

**IN THE INDUSTRIAL COURT, MAHARASHTRA****AT : AURANGABAD**

**Complaint (ULP) No.330 of 2017**  
(CNR No.MHIC20-0009822016)

Suraj s/o Apparao Joshi  
Age-36, Occ-Service,  
R/o- Plot No.54, Meeranagar,  
Padegaon, Tal & Dist-Aurangabad.

**Complainant**

**Versus**

- 1) Chairman & Managing Director,  
Dainik Bhaskar Group,  
Plot No. 06, "Dwarka Sadan",  
Press Complex, M.P. Nagar,  
Bhopal, (M.P.) 462001 & Anr.

**Respondents**

**ORDER BELOW EXH.U-2**  
**(Delivered on 16<sup>th</sup> July, 2018)**

1) This complaint is filed under Items-3,6 & 9 of Schedule-IV of the M.R.T.U. & P.U.L.P. Act, 1971 challenging the transfer order dt. 1-11-2017 and requested to quash and set aside it. By filing present application the complainant has requested to grant interim relief.

2) As per contention of complainant the respondent No.1 has started newspaper business at Aurangabad in the year 2011. The complainant was appointed as Telephone Operator w.e.f. 10<sup>th</sup> June,

2011 in Administrative Department. Thereafter, he is promoted time to time. Since April 2016 he is working as a Management Associate in Brand Marketing Department at Aurangabad. Though he was designated as Management Associate, but his nature of duties were as per employee. Therefore, he is an 'employee' u/s-3(5) of the MRTU & PULP Act, 1971 and 'workman' u/s-2(s) of the I.D. Act, 1947 and Sec. 3 of Working Journalist Act, 1955. Further, after promotion his services were appreciated by the respondent. His service record was clean and unblemished.

3) As per his contention his service was governed by recommendations of Majithia Wage Board Award dt. 11-11-2011. Hence, it is mandatory to the respondent to give wages as per Majithia Award. The complainant has severally requested to the respondent to make him permanent and to pay wages as per Majithia Award, but the respondent has not paid wages as per Majithia Award and therefore committed unfair labour practices. Further, on 6-1-2017 the respondent No. 1 through respondent No. 2 & 3 started pressurizing him directing the complainant to give resignation on or before 31-1-2017, otherwise they should terminate his services w.e.f. 1-2-2017. Therefore, he has filed Comp. (ULP) No. 20/2017. Further as per oral threat the respondent has not taken action. However, with an intention to victimize him and under the guise of management policy, the respondent has transferred his services by order dt. 1<sup>st</sup> November, 2017 with immediate effect. As per his contention due to claiming wages as per directions of Majithia

Award, he is victimized. Therefore, he is transferred with malafide intention. Hence, requested to prima facie declare that the respondent has committed unfair labour practices. The complainant has made out prima facie case. The balance of convenience is in his favour. Hence, requested to allow the interim application.

4) The respondent has filed say and written statement at Exh.C-4. They have admitted relationship with complainant. They have denied allegations of unfair labour practices as alleged by the complainant. They have denied that the complainant is an 'employee'. He is working in cadre of Management Associate, therefore he is not 'employee' as per Sec.2(s) of the I.D. Act and 'workman' Sec. 3(5) of the MRTU & PULP Act, 1971. Further, the complainant is already made permanent in service, hence his The application is not legal and tenable. Hence, requested to reject the interim application.

5) The complainant was appointed as Telephone Operator w.e.f. 13-6-2011. Thereafter, he was promoted time to time. At the time of filing of complaint he was promoted as Management Associate in Brand Marketing Department. Further his wages was increased due to promotion. He is working in executive grade M-7. The respondent has denied that the service conditions of the complainant are governed by Majithia Wage Board Award. Further, the complainant is governed by Model Standing Orders applicable to the newspaper industry. Further, the complainant has filed Comp.

(ULP) No. 20/2017 due to alleged oral transfer. In that complaint the complainant has not proved his claim. Further, there is vacant post at Jalgaon. One Mr. Punit Sharma has given resignation of his post w.e.f. 13<sup>th</sup> November, 2017. He was also working as a Management Associate in Brand Marketing Department. Due to vacant post the complainant was transferred at Jalgaon. There is exigency at Jalgaon, hence he is transferred. Therefore, the contention of complainant that with malafide intention he is transferred to Jalgaon is not correct. The complainant has not made out prima facie case. The balance of convenience is not in his favour and requested to reject the application.

6) From the pleadings of the parties, following Points arose for my consideration and I have recorded findings with reasons thereon as under :-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the complainant has made out a prima- facie case ?	No
2)	Whether the balance of convenience lies in favour of complainant ?	No
3)	What Order ?	As per final Order.

## **REASONS**

7) **As to Point Nos.1 & 2 :-**

In support of contention both the counsels have argued before me. The counsel for complainant has submitted that previously the complainant has filed Comp. (ULP) No. 20/2017 on the assumption that he might be transferred. But, due to filing complaint he was not transferred immediately. Further, the complainant was claiming wages as per Majithia Wage Award. He has given several representations to the respondent but same were not considered. He has also made complaint to Dy. Commissioner of Labour, Aurangabad. Before Dy. Commissioner of Labour no settlement took place. Further, due to making complaint and demanding wages the respondent has started victimizing the complainant. They were pressurizing the complainant to give resignation in the month of January of 2017. But, the complainant has refused to give resignation. Further, after passing 8 to 10 months, the respondent has transferred the services of the complainant at Jalgaon w.e.f. 1<sup>st</sup> November, 2017. However, the complainant has requested by sending E-mail dt. 6-11-2017 to cancel transfer order, but it is not cancelled. Therefore, the complainant has made out prima facie case and requested to allow the application.

8) The counsel for respondent has submitted that the complainant is making false allegations. Further, if the complainant was pressurized, then he has to make complaint to the Sr. officer or in the

police station, but the complainant has not filed complaint. Further the complainant is working as Management Associate. Therefore he is not 'workman' as per Sec. 2(s) of the I.D. Act, 1947 and 'employee' as per Sec. 3(5) of the MRTU & PULP Act, 1971. Hence, the counsel for respondent has submitted that it is necessary to decide the said issue at first. Further, the person who was working at the post of Management Associate in Brand Marketing Department at Jalgaon has given resignation in November, 2017, therefore said post is vacant. Further, the complainant being experienced person has transferred there due to exigency of the work. Hence, the respondent has not committed unfair labour practices. In support of contentions the counsel has relied on following reported decisions :-

- a) **The Executive Engineer, & ors. Vs. Shri Madhav Narhari Walake ( 1997-(2)-Bom.C.R.,145)**
- b) **Wimco Ltd. Vs. Wimco Employees Union (2001-(4)-Bom.C.R., 655)**
- c) **Cosmo Films Ltd.,Aurangabad Vs. Sunil Vasudeorao Deshmukh (2002 (Supp.2)Bom.C.R. 294)**
- d) **Rajasthan Patrika Pvt. Ltd. Vs. Ajay Kungar Bihari (2010-(3)-Bom.C.R.,184)**

After perusal of ratios it appears that if transfer order is not contrary to any applicable service rules or not malafide, then it is not necessary to interfere in the order. Further, prima facie if it discloses for administrative exigencies and there is no cogent evidence

produced by the complainant/employee, then also it is not necessary to interfere in the transfer order.

9) In the present case the employment of complainant is admitted. Further, he is promoted time to time. At the time of transfer he is working as Management Associate in Brand Marketing Department at Aurangabad. He is promoted to that post by order dt. 11<sup>th</sup> July, 2015 w.e.f. 13<sup>th</sup> July, 2015. Further, his designation was revised by order dt. 21<sup>st</sup> August, 2015. From 1<sup>st</sup> September, 2015 he is working as Management Associate M-7. As per his contention he is an 'employee' though designation is given as Management Associate. To prove the nature of work, it is necessary to come on record the oral evidence of both the parties. Prima facie from the documents produced by the complainant as well as respondent it appears that, he is working in management cadre. Therefore, at least at this stage it is not proper to consider him as a 'workman' or 'employee'.

10) There are another allegations of victimization and malafide transfer. It is admitted fact that presuming that he may be transferred elsewhere the complainant has filed Comp. (ULP) No. 20/2017 for permanency granting interim protection of alleged oral transfer. As per his contention the respondent has threatened him on 6-1-2017 to give resignation or he would be terminated w.e.f. 1-2-2017. From the record it appears that till 1-11-2017 as per alleged threat the respondent has not taken any action or not

pressurized him to give resignation. Hence, it should be considered that contention of the complainant of malafide intention is not reliable. Further, the complainant has not filed any proceeding that payment be given to him as per Majithia Wages Board Award. The complainant has filed complaint before Govt. Labour Officer of not implementation of Majithia Wage Bord Award in March, 2017. Therefore, in my view if respondent want to victimize the complainant, then immediately at that time he might be transferred or his service might be retrenched. But, the respondent has not taken action against the complainant. The respondent has produced copy of e-mail sent by Mr. Punit Sharma, Jalgaon. From said e-mail message it appears that Mr. Punit Sharma has decided to give resignation w.e.f. 13<sup>th</sup> November, 2017. Further, he was working as Management Associate in Brand Marketing Department at Jalgaon. Therefore, due to his resignation the said post at Jalgaon become vacant. The complainant is working as Management Associate at Aurangabad. He being experienced person he is transferred at Jalgaon. Further, Jalgaon is at a distance of 130 to 140 kms. from Aurangabad. Therefore, it is not at longer distance. Further the complainant has failed to prove that with malafide intention he is transferred. Hence ratio laid down in the above said reported decision is helpful to the respondent.

11) The counsel for the complainant has relied on **Press Trust of India Ltd. V/s Press Trust of India Employees Union and another (2002(4) Mah. L.J. 653)**. It is mentioned in it that

Malafide Transfer can always be challenged. In the present complaint the allegations of the complainant is about malafide transfer. But he has failed to prove it prima facie. In such circumstances, it is not proper to consider that the respondent has committed unfair labour practices as per the allegations made by the complainant. In such circumstances, the complainant has not made out prima facie case. The balance of convenience is not in his favour and therefore I record negative findings to the points under consideration and proceed to pass following order :-

**Order**

Application Exh.U-2 is rejected.

Sd/-

(R.S. Ghatpande)  
Member,

Industrial Court, Aurangabad.

Date :- 16-07-2018

sru/-