

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8441 OF 2025

Asahi India Glass Ltd. and Ors. .. Petitioners
Versus
Dinesh S. Gajbare and Anr. .. Respondents

WITH
WRIT PETITION NO.8215 OF 2025

Asahi India Glass Ltd. and Ors. .. Petitioners
Versus
Aadesh M. Urankar and Anr. .. Respondents

WITH
WRIT PETITION NO.8217 OF 2025

Asahi India Glass Ltd. and Ors. .. Petitioners
Versus
Laxman Raghunath Kadam and Ors. .. Respondents

WITH
WRIT PETITION NO.8216 OF 2025

Asahi India Glass Ltd. and Ors. .. Petitioners
Versus
Prashant Chandrakant Joshi .. Respondent

WITH
WRIT PETITION NO.7946 OF 2025

Asahi India Glass Ltd. and Ors. .. Petitioners
Versus
Sameer Jog and Ors. .. Respondents

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- Mr. Avinash Jalisatgi a/w. Mr. T. R. Yadav and Mr. Mulanshu D. Vora, Advocates i/by Dhruv Karnik for Petitioners.
 - Mr. Yogendra M. Pendse, Advocate for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 07, 2025

P.C.:

1. Heard Mr. Jalisatgi, learned Advocate for Petitioners and Mr. Pendse, learned Advocate for Respondents.

2. This is a group of five Writ Petitions. For convenience facts in Writ Petition No.8441 of 2025 are referred. By order and judgement dated 29.03.2025 is passed by the Industrial Court, Thane in separate Complaints filed by the Respondents. In Writ Petition No.8441 of 2025, there are two Respondents. In Writ Petition No.8215 of 2025, there are two Respondents. In Writ Petition No.8217 of 2025, there are nine Respondents. In Writ Petition No.8216 of 2025, there is one Respondent. In Writ Petition No.7946 of 2025 there are nine Respondents.

3. The aforementioned 23 Respondents were employees of Petitioner No.1 Company called Asahi India Glass Limited. Petitioner No.1 has factories at several places in the country including Taloja, MIDC, Navi Mumbai. Respondents of Asahi India Glass Karmachari Sangh – Union filed complaint of unfair labour practice against Petitioner before the Industrial Court to challenge the order of transfer of Respondents dated 16.06.2014 before the Labour Court.

4. In so far as Respondent No.2 in Writ Petition No.8441 of 2025 is concerned, during the pendency of the complaint, he fully and finally settled all his claims and disputes with the Petitioners and did

not press for his claim in the complaint. The learned Industrial Court by order and judgement dated 29.03.2025, allowed the Complaint in respect of Respondent No.1 only. Similarly, Complaints were allowed for other Respondents in companion Writ Petitions. Learned Industrial Court directed Petitioners to give all wages and allowances to Respondents from 16.06.2014 till the date of their termination. Petitioners being aggrieved have challenged the said order and judgement of Industrial Court.

5. Mr. Jalisatgi, learned Advocate for Petitioners would submit that transfer of Respondents was in view of an incident of accident which occurred in the factory of Petitioner No.1 at Taloja, Navi Mumbai and hence Petitioner No.1 had to transfer the Respondents. He would submit that there was a furnace collapsed in the factory of Petitioner No.1 which brought its production activities in the Float Glass Unit at a complete standstill. For that reason, Petitioners approached the State Government under Section 25-O of the Industrial Disputes Act, 1947 (for short '**the said Act**') and only after the State Government accorded permission for closure of the said Float Glass Unit, Petitioners decided to terminate all 91 employees working in the said Unit. He would submit that Respondents before the Court were all working in the Float Glass Unit and had the Petitioners not transferred them they would had been constrained to terminate their services due to the above reason. He would submit that the transfer of

Respondents was never going to bring about any change in the nature of their work or change in their designation and therefore the said transfer could not have been held as illegal by the learned Industrial Court.

5.1. He would submit that Court has returned *ex facie* erroneous finding holding that by virtue of the said transfer, nature of work of Respondents had changed and due to transfer Respondents were required to do work of a different nature altogether than their previous work. He would submit that though it is true that Respondents were required to do work of meeting distributors and dealers of Petitioners at the place of their transfer but this cannot be rendered as illegal as such mere change in work cannot be rendered as change since there was no change in designation of Respondents, their allowances and service conditions to which they were entitled to when they were working in the Float Glass Unit previously. He would submit that neither there was any reduction in their rank or any demotion since Respondents had worked with Petitioners' Company since long and were duly acquainted with the manufacture of the products of Petitioner No.1 – Company. He would submit that hence Respondents were transferred and given the above work only because they could execute it without any difficulty. He would submit that in that view of the matter, the transfer order could not be held as illegal neither the work given to Respondents could be said to be different for holding the

said transfer illegal. He would submit that the impugned judgment and order passed by Industrial Court, holds that Respondents were performing supervisory and managerial duties prior to their transfer and therefore on being transferred they ought to have been given supervisory and managerial work.

5.2. He would submit that the learned Industrial Court has incorrectly held that by virtue of transfer Respondents were infact demoted and reverted from their original designation and posts. He would submit that work given by Petitioners to Respondents was due to the relationship between Petitioners and Respondents of master and servant and was purely governed by their contract of employment and there were no fixed cadres amongst different employees to specially transfer them in those cadres and give them the same nature of work. He would submit that the only reason to transfer Respondents was to save their employment in view of the accident which occurred in the factory of Petitioner No.1 to save their jobs and safeguard their wages, perks and all other service conditions.

5.3. He would submit that some of the employees who were transferred abided by the transfer orders and reported to work at the new place of transfer and hence allegations of reversion in designation or change in nature of duties by Respondents are totally baseless and are rues to avoid transfer. He would submit that even Respondents did

not dispute the accident which took place in the factory of Petitioner No.1 and thereof there was no occasion for the Industrial Court to hold that the furnace in the factory of Petitioner No.1 was working. He would submit that witness No.2 of Petitioner No.1 deposed that the furnace in the said factory was working but that was in the year 2022, which was eight years after the date of accident. He would submit that the Furnace had indeed collapsed on or about 29.05.2014 whereas witness No.2 of Petitioners was examined on 09.08.2022 i.e. after about 8 years and in the meantime Petitioners had erected a completely new Furnace Unit and commenced its operations. He would submit that deposition of Petitioners' witness No.2 was in reference to the new Furnace installed in the factory of Petitioner and it had no relevance or nexus to the accident in question.

5.4. He would submit that findings returned by the learned Industrial Court that transfer of Respondents was effected illegally is therefore wrong finding and deserves interference by this Court. He would submit that Respondents failed in their endeavour to prove that transfer order issued by Petitioners was *malafide* and in this background the learned Industrial Court in total ignorance of the law put the burden upon the Petitioners to prove its *bonafides*. He would submit that transferred employees who reported to work at their new place of transfer did not face any difficulty and performed the work assigned to them after they were imparted training which was

sufficient for them to perform their work.

5.5. That apart, he would submit that learned Industrial Court came to an erroneous conclusion that the transfer order was illegal because it was signed by illegal Competent Authority since Petitioner No.1 was not a Government or Public Undertaking amenable to Article 12 of the Constitution of India and Respondents were employed in the private sector where there were no such hard and fast and strict rules defining an Authority competent to transfer such employees. He would submit that decision to transfer the Respondents was taken at the managerial level of Petitioner No.1 – Company and therefore it was wholly irrelevant to contend and hold that order of transfer was not signed by the Competent Authority. He would submit that transfer orders were signed by Mr. Panigrahi who was the then Executive Director of Petitioner No.1 but inadvertently the name of Mr. Ganjoo the Chief Operating Officer was added on the said transfer orders. He would submit that both Mr. Panigrahi and Mr. Ganjoo held very high posts in Petitioner No.1 – Company and were competent to issue the transfer orders.

5.6. He would submit that Industrial Court has incorrectly held that despite collapse of furnace in the Float Glass Unit, the logistic works at Taloja Unit of Petitioner No.1 still continued. He would submit that this was only because apart from the Float Glass Unit

where the furnace had collapsed there were two other units of Petitioner No.1 Company namely Soft Coat Unit and Frosted Glass Unit which were in operation and these Units were not dependent on the furnace that collapsed. He would submit that the supply chain of these two units continued to work even after collapse of the Furnace since these units pertain to further process of glass which was already manufactured by in the Float Glass Unit and they were not dependent solely on the Float Glass Unit. He would submit that the other two Units which were in operation were bringing in and importing glass from other countries as well as from other manufacturers from other countries for the purpose of their operation and as such their Supply Chain Department continued to function normally despite collapse of furnace in the Float Glass Unit. He would submit that the impugned order is therefore not sustainable and deserves to be quashed and set aside.

6. *PER CONTRA*, Mr. Pendse, learned Advocate appearing on behalf of Respondents – employees in all Writ Petitions has made following submissions in common in all Writ Petitions:-

6.1. He would submit that Respondents were initially appointed and have been working in the Supply Chain Management Department of Petitioners' factory since inception and carried on duties, of Logistic, Billing and placing of Purchase indent as per indent received.

6.2. He would submit that Respondents stated that Petitioner No.1 is a Public Limited Company, engaged in the Business of Manufacturing of varieties of Multipurpose Glasses. He would submit that Petitioners in its Taloja Establishment employed more than 600 employees and has a Manufacturing Unit and Sales and Marketing, Logistic and Processing Units also.

6.3. He would submit that Petitioners are having two factory Units, one at T-7 MIDC and another at T-16 MIDC in the same place. He would submit that products manufactured by Petitioners at T-7 Unit are used as raw materials at T-16 Units.

6.4. He would submit that Respondents formed Union i.e. Asahi India Glass Karmachari Sangh even though there was one other Recognized Union. He would submit that Respondents were admittedly served with Appointment Orders at the time of their joining. He would submit that in the said Appointment Orders, terms and conditions of Employment and nature of duties are mentioned. He would submit that Respondents were made permanent employees and were confirmed in services.

6.5. He would submit that Petitioners vide order dated 16.06.2014 transferred Respondents from its Taloja Unit. He would submit that in Writ Petition No.8441 of 2025, Respondents are transferred to Thanjavor, Tamil Nadu and Jamui, Bihar State. He

would submit that in Writ Petition No.8215 of 2025, both Respondents are transferred to Jammu and Kashmir. He would submit that in Writ Petition No.8216 of 2025, sole Respondent is transferred to Tamil Nadu State. He would submit that in Writ Petition No.8217 of 2025, 9 Respondents are transferred to Jharkhand (1), Rajasthan (3), Chattisgarh (1), Punjab (1), Aasam (2) and Sikkim (1). He would submit that in Writ Petition No.7946 of 2025, Respondents are transferred to West Bengal (2), Uttar Pradesh (1), Punjab (2), Kerala (1), Jharkhand (1), Haryana (1) and Telangana (1).

6.6. He would submit that Respondents pleaded about their personal difficulties in respect to the transfer order but to no avail.

6.7. He would submit that case of Petitioners that because of furnace accident, it effected transfer of Respondents and also effected termination of 91 workmen and applied to the Government to close down its Float Glass Unit is false since the said Unit was resurrected and a new Furnace was installed and is in operation.

6.8. He would submit that transfer order is issued and signed by an incompetent and unauthorised person. He would submit that transfer order violates the service conditions and in absence of notice contemplated under Section 9A of the said Act, transfer amounts to illegal change in service conditions. He would submit that the findings recorded by the Industrial Court will have to be viewed from the

following basic principles for adjudication of the present Petition:-

- (i) Whether the findings are based on 'no evidence'?
- (ii) Whether the findings are without considering any evidence, if would have considered the same, the findings would affect the result extensively and / or totally become perverse?
- (iii) The ground of second view is possible is not available to the Petitioners.

7. I have heard Mr. Jalisatgi, learned Advocate for Petitioners and Mr. Pendse, learned Advocate for Respondents and with their able assistance perused the record of the case. The submissions made by them have received due consideration of the Court.

8. Challenge to the impugned order and judgement passed by learned Labour Court can be decided on four fundamental issues namely whether Respondents are Workmen; reasons for transfer; authority who passed transfer order and change in nature of duties.

9. In the present case it is seen that Respondents were admittedly working as workmen since inception. They were members of recognized Union under MRTU & PULP Act, 1971. The Respondents - employees have pleaded their nature of duty in the Complaint. Petitioner - Company has not denied the work carried out by

Respondents, *albeit* it has challenged the status of the Respondents as 'Workman'. Respondents have specifically stated in their pleadings that the work they have been doing since beginning till they were transferred was never changed. Admittedly, the Petitioner - Company was treating Respondents as 'Workman' till their purported promotions. There is no denial to the specific pleading of Respondents - employees in respect of duties carried out by them. Hence in view of non-denial of nature of work being carried out by Respondents, if Petitioners claimed that Respondents were having status of either supervisory or administrative nature, it was imperative upon Petitioners to bring on record the actual work done by Respondents as to how such criteria could be satisfied. Respondents have stated that when there was no dispute about the nature of duties hence the burden is upon Petitioners to prove the same as held by this Court in the case of *Seth Jeejeebhoy Dadabhoy Charity Funds And Ors. Vs. Farokh Noshir Dadachnji¹*. The Industrial Court has found an admission given by the witness No. 2 of the Petitioner - Company in paragraph No.41 of his evidence in cross-examination that no evidence is brought in the form of documents to show that Respondents - employees were in fact discharging the work which can be claimed as supervisory or administrative work. Industrial Court has recorded the finding that Respondents - employees are required to work on

¹ 2005 III CLR 110

computers and to maintain inventories. Therefore the Industrial Court has rightly concluded that the Respondents are 'Workman' under Section 2(s) of the said Act; consequently they are 'employees' under section 3(5) of the MRTU & PULP Act and the Complaint is maintainable. Industrial Court has held that the purported promotion letters do not show any change in the nature of work. Respondents have not produced an iota of evidence on record to show that in fact duties of Respondents - employees underwent any change post the incident of collapse of the furnace. The Petitioners have claimed that Respondents are working in capacity of supervisory and / or administrative duties, and yet the Respondents failed to produce any evidence about the work done by the Respondents while in employment of the Petitioner - Company. The best evidence about the same was in possession of the Petitioners and it has decidedly failed to produce the same on record. The witness No.2 of the Petitioner – Company has admitted the duties which are pleaded by the Respondents - employees in paragraph No.3a of the Complaint, therefore the Industrial Court has rightly returned the finding that Respondents - employees are 'workman' on the basis of pleadings and materials placed on record before it.

10. The Respondents filed complaint before Industrial Court by invoking item Nos.3, 9 and 10 of Schedule IV to the MRTU & PULP Act. As far as unfair labour practices are concerned, this Court in the

case of *Deluxe Theatre v. Bombay Labour Union*² has ruled in paragraph No.13 that:-

“It is trite knowledge that the evidence as to unfair labour practice or victimisation is in most of the cases inferential or circumstantial. An Industrial Court trying a complaint of unfair labour practice, can hardly hope to get direct evidence on the issue. It is the duty of the Industrial Court to look at the totality of the circumstances brought on record by the evidence and raise probable inferences from the cumulative effect of the evidence placed on record”.

11. The action of transfer with *malafide* covers *malafide* in law and *malafide* in fact.

12. The Industrial Court has referred to the order of transfer dated 16.06.2014 as one that was based on false reasons, the reasons for which are reflected at paragraph No.30 of the impugned judgment. Reasons given were that ‘the float glass furnace collapsed and it was not possible to revive/restart the operations and work was not available’. In the present case transfer order denotes this as the only reason for transfer. In this context it is important to consider the material admissions given by the Petitioners’ witnesses that work in logistic department was available even after collapse of furnace and in fact the furnace is now in operation has been stated in his examination-in-chief after it being restored. In this context the primary reason of impossibility to restart work is a false reason. Thus it is seen that, in spite of collapse of the furnace, work was available in the logistic department which is admitted in the evidence by

2 (1992) 1 CLR 256 (Bombay).

Petitioners. Therefore, the second reason of inability to provide work to Respondents on the part of Petitioners is once again a false reason and thus *malafide*. Hence, *malafides* are proved and once the reasons are false, transfer based on such false reasons is not in good faith. It is also seen that in the application made to the Government for closure of the Float Glass Unit under Section 25-O of the said Act, the Petitioners did not show the Respondents - employees as affected persons. Hence it could not be said that no work is available for the Respondents as claimed by Petitioners. From the material placed on record it *prima facie* indicated that the reasons given for transfer are false and *malafide* on the face of it.

13. The Industrial Court has further found that the Authority who issued the transfer orders to be incompetent. A 'competent/appropriate authority' is the person/entity having the best knowledge of the daily functioning and running of the units, which in the present case happens to be the employer. It is a matter of fact that the letter of appointment is under the signature of 'Executive Director' while the transfer order of Respondents are not signed by the Director, but by the Chief Operating Officer. It is seen that Respondents have categorically denied the Authority of the said officer. Petitioners in its written statement has denied the contention raised by Respondents in pleadings as stated in paragraph No.14 of the written statement. In this context, it is trite law that the fact in negative cannot be proved.

Petitioners have denied the pleading of the Respondents *qua* Authority of the person i.e. signatory of the transfer order and hence it was incumbent upon the Petitioners to produce his Authority.

14. In this context mere assertion is insufficient to prove the Authority in case of Petitioners as Petitioner No.1 is an artificial person and it speaks only through its resolutions or any other like document. The Petitioner - Company failed to produce any such written document to show the powers conferred upon the said officer (COO) to transfer the Respondents from one zone to another zone. Hence it is rightly concluded by Industrial Court that the transfer order was not signed by the Competent Authority. In absence of any such authority being brought on record the finding of the Industrial Court therefore cannot be faulted with.

15. As far as change in nature of duties is concerned, the pleadings submitted in the written statement of Petitioners is of paramount importance. The Petitioners in its written statement has categorically pleaded that conditions of service and marketing personnel are distinct and different from employees working in other division/departments, branches and factories. Respondents - employees were admittedly working at factory unit and in a department other than sales and marketing. In the teeth of this admission, much less specific pleading of the Petitioners, it leaves no

room for doubt that upon transfer Respondents are required to work in the employment of Petitioner - Company but with completely different service conditions. It is admitted in the pleadings that the duties which were discharged by Respondents - employees are not being controverted and hence, in view of the above admission in pleadings in the respect of service conditions of sales and marketing personnel, the service conditions of Respondents are bound to change. In such a case it does contemplate as a precondition of proper notice of change in service conditions. It is an admitted fact by Petitioners' witness No.1 in evidence that he was imparted with training and the same is taken into consideration by the Industrial Court while returning its findings in paragraph No.36 of the judgment. It is an admitted fact on record that notice of change in service conditions was not given to Respondents'. The Industrial Court has returned a specific finding in paragraph No.36 of the judgment that the witness of the Petitioner - Company has admitted in paragraph No.35 of his cross-examination that Respondents - employees are required to assist the sales representative in their new job.

16. It is seen from the record that the real reason for transfer of the Respondents was due to victimisation and involvement in Union Activities. The Respondents were initially members of the recognized union. Later on, Respondents formed another Union, i.e., 'Asahi India Glass Karmachari Sangh'. It has come in evidence that transfers were

specifically of those persons who were members of the new Union and no other person was transferred. This specific statement is not at all controverted in the cross-examination of the Respondents' witness.

17. If the aforesaid four observations and findings emanating from the record are considered then it is seen that transfer of Respondents – employees has been effected to 14 States in all. It is seen that Respondents pleaded about their personal difficulties with respect to the said transfer order but to no avail. That apart, on all the four counts namely whether there was change in the nature of duties or the reasons for transfer or the status of the Respondents being 'Workman' and their status after their transfer and the Authority who executed the transfer orders the case of Petitioners cannot be accepted. The reasons returned by the learned Industrial Court in its judgement and order passed on the issue framed in paragraph Nos.30 onwards upto para 39 are cogent and do not call for any interference. The said reasons are solely based on the deposition and evidence of Petitioners' and Respondents' witnesses.

18. Learned Industrial Court has held that if at all Respondents have to be transferred they have to be transferred in the same cadre itself at the transferred place where they would be required to perform the same nature of duties and responsibilities, but even on the basis of evidence of Petitioners itself it is proven that the nature of work and duty assigned to Respondents - employees was entirely different.

19. It is seen that they were working in the Float Glass Unit in Taloja MIDC as workmen but on transfer all of them were required to perform duties of sales and promotion of Company's products for which they were to be assigned training by Petitioners. Hence in that view of the matter, once the aforesaid dichotomy is noticed and is evident on the basis of the evidence of Petitioners itself, the said transfer is vitiated. It is Petitioners' own case that work of transferred employees at transferred places was in the sales and marketing Department and confined to approach the dealers of the Glass Company and apprise them about the manufactured products of the Company and to intimate them about the quality and utility of Company's products with intention to enhance sales and improve revenue of the Company.

20. That apart, it is also proved on record on the basis of deposition of Respondents' witnesses that Respondents were imparted training for 12 days in this regard to undertake the new job of sales and marketing personnel in Petitioners' Company at Vashi in Navi Mumbai before the transferred orders were issued. Such overwhelming evidence *prima facie* revolts against the action of Petitioners of transferring the Respondents on the pretext of the accident / collapse of the furnace selectively. The case of Petitioners that transfer of Respondents did not change their nature of duty therefore has been rightly rejected by the learned Industrial Court on

the basis of cogent and proven incriminating material against Petitioners.

21. In that view of the matter, the transfer orders are held to be *malafide* and I am not inclined to interfere with the judgments and order passed by the learned Industrial Court while deciding the 5 ULP Complaints in the present set of Writ Petitions. Therefore the impugned orders and judgement all dated 29.03.2025 passed separately by the learned Industrial Court in Complaint (ULP) No.187 of 2014; Complaint (ULP) No.189 of 2014; Complaint (ULP) No.190 of 2014; Complaint (ULP) No.245 of 2014 and Complaint (ULP) No.246 of 2014 are upheld and confirmed. Resultantly all five Writ Petitions fail.

22. All Writ Petitions are dismissed and disposed.

[MILIND N. JADHAV, J.]

23. After the order is pronounced in open Court, Mr. Jalisatgi, learned Advocate for Petitioners has requested the Court to stay the order to enable the Petitioners to test validity of the order in the Superior Court. His request for stay is granted. Present order is stayed for a period of four weeks from the date of uploading of this order.

[MILIND N. JADHAV, J.]

H. H. SAWANT

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