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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A? No.866 of 1986

Union of India ..... Defendant/Appellant

Versus

G.C. Awasthi ..... Plaintiff/Respondent.

Hon. Ajay Johri, A.M.

In Suit No. 1943 of 1972 the plaintiff G.C. Awasthi had challenged his transfer from CIM Kanpur to I.G.S. Calcutta issued on 27.7.72 on the ground that he was a protected workman under the Industrial Disputes Act and also because it was against the policy of the Department on the subject of transfer of employees. The learned trial court by its judgement dated 24.9.75 declared the transfer order as illegal and ultra vires and the plaintiff was deemed to having not been transferred out of Kanpur and restrained the defendant from giving effect to the order permanently. It is this order against which this appeal has been filed by the defendant and it has been now received on transfer from the Court of District Judge, Kanpur under Section 29 of the Administrative Tribunals Act, 1985.

2. The grounds of appeal are that the decision of the trial court holding that the plaintiff was a protected workman was wrong, that the trial court did not appreciate the fact that the S.W. Association was not a Trade Union, that the court below failed to appreciate the fact that the plaintiff could be



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transferred in public interest and that the order of transfer was passed by an incompetent authority and that there was no service of the movement order on the plaintiff.

3. I have heard the learned counsel for both parties and perused the suit and appeal file carefully.

4. On 6.10.77 the plaintiff was allowed to resume duty at Kanpur and as a consequence he resumed duty on 24.10.77. This presumption was subject to the condition that it will be governed by the decision in this appeal and this is alleged to have been accepted by the plaintiff (Paper 253C).

5. In their affidavit filed on 18.2.87 before this Tribunal the defendants (appellants) have said that it was only to honour the judgement of the trial court that the plaintiff (respondent) was allowed to resume duties at Kanpur. This was without prejudice to this appeal. According to the defendant the S.W. Association was not a Trade Union and the I.D. Act rules are not applicable. The plaintiff's rejoinder affidavit before this Tribunal reiterates his earlier stand before the trial court and he has said that he was not taken on duty conditionally. According to him the SW Association is a registered Association under the Trade Union Act.



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6. This matter pertains to 1972 and thereafter 1977 when the plaintiff joined his duties back at Kanpur under orders of the defendant. This appeal has come before <sup>by this Tribunal</sup> ~~ex~~ today ~~at~~ i.e. after nearly 11 years of the incident. I consider that it is a stale matter now. So much of water may have flown since 1977. The status of the SW Association may also have changed and the defendant may have issued fresh directions in keeping with the progress of time. Hence consideration of this appeal at this stage has no meaning and it needs to be given a quitous. However, the issue of a permanent injunction against the transfer of the plaintiff <sup>also</sup> has ~~no~~ meaning.

7. It cannot be disputed that the responsibility of good and efficient administration is that of the employer. Transfer is also an implied condition of service. No permanent injunction can be issued to restrain the employer from transferring an employee. There may be a variety of reasons why the employer may like to transfer an employee. As long as that power is used judiciously, honestly and in the interest of administration it will not be challengeable in the Court of law. Courts have to leave it to the employer to make the best use of its manpower <sup>or power of transfer</sup> as long as ~~they~~ is not exercised arbitrarily. Hence the judgement and decree of the trial court issuing permanent injunction against transfer does not sustain.



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8. In the result the appeal is dismissed. The judgement and decree of the trial court in Suit No. 1943 of 1972 is modified to the extent that the defendant (appellant) will be at liberty to transfer the plaintiff in accordance with rules and requirements of the circumstances as may exist at the relevant time. Parties will bear their own costs throughout.

शुभम अग्रवाल

Member (A)

Dated the 22<sup>nd</sup> April, 1988.

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