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*Editorial*

## LOOKING BACK-LOOKING FORWARD

**19<sup>th</sup>** July is arriving alongside the arrival of the monsoon in the Indian peninsula. A normal monsoon ensures the buoyancy of the agrarian economy and contributes to the fertility of the soil. 19th July reminds us about the defining happening of bank nationalisation, which has ensured that the Indian economy continues to maintain a higher growth trajectory year-on-year breaking the shackles of colonial legacy. Bank nationalisation is a product of multiple social, economic, and political factors. But all these factors are wrapped up in the form of the struggle of bankers. The major contributor to such epoch-making combat that shook the nation and the entire banking fraternity was the emergence of the officers' trade union and their determination to establish the community's dignity and uphold the sanctity in the workplace through a democratisation process. We thought it worthwhile to revisit those golden days of the late 60s to draw inspiration for our onward movement keeping 19th July in the backdrop without reiterating the wry statistical figures. We are sharing the edited excerpts from the legendary R K Talwar's "Value In Leadership" to give a firsthand account of those turbulent days from the eyes of a person who led the country's largest lender, the State Bank of India, during that time itself.

Quote :

While the then Imperial Bank of India had a trade union led by its employees, the unions of the rest of the banking industry were controlled

by the Communist leaders. As the clerks and the sub-ordinates were called at that time, the workmen frequently resorted to work to rule agitations, strikes, and even gheraos. Most often, the Government intervened in the disputes and referred the matter to Tribunals for adjudication. There were a series of "Awards" governing the working conditions of the staff. Even the State Bank of India, which had its own internal leadership, went through a period of strife in the late '50s resulting in disruption of the banking activity for nearly three weeks. During all this turmoil, the officers of the Bank who considered themselves part of the management kept the work going. At least in the State Bank of India, this position started changing significantly in the mid-60s with the emergence of trade unionism amongst the junior officers. The junior officers felt that they were being exploited and made to pay a heavy price for what they considered to be the appeasement of the workmen staff. They also felt that the salary differential between them and the workmen steadily eroded. In quite a few cases, some junior officers also drew lower emoluments than the workmen staff. This was also the period when inflation in the country started climbing and all these factors led to a serious disaffection on the part of the officers leading to the formation of a trade union. The Managements' attitude toward trade unionism amongst officers was understandably hostile. While they were sympathetic to the cause of the officers, they disapproved of the concept of trade unionism amongst officers and tried their

**A JUG FILLS DROP BY DROP**

best to discourage it. Ultimately they accepted the reality and started talking to them. Still, negotiations with the Officers Union were very different from workmen's, and there was clearly a lack of seriousness. In a meeting of the senior executives convened to discuss the issue, he expressed his opinion that he could never tolerate a parallel authority that could give the officers instructions on what they could or could not do. A decision was taken in that meeting to take quick and prompt action, and four officers who were office bearers of the Union and refused to carry out the instructions of the Mumbai senior management were suspended. The Chief Cashier at the Bombay office, who refused to hand over the keys of the currency chest to a senior management representative deputed for this purpose, was also suspended. Talwar instructed that a criminal complaint should be lodged against him. The Officers Union promptly responded to these measures by calling for a strike initially in Mumbai, which quickly spread to the rest of the country. Nearly 90% of the bank officers responded to the call by abstaining from work. The first-ever strike by the Officers of the banking industry began in the State Bank of India. The first strike was ultimately withdrawn in the face of a tough stand by myself with due support from the then Finance Minister, Shri Morarji Desai. The morning after the strike was called off, I was told by my Senior Executives that I should feel happy that the firm stands which I took, paid off, and I stood vindicated by all measures. My response "There is nothing for us to be particularly happy about or euphoric. Remember that we are merely carrying out the Divine Will, and if at all you want to be happy, your happiness should be because that you have been given the opportunity to be the instrument for the Divine Will. Our efforts should now be concentrated in building up cordial relations with the unions, and we should explore ways of providing relief to the Officers who would necessarily have to forego their pay during the period of the strike."

*Unquote*

He was true to his word, and his tenure in the

Bank was marked by extreme cordiality in relationships with the unions and support for the employees' cause. There were, of course, a few skirmishes at the regional level but none of them serious enough to be called 'strife'.

We shared a part of the long story in the version of Shri Talwar himself to give a firsthand account of the prevailing macro environment, initial reactions of the management, and how the strike transformed the top management through its sheer bravery and uncompromising attitude. Today, as we write this editorial, it is not only the dark monsoon cloud, but the ominous dark cloud of bank privatization looming on the horizon. We should take a leaf out of the glorious struggle of State Bank officers' which contributed significantly to the formation of the Confederation in the latter days and ensured that the backward-looking management system of taking the officers' cadre as 'granted slave' would never return. This facilitated the path of nationalisation significantly. Today, we are confronted with the daunting task of thwarting the government's move to destroy the country's social fabric. The battle has to be fought both on the streets as well as on social media, which has, of course, assumed profound significance in generating public opinion and drawing the attention of the powers that be. Let that heroic struggle that we narrated from the eyes of a legendary banker inspire our slogan of never losing a battle that we have fought. Let us be prepared to face all consequences in the quest to protect our national assets.

**LONG LIVE THE STRUGGLE OF THE FOUNDING FATHERS.**

**LONG LIVE THE SPIRIT OF 19TH JULY, THE SPIRIT OF BANK NATIONALISATION.**

**March on comrades,  
#NationAgainstPrivatisation  
#StrikeHard  
#PowerofUnity  
#BankBachaoDeshBachao**

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

The liberalisation process that began in the 1990s may have sparked economic growth in the following decades, but it also caused an increase in income inequality by reducing the share of wages in net value addition in India's organised manufacturing sector.

This period also saw a rise in share of profits in net value addition, shows an analysis of data in the Annual Survey of Industries released last week. The trend has been slightly reversed since the mid-2000s, but workers are yet to regain their pre-liberalisation share in net value addition.

The term net value addition describes the additional value added in a product during the manufacturing process. It is calculated by deducting input cost and depreciation from total value of output.

The ASI report has data from FY 1981-82 to 2019-20. It shows that in 1981-82, India's organised sector had net value addition of about ₹ 14,500 crore, of which 30.3% went to workers as wages while 23.4% went to factory owners and shareholders as profits. In 2019-20 – a year for which provisional data has been released – the net value added had increased to ₹ 12.1 lakh crore but only 18.9% of this went as worker's wages while profits accounted for 38.6%.

Between 1981-82 and 1987-88, the share of wages in net value addition remained at or above 30%. The share of profits decreased from 23.4% to 11.6%, mostly because of higher interest payments.

In the post-liberalisation period, the share of profits in net value addition increased steadily. From 1988-

#### SOME IMPROVEMENT SINCE '09-10

FY	Net Value Added (₹ '000 Cr)	Share Of Wages (%)	Share Of Profit
1981-82	14.5	30.3	23.4
1984-85	20.9	32.4	15.4
1989-90	42.7	27.6	19.1
1994-95	108.5	20.3	34.3
1999-2000	155	17	30.5
2004-05	259.9	12.9	55.6
2009-10	592.1	11.6	56.2
2014-15	975.2	14.4	47.2
2019-20(P)	1,211.5	18.9	38.6

Source: Annual Survey of Industries, 2019-2020

89, there was a near free-fall in the share of worker's wages in net value addition. From 31.5% in 1987-88, it reduced to 29.7% in 1988- 89, 25.6% in 1990-91 and less than 20% in 1993-94. By 2003-04, it was down to 15% and slid even further to 10.6% in 2007-08, its lowest value in the entire four-decade period being analysed.

The year 2007-08 was almost in middle of the boom phase of the Indian economy, which from 2003-04 was growing at a steady rate of almost 8% per annum. Experts believe boom years helped in wage correction as demand for skilled workers increased. Also, industry became more technology-dependent and hence required higher skills among workers, which meant higher wages. Thus, the share of wages in the net value added has increased to 18.9% in 2019-20, but still remains below 1981-82 level.

The share of profits had increased to 61.8% in 2007-08, the highest it touched, and has since seen a decline, but even in 2019-20 — a year whose last few weeks were impacted by Covid-19 — it stood at 38.6%, well above the 1981-82 level.

Analysis of data from 20 large states and the national capital shows that the share of wages in net value added is highest in West Bengal followed by Andhra Pradesh. Tamil Nadu, Kerala, Punjab and Delhi. Workers' wages in each of these states have 25% or higher share in net value-added. Among large states, the share is lowest in Bihar, Rajasthan, MP, Gujarat and Assam, in all of which it is below 17%. ■

(Article, courtesy: Atul Thakur in Times of India.)

#### GRIM FIGURES BUST CLAIM OF 17-YEAR HIGH DEVIL IN GROWTH DETAILS

Growth in the fourth quarter of 2021-22 (January-March) slowed to a crawl at 4.1 percent, reflecting just how enfeebled the economy had become because of weakening demand and a broad-based surge in prices that sent inflation to an

eight-year high at 7.79 per cent in April.

The slowdown meant that the fourth quarter saw the lowest growth after 20.1 per cent in the first quarter (April-June 2021), 8.4 per cent in Q2 and 5.4 per

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

cent in Q3.

During the fiscal year, GDP grew 8.7 per cent year-on-year compared to a contraction of 6.6 per cent in the previous — and propagandists for the Modi government were quick to trumpet this as the fastest growth in the past 17 years.

### HOW IT COMPARES

Year	GDP in Rs crore
2021-22 (PE)	1,47,35,515
2020-21 (1st RE)	1,35,58,473
2019-20 (2nd RE)	1,45,15,958
Growth over 2020-21	8.7%
Growth over 2019-20	1.5%

PE: Provisional estimate;  
RE: Revised estimate

The statistical illusion is quickly busted when one compares the absolute real GDP figure with that in the pre-pandemic year of 2019-20.

The GDP in 2021-22 was estimated at ₹ 147.36 lakh crore, just 1.5 per cent higher than the ₹ 145.16 lakh crore achieved in 2019-20. The sobering truth is that the economy has just about overcome the negative impact of the

pandemic.

The downward revision in the last fiscal's GDP growth was expected as the omicron variant and the start of the Russia-Ukraine war hit the last quarter. The Indian economy has grown by only 1.5 per cent above the pre-pandemic level (fiscal 2020), compared with the 1.8 per cent estimated earlier. However, the good part is that estimates for both private consumption and fixed investment estimates are a tad higher than before.

During the March quarter, agriculture grew at a pace 4.1 per cent but manufacturing contracted 0.2 per cent. The services sector once again came to the rescue: trade, hotels, transport and communication expanded by 5.3 per cent while the financial services and real estate sector grew by 4.3 per cent.

Public administration, defence and other services, which represent government expenditure, grew 7.7 per cent during the March quarter, boosting overall

economic growth.

Among other sectors, mining and quarrying grew 6.7 per cent and construction lumbered ahead by 2 per cent.

Real GDP grew to ₹ 147.36 lakh crore from ₹ 135.58 lakh crore in 2020-21.

Gross Value Added (GVA), which strips out the impact of subsidies and indirect taxes, grew 3.9 per cent year-on-year in the fourth quarter compared with a revised growth of 4.7 per cent for Q3 FY22. For the full year, it grew by 8.1 per cent as against a contraction of 4.8 per cent in the preceding year.

Nominal GDP for FY22 grew 19.5 per cent over a year ago to an estimated ₹ 236.65 lakh crore.

The outlook for the economy doesn't look too good with the Reserve Bank of India's policy makers signaling that they are ready to sacrifice growth as they grapple with runaway inflation.

Earlier this month, the RBI raised the policy interest rate — the repo — by 40 basis points to 4.4 per cent in a surprise off-cycle intervention.

It is expected to raise rates again by as much as 50 basis points at a meeting early next month in a desperate attempt to cool prices.

The rupee has depreciated by over 4 per cent against the US dollar this year, sparking an imported inflationary pressure in the economy which has crimped consumer demand.

The per capita income (based on net national income) during 2021-22 was ₹ 1.5 lakh per annum at current prices, up from ₹ 1.27 lakh in 2020-21, showing a growth of 18.3 per cent. However, at constant prices, per capita annual income works out to be ₹ 91,481, up 7.5 per cent from ₹ 85,110 in FY21. ■

**(Edited version of the story originally published in The Telegraph dated 16.06.2022.)**

OVERCOME ANGER BY LOVE, EVIL BY GOOD



## THE 95TH EXECUTIVE COMMITTEE MEETING WAS HELD IN MUMBAI FROM 6TH TO 7TH JUNE, 2022

The 95th Executive Committee Meeting of AIBOC was held in Mumbai from 6th to 7th June, 2022. The meeting was full of vibrancy and was participated by leaders of the leader from all the affiliates and state units. The meeting reviewed the organisational activities and charted the Confederation's future course of action. The EC also took the opportunity of felicitating the superannuated leaders and recalled their contribution to the Confederation and the movement with gratitude. Some of the significant decisions taken by the Executive Committee as placed by the General Secretary are as follows:

- a) The Confederation decided to organise a programme of DILLI CHALO during the monsoon session of the Parliament, the exact date of which will be determined in due course. GS exhorted that all affiliates and state units must be geared up to offer resistance.
- b) All affiliates were advised to seek the approval of the Confederation leadership to before they approached the Court with their issues where the



interest of the fraternity was involved.

c) All affiliates were requested to contribute to CSBOA, and all contributions were routed through the AIBOC account and transferred to CSBOA.

d) National Women's Convention to be convened.

e) All affiliates to make efforts to increase the reach of our FB page. This was a new and effective form of signature campaign.

f) Com Dilip Saha, Executive Vice President, to chair a small committee for the next salary revision.

g) The role played by AIBOC in clinching family pension updation would have to be reiterated in every meeting.

h) If the Banking Law Amendment Bill is listed as an agenda item in the Monsoon session, urgent decisions will be taken at a General Secretary's meet, which will be ratified in the next EC.

i) Next EC meeting will be held in September in Chennai. ■

## COM MOHANAN, FORMER GENERAL SECRETARY OF DHANALAXMI BANK OFFICERS' ORGANISATION (DBOO) GETS JUSTICE

Common Bond welcomes the decision of the Sub Court, Thrissur, which decreed in part the termination handed over to Com P V Mohanan, former General Secretary of Dhanalaxmi Bank Officers' Organisation on 11th June, 2015. It's the movement's victory and portrays what the Confederation could achieve once it stands united for a cause that is dear to its heart. Red Salute Com P V Mohanan. We are reproducing the full text of AIBOC Circular No. 2022/19 dated 16.06.2022 and a personal message of Com Mohanan.

"15th June 2022 would be etched in golden letters in the annals of the glorious history of our Confederation. The civil suit filed by Com. P V Mohanan, former GS of DBOO, challenging his unlawful dismissal from the bank for carrying out legitimate trade union activities to espouse the cause of members, is decreed in part by the Sub Court, Thrissur. The Hon'ble court in its verdict pronounced that the termination handed over to Com. P V Mohanan on 11th June 2015 is unsustainable. The court further ordered financial compensation to be paid to Com. P V Mohanan along

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

with the cost.

02. This is a landmark judgement in favour of the working class. When unbridled power produces such draconian decisions, we have our path of struggle in front of us. DBOO along with AIBOC did traverse that path of struggle till the last. Com. P V Mohanan had to superannuate from an agitation pandal on 31st March 2016.

03. Approaching the judiciary was the only recourse in front of Com. P V Mohanan. We could not have afforded to leave it to an individual taking on an institution. AIBOC immediately took a principled stand that the Confederation would bear all the legal expenses in connection with the protracted legal battle that Com. Mohanan embarked upon to get

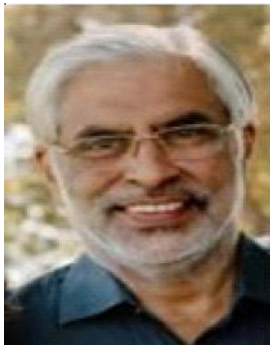
justice right till the very end. Our successive national executive committees have ratified all the expenses that were incurred in this connection.

04. We congratulate Com. P V Mohanan for his tremendous grit, gumption, patience and resoluteness showed during the past 7 years in taking the battle forward. We do hope that the new Management will be proactive enough to read the spirit of the judgement and do the needful so that Com. P V Mohanan is paid all his legal dues including super-annuation benefits.

05. The relentless struggle of Com Mohanan and the judgment would send the right signals to the recalcitrant management that the authority vested in them has to be exercised judiciously with the realm of ethics and good governance."■

## The personal message of Com Mohanan

"Dear all,



Ever since the Sub Court of Thrissur pronounced its verdict on my (our) case against the illegal termination a couple of days back, I have been receiving hundreds of congratulatory messages as well as anxious enquiries and calls from well-wishers and friends.

It is with immense satisfaction that I share the news that, the Sub Court of Thrissur has declared my termination from the services of Dhanlaxmi Bank as unsustainable.

I have been waiting for seven long years, for an official pronouncement as this, which vindicates my stance. It is worthy to note that the Bank's management did not venture further illegal terminations since then. This judgement can have a lasting impact on Bank Employees fraternity.

The nitti gritty of the judgement will be known only after the copy of the judgement is officially released. The details will be made known to well-wishers at that time.

A big salute to the Bank employee's fraternity as well as workers from different walks of life who espoused the cause and extended support to DBOO in the 33 days long hunger strike at Thekkinkadu Maidan following the termination.

When I recall the days of struggle, I am deeply touched by the unqualified commitment of the lady comrades; some of them who even took part in the indefinite hunger strike. The support extended by AIBOC, both the National level and Kerala State level was commendable. The backing that BEFI extended was invaluable and I cannot acknowledge it in words.

There were many activists, banking sector and other industries that pledged support to the cause. This victory is dedicated to all of them who raised the voice against injustice and fought for a righteous cause. Needless to state that my family extended unconditional support in my long innings in activism. During the seven-year long period, on stray occasions when my spirit sank, my well-wishers and comrades extended a helping hand to infuse some positive energy in me.

Almost all the erstwhile top executives of our Bank, vouched for me. But I will be doing injustice to my conscience, if I do not mention the name of Sri. K Jayakumar (former Chief Secretary of Kerala) who

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

was the Director of the Bank when the illegal termination happened. K Jayakumar IAS cited his dissent with the then management of the Bank on the illegal termination and even mentioned it in his resignation letter from the Bank's Board. He took the trouble of appearing as a witness in my case. I am indebted to him. I am also obliged to the counsel Advocate Philip T Varghese for the smooth conduct of the case.

When I sign off, my ultimate satisfaction is that Damocles sword of Clause 14(1) has vanished from the scene by the pronouncement that my termination is unsustainable..

With folded hands,

**Mohanan P V, Thrissur.**

17th June 2022

## **STRIKE ON 27.06.2022 DEFERRED**

We are reproducing the full text of AIBOC Circular No. 2022/20 dated 23.06.2022 containing Text of UFBU Letter No. 2022/06 dated 23.06.2022

Dear Comrade,

### **STRIKE ON 27.06.2022 DEFERRED**

We reproduce hereunder the text of UFBU Circular No.2022/06 dated 23.06.2022 on the captioned subject for your information. We convey our heartfelt greetings to all affiliates/ state units for their massive participation in the agitation programmes called by UFBU.

#### ***March on Comrades,***

With revolutionary greetings.

Yours Comradely,

**Sd/-  
(SoumyaDatta)  
General Secretary**

**Text of UFBU Letter No. 2022/06 dated 23.06.2022**

Dear Comrades,

### **IBA relents – Agrees to commence negotiations On our residual issues including 5 Day Banking, Pension Updation and other pending issues Our call for Strike on 27th June, deferred**

Consequent to our Strike Notice served on IBA on our 5 point charter of demands, the Chief Labour Commissioner (Central), Ministry of Labour, Govt. of India had called for a conciliation meeting/joint discussions between IBA and UFBU on 21-6-2022. Shri S.C. Joshi, CLC conducted the proceedings. Shri Kul Bhushan Nayyar, Dy. Secretary, Dept. of Financial Services, Ministry of Finance, Govt. of India also participated in the meeting.

During that meeting we had informed the CLC that even though our wage revision settlement was signed

**YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER**

***Common Bond, July -2022***

18 months ago in November, 2020 and even though IBA had agreed to continue the discussions on the residual issues which were duly minutised with Workman Unions on 10-12-2021 and with Officers Organisations on 4-12-2021, no serious effort was made by the IBA to resolve the issues through mutual discussions. We had informed the CLC that if the IBA would make a commitment and come forward to commence meaningful negotiations with the UFBU on all our demands, UFBU would be inclined to reconsider our strike call.

From the IBA, no such commitment was forthcoming. Further, IBA also stated that the issue of updation is subjudice since a court case is going on before the Supreme Court and hence they were not in a position to discuss the issue with the UFBU. We clarified to CLC and IBA that UFBU has not filed any court case on this issue nor there is any stay from the Supreme Court to discuss with the UFBU. After deliberations, IBA agreed that they would hold discussions with the UFBU. However, IBA did not agree to fix up any date for the meeting.

Regarding wage revision in CSB Bank and DBS Bank (e-LVB), IBA stated that in the absence of mandate, they were not covered by the Settlement. Since there was no common meeting ground on our issues, we informed the CLC that UFBU would go ahead with the strike call. However, the CLC advised that one more round of conciliation meeting can be held on 23-6-2022 to explore the possibility of resolving the issues.

In this background, conciliation meeting was held today in CLC's Office in New Delhi. Representatives of CSB Bank and DBS Bank were also present in today's discussions.

DBS Bank management informed that they are in discussion with the Unions to extend wage revision for the e-LVB employees and officers. CSB Bank management argued that since their business model has changed, the Board of Directors are not agreeable to extend wage revision on IBA

pattern. CLC advised that efforts should be made to find an amicable solution to the problem through mutual discussions with the Unions.

From the IBA, it was informed by them, that in consultation with the higher authorities, IBA has decided to commence the negotiations on all our residual issues including 5 Days Banking, Updation and all other pending issues. IBA further informed that the negotiations would be held on 1st July, 2022 at IBA office in Mumbai and the letter inviting the UFBU for this meeting has already been sent to the Convener.

In view of IBA coming forward to commence the negotiations on our demands, after mutual consultations amongst the constituent unions, it was informed to the CLC and IBA that UFBU is agreeable to defer the strike. We further requested the CLC that the progress in the discussion should be monitored by them so that the negotiations become meaningful and time-bound to which the CLC agreed.

Comrades, accordingly we hereby inform all our unions and members that our agitational programmes including the proposed All India Strike on 27th June, 2022 stand deferred.

We shall participate in the negotiations on 1-7-2022 and take all efforts to resolve our demands amicably.

We congratulate all our units and members for their enthusiastic participation in our agitational programmes which alone has paved the way for commencement of the negotiations. We shall keep our unions informed of further developments.

With greetings,

Yours comradely,

Sd/-  
**SANJEEV K. BANDLISH**  
**CONVENER**



## CIRCULARS

- 16 dated 02nd June, 2022: AIBOC Issued Press Statement Condemning the Brutal Killing of Bank Officer in the Kashmir Valley
- 17 dated 09th June, 2022: UFBU meeting held on 08.06.2022, strike action on 27.06.2022
- 18 dated 10th June, 2022: Strike action under UFBU banner on 27.06.2022 agitation programmes
- 19 dated 16th June, 2022: Com Mohanan, Former General Secretary of Dhanalaxmi Bank Officers' Organisation (DBOO) Gets Justice.
- 20 dated 23rd June, 2022: Strike on 27.06.2022 deferred■

## JUDICIAL VERDICT

2022 LLR 600  
CALCUTTA HIGH COURT  
Hon'ble Mr. Abhjit Gangopadhyay, J.  
WPA No. 5129/2018 with CAN No. 1/2019  
(old CAN No. 1987/2019), Dt/- 16-12-2021  
Writer Safeguard Pvt. Ltd.  
vs.  
State of West Bengal and Ors.

*TRANSFER OF EMPLOYEES – When not justified – Industrial Tribunal found to be mala fide as a counter measure against the employees for formation of a Trade Union – Hence, present writ petition by employer – Held, Tribunal quashed transfer order with 25% backwages as itself found to be mala fide – Interference of High Court is only if there is any perversity in the award – Full opportunity was given to the parties – Evidence showed that transfer orders were passed after getting the knowledge about the formation of a Trade Union by the employees – No interference – Petition dismissed.*

For Petitioners: Mr. Bikash Ranjan Bhattacharya, Mr. Partha Bhanja Chowdhury and Mr. Ravi Kumar Dubey, Advocates.

For Respondents: Mr. Susanta Pal, Mr. Prabir Kumar Roy, Mr. Soumya Majumdar and Mr. Victor Chatterjee, Advocates.

EVERY HUMAN BEING IS THE AUTHOR OF HIS OWN HEALTH OR DISEASE

## IMPORTANT POINTS

After taking evidence, both documentary and oral, and considering the documents marked as exhibits, the Tribunal held that the order of transfer was made with mala fide intention as the employees formed Trade Union.

The Tribunal has held that it was not a transfer which could come within the concept of incident of service, it is something more than that i.e. the extra thing is the mala fide attitude and therefore, the award was passed against the writ petitioner.

Writ Court is concerned with the decision making process of the Tribunal whether there is any legal perversity in the award of the Tribunal to see and while deciding the question of legal perversity it is to be checked whether something has been held without evidence or some evidence were not considered which is material in respect of the merit and whether the decision is of such nature to which no person of ordinary prudence can come to.

## JUDGMENT

Abhijit Gangopadhyay, J.

1. This writ application has been filed by the employer against an award passed by the Labour Court/Tribunal dated 12.09.2017.

2. The Tribunal has awarded that the employees who were transferred from Calcutta to some other place outside the State and some other distant place within the State of West Bengal cannot be transferred because the transfer is wholly mala fide as a counter measure against them for formation of a Trade Union. The Tribunal has also directed the petitioner to pay 25 per cent back wages to the respondent from the date of last payment made to them till the date of joining.

3. The affidavits have been exchange between the parties.

4. The petitioner has submitted that transfer is an incident of service and it can never be termed as mala fide and it cannot be challenged at all. The transferred employees can get a compensatory allowance for such transfer after they join the transferred place.

5. The Tribunal has held after analysing the evidence that there was no appointment letters (except one) given to the employees but confirmation letters were given to them, after one or two years of satisfactory service. No document has been produced and no document has been marked as exhibit to show that any appointment letter was given to the employees concerned. It is found from the materials before me that in fact there was only confirmation letters.

6. This act is extremely irregular which shows the mindset of the employer. The confirmation letters indicate that all of the concerned employees were duly appointed by the employer.

7. The employees were driver/security man. It was the business of the employer to put currency notes to ATMs through its employees. These employees are very very lowly paid which is evident from the record. Their gross salary was less than 6,500.00 per month.

8. The employees' contention before the Tribunal was that they were compelled to work almost for the whole day without any special duty hours like slaves.

They were ill-paid.

They always faced misbehaviour from the employer's officers.

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

9. As a result they took step for forming a Trade Union under the Trade Unions Act, 1926. The Trade Union was ultimately formed and was registered on 27.12.2011.

10. Their allegation is that as soon as the employer came to know that Trade Union was being formed by the employees, daggers were drawn against them by the employer and just three days before the registration of the Trade Union the transfer order was issued. The employees were transferred in some other place in other states like to Deoghar, Patna, Bhubaneswar, Ranchi etc. Their further cases was that with the meagre amount of salary of 6,500.00 they could somehow manage their miserable existence with their family while staying in this state but transferring them to other state and to a distant place within this state with the same salary and only a little amount of compensatory allowance would actually put them under slave like condition and knowing this fully well, to create inhuman pressure on them for resigning from service the transfer was made. Therefore, they prayed for setting aside and quashing the transfer order and for direction upon the employer to allow them to work.

11. After taking evidence, both documentary and oral, and considering the documents marked as exhibits, the Tribunal held that the order of transfer was made with mala fide intention as the employees formed Trade Union and did not believe the contention and therefore, rejected the contention of the employer that there was no proof that after coming to know about the formation of the Trade Union the employer retaliated by issuing order of transfer of eight employees. On the basis of the evidence and the facts and circumstances of the matter the Tribunal has also held that it was not a transfer which could come within the concept of incident of service; it is something more than that.

The extra thing is the mala fide attitude and therefore, the award was passed against the writ petitioner.

12. Against this award quashing the transfer order and direction for 25 per cent back wages, the employer has filed this writ application.

13. This Court is not an appeal Court in respect of award where the evidence can be reassessed and the matter can be heard again on merit on assessment of evidence. Writ Court is concerned with the decision making process of the Tribunal whether there is any legal perversity in the award of the Tribunal to see and while deciding the question of legal perversity it is to be checked whether something has been held without evidence or some evidence were not considered which is material in respect of the merit and whether the decision is of such nature to which no person of ordinary prudence can come to.

14. After hearing argument of the parties and after going through the pleadings I find that principles of natural justice have been fully complied with by the Tribunal. Full and complete opportunity was given to the parties to produce witness and examine and cross-examine. The evidence adduced, I have found, have been correctly assessed.

15. On the basis of the evidence the Tribunal held that no appointment letter was issued to the employees (except one). After one or two years of service confirmation letters were issued. On the basis of evidence or in other word non adducing of any evidence to establish that the policy of transferring the employees were taken in Bombay office of the petitioner for any justifiable reason the Tribunal has disbelieved that it was a transfer simpliciter. The registration of

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the Trade Union was on 27.12.2011 and issuance of transfer order was on 24.12.2011 are so proximate and in absence of any evidence as to policy of the employer of transfer, the Tribunal has correctly held and without any legal perversity that company or employer after coming to know about forming the Trade Union issued the transfer orders. This view is wholly reasonable as under Rule 4 of West Bengal Trade Unions Rules 1998 every notice under sub section (1) of Section 28B to other Trade Union functioning in the concerned industrial establishment or the class of industry in a local area as a case may be, has to be given by the Registrar in a prescribed form and simultaneously the notice shall be published by the Registrar in the official gazette. Therefore, the stand taken by the company that there is no proof that after coming to know about the steps taken by the employees to form a Trade Union

the transfer order were issued is against the facts.

16. There is no challenge to the fact that the Trade Union has been formed by the employees and no such thing has also been mentioned in the written statements filed by the employer before the Tribunal. Therefore, it can be safely presumed that the notice by Registrar of Trade Union under Rule 4 of the above – mentioned rules was given and was published in the official gazette. Now, therefore, there can be no doubt that the endeavour to form a Trade Union was not in any concerned persons. Thus the claim of the employee that there is no proof as to the knowledge of formation of Trade Union before issuance of the transfer order is wholly disbelievable.

17. Therefore, I do not find any merit in the writ application and the same is dismissed. ■

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