents. If this was the case, the action would not have been pursuant to the letter dated 30.9.94 but would have been initiated only after the enquiry was concluded.

8. In this view of the matter, this is one of the cases where Judicial interference would be justified. The impugned order is therefore liable to be quashed and set aside.

9. It is equally necessary in cases of the present type that the Court granting relief must mould the relief in such a manner as to do complete Justice. Both the learned Counsel had referred rather extensively to the enquiry proceedings and the conduct of the petitioner. In that background, one cannot view the action of the Management in a vacuum. Though the order of transfer is quashed, it would be necessary to further direct that before the petitioner is permitted to resume his services at Channapatna, he shall file a written undertaking that he will maintain good conduct at all times, that he shall not indulge in acts of instigation or disruption or insolence vis-a-vis his superiors and that his reposting at Channapatna will be subject to his observing this undertaking and only for such duration as he does so. To my mind, it is equally necessary that these safeguards be provided for on the facts of the present case as a Court is required to do even handed Justice to the parties before it. The petitioner is given an option of filing this undertaking within a period of one month whereupon the respondents shall repost him at Channapatna for such time as he observes the terms of the undertaking. If the petitioner chooses not to file the undertaking, the Corporation shall not be obliged to repost him at Channapatna.

10. The Petition accordingly succeeds. Rule is made absolute to this extent. No order as to costs.