Supreme Court of India
Management Of Cipla Ltd. vs Jayakumar R. And Anr. on 21 November, 1997
Equivalent citations: (1998) ILLJ 460 SC
Author: B Kirpal
Bench: S Bharucha, B Kirpal
JUDGMENT Mr. B.N. Kirpal, J.

1. Special leave granted.

The dispute which arises in this case pertains to the transfer of the respondent from the appellant's establishment at Bangalore to its factory at Mumbai.

2. Briefly stated the facts are that the respondent was appointed as a mechanic by a letter of appointment dated January 31, 1983 in the appellant's establishment at Bangalore. Two of the terms of appointment which are relevant for the purposes of the present case namely Clause 3 and Clause 11 are as follows:

Clause 3 You will be in full time employment with the Company. You are required to work at the company establishment at Bangalore or at any of its establishments in India as the Company may direct without being entitled to any extra remuneration. You shall have to carry out such duties as are assigned to you, diligently and during such hours as may be stipulated by the management from time to time. While you are in service, you shall not be employed else-where or have any interest in any trade or business.

Clause 11 You will be governed by the Standing Orders applicable to workmen of the Company, a copy of which is attached for your reference.

3. It appears that by an order dated April 16, 1996 the respondent was transferred from Bangalore and was required to report at Company's office at Mumbai. Instead of joining at Mumbai the respondent, filed a complaint under Section 33A of the Industrial Disputes Act, being complaint No.3 of 1996 in I.D. No.15 of 1994 before the Industrial Tribunal, Bangalore. It was alleged therein by Respondent No. 1 that there was no provision for transfer of an employee from one factory to another and the transfer of the first respondent was in violation of the provision of the Standing Orders and, furthermore, the said transfer amounted to alteration in the service conditions.

4. The defence of the appellant to the said application was that the transfer has been effected in accordance with the terms of employment and the application under Section 33 was not maintainable. In this connection it was submitted that the transfer of the respondent to Mumbai was not in any way concerned, with the industrial dispute which was pending adjudication in I.D. No. 15 of 1994.

5. By an award dated June 13, 1996 the Industrial Tribunal allowed the said application of Respondent No. 1 and it came to the conclusion that the Standing Orders of the Company's establishment at Bangalore did not mention about the transfer from one establishment to another

and therefore the appellant herein had no power to transfer the first respondent from Bangalore. The Tribunal also came to the conclusion that Clause-3 of the appointment letter permitting such a transfer was in conflict with the Standing Orders and therefore the said clause could not be given effect to.

6. Being aggrieved the appellant herein filed a writ petition under Article 226 of the Constitution before the High Court of Karnataka at Bangalore. The Single Judge dismissed the writ petition and the appeal filed by the appellant also met with no success. Hence this appeal by special leave.

7. The main question which arises for consideration in this appeal is whether the appellant could, in law, transfer the Respondent No. 1 from Bangalore to Mumbai. If such a power was there with the appellant then it is accepted by the learned Counsel for the respondent that such a transfer would in fact not amount to altering the conditions of service of the respondent with a result that the provisions of Section 33 of the Industrial Disputes Act would not be attracted.

8. It was vehemently controverted by the learned Counsel for the respondent that notwithstanding the aforesaid Clause-3 in the letter of appointment the position in law is that if there is any clause which is in conflict with the Standing Orders then the Standing Orders must prevail. It was submitted that Clause 11 of the letter of appointment clearly stipulated that the Standing Orders would be applicable. The learned Counsel drew our attention to the relevant clause in the Standing Orders which reads as follows:

A workman may be transferred from one department to another, or from one Section to another or from one shift to another within factory/Agricultural Research Farm, provided such transfers do not involve a reduction in his emoluments and grade. Worker who refuses such transfers are liable to be discharged.

9. It was while placing reliance on it that it was submitted that when the Standing Orders talk of transfer it permits a transfer only in terms of the said clause and transfer de hors this is not permissible.

10. It is the aforesaid argument which found favour with the High Court, both before the Single Judge as well as the Division Bench.

11. In our opinion, the aforesaid construction does not flow from the provisions of the Standing Orders when read along with the letter of appointment and, therefore, the conclusion arrived at by the High Court was not correct. As has already been noticed the letter of appointment contains both the terms namely for the respondent being transferable from Bangalore as well as with regard to the applicability of the Standing Orders. These clauses, namely, Clauses 3 and 11 have to be read along with the Standing Orders, the relevant portion of which has been quoted hereinabove. Reading the three together we do not find that there is any conflict as has been sought to be canvassed by the learned Counsel for the respondent. Whereas the Standing Orders provide for the department wherein a workman may be asked to work within the establishment itself at Bangalore, Clause 3 of the letter of appointment, on the other hand, gives the right to the appellant to transfer a workman

from the establishment at Bangalore to any other establishment of the company in India. Therefore, as long as the respondent was serving at Bangalore he could be transferred from one department to another only in accordance with the provisions of the Standing Orders but the Standing Orders do not in any way refer to or prohibit the transfer of a workman from one establishment of the appellant to another. There is thus no conflict between the said clauses.

12. It was then submitted on behalf of the respondent that the order of transfer was passed with an ulterior purpose. It was contended that the respondent was a trade union leader and it is for this reason that he was sought to be transferred. We do not find any factual basis for this. There is no averment in the pleadings before the High Court to this effect and nor is there any averment even in the complaint contained in the application under Section 33A which was filed by the respondent. It was for the respondent to state in the said application that he was a member of the Managing Committee or was involved with the trade union activities and that his transfer was for a mala fide reason and amounted to unfair labour practice. Learned Counsel took us through the complaint and we find that except for general submission that the respondent management was restoring to unfair labour practice including mala fide transfer there is no specific averment therein that the orders of transfer passed in respect of the respondent was for any mala fide reason or that he was closely connected with or was an office bearer of the trade union.

13. For the aforesaid reasons we find that the conclusion arrived at by the High Court that the provisions of Section 33A were attracted to the present case was unwarranted. We accordingly allow the appeal, set aside the decision of the High Court in Writ Appeal No. 9183/1996 as well as the judgment of the Single Judge with the result that the respondent's application under Section 33A stands dismissed.

No order as to costs.