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Court : Rajasthan

Decided On : Feb-21-2000

Reported in : (2001)IIILLJ655Raj; 2000(2)WLN241

Judge : Shiv Kumar Sharma, J.

Acts : Industrial Distpues Act, 1947 - Sections 2; [Constitution of India](#) - Article 19(1)

Appeal No. : S.B.C. W.P. No. 779/1999

Appellant : Ram Charan Sharma and ors.

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

Shiv Kumar Sharma, J.

1. The petition was finally heard with the consent of learned counsel appearing for the parties. As per averments made in the writ petition, the petitioners are office bearers of the Agro Industries Corporation Employees Union Rajasthan, Jaipur, which is affiliated with All India Trade Union Congress. Litigation of employees is subjudice in this Court. The petitioners have been contesting the cases against the respondents. The details of four pending cases in this Court, have been given in

the writ petition. Both the petitioners have been authorised by the Union to look after these cases.

2. The petitioners requested the Management to initiate enquiry in respect of illegalities and irregularities committed in the Corporation vide letters dated January 30, 1999, February 1, 1999 and February 5, 1999. It was also requested that the employees should be provided with the receipt of the Provident Fund as well as the copies of the State Insurance Statement. The meetings for this purpose were organised and in the said meetings there had been some hot exchanges between the petitioners and the representatives of the Management. Copies of the aforequoted letters have been annexed with the writ petition. In order to crush the Union activities of the petitioners, the respondents No. 2 and 3 vide order dated February 6, 1999, respectively transfers the petitioners from Jaipur to Hanumangarh and Jaisalmer. According to the petitioners the transfer is not in the public interest or in the administrative exigency but was made to curb the union activities of the petitioners. Under the circumstances, the prayer is made to set aside the order of transfer.

3. Respondent Nos. 2 and 3 submitted their reply to the writ petition, stating therein that the petitioners had been transferred on administrative grounds and in the interest of the Corporation. Some Bulldozers of the Corporation are working in Jaisalmer and for the maintenance of these machines, petitioner No. 2 has been transferred to Jaisalmer. There is a scarcity of staff at Hanumangarh, therefore, the petitioner No. 1 has been transferred to Hanumangarh in the interest of the Corporation. The Corporation is under the process of winding up, therefore, any employee of the Corporation may be transferred anywhere in order to utilise his services. Being a Union Office bearer an employee cannot escape to perform his duties which are allotted by his employer.

4. I have reflected over the rival submissions and carefully weighed the material on record.

5. Mr. Suresh Goyal, learned counsel appearing for the respondent Nos. 2 and 3 raised preliminary objections and placed reliance upon the cases of Shilpi Bose (Mrs.) and Ors. v. State of Bihar and Ors. AIR 1991 SC 532 : 1991 Suppl (2) SCC

659 : 1991-II-LLJ- 591, Suresh Chand Garg v. State of Rajasthan and Ors. 1991 (1) WLC 478 Jagdish Chandra Ozha v. State of Rajasthan 1998 (3) WLC 381.

6. Principle that may be deduced from the above quoted rulings is that the Court should not interfere with the transfer order which is made in the public interest and for administrative reasons, unless the transfer order is mala fide or violative of mandatory statutory rule. Therefore, it is to be seen as to whether the interference can be made by this Court under Article 226 of the Constitution of the India in respect of impugned transfer order.

7. Clause (1)(c) of Article 19 of the [Constitution of India](#) guarantees the right to form associations or unions. This includes the right of workmen to form trade unions for a lawful purpose.

8. In CHAMBER'S ENCYCLOPEDIA Vol. 13 p. 725, the trade union has been described as.-'an association of wages-earners or salary-earners formed primarily for the purpose of collective action for the forwarding or defence of its professional interests'. In the peculiar conditions of India collective bargaining on behalf of the workmen is almost the only function of the overwhelming majority of the trade unions, the subsidiary purpose of functioning as friendly societies conferring material benefits on the members. It is thus evident that right to form a trade union and to look after the interest of the members of the trade union is the constitutional right of the petitioners guaranteed under Article 19(1)(c) of the [Constitution of India](#) . Admittedly the petitioners are General Secretary and Senior Vice President of the Union. The petitioner Ram Charan Sharma was nominated as General Secretary on February 3, 1999. After his nomination the trade Union vide letters dated January 30, 1999, (Annexure-2) February 1, 1999 (Annexure-3) and February 5, 1999 (Annexure- 4), raised certain demands. These three letters were signed by the petitioner Ram Charan Sharma. Immediately after receiving letters dated February 5, 1999 (Annexure-5), the petitioners were transferred from Jaipur to remote places.

9. Section 2(ra) of the Industrial Disputes Act, 1947 defines 'Unfair Labour Practice', which means any of the practices specified in the 5th Schedule. According to Clause 7 of the 5th Schedule, to transfer a workman mala fide from

one place to another, under the guise of following management policy is an unfair labour practise.

10. I have carefully scrutinised the material placed on record. In the reply it has been averred by respondent Nos. 2 and 3 that the petitioners have been transferred on administrative ground in the interest of the Corporation but I am unable to persuade myself to accept this plea and there is a logical reason behind it. The petitioner Ram Charan Sharma wrote two letters Annexures - 4 and 5 on February 5, 1999 to Managing Director respondent No. 2. In the letter (Annexure-4), respondent No. 2 was asked not to let-out the building of the Krishi Upkaran Mantralaya and in another letter dated February 5, 1999, (Annexure-5) the respondent No. 3 was asked to hand-over the receipts of P.F. and copies of the State Insurance Statement, Immediately on the next day i.e. February. 6, 1999 the respondent No. 3 passed the order transferring the petitioners from Jaipur to Hanumangarh and Jaisalmcr respectively. Malice can be inferred from this hasty act of respondent No. 3.

11. I am of the firm view that the respondent Nos. 2 and 3 have transferred the petitioners to curb their Union activities. The act of the respondent Nos. 2 and 3 comes under the definition of 'Unfair Labour Practice' and is violative of Article 19(1)(c) of the [Constitution of India](#).

12. In the result, the writ petition stands allowed and the transfer order dated February 6, 1999 (Annexure-6) is set aside. Cost easy.

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