

MANU/MH/0974/2004

Equivalent Citation: (2005)ILLJ337Bom

IN THE HIGH COURT OF BOMBAY

O.O.C.J. W.P. No. 443/2003

Decided On: 09.07.2004

Appellants: **Vijayan V.**

Vs.

Respondent: **Wimco Limited and Ors.**

Hon'ble Judges/Coram:

S.J. Vazifdar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S.C. Naidu, Jay Choksi and Vinay Menon, Advs.

For Respondents/Defendant: S.K. Talsania and R.N. Salgaonkar, Advs., i/b., Salgaonkar & Co.

Case Note:

Labour and Industrial - Transfer - Complaint filed under Section 28 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 against the order of transfer - Various applications filed for stay on the order of transfer were rejected - Order under challenge - Held, it would be open to the Petitioner to challenge the order of transfer - To render the Petitioner's Complaint infructuous would in effect debar the Petitioner from challenging the transfer order in the event of the Petitioner succeeding against the order of termination - Impugned order was set-aside.

JUDGMENT

S.J. Vazifdar, J.

1. The Petitioner seeks a writ of certiorari against the impugned order dated November 30, 2002 holding a complaint filed by the Petitioner under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter the "said Act") to have become infructuous.

2. The Petitioner joined the services of the first Respondent on April 1, 1981 as a Clerk "B" Grade. He remained in the post throughout. He was the Secretary of the Wimco Employees Union which is the recognized union of the first Respondent.

3. In 1998, a charter of demands was made and referred to the Industrial Tribunal under Section 10(1) of the Industrial Disputes Act for adjudication. The same is registered as Ret". (I.T.) No. 3 of 2001. One of the demands of the Union was that that first Respondent ought to stop the system of reducing the strength of the bargaining cadre of the workers.

4. On December 4, 2001, the Petitioner himself was offered promotion by the first Respondent, which he refused. On December 12, 2001, the Petitioner received an

order transferring him to the Chennai Office of the first Respondent. The Petitioner challenged the transfer by filing Complaint (ULP) No. 72 of 2002 before the Industrial Court. The complaint was filed under Section 28 read with Items 3, 7, 9 and 10 of Schedule IV of the said Act. It is not necessary for the present purpose to deal with the merits of the complaint, which has by the impugned order been held to have become infructuous. Suffice it to say that the transfer has been challenged by the Petitioner on the ground of it being mala fide. For instance, it is contended on behalf of the Petitioner that the mala fides are apparent from the fact that the transfer order was passed within about a week of his refusing the offer of promotion. Further the transfer was to the Chennai Office where a strike was in force from November, 2001 and in June, 2002 a lock-out was declared. The lock-out was lifted only in February, 2003.

5. The petitioner's application for interim reliefs under Section 13(2) of the said Act for stay of the order of transfer was rejected by an order dated February 27, 2002 passed by the Industrial Court. The Petitioner challenged the same by filing Writ Petition No. 1922 of 2002, which was dismissed in limine by an order of this Court dated April 1, 2002. An appeal from that order was also dismissed by a Division Bench of this Court.

6. The evidence in the present complaint commenced on August 16, 2002. The Petitioner admittedly did not report to the Chennai Office. On September 18, 2002, for this reason his services were terminated by the first respondent.

7. On October 17, 2002, the first Respondent filed Exhibit C-8 in Complaint (ULP) No. 72 of 2002 praying for dismissal of the complaint on the ground that it was infructuous in view of the first Respondent having terminated the services of the Petitioner. The impugned order was passed in this application Exhibit C-8 on November 30, 2002.

8. Before dealing with the judgment, it is pertinent to note that on December 12, 2002, the Petitioner filed Complaint (I.T.) No. 10 of 2002 in the said Ref. (I.T.) No. 3 of 2001, challenging the order of termination. The impugned order is based solely on the fact that the services of the Petitioner had been terminated and that therefore he was required to approach the learned Labour Court. For this reason, the learned Member held that the complaint had become infructuous.

9. The impugned order, it is important to note in effect dismissed the complaint itself Without going into the merits of the matter. Whatever may have been the position on the date of the impugned order, the fact remains that today the order of termination has been challenged by the Petitioner. In the event of the Petitioner succeeding in the challenge to the order of termination, it would be open to the Petitioner to challenge the order of transfer as well. I refrain from making any observations on the merits of the matter or on the legal position of the parties as regards the effect of the Petitioner's refusing to report to Chennai. It was contended by Mr. Talsania, the learned counsel appearing on behalf of the Respondents that irrespective of whether or not the order of transfer is set aside, the Petitioner's services could always be terminated for not having reported to Chennai in view of the fact that he had obtained no interim reliefs against that order. This issue will be decided in Complaint (I.T.) No. 10 of 2002.

10. To render the Petitioner's Complaint (ULP) No. 72 of 2002 infructuous would in effect debar the Petitioner from challenging the transfer order in the event of the

Petitioner succeeding against the order of termination.

11. For this reason and in view of the judgment of a Division Bench of this Court in *D. Venkat Rao and Anr. v. Vice Chairman, Central Administrative Tribunal, Bombay and Ors.* 1997 II CLR 1139, the impugned order is set aside and the complaint shall be restored to file. There shall be no order as to costs.

12. Parties to act on an ordinary copy of this order duly authenticated by the Associate/Court Stenographer of this Court.

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