



WEB COPY

W.A. (MD) Nos.1684 to 1695 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.08.2019
DELIVERED ON	30.08.2019

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD) Nos.1684 to 1695 of 2018

and

C.M.P. (MD) Nos.12361 to 12372 of 2018

- 1) S.Ganesamoorthy ... Appellant in W.A.(MD) No. 1684 of 2018 / Petitioner in W.P.(MD) No.22986/2018
- 2) M.Sakthivel ... Appellant in W.A.(MD) No. 1685 of 2018 / Petitioner in W.P.(MD) No.22987/2018
- 3) N.Kareemuddin ... Appellant in W.A.(MD) No. 1686 of 2018 / Petitioner in W.P.(MD) No.22988/2018
- 4) S.Sathiyaseelan ... Appellant in W.A.(MD) No. 1687 of 2018 / Petitioner in W.P.(MD) No.22989/2018
- 5) M.Selvam ... Appellant in W.A.(MD) No. 1688 of 2018 / Petitioner in W.P.(MD) No.22990/2018
- 6) S. Mari Rajan ... Appellant in W.A.(MD) No. 1689 of 2018 / Petitioner in W.P.(MD) No.22991/2018
- 7) M.Senthil Kumar ... Appellant in W.A.(MD) No. 1690 of 2018 / Petitioner in W.P.(MD) No.22992/2018
- 8) P. Ganesan ... Appellant in W.A.(MD) No. 1691 of 2018 / Petitioner in W.P.(MD) No.22993/2018
- 9) K.P.Ganesh Kumar ... Appellant in W.A.(MD) No. 1692 of 2018 / Petitioner in W.P.(MD) No.22994/2018



10) R.Muthukumar

... Appellant in W.A.(MD) No.
1693 of 2018 / Petitioner in
W.P.(MD) No.22995/2018

11) G.Manokaran

... Appellant in W.A.(MD) No.
1694 of 2018 / Petitioner in
W.P.(MD) No.22996/2018

12) G.Vignesh

... Appellant in W.A.(MD) No.
1695 of 2018 / Petitioner in
W.P.(MD) No.22997/2018

Vs.

Bharat Heavy Electricals Limited,
Rep. by its Deputy Manager (HR-EE & CE),
Trichy-14

... Respondent in all Writ
Appeals / Respondent in
W.P.(MD) Nos.22986 to
22997 of 2018

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent Act against the order made in W.P.(MD) Nos.22986 to 22997 of 2018 dated 20.11.2018.

COMMON PRAYER W.P.(MD) Nos.22986 to 22997 of 2018:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue of Writ Certiorari calling for the records to the impugned order of transfer vide Office Order: Trasn/1014/302/2018, Trasn/1014/332/2018, Trasn/1014/331/2018, Trasn/1014/317/2018, Trasn/1014/317/2018, Trasn/1014/317/2018, Trasn/1014/328/2018, Trasn/1014/329/2018, Trasn/1014/296/2018, Trasn/1014/330/2018, Trasn/1014/311/2018, Trasn/1014/311/2018, dated 09.10.2018 respectively passed by the respondent and quash the same as illegal and pass such other order.

In All Writ Appeals:

For Appellants : Mr.M.Ajmal Khan,
Senior Counsel for
Mr.T.Antony Arul Raj

For Respondent : Mr. A.V.Arun

C O M M O N J U D G M E N T

(Judgment of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**)

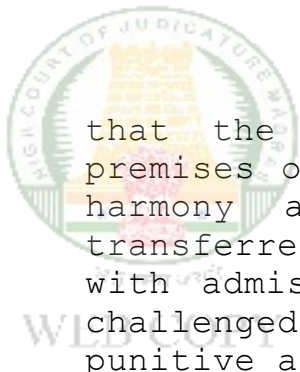
1. Common issues relating to the transfer of each of the

<https://hcservices.ecourts.gov.in/hcservices/>



Appellants herein and the validity thereof arise for consideration in these Writ Appeals and, therefore, they are disposed of by a common judgment. The Appellant in each Writ Appeal is the Petitioner before the Writ Court. The Writ Petitions were filed to challenge the separate orders of transfer dated 9.10.2018, which were issued by the Respondents in each Writ Appeal to each of the Appellants herein. All these Writ Petitions were dismissed by a common order dated 20.11.2018, which is impugned herein.

2. The facts that are relevant for the disposal of these Writ Appeals are stated briefly herein. A strike notice was issued by the Welders' Association of the Respondent on 7.5.2018. Pursuant thereto, an order of transfer was issued to one employee, namely, the General Secretary of the Association, Mr. Satish Kumar. Thereafter, the Assistant Commissioner of Labour, Pondicherry, by communication dated 14.5.2018, called upon the members of the Association of Welders to participate in conciliation proceedings under section 12 of the Industrial Disputes Act, 1947 (the ID Act) on 23.5.2018 at his office. Similar communications were also issued on 5.6.2018 in respect of a conciliation meeting on 13.6.2018 and by a communication dated 8.8.2018 in respect of a conciliation meeting on 24.8.2018. By communication dated 7.9.2018, the Assistant Labour Commissioner, Pondicherry, informed the Secretary of the Ministry of Labour and Employment that the conciliation proceedings had failed. Shortly thereafter, there was mass absenteeism by welders and the Executive Director issued an appeal dated 03.10.2018 to the employees concerned to resume work but this did not yield results. Therefore, the Respondent concerned sent individual notices to the employees concerned on 4.10.2018 wherein it was stated that the said employees absented themselves from work without obtaining written permission or sanction from the competent authority on 1.10.2018, 3.10.2018 and 4.10.2018. It was further stated therein that such unauthorised absence caused disruption of work and seriously hampered the achievement of the targets and goals of the organisation. It was further stated that such willful insubordination and absence from duty amounts to a serious misconduct as per Standing Orders 40, 60 (1), 60 (5), 60 (6), 60 (21) and 60 (33) warranting stringent disciplinary action. The impugned transfer orders were issued shortly thereafter on 9.10.2018 in this factual context. Each of the impugned transfer orders, which are in pari materia, advert to the unauthorised absence from duty in a concerted action from 1.10. 2018. The said orders also referred to the proposed sit-in-strike at the instance of the employees concerned and to the appeal made by the Executive Director that employees should refrain from such direct action, which would be detrimental to the interest of the organisation. After referring to such disruptive direct action on the part of the employee concerned, the transfer order refers to the terms and conditions of employment and states



that the presence of the employee concerned in the factory premises of the Respondent at Trichy is detrimental to industrial harmony and, on that basis, the employees concerned were transferred to other factories in the existing grade and pay along with admissible transfer benefits. The said transfer orders are challenged primarily on the ground that the said orders are punitive and, therefore, illegal.

3. The Appellants were represented by Mr. Ajmal Khan, learned senior counsel, who appeared for Mr. T Antony Arul Raj, Advocate. The learned senior counsel referred to the order of the Writ Court and pointed out that the Writ Court held that the transfer orders were preventive and not punitive. He submitted that the said conclusion is patently erroneous because the Writ Court also alluded to the participation of the employees concerned in the proposed sit-in-strike and to their unauthorised absence, which were cited in the transfer orders. On that basis, the learned senior counsel contended that the impugned transfer orders are clearly punitive in nature. For this purpose, he referred to the said transfer orders and pointed out that these transfer orders cite the alleged unauthorised absence, the alleged attempt to organise a sit-in-strike and the alleged disruptive activities as the reasons for the transfer. According to the learned senior counsel, the transfer orders disclose, in no uncertain terms, that the transfers are not on account of administrative exigency but are clearly punitive in nature. In this connection, he referred to the judgment of the Supreme Court in **Somesh Tiwari vs. Union of India (2009) 2 SCC 592**. In particular, he relied upon paragraph 16 of the said judgment, which reads as under:

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds, one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside as being wholly illegal."



4. In addition, he also relied upon a judgment of the Division Bench of this court in **P. Karunakaran vs. Union of India 2013 SCC Online Mad 3958**, which was authored by one of us (KRCBJ). In specific, he relied upon paragraphs 15, 16 and 21 of the said judgment, which read as under:

"15. Admittedly, in this case, no charge memo was issued to the petitioner and on the other hand, the suspension order issued on him was also revoked on 23.1.2013. No doubt; the transfer is not a punishment and it is only an incident of service. There is no quarrel about the said proposition. At the same time, if it is admitted that the employee was transferred as a punitive measure or preventive measure, then such transfer takes a different colour and shape in the eye of the employee not as an incident of service but as a punishment out of an untold charge levelled against him.

16. Once it is admitted by the authorities that transfer was made based on certain reasons of unbecoming attitude of the employee, more particularly, based on certain incident said to have taken place on a particular date, then the authorities cannot exercise the power of transfer on that ground without affording an opportunity of hearing and allowing the employee to defend his case. Administrative grounds can be put as the reason for transfer, so long as such administrative grounds do not affect the interest of the employee personally with civil consequences all such grounds do not attribute imputation on the character of the employee. If any of these elements are apparent based on admitted facts, then such grounds can no longer be termed as administrative grounds. Therefore, we are of the firm view that the order of transfer in this case was passed only as punitive measure to achieve the collateral purpose and therefore the same cannot be sustained in the eye of law as the same has been made in violation of principles of natural justice.

29. A careful perusal of the above four decisions of the Apex Court would show that if an order of transfer was found to be an outcome of mala fide exercise of power or if the transfer was made in connection with the departmental proceedings or for extraneous considerations or for collateral purpose, the court can interfere as against such transfer order, if the same was made in violation of the principles of natural justice. All these decisions commencing from 1991 to 2004 have, no doubt, observed that the authorities are entitled to transfer on administrative grounds/public interest. But a perusal of the subsequent decision made by the Apex Court in Somesh



Tiwari vs. Union of India (Paras 19 and 20 of AIR) would show that no such transfer can be made when the same was passed in lieu of punishment or on extraneous reasons."

By relying on the said judgments, the learned senior counsel submitted that the transfer orders, in this case, disclose indisputably that the said orders are a consequence of the alleged unauthorised absence, proposed sit-in-strike, etc. Thus, the transfer orders are punitive and not administrative. Consequently, he concluded his submissions by stating that the said transfer orders are liable to be set aside and that the order of the Writ Court dismissing the Writ Petitions is directly contrary to the above mentioned judgment of the Supreme Court and that of the Division Bench of this Court.

5. Mr A.V.Arun, the learned counsel for the respective Respondents, made submissions in response and to the contrary. He opened by pointing out that five of the Appellants, namely, the Appellants in W.A. Nos. 1684, 1687, 1693, 1694 and 1695 of 2018 accepted the orders of transfer and joined duty in the transferred place. He further pointed out that the impugned orders of transfer were issued on 9.10.2018 whereas the Writ Petitions were filed on 14.11.2018, i.e. more than one month later. In other words, his contention was that the Appellants did not join duty at the transferred place and remained absent for more than one month before filing the Writ Petitions out of which the present appeals arise. In this regard, he submitted that the statement in paragraph 5 of the affidavit in support of the respective Writ Petitions that the employee concerned had applied for leave was specifically denied in the counter affidavit filed by the Respondents in the respective Writ Petitions. In order to establish that the employee concerned was put on notice regarding the unauthorised absence and the unauthorised direct action initiatives, he referred to various communications from the Respondents' typed set of papers. In specific, he referred to communications dated 28.9.2018 and to the appeal from the Executive Director on 3.10.2018 to maintain peace and ensure productivity in the organisation. He also referred to the individual letters that were sent on 4.10.2018 to the individual employee concerned, in this regard, and to the conciliation officer's notice in respect of conciliation meetings. He also pointed out that out of 1009 welders, only about 309 welders attended work during the relevant period. In order to substantiate the submission, he referred to a table showing the number of absentees during the relevant period. In effect, he contended that the transfer was for administrative exigencies in as much as it was intended to prevent disruption to work so as to meet the commitments of the organisation. He further submitted that the provision of reasons in the transfer orders does not render the transfer punitive. In order to substantiate the submission, he



referred to and relied upon the judgment of the Supreme Court in **Registrar General, High Court of Judicature of Madras vs. R. Perachi (2011) 12 SCC 137**. He relied upon paragraphs 21 and 31 of the said judgment, which read as under:

"21. We have considered the submissions of both the counsel. As far as the action of transfer against the first respondent is concerned, the same was on the basis of the report of the Registrar (Vigilance). Besides, the District Judge had also opined that retention of the appellant in his district was undesirable from the point of view of administration. Thus, it involved inter-district transfer. Respondent 1 had not disputed the power of the High Court to transfer him outside the district, nor did the Division Bench interfere therein on that ground. This is apart from the fact that transfer is an incident of service, and one cannot make a grievance if the transfer is made on the administrative grounds, and without attaching any stigma which was so done in the present case.

31. As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against the first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the unit concerned. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the decision of the then Chief Justice to transfer outside the district could not be faulted."

6. He also relied upon the judgment of a Division Bench of this Court in **Registrar, High Court vs. A.K. Vasudevan 1995 CJ (MAD) 615**. In the said judgment, he relied upon paragraph 40 wherein the Court referred to another judgment of a Division Bench of this Court in **Chief Engineer (Personnel) TNEB Madras vs. K. Raman 1985 1 LLJ 164**, wherein it was held that a transfer to another place in view of complaints or allegations but without visiting the officer concerned with any penalty in terms of emoluments, rank or status does not amount to punishment and that the court should not interfere unless the order of transfer is actuated by mala fides. In addition, he referred to the judgment



of the Supreme Court in **The Management of Cipla Limited vs. R. Jayakumar** 1998-1-LLN 54. In the said judgement, the Supreme Court held, at paragraph 12, that the transfer could not be interfered with because there was no evidence that it was a mala fide transfer. The last judgment that was relied upon by him was the Supreme Court judgment in **Union of India vs. Janardhan Debanath** (2004) 4 SCC 245, where it was held, in relevant part, as follows in paragraph no.12:

"12) The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially - and same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration. "

By relying on the said judgments, the learned counsel concluded his submissions by stating that the transfers are not punitive merely because reasons were mentioned in the orders of transfer. He further submitted that the said transfers are undoubtedly not punitive or in lieu of punishment because an enquiry against the employees concerned was undertaken independently in order to decide whether they should be punished and the said enquiry is at the final stage. In other words, he submitted that the impugned transfers were not intended to be the punishment for the alleged misconduct or to be an alternative to regular forms of punishment. Thus, he submitted that these transfers are not liable to be interfered with by the Court and that the order of the Writ Court is liable to be affirmed.

7. By way of rejoinder submissions, the learned senior counsel for the Appellants pointed out that transfer is not one of the specified forms of punishment under the Standing Orders of the Respondent. For this purpose, he referred to the said Standing Orders and established that transfer is not listed therein as a form of punishment. He, thereafter, concluded his submissions by, once again, referring to the judgment of the Supreme Court, which



is reported in (2009) 2 SCC 592 (cited supra), and, in particular, to paragraph 16 thereof wherein it is stated that a transfer in lieu of punishment is also illegal.

8. The records were examined and the oral submissions of both sides were considered carefully. The main question that needs to be answered is whether the transfer orders are punitive or administrative and, as a corollary, whether the said orders are valid or invalid. In order to answer these questions, it is necessary to examine all the relevant facts in a holistic manner before considering the relevant law on the subject. As stated at the outset, a strike notice was given by the BHEL Welders' Association on 7.5.2018 in respect of various grievances that are mentioned therein, including with regard to the revision of welding allowances by Circular dated 21.04.2018. In this situation, transfer orders were issued to the office bearers of the said Association, which were challenged in WP (MD) No. 11006 to 11016 of 2018 and, by interim order dated 16.05.2018, an interim stay was granted on the basis that the order is nonspeaking. Thereafter, the conciliation proceedings that were initiated in order to resolve the dispute ended in failure as evidenced by the communication dated 07.09.2018. Around this time, after the Executive Director's appeal dated 03.10.2018 to the employees' concerned to resume work did not yield results, the Respondent sent individual notices to the employees concerned on 4.10.2018 wherein it was stated that the said employees absented themselves from work without obtaining written permission or sanction from the competent authority on 1.10.2018, 3.10.2018 and 4.10.2018. It was further stated therein that such unauthorised absence caused disruption of work and seriously hampered the achievement of the targets and goals of the organisation. It was further stated that such willful insubordination and absence from duty amounts to a serious misconduct as per the Standing Orders 40, 60 (1), 60 (5), 60 (6), 60 (21) and 60 (33) warranting stringent disciplinary action. The impugned transfer Orders were issued shortly, thereafter, on 9.10.2018.

9. On perusal of the impugned orders of transfer, it is clear that the said orders set out the following material facts:

(a) the terms and conditions of appointment specify the transfer policy, which is applicable uniformly to all trades including welders;

(b) the employee concerned was unauthorisedly absent from 1.10.2018;

(c) the employee concerned participated in a continuous sit-in-strike inside the factory premises from 29.9.2018 onwards;

(d) the Executive Director issued an appeal dated 3.10.2018 explaining the current critical situation of the company and requested employees to refrain from direct action which would

be detrimental to the interests of the employees and the



organisation;

(e) individual letters were sent to the employee concerned to his residential address informing him that mass continuous absence is illegal and that such absence has caused disruption of work and seriously hampered the achievement of the targets and goals of the organisation;

(f) the presence of the employee concerned at the factory premises at Trichy is detrimental to industrial harmony and that, therefore, the employee concerned is transferred to a different factory as specified in the individual transfer order; and

(g) the transfer is in the existing grade and pay and the employee concerned is eligible for transfer benefits as per the rules.

10. Based on the aforesaid material facts that are set out in the individual transfer orders, it is clear that the transfers were made on account of the unauthorised absence, attempted sit-in-strike, et cetera, which disrupted the work of the Respondent and was thereby detrimental to industrial harmony. On that basis and as provided by the terms of appointment, the transfer orders were issued. Therefore, the question arises as to whether the transfers are bona fide or mala fide. On examining the relevant correspondence leading up to the orders of transfer, we are of the considered view that the said transfer orders cannot be considered to be mala fide. In this connection, as correctly pointed out by the learned counsel for the Respondents, it is not possible for a large public sector organisation, which services a large order book, to meet its commitments if about 700 out of 1009 welders do not turn up for work. Needless to say, it would cause a complete disruption to the production schedule of the organisation. In such circumstances, transferring the persons responsible for this concerted action cannot be termed as mala fide or as lacking in bona fide. The next question that should be examined is whether it, nonetheless, amounts to punishment or an action in lieu of punishment. In this case, pursuant to the transfer orders, in view of the misconduct of the employee concerned, the employee concerned was suspended by an order of suspension-cum-charge memo and an enquiry was conducted, which is said to be in the final stages. Such suspension is the subject matter of another batch of writ appeals, which we heard and in respect of which a separate judgment is being pronounced. From these facts, it is clear that the Respondent intended to and, in fact, initiated proceedings to punish the employees concerned/transferred employees separately for their alleged misconduct. Nevertheless, it should be examined whether the transfers constitute additional punishment. In this connection, it is relevant to bear in mind that the transfers are in the same grade and pay and subject to payment of applicable transfer allowances. Therefore, the service and monetary



conditions of the employees concerned has certainly not been modified adversely. Notwithstanding this fact, can it be concluded that the transfer orders are punitive because the unauthorised absence, attempted sit-in-strike and other activities of the employees concerned were referred to in the said transfer orders?

WEB COPY

11. In order to answer the above question, it is necessary to revisit the judgments of the Hon'ble Supreme Court on the subject. In **NK Singh versus Union of India (1994) 6 SCC 98** the Supreme Court held as follows:

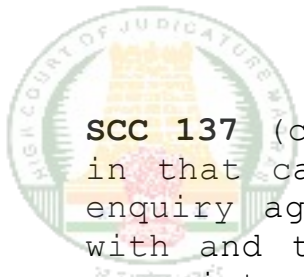
"23.... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

12. Likewise, in **State of M.P. vs. S.S. Kourav (1995) 3 SCC 270**, the Supreme Court held as under in paragraph 4:

"4.... The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background or foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore we cannot go into the expediency of posting an officer at a particular place."

13. By referring to and following the above mentioned judgments, the Supreme Court in the judgment reported in **(2011) 12**

<https://hcservices.ecourts.gov.in/hcservices/>



SCC 137 (cited supra) held that the transfer of the court staff, in that case, in view of the pending complaint and departmental enquiry against the said person was not liable to be interfered with and the order of the High Court whereby the transfer order was interfered with was set aside by the Supreme Court. Furthermore, it was also held as follows in relevant part, in paragraph 9 of the judgment reported in **(2004) 4 SCC 245 (cited supra)** .

"9)Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan (2001) 8 SCC 574."

14. There is no quarrel about the proposition that an order of transfer, if punitive in nature, can be interfered with by Court. At the same time, it should be borne in mind that such interference is not automatic in all such cases, but on the other hand, it is made only when the person who seeks such interference, pleads and proves that (i) such transfer itself is by way of punishment or in lieu of punishment and (ii) before passing such order, he was not put on notice and heard. Only when the above two ingredients are proved to exist, the Court can interfere on the ground that no one can be punished unheard. Keeping this principle in mind, if we look into the facts and circumstances of the present case, the following admitted position would emerge :

(a) the management has no intention to treat the impugned transfer itself as a punishment or in lieu of punishment and on the other hand, it has initiated separate disciplinary proceedings against these petitioners by issuing charge memo and that the same has culminated into conducting an enquiry which is stated to be in advanced stage.

(b) before issuing the impugned transfer order, notices were issued on 28.09.2018, 03.10.2018 and 04.10.2018 to these writ petitioners. In all those notices, the petitioners were specifically informed that the stringent disciplinary action will be initiated as per the standing orders, if they fail to return to duty.

It is stated that despite such notices, since the petitioners did not respond to the same, consequently, the transfer orders



were issued. Therefore, it is evident that the impugned orders of transfer were issued not as a punishment but as a measure to keep the writ petitioners away from the work spot for some time and that before issuing the same, the petitioners were put on notice, to which they failed to respond. In view of the above, we find that the decisions relied on by the learned Senior Counsel for the appellant in **(2009) 2 SCC 592** (cited supra) and **2013 SCC on line Mad 3958** (cited supra) are not applicable to the facts and circumstances of the present case, which we have discussed in detail as hereunder.

15. It is also necessary to consider the implications of the judgment of the Supreme Court reported in (2009) 2 SCC 592 and that of the Division Bench of this Court in the judgment reported in 2013 SCC Online Mad 3958 (both cited supra). In the above mentioned judgment of the Supreme Court, the fact situation was that an officer of the Indian Revenue Service was transferred based on an anonymous complaint of caste bias, which, upon enquiry, was found to be untrue beyond any doubt or dispute. Despite that, he was transferred (paragraph 17 thereof). In the above mentioned Division Bench judgment of this Court, the employee concerned was a Deputy Chief Ticket Inspector in the Railways, who had filed a complaint with the State Human Rights Commission and had also approached this Court in respect of harassment by the police even prior to his transfer. More importantly, no charge memo was issued to him and the suspension order that was issued to him was subsequently revoked. In these facts and circumstances, this Court concluded, in paragraphs 14-16, that the order of transfer was punitive and that such "punishment cannot be imposed on a person without affording an opportunity of hearing, conducting an enquiry and giving a finding that such person was guilty of charges levelled against him." Thus, the above judgments are distinguishable on facts in as much as there is evidence that the transfers therein were mala fide and/or for extraneous reasons and also by way of punishment in violation of principles of natural justice because no enquiry was held in which the employee concerned had an opportunity to explain his position. In fact, in the above mentioned judgment, the Division Bench of this Court referred to the judgment of the Supreme Court which is reported in **(2004) 4 SCC 245**, cited supra, where the Supreme Court upheld a transfer in the factual context of alleged misbehaviour by holding that the purpose of transfer would be defeated if it was delayed until the conclusion of departmental proceedings in respect of the alleged misbehaviour.

16. From the above analysis of relevant case law, the following non-exhaustive principles emerge with regard to the law on judicial review of transfers:



(a) A transfer is an incident or condition of service and, therefore, is not ordinarily interfered with in exercise of the power of judicial review;

(b) A transfer is liable to be interfered with if, in the opinion of the court, there is sufficient evidence that such transfer is mala fide or if it is in violation of statutory provisions or service conditions;

(c) The administrative exigencies that, in the opinion of the employer, necessitate transfer cannot be exhaustively enumerated and the court would not ordinarily substitute its view for that of the employer in such matters;

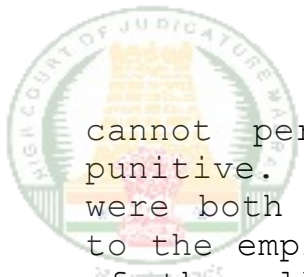
(d) A transfer would be construed as punitive or in lieu of punishment if, in the opinion of the court, there is sufficient evidence that such transfer is intended to be the punishment for the alleged misconduct. The provision of reasons in the transfer order, including reference to the alleged misconduct or complaints against the employee concerned, would not per se lead to the conclusion that the transfer is punitive;

(e) The fact that a separate enquiry is being conducted in respect of the alleged misconduct by providing an opportunity of hearing to the employee concerned, which could result in punishment depending on the outcome thereof, would indicate that the transfer is not intended to be punitive or in lieu of punishment;

(f) The fact that the service conditions and monetary benefits are not adversely impacted by the transfer order indicates, albeit not conclusively, that the transfer is not intended to be punitive or in lieu of punishment; and

(g) A punitive transfer is interfered with on judicial review on the basis that an employee should not be punished without providing such employee with a reasonable opportunity to defend himself/herself against such proposed punishment by way of transfer. As a corollary, a punitive transfer is not per se illegal and may be resorted to if the service conditions permit such transfer subject to fulfilment of the requirements for the imposition of punishment, including by way of transfer.

17. If the above principles are applied to the facts of this case, it is clear that the transfer orders advert expressly to the alleged unauthorised absenteeism, the alleged sit-in-strike and the consequential disruption of the functioning of the factory. From the facts on record, the transfers cannot be construed as mala fide especially when one considers the facts that there was large-scale absenteeism of welders during this period and such absenteeism would certainly be disruptive. Moreover, as per the principles laid down in the judgments discussed herein, this



cannot per se lead to the inference that the transfers are punitive. In this connection, we find that the orders of transfer were both preceded and succeeded by notices/alleged charge memos to the employees concerned and an enquiry was conducted in respect of the alleged misconduct. Therefore, we are of the considered view that the transfer is not punitive or in lieu of punishment and, on the contrary, the Respondents would separately decide on punishment for the alleged misconduct based on the outcome of the ongoing enquiry. For all these reasons, the order of the Writ Court is liable to be affirmed.

18. Notwithstanding the above conclusion upholding the legality of the orders of transfers, we note that the impugned transfer orders were issued on 09.10.2018 in the then prevailing factual context of disruption of work at the factory. Considerable time has elapsed thereafter and the current situation is completely different. Consequently, we are of the view that the respective Appellant should be permitted to submit a representation for re-consideration of the respective transfer order. If such representation is submitted, the respective Respondents should consider the same on merits and in accordance with the relevant rules and laws and pass orders thereon without being influenced by the observations herein with regard to the validity of the transfer orders.

19. In fine, these Writ Appeals are disposed of on the following terms:

- (a) The impugned orders of transfer are upheld as valid and the order of the Writ Court is affirmed;
- (b) The respective Appellant is permitted to submit a representation to the respective Respondents seeking re-consideration of the respective transfer order;
- (c) if such representation is submitted, the respective Respondents are directed to consider the same on merits and in accordance with applicable service conditions, rules and laws and pass speaking orders thereon uninfluenced by the observations herein with regard to the validity of the transfer orders;
- (d) there will be no order as to costs; and
- (e) Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //



W.A. (MD) Nos.1684 to 1695 of 2018

TO
THE DEPUTY MANAGER,
BHARAT HEAVY ELECTRICALS LIMITED,
TRICHY 14.

WEB COPY

+1 CC to M/s.A.V.ARUN, Advocate (SR-84464[F] dated 30/08/2019)

+21 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-84764[F] dated
30/08/2019)

sts

Common Judgment made in
W.A. (MD) Nos.1684 to 1695 of 2018

Dated:
30.08.2019

KM/ (04.10.2019) 16P 24C