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## **BOMBAY HIGH COURT ON TRANSFER OF EMPLOYEE.**

Bombay High Court (“**HC**”), in *The Indian Express (P) Ltd. and Ors.* case,<sup>1</sup> on July 2, 2024, held that the Industrial Court, Thane (“**IC**”) cannot stay a transfer of employee simply because it is exceptional or due to a prior litigation between the employer and employee.

### **Brief Facts.**

The Indian Express (P) Ltd. (“**IEPL**”) engaged in the business of printing and publishing newspapers. Ganesh Gopinath Rane (“**Rane**”) joined services in March 2002. Subsequently, he was promoted to senior printer post in 2019 at Mahape, Navi Mumbai.

Rane apprehended adverse action of termination and transfer against him in the light of conduct of Trade Union elections in August 2022. He complained before the IC seeking stay of any termination/transfer.

IC passed interim order in September 2022 restraining IEPL from terminating his services therein without following the due process of law, but later the HC set aside IC’s order.

In November 2022, Rane challenged his deputation to Lucknow, but the HC permitted it on IEPL assuring the transfer tenure would not exceed six months.

Rane was promoted from senior printer to supervisor and transferred to Aurangabad in April 2024. He filed a complaint before IC challenging the transfer order on grounds of unfair trade practice and order being *mala fide*.

IC stayed the transfer order till final decision of the complaint. Aggrieved, IEPL petitioned before the HC.

### **Parties’ Contentions before HC.**

#### IEPL’s Contentions

The transfer being a condition of service, no fault can be found in its action of promoting and transferring.

The transfer order clearly it is effected due to exigencies of IEPL’s work.

It relied on the decision of Supreme Court in *Brooke Bond India Private Limited vs. Workmen* (1963)1 LLJ 256. It contented that promotion is at the employer's discretion. Thus selecting Rane over other senior employees for promotion and transfer is not questionable.

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<sup>1</sup>*The Indian Express (P) Ltd. and Ors. vs. Ganesh Gopinath Rane*, (2024) SCC Online Bom 2040.

<sup>2</sup> *Brooke Bond India Private Limited vs. Workmen* (1963)1 LLJ 256.

### Rane's Contentions

He contended that the transfer order amounted to systematic harassment. At Lucknow, he was idle without work. An artificial need for his posting to Aurangabad was created, falsely praising his Lucknow performance. The IC recognized the transfer is *mala fide*.

### **HC's Judgment & Reasoning.**

HC:

- Observed that Rane's employment contract explicitly stated that he was liable to be transferred anywhere in India. After two employees at Aurangabad retired, IEPL had established a *prima facie* case for the presence of an administrative crisis requiring his transfer.
- Ruled that proving *mala fides* in a transfer order is challenging, placing a heavy burden on Rane. His complaint does not substantiate any allegations of *mala fides*.
- Observed that Rane's complaint was vague and unsupported, noting no specific bias or evidence linking the transfer order to Trade Union elections. His claims of discrimination over rejected nominations were unsubstantiated.
- Allowed IEPL's petition and set aside the IC order holding that: "*Mere filing of earlier litigation is not a reason to infer existence of mala fides for interdicting the order of the transfer...It was not necessary for [IEPL] to demonstrate past precedent for justifying [Rane's] transfer. Merely because the transfer is found to be exceptional, the same was not ground for learned Member [of IC] to stay the same.*"<sup>3</sup>

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<sup>3</sup> Paragraph No. 30 of the Judgment.