

# ALLAHABAD HIGH COURT

The Pioneer Ltd

Vs.

The Presiding Officer

Civil Misc. Writ Petn. No. 14224 of 1981

(A.N. Varma, J.)

21.05.1982

## ORDER

**A.N. Varma, J.**

1. This petition is directed against two orders of transfer made by the Government of Uttar Pradesh on 1-1-1981 and 10-6-1981 transferring a miscellaneous case commenced on an application of the respondent No. 4 Sri Munna Lal under S. 33-C (2) of the Industrial Disputes Act, 1947 (Central Act). By the first order: the case had been transferred from the Labor Court, Bareilly to the Labor Court (IV) Kanpur, and by the subsequent order the case was transferred from the Labor Court (N) Kanpur to the Labor Court, Gorakhpur.
2. The petitioner is a public limited company. It published two newspapers from Lucknow, one in English known as 'Pioneer' and the other in Hindi called 'the Swatantra Bharat'. Munna Lal, the respondent No. 4 herein was employed as a correspondent of 'Pioneer' at Gorakhpur. On 18th Aug., 1973 the Managing Editor of 'the 'Pioneer' terminated the services of the said respondent with immediate effect. This gave rise to an industrial dispute which was referred by the State Government under S. 10(1) of the Industrial Disputes Act (Central) by a Notification dated 8th of June, 1974. The dispute was adjudicated by the Labor Court, Gorakhpur which gave an award dated 9th Dec., 1976 holding that the termination of the services , of respondent No. 4 was illegal and unjustified and directing his reinstatement with the benefit of back-wages. It is stated by the petitioner that after this award the respondent No. 4 was reinstated but as he had already crossed the age of superannuation he was retired from service. The respondent No. 4 thereafter filed an application under S. 33-C(2) of the Industrial Disputes Act before the Labor Court, Bareilly for computation of the benefits allowable to him in consequence of the aforesaid award. In the

application, it was alleged that the petitioner had refused to pay to the said respondent, the amounts to which he was entitled and as a result of the aforesaid award, this application gave rise to the miscellaneous case No. 21 of 1980. The parties filed their written statements before the Labor Court, Bareilly and issues were framed. Thereafter, it appears that the respondent No. 4 made an application before the Labor Court, Bareilly on 22-9-1980 to the effect that he had applied for the transfer of the case from the Labor Court, Bareilly to the Labor Court, Gorakhpur to the State Government and that the hearing of the Misc. case be therefore adjourned. On that application, the Labor Court passed an order on 29-9-1980 that the hearing of the case be adjourned for a period of two months and it fixed 21-11-1980 as the next date for the hearing of the case. It further appears that the respondent No. 4 had made an application to the State Government along with his affidavit praying therein for the transfer of the case from the Labor Court, Bareilly to the Labor Court, Gorakhpur where the said respondent resides. It is alleged in the counter affidavit filed on behalf of the said respondent that comments on this application were called for from the Presiding Officer and on the receipt of the comments the case was transferred by an order dated 1-1-1981 from the Labor Court, Bareilly to the Labor Court (IV) Kanpur with a further direction that the hearing of the case shall take place at Gorakhpur. On 19-2-81 the file of the case was received by the Labor Court (IV) Kanpur from the Labor Court, Bareilly. The case was registered as Misc. Case No. 67 of 1981 by the Labor Court (IV) Kanpur and notices were issued to the parties to appear before the said Labor Court on 25.3-1981. On 10-6-1981 the Government of Uttar Pradesh passed a further order purporting to exercise the powers under S. 33B of the Industrial Disputes Act (Central), transferring the case from the Labor Court (IV) of Kanpur to the Labor Court Gorakhpur on the ground that the Presiding Officer Labor Court (IV) Kanpur had expressed his inability to dispose of the case and had requested that the case be transferred to the Labor Court, Gorakhpur. The petitioner is aggrieved by these two orders of transfer.

3. The contention of the learned counsel for the petitioner in regard to these orders of transfer was that the same had been passed without giving any opportunity or notice to the petitioner. The case had been transferred from Bareilly at the instance of the respondent No. 4, a working journalist, on certain allegations which are stated to have been made both against the Presiding

Officer as well as the management. The petitioner was hence entitled to be given an opportunity before the case was transferred. In regard to the transfer of the case from Kanpur to Gorakhpur again the petitioner was given no opportunity. The two orders were, therefore, liable to be struck down on that ground alone. The second submission made by the learned counsel for the petitioner was that the Presiding Officer of the Labor Court, Gorakhpur was not authorized to adjudicate on matters in regard to working journalists and consequently, the transfer of the case made to that court was illegal and void.

4. Having heard counsel for the parties I find no merits in either of these two submissions. In regard to the order of transfer dated 1-1-1981 the first observation which I wish to make is that if the petitioner had really any genuine grievance or if it had suffered or there was likelihood of his suffering any real prejudice, he would have approached this court immediately after he came to know of the order of transfer from the Labor Court Bareilly to the Labor Court at Kanpur. I, however, find that the petitioner participated- in the proceedings before the Labor Court, Gorakhpur after the case was transferred to that court on several dates. It approached this court only in Dec., 1981 i.e., six months even after the passing of the second order of transfer dated 10-6-1981. From the affidavits filed by the parties, in this case it is clear that the petitioner was aware of the move of the respondent No. 4 to get the case transferred from the Labor Court, Bareilly to the Labor Court, Gorakhpur even before the Government passed the aforesaid order dated 1-1-1981. The petitioner admits having written to the State Government on 29-9-1980 about the move of the respondent No. 4 to get the case transferred from the Labor Court, Bareilly. At any rate, even according to the petitioner it had come to know about the order of transfer at least by 25th Mar., 1981 on which date the petitioner is alleged to have challenged the propriety of the order of transfer dated 1-1- 1981.

5. The silence of the petitioner all this while clearly shows that the petitioner had no genuine or real grievance as regards the transfer of the case from the Labor Court, Bareilly. Further, it is not averred by the petitioner that it has suffered any prejudice or that it would in any way be inconvenienced in the slightest degree by the transfer of the case from the Labor Court, Bareilly. The petitioner has been entirely unable to substantiate that its legal rights have been pre-judicially affected by the transfer of the case from the Labor Court, Bareilly.

It may be mentioned at this point that the allegation of the petitioner made in para. 13 of the writ petition that on the first opportunity the petitioner had protested against the transfer of the case before the Labor Court, Kanpur and that the protest had been expressed by means of a letter dated 25-3-1981 which is stated to have been sent along with a covering letter dated 26-3-81, has been denied by the respondent No. 4 in para. 11 of the supplementary counter-affidavit in which it is asserted that a similar plea raised by the petitioner before the Labor Court, Gorakhpur was rejected with the following observations. :

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"Rejected as there is no such undisposed of representation on the record.  
Sd./P. O.  
22-9-1981."

The allegation of the petitioner, therefore, that he had protested even before the Labor Court (IV) Kanpur cannot be accepted. Moreover, the order dated 1-1-1981 stands superseded by the second order of transfer dated 10-6-1981. The issue, therefore, as to whether the order dated 1-1-1981 was validly passed thus becomes purely academic. For all these reasons this court is not satisfied that the order dated 1-1-1981 ought to be quashed in the exercise of its discretionary powers under Art. 226 of the Constitution of India.

6. Even on merits I am not satisfied that the impugned order dated 1-1-1981 is liable to be quashed on the ground that no opportunity was given to the petitioner before the transfer of the case. Learned counsel for the petitioner cited various decisions of different High Courts (see 1975 (30) Fac L R 166 (Mad), 1965 (2) Lab LJ 218 (Punj) and 1971 Lab IC 526 (Delhi)) in support of his contention that before a case is transferred under S. 33-B, the appropriate Government is bound to give an opportunity to the concerned party.

7. I am unable to accept the above contention. S. 33-B of the Industrial Disputes Act does not in terms contemplate or require giving of any notice before the transfer of any proceedings is made by the Government from one Labor Court to . There is no right in any party to have any question or dispute decided by any particular Labor Court. There is hence no question of violation of any principles of natural justice by the mere transfer of the case from one Labor Court to without giving any notice or opportunity to show cause why such

transfer should not be made. I am fortified in this view by the decisions of Calcutta and Andhra Pradesh High Courts reported respectively in 1977 Lab IC 1739 (1750-51) and 1979 Lab IC 325 (329). This court too has in the case of *Hindustan Lever Ltd. v. Govt. of Uttar Pradesh in <sup>1</sup>* taken the same view, but it has made an exception in cases where the transfer is sought by a party on allegations of prejudice or bias against the Presiding Officer.

8. In the present case, however, it has not been established that the transfer was sought by the respondent No. 4 or was granted by the State Government on grounds of bias or prejudice against the Presiding Officer. On the contrary, in the counter-affidavit it has been asserted that the transfer was sought by the respondent No. 4 from Bareilly to Gorakhpur as the said respondent was a resident of that place and was also working there while in employment of the petitioner as its correspondent. The award which forms the basis of the claim of the respondent No. 4 in his application under S. 33-C (2) was also rendered by the Labor Court, Gorakhpur. It is thus apparent that the respondent No. 4 had sought the transfer purely on grounds of convenience. Indeed, it is for this reason that the State Government had while transferring the case to the Labor Court at Kanpur directed the latter to hold its sittings at Gorakhpur. The case was not transferred to the Labor Court at Gorakhpur straightway as at that time there was no Presiding Officer available at Gorakhpur. After an Officer had been appointed to preside over the Labor Court, Gorakhpur, the Labor Court, Kanpur itself requested the Government to transfer the case to Gorakhpur. It is thus apparent that it was not on grounds of prejudice or bias against any particular Presiding Officer that the case was transferred from the Labor Court, Bareilly. Thus, in either view of the matter, this court sees no grounds to interfere with or set aside the first order of transfer dated 1-1-1981.

9. So far as the second order of transfer dated 10-6-1981 is concerned, the same having been passed on the grounds that the Labor Court (IV) Kanpur had expressed its inability to hear the case and had requested the Government to transfer the case to Labor Court, Gorakhpur, there was no question of giving any notice or opportunity to the petitioner to show cause against the proposed transfer. The transfer order had been passed on grounds which could not attract the application of the principles of natural justice, assuming that under certain circumstances principles of natural justice might require giving of an

opportunity before ordering the transfer of a case. As mentioned above, the Labor Court (IV) at Kanpur was supposed to hear the case at Gorakhpur. According to the assertions made in the counter-affidavit the Labor Court at Gorakhpur was not functioning at the time of passing of the first order of transfer. There was no Presiding Officer in that court. After, however, a Presiding Officer had been nominated for the Labor Court, Gorakhpur, there was no longer any need for the Labor Court, Kanpur hearing the matter. It is for this reason that the Presiding Officer, Labor Court, Kanpur himself requested that the case be transferred to the Labor Court, Gorakhpur. Further, the Presiding Officer of the Labor Court at Kanpur having expressed his inability to proceed with the hearing of the case, the Government was well within its powers in ordering the transfer of the case from that court to Gorakhpur. In these circumstances, it cannot be said that any principles of natural justice were violated in directing the transfer of the case from Kanpur to Gorakhpur.

10. The result of the aforesaid discussion, therefore, is that no ground has been made out for interference with either of the two orders, of the transfer.

11. This brings me to the second submission namely that the subsequent order of transfer was invalid for the reason that the Presiding Officer, Labor Court, Gorakhpur was not empowered to entertain applications under S. 33-C (2) in regard to working journalists. It was urged in support of this contention that the two predecessors of Sri S. P. Singh, the present Presiding Officer of the Labor Court, Gorakhpur, were specifically authorized to adjudicate on disputes relating to working journalists. As Sri S. P. Singh was not so specifically authorized, the order of transfer was liable to be quashed on that ground alone.

12. I am unable to accept the above contention. S. 3 of the Working Journalists and other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Working Journalists Act, for short) provides that the provisions of Industrial Disputes Act, 1947, as in force for the time being shall, subject to the modifications specified in sub-s. (2) apply to, or in relation to working journalists as they apply to, or in relation to workmen within the meaning of that Act. It is in virtue of this provision that working journalists can claim computable benefits under S. 33-C (2) of the aforesaid Act. If a particular Labor Court is authorized by the appropriate government, which in the present

case is admittedly the State Government, to entertain applications under S. 33-C (2), that Labor Court shall, in my opinion, be clearly competent to entertain applications made by working journalists also. Neither the Working Journalists Act nor the Rules framed by the U. P. Legislature there under require any separate authorization in favor of a Labor court for entertaining applications under S. 33-C (2) in regard to working journalists. If, therefore, the Labor Court, Gorakhpur was authorized to entertain applications under S. 33-C (2), that would, in my judgment, be sufficient to validate the order of transfer dated 10-6- 1981. It must be borne in mind that the order of transfer is from the Labor Court, Kanpur to the Labor Court, Gorakhpur.

13. I shall, therefore, examine whether the Labor Court, Gorakhpur was authorized to entertain applications under S. 33-C (2). By means of a Notification dated 16th of March 1978 the State Government exercising powers under S. 7 of the Industrial Disputes Act, 1947 constituted the Labor Court, Gorakhpur for the adjudication of Industrial disputes relating to all matters specified in the second Schedule of that Act. In para. 2 of the Notification, the State Government purporting to exercise powers under R. 11 of the U. P. Working Journalists (Industrial Disputes) Rules, 1957 constituted the same Labor Court, Gorakhpur for adjudicating on the industrial disputes relating to working journalists. Under para. 3 of that Notification, the Labor Court, Gorakhpur was further empowered to entertain applications under S. 33-C (2) of Industrial Disputes Act in respect of the entire State of Uttar Pradesh. By the same Notification Dr. J. N. Singh was appointed Presiding Officer of that Court. It appears that Dr. J. N. Singh died somewhere in 1980 and one Sri Ashwini Prasad Srivastava was appointed by a Notification dated 10th Aug. 1980 to fill the vacancy caused by the death of Dr. J. N. Singh and to exercise powers to adjudicate on industrial disputes as well as to entertain applications under S. 33-C (2). Sri Ashwini Prasad Srivastava was succeeded by Sri S. P. Singh, the present Presiding Officer.

14. From a perusal of these various Notifications true copies whereof have been annexed to the affidavits filed by the parties in this petition, it is clear that the Labor Court, Gorakhpur had been specifically empowered to entertain applications under S. 33-C (2) for the entire State of Uttar Pradesh. Sri S. P. Srivastava as the Presiding Officer of that Labor Court was thus clearly

empowered to entertain applications under S. 33-C (2). As mentioned above, no separate authorization is required under the Working Journalists Act or the Rules framed there under by the U. P. Legislature in 1957 for entertaining applications under S. 33-C (2) in regard to working journalists. R. 11 of the U. P. Working Journalists, (Industrial Disputes) Rules, 1957 merely requires that the appointment of a Labor Court or Tribunal together with the names of the persons constituting the Labor Court or Tribunal shall be notified in the Official Gazette. But these rules do not require that there has to be a separate authorization in regard to working journalists. Indeed, R. 44 of these rules confirm the view that I am taking that for working journalists there has not to be a separate authorization in favor of the working journalists under S. 33-C (2). The fact that by the Notifications dated 16th Mar. 1978 and 10th Aug. 1980 while constituting the Labor Court, Gorakhpur to adjudicate on industrial disputes as well as to entertain applications under S. 33C (2), the State Government had also simultaneously appointed various Presiding Officers namely Dr. J. N. Singh and Sri Ashwani Prasad Srivastava, cannot lead to the inference that Sri S. P. Singh as the Presiding Officer of that Court was not authorized to entertain applications under S. 33-C (2). However, it appears that in various matters pending before Sri S. P. Singh, an objection was raised by the concerned parties that he was not empowered to entertain applications under S. 33-C (2) or to adjudicate on industrial disputes relating to working journalists. This led to query by Sri S. P. Singh dated 6-7-1981 addressed to the State Government. In this query Sri S. P. Singh stated that nearly 500 applications under S. 33-C (2) were pending before him. Objections were being raised to the competence of Sri S. P. Singh to dispose of those applications. Sri S. P. Singh invited the attention of the Government to the aforesaid notifications dated 16th Mar. 1978 and observed that in view of the recitals made in paras 1 and 2 therein mentioning the name of late Dr. J. N. Singh, a doubt had arisen in his mind whether he was competent to entertain these applications. He also asked in the last para. of that query whether he was competent to entertain industrial disputes under S. 10 (1)(c) raised in regard to working journalists. The query led to the issuing of a notification dated 1-8- 1981 whereby the State Government in order to remove any kind of doubt and by way of abundant caution notified that Sri S. P. Singh was appointed the Presiding Officer of the Labor Court, Gorakhpur w. e. f. the date of his assuming charge of the office for adjudication of the industrial disputes in regard to all matters mentioned in the

first schedule. In para 3 of this notification, it was further notified that exercising powers under S. 33-C (2) the State Government was constituting the Labor Court Gorakhpur to entertain applications for computation of benefits under S. 33-C (2) for the entire State of Uttar Pradesh.

15. It is thus apparent that the Labor Court, Gorakhpur was duly constituted as the Labor Court empowered to entertain application under S. 33-C (2) at all material times for the entire State of Uttar Pradesh and that Sri S. P. Singh was also as duly appointed Presiding Officer of that Court fully competent to entertain the application filed by the respondent No. 4. The contention of the petitioner that the Presiding Officer Labor Court Gorakhpur was not competent to entertain the application and hence the case could not be transferred to him must, therefore, fail.

16. Learned counsel for the petitioner, however, relied solely on the letter dt/ 3-8-1981 sent by the State Government to Sri S. P. Singh in reply to the latter's query referred to above. Learned counsel particularly stressed the last paragraph of this reply dt/- 3rd Aug., 1981 in which it was stated that as Sri S. P. Singh was not competent to adjudicate on industrial disputes raised by working journalists he should not entertain the same and he should write to the government for the transfer of such cases to some other Labor Court. The argument is clearly untenable. The reply of the government dt/- 3rd Aug., 1981 has to be read in the context of the letter of Sri S. P. Singh dt/- 6th July, 1981. In this reply, the State Government has in the second paragraph expressly and specifically stated that Sri S. P. Singh was fully empowered to entertain all applications filed under S. 6H (2) of the U. P. Industrial Disputes Act or under S. 33-C (2) of the Industrial Disputes Act. In the last paragraph of this reply, however, the State Government was replying to the query of Sri. S. P. Singh whether he was empowered to adjudicate on industrial disputes referred to the Labor Court, Gorakhpur under S. 10 of the Industrial Disputes Act in relation to working journalists and it was observed in that connection that Sri. S. P. Singh was not authorized to adjudicate on industrial disputes (as distinct from miscellaneous applications under S. 33-C (2)) raised by working journalists. The last para of this reply dated 3rd Aug., 1981 does not in any way take away or curtail the power specifically vested in Sri S. P. Singh by the notification dt/- 1st of Aug., 1981. It is thus apparent that Sri S. P. Singh was fully competent to

entertain the application filed by the respondent No. 4 under S. 33-C (2) and the argument raised by the petitioner's counsel to the contrary must fail.

17. In the premises both the contentions raised in support of the petition fail. The impugned orders of transfer have not been demonstrated to be vitiated by any error of law or jurisdiction.

18. No other point was urged in support of the petition.

19. In the result, the writ petition fails and is dismissed with costs.

Petition dismissed.

Cases Referred.

1. 1978 Lab IC 864 (868)