

Writ Appeal No. 440 of 2016

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH
HON'BLE MR. JUSTICE MANOJIT BHUYAN**

05.01.2017

(Ajit Singh, C.J.)

Mr.A Dasgupta, Mr.S Chakroborty & Mr. SC Biswas,
learned counsel for the appellants.

Mr. R Sarma, learned State Counsel appearing for
Respondent No.1.

Heard on admission.

This intra court appeal is directed against the order dated 24.08.2015 passed by the learned Single Judge of this High Court, whereby he has dismissed appellants' WP(C) No.2012/2006.

Shyamguri Tea Estate is situated in the district of Sonitpur, Assam. Respondent No.2 worked as Accounts Clerk in this Tea Estate. There is another Tea Estate i.e. Pearacherra Tea Estate situated in the State of Tripura. Both the Tea Estates are under the management and control of Indian Tea and Provision Limited i.e. appellant No.1. The Tea Estates, however, have independent Managers, who control the management of their respective Tea Estates. Vide order dated 29.12.2001, the Manager of Shyamguri Tea Estate transferred Respondent No.2 from Shyamguri Tea Estate to Pearacherra Tea Estate with effect from 21.01.2002. Aggrieved, Respondent No.2 raised an industrial dispute on the ground that Manager of Shyamguri Tea Estate had no authority to transfer him to another Tea Estate. The dispute was referred to the Labour Court for adjudication. The Labour Court vide award dated 31.08.2005 agreed

with Respondent No.2 that Manager of Shyamguri Tea Estate had no authority to transfer him to Pearacherra Tea Estate. The Labour Court also held that Respondent No.2 shall be entitled to re-posting as Accounts Clerk in Shyamguri Tea Estate with full back-wages. Dissatisfied with the award of Labour Court, the appellants filed WP(C) No.2012/2006, which the learned Single Judge has dismissed by the impugned order. The relevant paragraphs 24 and 25 of the order read as under:

"24. From a careful and dispassionate examination of the materials on record, it becomes evident that respondent No. 2 was transferred from Shyamguri Tea Estate in Assam to Pearacherra Tea Estate in Tripura by the General Manager of Shyamguri Tea Estate. It is the admitted position that General Manager of Shyamguri Tea Estate had no authority to transfer an employee of Shyamguri Tea Estate to a Tea Estate outside Assam. Though management would contend that the transfer order was issued as per oral instruction of the Managing Director of the Company, i.e., petitioner No. 1, Sri Dipankar Chatterjee, however, Sri Dipankar Chatterjee did not come forward to adduce any evidence in the case. No order or instruction of Sri Dipankar Chatterjee or of anyone from the Head Office of the company transferring the respondent No. 2 could be produced or placed on record. Therefore, the fact remains that the order of transfer was issued by the General Manager of Shyamguri Tea Estate and not by the management of Indian Tea and Provision Limited, which is the company owning the 2 (two) Estates in question.

25. In the light of the above discussions, this Court is unable to find any patent error or infirmity in the view taken by the Labour Court. Principles

governing judicial review of transfer of a government employee may not be applicable in the case of transfer of an employee of a private establishment covered by the provisions of the Act. In the present case, transfer of respondent No. 2 from one State to another had given rise to an industrial dispute leading to a reference by the appropriate government which was adjudicated upon by the Labour Court. The purpose of adjudication of industrial disputes under the provisions of the Act is to maintain industrial peace and harmony. Therefore, unless the view taken by the Labour Court suffers from patent illegality or perversity, interference should be avoided."

After hearing the learned counsel for the appellants, we find ourselves in complete agreement with the view taken by the Labour Court and affirmed by the learned Single Judge. The award of the Labour Court and the order of the learned Single Judge are well founded and unassailable. In the fact situation of the case, it is as clear as day-light that Respondent No.2 was transferred by an order of Manager, Shyamguri Tea Estate, who had no authority to transfer him to another Tea Estate, and that too, situated in different State.

The appeal has no merit and is accordingly dismissed.

JUDGE

CHIEF JUSTICE

skd