
(2001) 07 BOM CK 0069
In the Bombay High Court
Case No : Writ Petition No. 1457 of 2001

WIMCO Limited

APPELLANT

Vs

WIMCO Employees Union and Another

RESPONDENT

Date of Decision : 02-07-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33(1)

Citation : (2002) 1 ALLMR 441 : (2001) 4 BomCR 655 : (2002) 4 BOMLR 656 :
(2002) 92 FLR 426 : (2002) 2 LLJ 888

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : P.N. Salgaonkar, instructed by Salgaonkar and Company, for the Appellant; R.D. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Rule returnable forthwith. The learned Counsel for the First Respondent waives service. By consent taken up for final hearing.

2. The Industrial Court has granted an interim stay of an order of transfer despite an express finding in the impugned order dated 3rd May, 2001 that no mala fides have been established as regards the transfer of the workman concerned from the Head Office at Mumbai to the factory at Ambernath. The workman. Mr. Shailesh Mahyavanshi, was appointed on 5th August, 1987 as Hamal. The letter of appointment expressly states that his services are liable to be transferred to any of the units or establishments of the employer in India, in which case the service conditions will be governed by the rules and regulations of that unit or establishment. An order of transfer has been issued on 12th March, 2001 by which the workman was asked to report at the factory situated at Ambernath. The Industrial Court has taken due note of the fact that the services of the workman are transferable. The Industrial Court has noted at more than one place in its order that the question as to whether the transfer is mala fide would have to be established only upon leading evidence and that in the present

case, a case of mala fides has not been made out at this stage. The Industrial Court was, however, persuaded to interfere with the order of transfer on three grounds : (i) that as a result of the transfer the workman would have to work on the shop floor; (ii) that the workman would not receive the attendance and education allowance upon transfer; and (iii) that the workman would have to work for six days every week in the factory as aforesaid instead of the five day week at present. Insofar as the First of these grounds is concerned, the learned Counsel for the Petitioner states that the workman is not being made to work on the shop floor but has only been required to carry out the duty of opening gunny bags containing match boxes work which it cannot be said that the workman cannot perform. Insofar as the second of these grounds is concerned, the learned Counsel appearing on behalf of the Petitioner has adverted to a Chart annexed at Exh. H to the petition which contains a comparison of the emoluments which the workman is drawing presently at the Head Office and those that he would receive at the Ambernath factory. The total emoluments which the workman is receiving at present are Rs. 4,875/- while those upon transfer would be Rs. 5,014. The learned Counsel for the employer has also stated that the total emoluments and pay package of the workman would be duly protected. Insofar as the attendance and education allowances are concerned, the case of the Management is that these allowances were never granted to the workman even at the Head Office. In support thereof the salary slip for the workman for the month of February, 2001 which was immediately prior to the order of the transfer has been annexed at Exh. G from which it is abundantly clear that the attendance allowance and education allowance have not been granted to the workman even at the Head Office. Insofar as the question of the six days working week is concerned, the letter of appointment provides that upon transfer, the workman would be governed by the rules and regulations of the unit or establishment to which his services are transferred.

3. The Industrial Court held that the balance of convenience weighed in favour of the workman because his monthly wages may be reduced upon transfer. This conclusion, as noted earlier is erroneous and in any event, it has been stated on behalf of the employer that the wages which would be allowed to the workman upon transfer to Ambernath would in no manner be less than what he is drawing at present.

4. The Industrial Court has negated the argument of the Union that the transfer was contrary to the provisions of Section 33 of the Industrial Disputes Act, 1947. There is no substance in the submission urged on behalf of the Union on this issue since Section 33(1)(a) contemplates that during the pendency inter alia of a reference to the Labour Court or Tribunal in regard to any matter connected with the dispute no employer shall alter to the prejudice of the workman concerned in such dispute the conditions of service applicable to the workman before the commencement of the proceedings. The conditions of service are those provided for in the letter of appointment which expressly contemplates that the workman can be transferred and that upon transfer he will be governed

by the rules and regulations of the unit or establishment to which he is transferred.

5. There is, therefore, no alteration in the conditions of service within the meaning of Section 33(l)(b). Having regard to the aforesaid situation, I am of the view that this was not one of those exceptional cases where the Industrial Court should have at the interim stage interfered with the order of transfer. In the circumstances, the impugned order passed by the Industrial Court is liable to be quashed and set aside. The Petition is made absolute in terms of prayer Clause (a). It is however, clarified that the present order will only cover the case of the concerned workman, Mr. Shailesh Mahyavanshi, and shall not in any manner affect the merits of the case relating to the other employee, Mr. Survarna whose case was also dealt with by the order of the Industrial Court. The hearing of the dispute before the Industrial Court is expedited. All the observations in this order are confined to a prima facie determination of the merits of the case at this stage for the disposal of the question of interim relief, by the Industrial Court. The Industrial Court shall hear and dispose of the pending complaint uninfluenced by the observations in this order.

6. The Writ Petition is allowed in the aforesaid terms. No costs.