

IN THE INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI.

COMPLAINT(ULP)No. 96/2008

Mohit V. Thakar

8-B, Abhay Apartment,

Dattatery Road, Opp.Indian Bank,

Santacruz(W), Mumbai – 400 054.

.... Complainant

Versus

1. ACC Ltd.

2. Sumit Banerjee,

Managing Director,

3. Paramjit Pabby,

Head Human Resource,

Notice to be served on all at

Cement House, 121, Maharshi Karve Road,

Mumbai – 400 020.

.... Respondents

In the matter of complaint under Items No.3 and 9 of Sch-IV of the MRTU & PULP Act, 1971.

Coram :- Sudam P. Deshmukh, Member

Appearances:- Shri. P.M. Patel, Adv. for Complainant.

Shri. B.G. Goyal, Adv. for Respondents.

J U D G M E N T

(Dictated on 15.09.2015)

1. The complainant prayed for order of declaration that the respondents have committed unfair labour practice as complained in complaint. He requested to issue direction against the respondents not to transfer the complainant from his present posting to another establishment of first respondent without taking consent in writing from him. Besides it, the complainant requested for

direction against the respondents to pay arrears of salary from 03.10.2007 together with 12% p.a. interest and also medical reimbursement of Rs.9000/- together with 12% p.a. interest.

2. The complaint came to be presented to the Court on 01.03.2008. It was registered on 02.03.2008 wherein he claimed that, the respondents have engaged in and are engaging in unfair labour practice from 28.02.2008. According to the complainant, he was employed with respondent No.1 as Sectional Head in Grade-VIII. He claimed that he is serving with respondent No.1 since 07.10.1976. Said employment was started from Grade-X at the place where he joined duty as per appointment letter. He had purely clerical work, but his service conditions are governed by various awards, Settlements and agreements which had recognition under the provisions of Industrial Disputes Act, 1947. The respondent No.1 is incorporated under the Companies Act, 1956. His business is administered by respondents No. 2 and 3.

3. The complainant pleaded that in the letter of appointment dated 07.10.1976 there was clause as to transfer of complainant on any other unit or establishment of respondent No.1, but actually one Mr. G.L. Govil Controller Staff & Industrial Relations for and on behalf of respondent No.1 said that said clause is formal, therefore the complainant was not transferred from the place of his first posting till 28.05.2004. However for the first time the respondents issued transfer order for transfer of complainant on 28.05.2004 and asked him to serve at Kalamboli unit in New Bombay. There was disparity in the act of respondents when he was

transferred to Kalamboli because rest of similar employees on the establishment of respondent No.1 were not transferred even though they were senior to him.

4. In recent days in the year 2004 the complainant had taken interest in working of Union namely Associated Cement Staff Union, so administration and authority of respondent No.1 got annoyed and decided to shift the complainant to the place as desired by them.

5. The respondents adopted various tactics to give effects to the Order of transfer of employee. So they were discussing for retention of staff members if they do respect voluntary retirement scheme i.e.compulsory retirement scheme. They started pressurizing and also causing adverse consequences on service conditions besides even suspended President, General Secretary, Joint Secretary of Associated of Cement Staff Union. The complainant's transfer was one of the malafide attempt, so the complainant wanted to consider his claim within the scope of Item No.3 of Sch-IV of the MRTU & PULP Act.

6. Many employees from the Head Office retired and their posts were vacant. Inspite of that the respondents decided to transfer the complainant from that post to Kalamboli, Panvel unit. It was unfair labour practices adopted by the respondents. The complainant pleaded that, there was long standing practice adopted by the respondents to obtain consent of employees before issuance of transfer order but that practice not followed in respect of

complainant.

7. There was necessity of approval of the Court before an order of transfer of complainant. Any such approval of the Court being not taken, the order of transfer was in violation of Section 9A of the Industrial Disputes Act, 1948, so it is to be examined under Item No. 9 of Schedule-IV of the Act. Said order dated 28.05.2004 questioned by the complainant in Complaint(ULP)No.289 of 2004 and that complaint besides interim application were under consideration of competent Court. In spite of that the respondents decided to chargesheet the complainant, accordingly chargesheet dated 04.11.2005 and 15.12.2005 given to the complainant but there were not substantial materials to establish the charge.

8. The complainant had to prefer Misc. Criminal Complaint(ULP)No.39/2005 for prosecution of respondents for charge of Section 48 of the MRTU & PULP Act, because the respondents did not heed to interim order, which was passed in his favour by the competent Court in Complaint(ULP)No. 289/2004.

9. There was Complaint(ULP)No.541/2006 of Associated Cement Staff Union. In that complaint prayer was made by the Union that the respondents be prevented from introducing (SAP) Program because the activities of respondents were challengeable under Section 9A of the Industrial Disputes Act. There was interim order in favour of Union of the complainant, so the respondents rushed to the Hon'ble High Court in Writ Petition No. 1287 of 2007. The Hon'ble High Court set aside the interim order of Industrial

Court by an Order dated 04.03.2007. Certain directions were recorded by Hon'ble High Court and those were binding on the respondents. One of such direction was about restriction on the respondents for transfer of employees without prior permission of the Industrial Court. In spite of that the respondents passed the order of transfer of complainant from Kalamboli to Bangalore. It was absolutely against the order passed in Writ Petition.

10. The respondents attempted to explain the transfer of complainant from Kalamboli unit to the establishment at Bangalore saying that the respondents started new side office in respect of its new business activities of mixing concrete known as 'ready mixed concrete'. It was contention of respondents that, the complainant's service they wanted to avail at Bangalore Unit. The respondents pretended that at Kalamboli office the staff was not necessary because the work was given to the contractor, however later on work was retained with the establishment of respondents.

11. The respondents preferred Complaint(ULP)No.398 of 2007 for grant of permission to transfer the complainant from Kalamboli unit to Bangalore establishment. Against that order the complainant preferred Writ Petition No. 977 of 2008 before Hon'ble High Court, whereby transfer order dated 13.09.2007 from Kalamboli to Bangalore came to be challenged. The interim relief in that petition was not granted, therefore the complainant preferred second Writ Petition No. 863 of 2008. In that petition on 27.02.2008 the respondents had withdrawn the transfer order dated 13.09.2007. Consequently the Complaint(ULP)No.398 of 2007 also ceased its

effect. In spite of that on 28.02.2008 the respondents ordered to transfer the complainant to Lakheri in Rajasthan State and thus committed unfair labour practice.

12. The above said pleadings of the complainant are only related to earlier litigations. In the present complaint order dated 28.02.2008 whereby the complainant is transferred to Lakheri would be under challenge.

13. The complainant stated various instances to point out unfair labour practices beyond the order of transfer. According to him, the transfer was nothing but an order of punishment. The respondents had given SG Grade to 30 junior employees from clerical category but it is not given to complainant. There were vacancies occurred in clerical section at Head Office because clerical employees were given SG Grade. In spite of that the respondents decided to transfer the complainant to Lakheri. The complainant pleaded that, the respondents started to employ labour on contract basis, so that they would succeed to point out no work available at the place where the complainant could be posted. He claimed that the issues raised by the Union in Reference(IT)No. 07/2007 ought to be considered by the respondents. It being not considered there was violation of Item No.9 of Schedule-IV of the MRTU & PULP Act, 1971. The complainant pleaded that the order to transfer him from Kalamboli to Bangalore being withdrawn the permission sought by the respondents in their Complaint(ULP)No.398/2007 ceases its effects so fresh permission was necessary before his transfer to Lakheri. Any such exercise being not done the order of transfer was

malafide.

14. The complainant had due amount Rs. 9000/- against the respondents towards medical expenses. Not only that but salary from 03.10.2007 also was due against the respondents. Without satisfaction of the monetary claim the respondents ordered to transfer him.

15. The working procedure and practice at Lakheri particularly in respect of weekly off are different so it would amount change in service conditions. In spite of that the respondents decided to post the complainant to Lakheri and thus committed unfair labour practice. The VRS notice was also given. All those attempts of respondents were nothing but to weaken the defense of complainant against the claim for above said reliefs against the respondents.

16. The respondents No.1 to 3 submitted Written Statement at Exh. C-6. They pleaded that, there is no cause of action to the complainant for asking any relief in view of the finding and order recorded by the competent Court in the earlier litigation of complainant, respondents and even in Writ Petitions. The misconduct of complainant would justify the respondents' action of transfer. Moreover, the complaint is bad in law of mis joinder of party against the respondent No.2 who having no any authority as executive or management of respondent No.1. The transfer order dated 28.02.2008 was under business exigencies and it is having support from service conditions, so there cannot be applicability of the provisions of Item No.3 of Schedule-IV of the MRTU & PULP Act,

1971. The burden is on the complainant to prove the facts and materials for attracting any items of Schedule-IV of the MRTU & PULP Act.

17. The respondents wanted to arrange their business which is spread all over India. So the complainant would not restrict them from such exercise. Mumbai is Head Office of business of respondents, but working posts being at respective fields, the person like the complainant was rightly posted firstly at Kalamboli and then at Bangalore and thereafter at Lakheri. The working of employee at different divisions of respondents being service conditions, the employee posted while appointment in Head Office would not feel long or life posting at that very place. This can be inferred from the pleadings of respondents.

18. The Division RMC were in due course known as ACC Cement Limited i.e. ACC Concrete Ltd. i.e. ACL, so there was cause for the respondents to have staff arrangement in accordance with the business arrangement. The complainant was connected with financial matters of respondents, so in other units of respondents his services were attempted to avail for suitability of business.

19. The complainant and Union indulging in various litigations and forced the respondents to get involved. The complainant did not resume duty as early as possible at either of the places of posting as and when ordered, but acted adverse to the interest of respondents. In none of complaints and earlier litigations the order pass in favour of complainant, inspite of that he did not

respond the orders of respondents. The transfer of the complainant from Mumbai Head Office to Kalamboli had background, then from Kalamboli to Bangalore and Bangalore to Lakheri also had backgrounds related to business administration and exigencies. Thus the complaint is without cause of action, so it is to be dismissed with cost, according to the respondents.

20. Considering the controversy in pleadings and submissions of advocate of both parties the then Presiding Officer of the Court framed Issues at Exh.O-2. Those issues are reproduced hereunder, because the controversy is still to that stage. My findings are recorded against each of the issues for the reasons given below:

ISSUES

FINDINGS

- | | |
|---|------------------------|
| 1) Does the complainant prove that the respondents have engaged in the unfair labour practices under Item No. 3 and 9 of Schedule-IV of the MRTU & PULP Act, 1971 while his transfer to Lakheri ? | :- Not proved. |
| 2) What reliefs and Order ? | :- As per final order. |

REASONS

As to Issue No. 1:

21. For attracting scope of Item No.3 of Schedule-IV of the MRTU & PULP Act, the burden was on the complainant to prove that the order of transfer dated 28.02.2008 is malafide because as per order he is transferred from Mumbai to Lakheri under the guise of following management policy. The advocate of respondents would not agree to have applicability of these items because according to him, the Court has to see legal and logical aspects applicable in such

cases. So before having examination of above said factual aspects and controversy over the same, the Court deems it proper to go through the legal and logical principles considerable on above said factual aspects. Those can be gathered from various judgments and rulings which are placed before the Court.

22. The management has no right to degrade the workmen with a lower status and lesser peculiar benefits. To point out this the advocate of complainant sought admission of witness of respondents in respect of little adverse situation at Lakheri unit of respondents. With this background this principle he would press in support but from the evidence of complainant it would reveal that, there were no material changes in service conditions. Short of some monetary benefits which are not compulsory part of wages would not be ground for refusing to respect the order of transfer, see the observations in Show Wallace & Co Ltd. Parasis V/s. Central Government Industrial Tribunal-cum Labour Court, Jabalpur and Others 1970-II-LLJ-710(M.P.).

23. The complainant has to first allege that he has been transferred malafide under the guise of management policy and thereafter prove the said allegation by cogent evidence before the Industrial Court. As long as transfer order is not shown to be contrary to any applicable service rules, or malafide, it is impressive for the Industrial Court to interfere under Item No.3 of Schedule-IV of the Act. It is the right of employer to see who would be proper person for working of his establishment at different places. See little support from the case Executive Engineering, Mechanical Division, Ahmednagar and Ors. V/s. Madhav Narhari Walake and

Antoher 1996(3)-LLN-623.

24. In the case in hands both in pleadings and evidence, the complainant stated that there is transfer clause-6 in his appointment order. It was mentioned before giving him an appointment in the year 1977. He says it was formal clause, so it would not give right to respondents for transfer. Firstly in the year 2004 and later on in the year 2007 and lastly in the year 2008 he was ordered to transfer. I observed that the complainant could not submit Standing Order to point out restriction on right of respondents against the enforcement of said clause of transfer.

25. As against this even the complainant admitted about transfer of some employees from the head office of respondents. It means there was transfer policy considerable for the employees. Only grievances in this situation from the complainant would be about place of posting. No doubt, he has stated that some of the co-employees were given nearer postings comparing to him. Not only that the consent of some of the employees were also sought by the respondents before having their transfer. However the complainant did not compel the respondents to produce relevant record of any such employees and their consent letters. Such being iota of circumstances the Court may observe that except pleadings and oral contentions the complainant could not produce reliable and sufficient materials to the satisfaction of Court for an inference that asking of consent of each and every employee before an order of transfer was mandate of rule or undisputed practice. From above said principles and observations from the case of Executive

Engineering, cited supra I would observe that the complainant could not establish required materials.

26. In the case of M/s. Parry & Co Ltd. V/s. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta and Ors. 1970(21)-FLR-266. Hon'ble Apex Court held that;

“Scheme of reorganisation of business of employer leading to discharge of some employees. The Tribunal cannot question so long as it is done bonafide”.

27. In the case in hands there were no specified instances of complainant for giving effects to the provisions of Section 9A of the Industrial Disputes Act, 1947. According to him there was Reference(IT)No.07/2007 of the Union. So reference to Section 9A of the Industrial Disputes Act was considerable at the date of order of transfer. I would not accept this claim of complainant in view of various orders which came to be passed in earlier litigations between the complainant and respondents, besides, between Union and respondents.

28. The advocate of respondents submitted that some of the Orders on this aspects with list Exh.C-13 to be seen. I am going to refer said orders for holding that failure of the respondents to act and perform within the scope of Section 9A of the Industrial Disputes Act would not be illegality when the order dated 28.02.2008 came to be passed.

29. The Judgment came to be recorded in Complaint

(ULP)No. 289 of 2004. Mr. M.V. Thakar, the present complainant and M/s. Associated Cement Companies and other, the present respondents were party. The Judgment is dated 25.09.2013, whereby competent court held that the Complaint(ULP)No. 289/2004 not sustainable for grant of any reliefs which were asked by the complainant. It was observed that there was no unfair labour practices under Items No. 3, 9 and 10 of Schedule-IV of the MRTU & PULP Act. In that case first transfer order was under challenge on above said grounds. No doubt, at this stage there is no finality to above said Judgment of the competent Court but still no any observations for favouring the contentions of complainant are recorded till the date in his favour.

30. In Complaint(ULP)No.541 of 2006 the order was passed below Exh.C-6 on 03.07.2007. Said complaint was between Associated Cement Staff Union V/s. ACC Ltd and 2 Ors. The complainant is member of said Union, therefore bound to respect the observations and findings recorded in that Order. There was observation that it is clearly demonstrated that the transfer of employees of the respondent Company and particularly Shri.M.V. Thakur is incidence of service, therefore the respondents Company is not acting illegally. Secondly it cannot be said that said transfer is on account of introduction of SAP technology. Therefore, there are no grounds to refuse to grant permission to transfer Shri. Thakur. No doubt, the complainant has cause to challenge such order, consequently it was challenged by him in Writ Petition No. 863 of 2008. There was one more Writ Petition having No. 977 of 2008. In that petition His Lordship of hon'ble Bombay High Court recorded

the observations that, both petitions are disposed of as withdrawn. The Complaint(ULP)No.398 of 2007 before the Industrial Court, Mumbai also stands disposed of as withdrawn. Thus in that proceeding the complainant himself withdrawn his claim against the order dated 03.07.2007 passed on Exh.C-6. The Union and complainant cannot reopen issues which were under examination in that complaint in respect of authority of respondents on transfer of complainant.

31. There is Order dated 27.03.2008 which came to be passed on Exh.U-1 in Complaint(ULP)No.398 of 2007 of Mr. M.V. Thakar the complainant V/s. ACC Ltd. and Ors. respondents. In that Order the then Presiding Officer of the Court observed that Writ Petition No.836 of 2008 and 977 of 2008 being withdrawn and disposed of with certain observations, the complaint between M.T. Thakar and ACC Ltd would not exist for disposal on merits. With this background the pleadings and evidence of complainant in respect of the order of transfer passed in the year 2004 and 2007 does not exist for appreciation by this Court while testing the transfer order dated 28.02.2008. The principle of estoppel may attract against the complainant for reopening of those claims related to the order of transfer.

32. In the present Complaint(ULP)No.96/2008, most of the pleadings and evidence of complainant is about the period between 1976 to 2004, 2004 to 2007 but those can be said to be irrelevant and non sustainable materials against the order dated 28.02.2008 and this situation is invited by the complainant himself

while withdrawing the Writ Petitions No.977/2008 and 863/2008.

33. There is order dated 11.11.2008 which came to be recorded by His Lordship in Writ Petition No.6305 of 2008. It was Writ Petition of Mohit V. Thakar, present complainant against ACC Ltd. the respondents. In that Writ Petition His Lordship of Hon'ble Bombay High Court observed that, the Industrial Court has recorded cogent reasons for declining to stay the operation of the order of transfer. The fact finding Court having arrived at prima facie conclusions on the basis of materials on record. I observed that there was no change in the facts and materials and circumstance during trial of the case. Moreover there are no observations in the said Order dated 11.11.2008 that the Court would reopen appreciation in different manner on trial. The history of instances taken for examination in said Writ Petition was reproduced by the complainant in his evidence in the course of trial but it can be said to be unprotected attempt of complainant.

34. The order dated 09.01.2009 came to be passed by the Hon'ble Bombay High Court in Contempt Petition No. 311 of 2008. In this petition his Lordship observed that, Writ Petition No.863 of 2008 and 977 of 2008 came to be disposed of and thereby the Hon'ble High Court permitted respondent No.1 to issue fresh transfer order and it also reserved right of the complainant to challenge said order in fresh proceeding, therefore the Hon'ble High Court felt that there was no contempt of the Court though the respondent ordered the complainant to transfer at Lakheri. Thus even from these observations it would reveal that the effects of

withdrawal of the Writ Petition No. 863 of 2008 and 977 of 2008 would not reopen by the complainant while challenging the Order dated 28.02.2008. Same thing would reflect from the observations recorded in Order dated 21.03.2009 which came to be passed in Appeal No. 126 of 2009 in connection with Writ Petition No. 253 of 2009.

35. Thus in the present complaint there is limited scope for examination of the instances, facts and pleadings which are recorded on and around the Order dated 28.02.2008. In respect of transfer order dated 28.02.2008 the complainant stated the grounds in clause (l) below para No.(k) of main para 3 of the complaint. He stated that on 28.02.2008 his transfer order from Kalamboli to Bangalore was withdrawn but immediately on 29.02.2008 he has been transferred to Lakher. But no any such promptness is shown about making payment of arrears of salary for protection of his interest. I observed that the complainant repeated this ground even in evidence so argued by his advocate for saying that it was malafide transfer order.

36. I would not agree to accept above plea of complainant because payment of said amount would not be a cause and ground for the complainant not to respond the order of transfer. He could make submission at respondents for demand of payment of due amount, if any was payable to him. The arrears of payment as claimed by the complainant were in dispute because the complainant did not respond the earlier orders of transfer from Kalamboli to Bangalore. Till the date no competent court held that

said order of transfer was illegal and not sustainable, therefore the complainant is entitled for wages of that period though he did not join duty at Bangalore. As against this it is transpired that, in Writ Petitions no any positive findings sought by the complainant against the respondents for satisfaction of said due amount. He had a set back in view of his undertaking to the respondents for withdrawal of petition on said transfer orders. Thus after disposal of proceeding of both parties this issue cannot reopen in present complaint as a ground or defence for defeating the effects of transfer order dated 28.02.2008.

37. The complainant pleaded that, there was no vacancy at Lakheri when the transfer order dated 28.02.2008 passed by the respondents. To some extent this statement of complainant is correct but that does not mean that employer cannot transfer the employee from one division to other division, if in that division vacancy is not seen on record. It is for the employer to adjust the service of the employee at the place of transfer, otherwise the employer would be unnecessarily to pay such employee even if post was not vacant or work was not in hands for availing his service. The employee need not worry on non availability of the post and non availability of work at the place of his posting. On this ground the employee cannot refuse to respect the order of transfer. So the evidence of complainant even if is positive but to my mind on this fact legally and logically it would not be ground and cause for the complainant to refuse to join at the transfer place. Thus these grounds also cannot consider by the Court for saying that the unfair labour practices adopted by the respondents for transfer of complainant.

38. One more ground agitated by the complainant for challenging the Order dated 28.02.2008. According to the complainant said transfer order was nothing but result of retaliation to send message to other employees that they should not try to confront / question management action howsoever wrong or illegal it may be and those dare to challenge will be subject to harassment such as transferring, non payment of salary, encashment and other benefits and driving them to Court for establishing his right which cause heavily to him. I observed that this statement of complainant in pleadings as well as evidence are nothing but inference drawn by him. He could not point out names and numbers of co-employees with whom the respondents acted in such manner to show retaliation and giving message of above nature. The present case in respect of order dated 28.02.2008 was isolated, based on allegations of complainant and not based on common grievances of any other employee. The complainant made capital of his own grievances but attempted to label said grievances on the name of co-employees. Thus he attempted to point out gravity of the act of respondents not only against him but even against co-employees but failed to explain with supportive materials and proof even in respect of him.

39. It is transpired that his transfer from Head Office Mumbai to Lakheri unit was questioned by him though he was transferred for the first time after expiry of 28 years of his service at the Head Office. Thereafter no transfer order came to be passed in the year 2007, but because of the issues in the office at Bangalore, the respondents decided to shift the complainant to Lakheri office. The complainant did not claim that he respected the orders for

joining in the office at Bangalore. Thus effects of the transfer order of 2007 remained in force so the Order dated 28.02.2008 cannot be said to be third transfer order but it was second transfer order for changing the place of posting. That change had taken place because of the settlement between parties. In Writ Petition before Hon'ble High Court these background circumstance are over looked by the complainant while challenging the order dated 28.02.2008. There was liberty to the respondents to pass transfer order. There was liberty to the complainant to challenge transfer order. So only point against such order would be legality of order.

40. It is transpired that the respondents offered the complainant to serve in the office at Chandrapur in State of Maharashtra but there being no response from him the respondents constrained to stick up to their claim for posting at Lakheri. It is transpired that already working at Kalamboli was adjusted by the respondents as per their administrative exigencies. Under these circumstance the claim of complainant to take him back in Head Office at Mumbai was nothing but adamantness against the exercise of respondents. If the employee who had expertisation in Account because of more than 30 years service was insisting the respondents to continue him only at Head Office it can be said to be against the business exigency of the employer.

41. The respondents failed to apply to the Industrial Court for approval to an order of transfer dated 28.02.2008. It would not amount violation of the provisions of Section 9A of the Act because at that date no any dispute between the Union and

employer in respect of service of complainant was under consideration before the Industrial Court. The controversy related to those materials and grounds can be said to have come to an end on withdrawal of the Writ Petitions and consequent proceedings. There was fresh cause for the complainant against the respondents since the respondents issued fresh order of transfer on 28.02.2008. If industrial disputes related to the cases of complainant were not under consideration before the Industrial Court, the respondents need not come to the Industrial Court for availing the jurisdiction under Section 9A of the Industrial Disputes Act. Moreover, in the pleadings and evidence in respect of transfer order dated 28.02.2008 the complainant could not sufficiently and satisfactorily plead necessity of the compliance of Section 9A of this Act. Just reference in pleadings and evidence would not suffice the principles of burden of proof as to requirement of compliance of Section 9A of the Act. I am of the view that even on these causes the complainant would not request the Court to pass an order of declaration that the Order dated 28.02.2008 was malafide.

42. There are pleadings of respondents to recognise sustainability of transfer order dated 28.02.2008. Those grounds are not disqualified by the complainant by way of amendment in pleadings or adducing the evidence against those grounds. The respondents clarified about their administrative exigencies which were discussed on 01.01.2008 in respect of RMC and ACL requirement in this division. It was attempted by the respondents for shifting of the staff and arrangement of staff. With this background insistence of complainant to call back him at the original place at

Head Office Mumbai was nothing but his desire having no relevance with business exigencies of respondents.

43. It is transpired that the respondents have informed the details as to the place where the complainant was ordered and posted at Lakheri. The arrangement of his business working and arrangement as to reporting were also done by the respondents. It was possible for the complainant to request the respondents to make some provisions for his journey or for transfer benefits. Such claim against the respondents was sustainable as per agreement or settlement between the employer and Union if otherwise sustained but any such document is not placed before the Court by the complainant so that the respondents could be directed to provide financial assistance to the complainant before asking him to resume duty at Lakheri. The complainant did not plead even in present complaint for calling upon the respondents to make any such pre-arrangements. It means even if the respondents had desire to make such arrangements the complainant was not willing to respect that transfer order dated 28.02.2008. The instances of the employee for retaining him at the place of first posting is not accepted by establishment of the employer who has 24 units all over India and because of that Clause 6 was mentioned in appointment letter. Thus the complainant being well acquainted with all these backgrounds the claim of complainant for retaining him at the place of first posting not at all welcoming factor in such business.

44. In case of Superintending Engineer, South Arcot Electricity System(North) Villupuram and Ors. V/s. P.

Chakkarapani 1989-II-LLN-83 Their Lordships of Hon'ble Madras High Court observed that,

“Considering for transfer is administrative exigency. The employees concerned is a Class-IV hence he cannot claim that his services are not subject to transfer. The transfer is a necessary concomitance of every service”.

Similar are observations in case of **Public Services Tribunal Bar Association V/s. State of U.P And Another 2003-Supreme Court Cases(L & S)400**. Their Lordships of Hon'ble Apex Court observed that:

“Generally there is no scope of judicial review of transfer order because the transfer is an incidence of service and normally should not be interfered with by Court.”

45. Considering the materials on record and legal position no grounds are made out by the complainant for cancellation of order of transfer.

46. It is transpired that at present the complainant is not in service of respondents. He has crossed the age of retirement during pendency of this complaint, particularly in the year 2011. With this background there would be no effect of the Order of Court in case transfer order is set aside. However the advocate of complainant having view that the complainant would entitle for monetary benefits attached with salary in case the complainant was in service in between the period of order of transfer and date of retirement under principle of superannuation. The complainant will entitle for salary and other consequential monetary benefits.

47. I observed that principle of 'no work no pay' would prevail because without any protection against that transfer order the complainant decided to keep away from working at respondents. It is not the case of complainant that he was not allowed to work at posted places. One of the door for resuming duty was open for the complainant but he withhold to go through that door for service on the establishment of the respondents. In other word there being no restriction on the right of complainant to resume duty, the primary responsibility was on him to resume duty, but he failed, hence his claim for back wages for any such past period not at all sustainable. With this the issue is replied in the negative.

48. The respondents claimed for cost of this proceeding the would not sustain because no good grounds or case made out by the respondents to point out perversity in the case and claim of complainant. With this following Order:

:- O R D E R :-

1. The Complaint(ULP)No. 96/2008 stands dismissed.
2. No order as to cost.

Date :-15.09.2015.
Place: Mumbai

(Sudam P. Deshmukh)
Member,
Industrial Court, Mumbai

(A.S. Jagdale)
Registrar
Industrial Court Maharashtra, Mumbai
Date :
Asg/- 15.10.15