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Court : Andhra Pradesh

Decided On : Oct-12-1998

Reported in : 1998(6)ALD295

Judge : S.R. Nayak, J.

Acts : Industrial Disputes Act, 1947 - Sections 33

Appeal No. : WP No. 28156 of 1998

Appellant : K. Devender Reddy Adv.

Respondent : Singareni Colleries Co., Ltd. and ors., Advs.

Advocate for Def. : Mr. K. Srinivasa Murthy and ;Mr. T. Niranjan Reddy, Advs.

Advocate for Pet/Ap. : Mr. K. Vasudeva Reddy, Adv.

Judgement :
ORDER

1. Rule nisi. Sri K. Srinivasa Murthy took notice for respondents 1 to 3 and Sri T. Niranjan Reddy took notice for Respondent No.4 Writ petition was heard finally.

2. The petitioners four in number were initially appointed in the respondent Company as EP Operator in D Grade and subsequently got promotion as C-Grade and B also as E Grade. It is averred in the affidavit filed in support of the writ petition that in the year 1993 the respondent Company conducted special

interview for the existing posts of EP Operators and the petitioners were sent for training for a period of three months at NIC Tamilnadu and all the petitioners along with some other EP Operators underwent the training. From the affidavit averments, it appears that on behalf of the petitioners and the similarly circumstanced, the trade union to which the petitioners and the others belong has raised an industrial dispute demanding that the petitioners and the similarly circumstanced others should be paid A Grade wages and their services should be absorbed as Spreader/ Tripper Car Operators, and the said dispute is pending in conciliation before the fourth respondent. When the matters stood thus, according to the petitioners, the Management of the Company have made the petitioners to work in other posts such as Dozer Operator. Hence this writ petition seeking for a writ of Mandamus declaring the action of the second and third respondents in changing petitioners' service conditions while the Conciliation Proceedings are pendings before the IV respondent as illegal, arbitrary and contrary to Section 33 of the Industrial Dispute Act (for short 'the Act') and for a consequential direction to the respondents 1 to 3 not to disturb petitioners from the posts of Spreader/ Tripper Car Operators till finalisation of the Conciliation Proceedings pendings before the fourth respondent.

3. Sri K. Vasudeva Reddy, learned Counsel for the petitioner would strenuously contend that the action of the Company in insisting that the petitioners should work in the posts such as Dozer Operator would amount to alteration of condition of service and that is totally improbable having regard to the prohibition contained in Section 33 of the Act. The contentions of the learned Counsel for the petitioner is not well-founded. Suffice it to state that admittedly the petitioners were I appointed in the Company's service as EP Operators. The petitioners have yet to establish in appropriate legal proceedings, that they are entitled to be absorbed as Spreader/Tripper Car Operator and they are entitled to A Grade Wages. It is well-established that pending Conciliation Proceedings, if the employer transfers a workman to an equivalent post such transfer would not alter conditions of this service. Such Transfers would not amount to alteration of condition of service as per the decisions reported in Mysore Spinning and v. H..N. Narayanamurthy, 1955 (1) LLJ 634; National Carbon Company v. Mukthinath Singh, 1957 (2) LLJ 567; and Peddar Automobiles v: Sudhan Chandra Ghosh, 1957 (1) LLJ 326.

Undoubtedly transfer is a condition of service, but at the same time it is well-established by a catena of decisions of the Supreme Court and the High Courts that transfer is an incidence of service and that cannot be avoided so long as the workman in question holds a transferable post. Only in the event of the petitioners establishing in appropriate legal proceedings that their services are entitled to be absorbed as Spreader/Tripper Car Operator and they are entitled to A Grade wages, the petitioners would possibly contend that the action of the Management of the Company directing them to function as Dozer Operators would amount to alteration of condition of service. The right claimed by the petitioners is yet to be established. Therefore, it cannot be held that the action of the respondent Company indirecting the petitioners to function as Dozer Operators amounts to alteration of condition of service so as to attract the bar contained in provisions of Section 33 of the Act. No ground is made out for the interference.

4. Writ Petition is therefore dismissed. No costs.'

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