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Court : Chennai

Decided On : Sep-11-1997

Reported in : (1997)IILLJ1090Mad; (1998)IMLJ139

Judge : A.R. Lakshmanan and ;M. Karpagavinayagam, JJ.

Acts : Industrial Disputes Act - Sections 10(1) and 12(5)

Appeal No. : W.A. No. 1234/1994

Appellant : Workmen of Sundaram Industries Ltd.

Respondent : Sundaram Industries Ltd. and anr.

Advocate for Def. : S. Jayaraman and ;M. Rathnam, Advs.

Advocate for Pet/Ap. : V. Prakash, Adv.

Judgement :

A.R. Laksivmianan, J.

1. The writ appeal is directed against the order of his Lordship Mr. Justice K. S. Bakthavachalam in W.P. No. 16715 of 1991 dated April 26, 1994 dismissing thhj wretition filed by the appellant Union. arn Judge has held that there is no aflde in the transfers made, when transfers are made from two unions and not from the members of appellants union alone. The writ petition was filed against the

impugned action of the management relating to workers who are members of the appellant union employed in the Coach Factory at Viralimalai.

2. The writ petition was filed for a Mandamw directing the Government of Tamil Nadu to refer the dispute relating to the transfer of 121 workmen declined to be referred in (G.O.D. No. 1076 dt. October 28, 1991) by the Government of Tamil Nadu. The Government under the proceedings dated October 28, 1991 after examining the conciliation report of the Joint Commissioner of Labour, Madurai dated July 4, 1991 in regard to an industrial dispute raised by Sundaram Industries Employees Union, Madurai against the management of Sundaram Industries Limited (Coach Division), Madurai s over the issue relating to transfer of 122 workmen and passed the impugned order declining to refer the dispute for adjudication. The Government while considering the case had observed that the transfer of workmen is a managerial io function and the workmen had been transferred from one place to another for specific adtninistrative reasons such as operational requirements, fluctuations in work order, the need to execute orders economically, productive utilisation of labour, lack of adequate orders in some places etc. The Government also held that the allegation of victimization or discrimination against the writ petitioner's union had not been substantiated. Out of 122 worlanen, 33 workmen have accepted the transfer orders and joined duty at the new station. and, therefore, the Government held that no action was considered necessary in respect of 33 workmen. Likewise the order of transfer of one P. Muniyandi was cancelled by the management itself and nine workmen have since left the services of the management and there was no need to refer their case for adjudication. The Government also declined to refer the matter for adjudication in respect of 15 workmen as indicated in the remarks column. Likewise the Government declined to consider the case of the remaining 64 workmen mentioned in paragraph 5 of its order and thought it not expedient to refer their cases for adjudication for the reasons recorded in the said paragraph.

3. The above order was challenged by the members of the Union employed in the Coach Factory Viralimalai alone, and not ty others. Challenging the impugned order of the Government Mr. Prakash, learned Counsel appearing for the appellant union contented that absolute control and lack of trade union protection exposed

the workmen to every type of labour law violation and unjust treatment and without any collective bargaining ability workers were even denied basic dignity in treatment. The workmen are unable to bear this unjust situation and feudal treatment and inspired by the attempt of other T.V.S. Workers in Southern Roadways Limited (TVS) and Sundaram Motors (T.V.S. & sons) forming genuine trade unions, the appellant union was formed and immediately enjoyed the membership of an overwhelming majority of the workers employed in the rubber factory, Madurai and coach factories at Madurai, Pudukottai and Viralimalai.

4. According to Mr. Prakash the reaction of the respondent - Mangement to the new trade union movement was identical to the reactions of the mangement of the Southern Roadways, Limited, Sundaram Motors (T.V.S. & Sons) namely one of total hostility. According to him, the workers were treated in hostile discrimination in the matter of wages adopting 18(1) 'Settlement' as devices and ordering cash incentives, advances and allowances under various 4 heads to the members of the management run trade union again adopting 18(1) 'Settlement' with puppet union as devices of discrimination and abuse of disciplinary powers, dismissing of the office bearers and leaders of the genuine trade union, abusing power of transfer to indulge in mass transfer of members of appellant union to expose them to financial harassment aimed at the union membership with no relevance to administrative necessity. Thus according to Mr. Prakash the entire purpose of the four pronged attack being to threaten the workers to give up the membership of the appellant union and to rejoin in the management run trade union. To put in a nut-shell the workmen daring to exercise his basic right to be a member of a trade union of his choice, would have to necessarily face poverty by deprivation of his livelihood in one manner or another and a worker surrendering the precious right will be given allowances, of total relaxation of work and disciplinary norms and patronage by the management. According to Mr. Prakash, if the union succeeds in the dispute they will be entitled to wages for the said period in question. ne order dated March 31, 1990 in an adjudicatory order which merely states that as per the ruling of the Supreme Court reported in (1974-1-LU-94) relating to Hindustan Lever Limited v. The Workmen, there is power for the management to transfer. According to the counsel the issue is not the power but whether the power has been exercised malafide and as a measure of vicitmisation. He also invited our

attention to the similar orders passed with reference to other workers. It is the case of the learned counsel for the appellant union that the reasons given by the Government in the order impugned are adjudicated and that the Government cannot decline to refer the dispute for adjudication by giving reasons which determine lis between the parties. As the power under Section 10(1) is an administrative power and the Government, therefore, cannot adjudicate the dispute.

5. The writ petition was resisted by the M anagement and the Secretary of the first respondent company filed a detailed counter-affidavit denying the allegations contained in the affidavit filed in support of the writ petition.

6. Mr. Jayaraman, learned counsel for the Management submitted that the management had to transfer and post some of the workmen from Madurai, Viralimalai and Pudukottai to various locations so that they will he utilised for 'after sales services'. In addition to that some people have been transferred from Madurai to Viralimalai and Pudukkotai, and in fact such a transfer and posting was made without any hindrance to the promotion and the benefits which such employees have been enjoying. In fact, the persons who have been transferred for 'after sales services' were also granted an additional allowance of Rs. 75/- per mensem per worker, during the period of their stay at the transferred place which is in the nature of extra benefit to them. Most of the worlanen transferred are working in their transferred places and thus it is contended that the transfer and deputation of these employees have been made only due to exigencies of work to meet the requirements of. the units at Viralimalai and Pudukottai and else - where and there are absolutely no nwlaflde in the transfers. In fact, in some cases, even the posting itself was for temporary period depending upon the nature of work.

7. The Deputy Secretary to Government, Ubour and Employment Department, Madras has also filed separate counter-affidavit. He has submitted that the Government has passed, orders after examining the contentions of both parties and the Government were satisfied and came to the conclusion that the management had transferred the workers on bona fide administrative reasons and has passed orders declining 2 the adjudication.

8. We have carefully considered the rival submissions made by the respective counsel. As rightly pointed out by Mr. Jayaraman the, Management has right to transfer an employee' and the management has got power and right to arrange the' anpower requirement according 'r'n to the needs and exigencies of business. We are of the view that in the instant case the transfers 4 were made purely for administrative exigencies and requirements and therefore there are no fide in them. The fact that about 80 employees belonging to T.Y.S. Workers Union (INTUC) have also been transferred to the very 4 same places and they have reported at the transferred places without any protest or murmur, establishes beyond doubt that all the transfers were made solely for business reasons. The management had also given the reasons in detail as to why and for what purpose the transfers have been effmled in their reply dated August 19, 1989. In fact it was submitted that the appellant union has an insignificant strength of members and that it not even have the locus standi to raise the dispute with regard to the transfers. As regards the transfers to Viralimalai Puduki were cone that during the of April-May 1989, ther was not enough work at Madurai, whereas urgent to export order for Enfirms was received from Messers Ashok Lyland Limited, who is the main customer and that the order was timebound and to be executed Viralimalai and Pudukottai before die of July, 1989. Since the available work force in dxm two places was not enough, the first respondent Management had to necessarily transfer the employees from Madurai, where there was not much work, to balance the work force and to avoid idle hours at to Madurai and to finish the work with regard to the time-bound export order. Thus it could he seen that the transfers were made purely out of cxigencies and administrative requirements.The Conciliation Officer submitted his conciliation report on July 4, 1991. The Government thereafter by its order dated October 28, 1991 declined to refer the issue of transfer of these employees for adjudication. In respect of employees 1 to 33 as mentioned in the pugned order, the Government has stated that those 33 employees have accepted the transfer and reported for work and in view of that, the Government said that no action is necessary in respect of those 33 employees. In respect of one employee by name P. Muniyandi, the Management had cancelled the order of transfer and, therefore, there was no necessity to refer to his case. In respect of nine employees, since they the services of the expressed

the their transfer n respect of another set of 15 employee, scince the Government had already declined to refer for 5 adjudication by their earlier orders dated March 1, 1990 and May 29, 1990 the Government thought it fit not to refer the matter for adjudication. With regard to the remaining 64 employees the Government in its impugned orders a has given the reasons as extracted above in the paragraph supra. So far as the victimisation is concerned, it has been expressed in the order of the Government that the said issue has not been substantiated. With the above mentioned reasoning, the Government had declined to refer the matter for adjudication. To nullify the above said order the appellant union has come forward with the writ petition.

9. As already noticed and narrated earlier, we are of the view that the management has got power to transfer an employee from one place to another and from one unit to another unit. Thus the transfer of an employee is part of conditions of service and the employees are bound to obey the orders of transfer and work in the place where they have been transferred and posted. As already stated the appellant union has no locus stands to raise the issue with regard to transfer of others. The majority Union, namely, TYS Workers' Union (INTUC) has not questioned the transfer of employees. In fact about 132 workers belonging to the TVS Workers' Union (INTUC) the majority union have obeyed the order of transfer and reported for work in the transferred places. The transfers of, the workmen had been made for administrative exigencies and also to meet the requirements at Viralimalai and Fludukottai.

10. The Supreme Court has repeatedly ruled. that transferability from one establishment to another is an incidence of service and that the employer is the best judge to decide upon the utilisation and distribution of its manpower, amongst various units and places. The Court : has further held that Courts and Tribunals cannot also properly assess or adjudicate effectively reasons given for transfer of employees. In other words, the effect of those rulings is the decision of the employers in such cases is con-, clusive and that except in the rarest of rare cases, Courts should not interfere with transfer. In our opinion the case on hand is not one such a case. Hence, there is no need to go through the ritual of a reference. This apart from the fact, that on merits the Government order is

unassailable. In our view the Government has rightly declined to refer the matter for adjudication. The appellant union has not established their case of malafides. The transfers, as already noticed, are purely on administrative reasons and therefore, the Government has rightly declined the matter for adjudication.

11. It is not the case of the members of the appellant union that the transfers have resulted in any reduction in status, seniority, emoluments or other benefits of the workmen. In fact the service conditions of the workmen in terms of their status, wages, seniority etc, have not [0 been prejudicially affected on account of the transfers and that perhaps explains why most of the workers belonging to the recognised TVS Workers union as well as Sundaram Industries employees union have accepted transfer and joined at the new places of work. Further the members belonging to the recognised TVS Workers union have also been involved in similar transfer during the period from April to August 1989. Hence, the Government order relating to the transfer of 32 workmen who have accepted the transfer orders and joined duty at the new station declining for reference to adjudication is legally justified.

12. Mr. Prakash has not been able to substantiate his allegation of victimisation or nwla fide in their transfer at the time of conciliation proceedings. No prejudice has been caused to their service conditions on account of the transfer. The Co-workers involved in the transfer have accepted and acted on the transfers by joining at the new places of work. There are no special or distinguishing facts in their case to warrant a reference, since the second respondent have already declined adjudication in similar individual cases of transfer. The management have made these transfers necessitated by bona fide business exigencies and to distribute available manpower to different 40 places where the business of the Management is carried on. The Government have to consider the implications of a reference of this dispute and its adverse effect of unsettling the state of administration in the industry, besides impairing the existing state of industrial peace and harmony. Thus the Government's order declining to refer the dispute involving the transfer of 122 workmen issued in the G.O. (D) No. 1076, Labour and Employment Department dated Octoso ber 28, 1991 is fully justified, perfectly valid and legally sustainable.

13. Mr. Prakash has cited the following decisions reported in the Hindustan Lever Limited v. The Workmen (supra), M/s. Shaw Wallace & Company Limited v. State of Tamil Nadu By Commissioner and Secretary, Labour Department And Others 1988 1 LLJ 177 (Mad), Tamil Nadu Electricity Board Engineers' Sangam v. Tamil Nadu Electricity Board 1996 LLJ 1071 (Mad) and lhiruvalluvar Transpori Corporation Limited v. K. P. Ganesan : (1997)IILLJ166Mad . There cannot be any dispute or quarrel over the proposition of Law laid down in the above cases. The Judgment referred are depending upon the facts and circumstances of each case. Since the case on hand has been decided on the facts and circumstances, we feel that there is no need to refer the above citations, since the matter in the present case has been decided on the peculiar facts and circumstances of the case.

14. We are also unable to accept the contentions of Mr. Prakash stating that the Government cannot decline to refer the dispute for adjudication by giving reasons which determine the lis between the parties and that the power under Section 10(1) is an administrative power and the Government cannot adjudicate the dispute. We are unable to accept this contention. While coming to the conclusion for not referring the dispute for adjudication, the Government has to necessarily refer the reasons thereof. Merely disclosing the reasons for declining reference which is incumbent on the Government cannot be equated with and Compared with adjudication. Section 10 read with Section 12(5) of the Act confers very wide discretion on the appropriate Government either to refer or reflise to refer an industrial dispute. In this case the Government have bona fidely exercised its discretion and had decided to decline reference. While passing the administrative orders under Section 12(5) of the said Act, the Government is not prevented from considering the merits of the dispute raised by the workmen p;lmafacie. Section 12 (5) of the Act does not make it obligatory on the part of the Government to make reference of all disputes raised by workmen automatically. It has got discretion to refer or not to refer the dispute. Therefore, while considering the prima facie case on merits, the Government has found that the reasons for transfer of the workmen are genuine business reasons and has thus disclosed the reasons relevant to the dispute. This would not tantamount to adjudication, as alleged by the appellant union. On proper consideration of the facts of the dispute, the Government, in our view, has exercised its power vested in them under Section 10 read with Section

12(5) of the Act. The workmen of the appellant union have not made out a case for issue of Mandanw as prayed for. The writ petition is devoid of any merits and legal efficacy. None of the contentions raised by the appellant union is tenable nor the reliefs sought for by them is sustainable in the eyes of law. Under these circumstances, the writ appeal fails and is dismissed. The order of the Learned Judge dated April 26, 1994 in W.P. No. 16715 of 1991 impugned in this writ appeal is confirmed. However there will be no order as to costs.

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