

Exh.O-5

THE INDUSTRIAL COURT (MAHARASHTRA)
(BHANDARA BENCH), BHANDARA.

Complaint (ULP) No.75 of 2023
(CNR NO.MHIC36-000149-2023)

Sandhya Navin Ruse

..... versus

Chief Executive Officer, Bhandara District
Central Co-operative Bank Ltd., Bhandara + 2

ORDER BELOW EXH.U-2
(Passed on 04th August , 2023)

The complainant has filed this complaint under Section 28 read with Item 3 and 5 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "Act"), in which taken out this application under Section 30(2) of the Act for grant of stay to her transfer order dated 12.04.2023.

2] In short, according to complainant, that she is appointed as a "Peon" on compassionate ground in place of her

deceased father w.e.f. 3.10.2018 with respondents Branch at Sangadi, Tahsil Sakoli, Dist. Bhandara. She is working at said Branch diligently and with utmost satisfaction of respondents and at no point of time, she received any show cause notice or faced any enquiry. Thus, her service record is clean and unblemished. However, sometime in the year 2021, the Branch Manager working at said Branch started demanding sexual favour to her. On said ground, he started her mental and physical harassment. Therefore, on 24.02.2023, she reported said behaviour of Branch Manager to Maharashtra Rajya Mahila Ayog and SC ST Commission. The respondents instead of taking action against Branch Manager issued her transfer order dated 12.04.2023 and thereby, transferred her from Branch Sangadi to Branch Masal. It is contended that, she has responsibility of two small children, one is aged about 4 years and other one of 8 months. She is residing in rented house. She requested respondents to cancel her transfer order contending that, in view of her transfer at Masal, which is 33 Km from her existed posting, it is not possible for her to look after her small children. She made representation for cancellation of transfer to the respondents in writing on 19.04.2023. However, respondents failed to take cognizance of her representation.

3] According to complainant, as she made a complaint against then Branch Manager to Woman Commission and

Commission for SC ST for her harassment on account of demand of sexual pleasure, the respondents have effected her malafide transfer. She submits that she has a prima facie case and balance of convenience also tilt in her favour. If the impugned order of transfer is not stayed she would suffer irreparable loss as she will have to face the consequence of no co-operation in immoral activity. Thus, she prayed for grant of stay to the effect, operation and execution of her transfer order dated 12.04.2023.

4] In response to the notice of this application, respondents have filed their reply at Exh.C-4 and resisted the temporary injunction claimed by complainant. According to respondents, since the appointment of complainant she is misbehaving with superior officers and used to give them threats to implicate in false charges. She is habitual in disobeying the order of her superior officers. Due to her such usual behaviour, the work of Sangadi Branch was hampered, therefore, for smooth working of said Branch she is transferred to Masal. Not only complainant, but other officers including Branch Manager working at said Branch with whom complainant had issue are also transferred to other various Branches. Her transfer is effected out of administrative exigency. Hence, she has no prima facie case, nor balance of convenience lies in her favour. She would not suffer any irreparable loss if injunction is refused. With this, respondents prayed for rejection of the application.

5] In view of rival contention of the parties, following points have arisen for the determination. I have recorded findings against each point for the reasons enumerated thereunder:

POINTS

FINDINGS

- | | |
|--|-----------------------|
| 1] Does complainant prove that she has :
prima facie case in her favour? | Yes. |
| 2] Does complainant prove that :
balance of convenience tilt in her
favour? | Yes. |
| 3] Does Complainant further prove that :
she would suffer irreparable loss, if
injunction is refused to her? | Yes. |
| 4] What order? | : As per final order. |

R E A S O N S

6] **As to Point no.1 to 4** :- Heard learned Advocates of both the sides. The learned Advocate appearing for the complainant vehemently urged that, the then Branch Manager of Sangadi Branch was continuously demanding sexual favour to complainant and on account of that, started harassing her. He

was not allowing her to foster her milk sucking child. Due to that, health of her children started deteriorating. So, being no other alternative, she lodged written complaint before State Woman Commission and Commission for SC ST regarding misbehaviour of then Branch Manager. She made a complaint, therefore, with malafide intention her transfer order is passed. She requested to the respondents to cancel her transfer order considering the tender age of her children. However, her representation was neither considered, nor rejected. Therefore, according to learned Advocate, this is a fit case to exercise discretion in favour of the complainant. He pointed out the various complaints and representations of complainant for cancellation of her transfer order during his arguments.

7] On the other hand, learned Advocate for the respondents urged that, since the appointment of complainant on compassionate ground, she is behaving arrogantly with her superior officers. She is not obeying their legitimate orders. She has habit to give threats to the officials of said Branch to implicate in false charges of molestation and under the provisions of SC ST Act. On account of such continuous misbehaviour of complainant, the working of said Branch was hampered. Therefore, administrative exigency was arisen and in order to have smooth working of said Branch, complainant is transferred to Masal Branch and the Branch Manager and other

officials who have grievance against complainant are also transferred to different Branches. So, the transfer of complainant is on account of administrative exigency.

8] Having heard learned Advocates of both the sides, at at the outset, I would like to state that it is a settled preposition of law that, transfer of employee is the prerogative and domain of employer. The employer has right to transfer his any of the employees for betterment of establishment. However, said powers of transfer are not absolute, but with rider that transfer should not be malafide. Though, the respondents are coming with a case that since her appointment from 2018, she is continuously misbehaving with superior officers, the officials of said Branch have grievance against the working and misbehaving of complainant, but the respondents have not placed on record any such complaint or other evidence regarding misbehaviour of the complainant.

9] On the contrary, the complainant has placed on record that before her transfer from Sangadi Branch, on 24.2.2023 she lodged complaint with State Woman Commission with allegation that the Branch Manager is demanding her sexual pleasure from her and on her refusal, he is mentally and physically harassing her.

10] The respondents have also not placed on record exactly what order has been passed on her representation, made for cancellation of her transfer. No statement is made either it is under consideration or rejected. Once, the representation is made it is duty of respondents to consider it and pass any order as it deems fit under the circumstances. However, in the case in hand, neither the representation of complainant is rejected, nor anything is informed to her about the representation.

11] It is not disputed that complainant has two small children, out of it one is about 8 months to 1 year and it is her allegation that sexual pleasure was time and again demanded from her. Under the circumstances, if she is transferred it would penalise her, therefore, considering the documents available on record and no evidence from respondents about misbehaviour of complainant, I find complainant has a prima facie case. No past record of misbehaviour of complainant is placed before Court, therefore, balance of convenience also tilt in her favour. She has small milk sucking child and on account of her transfer if said child is suffering with inconvenience and deteriorate its health, it would amount irreparable loss.

12] Hence, in view of foregoing discussion, I record findings against Point no.1 to 3 in the affirmative and in answer to Point no.4, I proceed to pass following order.

ORDER

- i] Application is allowed.
- ii] The effect, operation and execution of transfer order of complainant dated 12.04.2023, whereby her transfer is effected from Sangadi Branch to Masal Branch, is hereby stayed and respondents are restrained temporarily to act upon said transfer order till the decision of complaint.
- iii] Parties to bear their own costs.

Bhandara.

(Atul K. Shah)

Member

Dated: 04.08.2023

Industrial Court, Bhandara.