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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6660 OF 2011

Indian Airports Kamgar Union. ..Petitioners
-Versus-
Airports Authority of India and another. ..Respondents

.....
Mr.R.D.Bhat, for the Petitioners.
Mr.S.K.Talsania, Senior Advocate a/w Ms.Rekha Rajagopal, for the
Respondent No.1.

.....
CORAM : S.C.DHARMADHIKARI, J.
Date : 22nd August, 2011.

P.C.:

1 The Petitioners are aggrieved by the order below Exhibit-62 passed by the Central Government Industrial Tribunal No.2 (CGIT-2), Mumbai in Reference No.CGIT-2/23/2008. They are second party Union. The Tribunal is seized of the reference which has been made by the appropriate Government so as to decide the issue and particularly, whether, the action of the management of Airports Authority of India (AAI) in entering into Operations, Management and Development Agreement (OMDA) dated 04.04.2006 with Mumbai International Airports Pvt.Ltd., Mumbai and in refusing the work and dislocating the employees of AAI from their original work place during the initial period of three years w.e.f. 03.05.2006 is in contravention of section 9-A of the Industrial Disputes Act, 1947, if so, what reliefs the workmen are entitled to and what other directions are necessary in the matter.

2 The statement of claim dated 27.10.2008 has been filed by the Petitioners in which several pleas have been raised and it has been stated that the entire policy cannot be forced on employees who are recruited and appointed by the Airports Authority of India. Their service

conditions cannot be altered by the Mumbai International Airports Pvt.Ltd.. Even the Airports Authority of India cannot adversely alter the service conditions.

3 The Written Statements have also been filed on behalf of the Airports Authority of India, as also, the Respondent No.2.

4 During the pendency of such a reference, an application was made by the Petitioners seeking stay of the transfer order issued on 08.04.2011. The transfer order pertains to 78 employees who are proposed to be transferred at various places all over India from Mumbai. It is contended that these transfers are illegal, malafide and for extraneous considerations and in contravention of the office order dated 30.09.2009.

5 This application was resisted by the Respondents and they submitted that the transfer orders are issued due to exigencies of work and for administrative reasons. There is shortage of concerned personnel at respective stations, therefore, neither the orders are malafide nor they contravene any of the terms and conditions of the service.

6 The Presiding Officer, CGIT-2 Mumbai, by the impugned order dated 30.06.2011 rejected this application and therefore, the Writ Petition has been filed by the Petitioners Union.

7 Mr.Bhat, learned counsel appearing in support of this Writ Petition, submitted that the order of a division bench of this Court, so also, the observations therein which have been relied upon, are distinguishable and they do not apply in the facts and circumstances of the present case. Mr.Bhat invited my attention to the office letter dated 30.09.2009, copy of which is annexed at page 170 of the petition paper book and also the order dated 24.05.2010 passed by the Government of India, Ministry of Labour & Employment and particularly, of the Appellate Authority under the Industrial Employment (Standing Order) Act, 1946, a

copy of which is at page 67 of the petition paper book. He submits that the observations of the learned Presiding Officer in this case that the application is unconnected with the terms of reference and therefore, is an independent grievance, are erroneous. He relied upon paragraph 17 of the order of the Appellate Authority which has been passed on 24.05.2010 and submitted that this is development subsequent to the order of the division bench and therefore, the said order would not be applicable to the facts and circumstances of the present case.

8 On the other hand, Mr.Talsania, learned Senior Counsel appearing for the Respondent No.1, submitted that the order passed is on interlocutory application. The Petitioners have raised the same grievance as was subject matter in the earlier round of litigation and particularly of the order of the division bench of this Court. In these circumstances and when that order of the division bench in L.P.A. No.117/2009 in Writ Petition No.9004/2009 along with L.P.A. No.119/2009 in Writ Petition No. 3835/2009 decided on 23.04.2009, has been upheld by the Honourable Supreme Court, then, the Presiding Officer was in no error in rejecting the application. Ultimately, the transfers are effected to meet the administrative exigencies and therefore, there is nothing malafide. There is absolutely no allegation of that nature. For all these reasons, he submits that the impugned order should not be interfered with and the petition be dismissed.

9 The office order dated 08.04.2011 states that the Fire Officials presently retained at Juhu Airport, Mumbai are transferred to the stations indicated against their names. 78 persons have been transferred to various places all over India and a representation was made stating therein that there is no exigency of work and no cogent reasons are mentioned in the transfer order. The transfer order is issued by way of

victimization since the workmen are participating and supporting the Union and opposing the illegal acts of the Management. The grievances in that behalf have not been redressed and that is how the application was made in the pending reference.

10 It is not necessary to decide, at this stage, as to whether, the Tribunal's observation and finding that there is no scope in reference to decide the issue of transfer or that same is independent grievance and has no relation with the subject matter of the reference, is correct or not. The argument of Mr.Bhat that considering the terms of the reference it was permissible for the Petitioners to file an application of the present nature and he relied upon the observations of the division bench in that behalf. Mr.Talsania submits that these are matters which are to be decided at the stage of making of an award and at this stage, it should not be concluded as to whether, the application could have been made and whether, the issue is raised in relation to the terms of reference or not.

11 To my mind, at this stage at which the matter stands, the Tribunal should not have made any of the observations and particularly that the transfer orders have no concern with the subject matter of the reference. The only argument the Tribunal was required to consider was whether, the transfer orders are required to be stayed or not and any grounds have been made out for grant of any such relief. The nature of grievance raised by the Petitioners and the arrangement between the Respondent Nos.1 and 2 being such, that the Tribunal should have avoided the making of any sweeping observations and findings and should have held that at final stage appropriate directions can be given. In these circumstances, it is clarified that the Petitioners are not precluded or prevented, in any manner, from raising their grievance during the course of argument and when the final orders are made in reference as regards

the subject transfer orders. However, I am of the view that no interference is warranted, at this stage, with the interlocutory order because the Tribunal was right in its conclusion that no prima facie case is made out, as far as the staying of all the transfer orders, is concerned. There is no prima facie case with regard to any malafide as alleged. Further, the power of management to transfer its employees is also covered by the order of the division bench in this case. The impact of the letter of the Executive Director and the order of the Appellate Authority under the Industrial Employment (Standing Order) Act, 1946 are matters which can be raised during the course of hearing of the reference before the Court below. The Tribunal has, therefore, rightly concluded that there is no prima facie case nor is the balance of convenience in favour of the Petitioners. In these circumstances, the Tribunal has not committed any error in rejecting the application.

12 However, in the larger interest of justice and considering that the issue involved is of the management of the Airports by the Respondent Nos.1 and 2 and its obligation under the subject Agreement for Operation, Management and Development (OMDA), the interest of justice would be served, if it is directed that the Presiding Officer of the CGIT-2 shall make an endeavour to dispose of the pending reference as expeditiously as possible and within a period of three months from the date of receipt of a copy of this order, without being influenced by the observations made earlier. The parties shall cooperate with the Tribunal in early disposal of the reference as directed above and shall not seek unnecessary adjournments. All contentions of both sides are kept open. The Writ Petition is, accordingly, disposed of. No costs.

(S.C. Dharmadhikari, J)