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HIGH COURT OF CHHATTISGARH, BILASPUR

S.B.: HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

WRIT PETITION NO.104/1999

T.N. Pandey

Vs.

Steel Authority of India Limited,
Bhilai Steel Plant Bhilai & Others
&

(Connected Writ Petitions No. 105/99 & 106/99)

ORDER

Post for Order: 30/11/2010

Sd/-
Sunil Kumar Sinha
Judge



APR

HIGH COURT OF CHHATTISGARH, BILASPUR

S.B.: HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

WRIT PETITION NO.104/1999

PETITIONER

T.N. Pandey, son of Late Shri A.P. Pandey, aged about 55 years, Resident of 17-B, Street No.32, Sector 4, Bhilai Nagar, Bhilai (M.P.) (Now Chhattisgarh)

Versus

RESPONDENTS

- 1 Steel Authority of India Limited, Bhilai Steel Plant Bhilai through Managing Director, B.S.P., Bhilai (M.P.) (Now Chhattisgarh)
- 2 Industrial Court Madhya Pradesh, Raipur Bench, Raipur (M.P.) (Now Chhattisgarh)
- 3 Presiding Officer, Labour Court, Durg (M.P.) (Now Chhattisgarh)

WRIT PETITION NO.105/1999

PETITIONER

K.A. Khandekar, son of late Shri Amrit Khandekar, aged about 54 years, presently R/o Plot No.9, Block No.61, Radhika Nagar, Bhilai : M.P. (Now Chhattisgarh)

Versus

RESPONDENTS

- 1 Steel Authority of India Limited, Bhilai Steel Plant Bhilai through Managing Director, B.S.P., Bhilai (M.P.) (Now Chhattisgarh)
- 2 Industrial Court Madhya Pradesh, Raipur Bench, Raipur (M.P.) (Now Chhattisgarh)
- 3 Presiding Officer, Labour Court, Durg (M.P.) (Now Chhattisgarh)

WRIT PETITION NO.106/1999**PETITIONER**

Rajaram Yadav, son of Shri Ramji Yadav, aged about 59 years, R/o Bhatia Lakdi Tal, Kohka, Bhilai Nagar, Bhilai (M.P.) (Now Chhattisgarh) (Dead)

Through Legal Representatives

- I. Smt. Kunwariya Bai, W/o Late Rajaram, aged about 65 years.
 - II Hari Krishna, S/o Late Rajaram, aged about 42 years
 - III Dhaneswar S/o Late Rajaram, aged about 33 years
- All are R/o Vill. Khamriya post parai, Police Station Utai District Durg
- IV Smt. Kanti W/o Heeru aged about 44 years R/o Pachripara, Durg
 - V Smt. Pramila W/o Huriah, aged about 35 years, R/o Khamariyapara, Khairagarh, District Rajnandgaon

Versus**RESPONDENTS**

- 1 Steel Authority of India Limited, Bhilai Steel Plant Bhilai through Managing Director, B.S.P., Bhilai (M.P.) (Now Chhattisgarh)
- 2 Industrial Court Madhya Pradesh, Raipur Bench, Raipur (M.P.) (Now Chhattisgarh)
- 3 Presiding Officer, Labour Court, Durg (M.P.) (Now Chhattisgarh)

WRIT PETITIONS UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA**Appearance:**

Ms. Sharmila Singhai, Advocate for the petitioners.
Mr. Gautam Bhaduri, Advocate for Steel Authority of India Ltd./respondent No.1.



ORDER
(30.11.2010)

(1) Since common questions of facts and law have been raised in these petitions and the petitions arise out of a common order dated 28th of October 1987, which was the subject matter before the Labour Court and the Industrial Court and almost similar orders were passed by the said authorities in all the 3 matters, therefore, they are being disposed of by this common order.

(2) The facts, briefly stated, are as under:-

The three petitioners namely T.N. Pandey, K.A. Khandekar and Rajaram Yadav were employees of respondent No.1. They were working in Shipping Section of Merchant Mill of Bhilai Steel Plant. Mr. T.N. Pandey was Shipping Assistant, Mr. K.A. Khandekar was Weigher-cum-Recorder and Mr. Rajaram was S.M.O. Mr. T.N. Pandey was carrying N6(P) Scale, Mr. K.A. Khandekar was carrying N5 scale and Mr. Rajaram was carrying N4 (PG) scale. By a common order dated 28th of October 1987 (Annexure-P/1 in W.P. No. 104/99), the petitioners were transferred from Shipping Section of Merchant Mill to Special Pool in their existing capacity. The petitioners challenged this order in 3 different proceedings before the Labour Court, Durg, by filing petitions under Sections 31(3) read with 61 of M.P. Industrial Relations Act, 1960. They contended that the nature of jobs in two wings was totally different, therefore, the transfer was bad in law. They also challenged the order of transfer on malafides. Their contention was that the said order of transfer was against the provisions of Standing Orders applicable in the matters of the petitioners. During the Course of pendency of above proceedings before the Labour Court, by a subsequent order dated 18.12.87, the petitioners were again transferred from the said wing to the marketing wing. The subsequent order was neither challenged by the petitioners nor any

amendments were brought in their application filed before the Labour Court. The employer opposed the contentions raised by the petitioners and it was also contended that after passing a subsequent order of transfer dated 18.12.87, the petitions filed against the earlier order of transfer dated 28.10.87 became infructuous. The Labour Court held that even if the petitioners were subsequently transferred by another order dated 18.12.87, their petitions challenging the order dated 28.10.87 never become infructuous. The Labour Court allowed their petitions by orders dated 04.04.96, 08.04.96 and 04.04.96 and the order of transfer of the petitioners was set aside. The above orders passed by the Labour Court were challenged in 3 appeals by the employer before the Industrial Court. The Industrial Court allowed the appeals and set aside the orders passed by the Labour Court. It was held that after passing of the subsequent order of transfer on 18.12.87, the petitions filed against the earlier order of transfer became infructuous.

(3) Ms. Sharmila Singhai, learned counsel appearing on behalf of the petitioners, pressed these petitions on the grounds that by the impugned order of transfer dated 28.10.87, the petitioners were transferred from technical wing to non-technical wing, therefore, the transfer was bad in law. She also argued that in the technical wing, the petitioners were getting various incentives under the schemes, which they would not be getting at their transferred place as it was a non-technical wing, therefore, by the impugned order of transfer, the petitioners were put to disadvantageous position.

(4) On the other hand, Mr. Gautam Bhaduri, learned counsel appearing on behalf of respondent No.1, opposed these arguments. He argued that the petitioners were working on transferable posts and there was no statutory prohibition in transferring the petitioners from wing to

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another wing. About the incentives, he argued that the incentives which the petitioners would be getting time to time under the relevant schemes was not of permanent nature and it was not a part of wages or salary drawn by the petitioners under the terms of employment. Therefore, even if they would be put to some disadvantageous position (though it is not established), their transfers would never render bad in law.

(5) I have heard learned counsel for the parties at length and have also perused the records of the writ petitions.

(6) Admittedly, the services of the petitioners were governed by the Standing Orders which came into force w.e.f 28th of February 1965. Clause 23 of the Standing Order deals with transfers. It provides that "employees may be transferred due to the exigencies of work from one work, department, section or job to another, provided that the pay, grade, continuity and conditions of service of the employee are not adversely affected by such transfers and provided also that if an employee is transferred from one job to another, that job should be of similar nature and such as he is capable of doing." The above provisions of the Standing Orders make it clear that there was no prohibition in transfer of the employees from one wing to another wing. The only thing which was to be taken care of was that if the employee is transferred from one job to another job, the job should be of similar nature and further that he is capable of doing the job of his transferred place.

(7) In the present cases, as stated earlier, the three petitioners were working as Shipping Assistant, Weigher-cum-Recorder and S.M.O., therefore, the nature of jobs of the petitioners was not technical in real

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sense. The argument of Ms. Singhai was that the petitioners have been transferred from a technical wing to non-technical wing. The said argument, therefore has no force. It may be that the two wings of the Bhilai Steel Plant were technical and non-technical wings, but that is not important in relation to the instance of transfer of the petitioners, and what is important is that what jobs were assigned to the petitioners. As I have already stated that the petitioners were not in such jobs, which were highly technical. They were not expertised in a particular technical job. Therefore, their transfer to a non-technical wing was not prohibited. Clause 23 clearly stipulates that the job of the transferred place should be of similar nature and such as the employee is capable of doing. In the present matters, though there is evidence about change of wings i.e. from technical wing to non-technical wing, but there is no evidence of change of jobs of the petitioners and further that the petitioners would not be capable of performing their such jobs at their transferred places.

(8) Transfer is an incidence of service. No person working on a transferable post can claim for his posting at a particular place. It is for the employer to see as to who should be post at which place keeping in mind the exigencies arising as also the better functioning of the employer's concern. Unless an order of transfer is shown to be vitiated by malafides or extraneous considerations or is shown to be against the provisions of any statute or governing principles for the same, ordinarily the order is not be interfered by a Court of law.

(9) In the present petitions, nothing could be brought on record to show that the above transfers were in contravention of provisions

contained in the Standing Orders or they were vitiated by malafides or extraneous considerations etc. Therefore, the arguments advanced by Ms. Singhai that the transfer of the petitioner from technical wing to non-technical wing was not in accordance with law cannot be accepted.

(10) The second contention of Ms. Singhai was about the loss of incentives which the petitioners would be getting in Merchant Mill and which, according to her, they would not get in the transferred place.

(11) Incentives/Bonus, in the realm of industrial jurisprudence, are understood to be the remunerations given to the employees by the employers for achieving higher productivity. This is commonly known as Incentive Bonus or Production Bonus. Other types of remuneration that are not directly related to the production like bonus for regular attendance, length of service, quality of production and elimination of waste etc. are also incentives. Clause 23 of the Standing Order provides that on the instance of transfer, pay, grade, continuity and conditions of service of employee should not be adversely affected. Clause 10 of the Standing Order refers to the provisions of the Payment of Wages Act, 1936 (hereinafter referred to as "the Act 1936"). The "wages" has been defined under Section 2(vi) of the Act, 1936, which means, 'all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.' The above definition of wages further makes it clear that the additional remunerations which are payable under the terms

of employment and which may be called by any names like bonus, incentive etc. would also be included in the wages. But the wages would never include any bonus or incentives which are paid under any scheme and not under the terms of employment. Apart from the above, the "salary" or "wage" has also been defined in the Payment of Bonus Act, 1965, which means 'all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living) but does not include any bonus (including incentive, production and attendance bonus).

(12) The above provisions of different Acts make it clear that if any incentive is paid under the terms of employment, then only, it can be included in "wages" or "salary" or "pay" of the employee in a legal sense, and any incentive paid by any circular or scheme for promoting the work would never fall within the definition of "wages" or "salary" or "pay" of the employee. Therefore, even if the petitioners were put to some disadvantageous position on their transfers on account of loss of incentives which they were getting under the schemes and not under the terms of their employment, that would never render their transfers bad in law, because what is protected under Clause 23 is "pay", grade, continuity and conditions of service of the employee which would be only attributed to the terms of employment.

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(13) For the forgoing reasons, I do not find any substance in the writ petitions. The petitions are liable to be dismissed and are hereby dismissed.

(14) No order as to cost(s).

Sd/-
Sunil Kumar Sinha
Judge

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