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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 06.10.2026	Delivered On: 27.10.2026

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR JUSTICE E. MANOHARAN

W.A.No.3286 of 2024
& C.M.P.No.25475 of 2024

The Branch Manager,
M/s.Bajaj Allianz Life Insurance Co. Ltd.,
No.85, Sidel Tower,
Opp. WCC College, WCC Road,
Nagercoil,
Kanyakumari District – 629 001.
Represented by its Authorized Representative,
M.Aravinda, S/o.M.I.Muniyappa … Appellant

vs.

M.Antony Dhass,
No.12/54, Mary's Cottage,
Muthuraman Kovil Road,
Thickanamcode,
Kanyakumar District – 629 804. … Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, pleased to set aside the order dated 26.02.2024 passed in W.P.No.19579 of 2019 and allow the Writ Appeal with costs.

For Appellant : Mr.G.Balasubramanian,
for M/s.Leela and Co.,

For Respondent : Mr.A.G.F.Terry Chella Raja

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Dr. G. JAYACHANDRAN, J.

The appellant herein is an Insurance Company, under which the respondents was employed as a workman, appointed as Customer Support Representative on 07.02.2005. His appointment was regularized with effect from 1.6.2006. Initially, he was posted in Nagercoil branch. Later, during the month of September 2010, he was transferred to Trichy TLC Offsite office. Prior to the issuance of the transfer order, the respondent was asked to do tele-calling work by contacting atleast 20 customers per day, which the respondent refused to do on the ground that tele-calling was not part of his work. Therefore, when the transfer order was issued to him, the respondent did not join at the transferred place, stating that it is an act of victimization and undue labour practice, since he was actively involved in trade union activities.

2. The respondent contended that TLC Offsite is not a Branch office of the appellant and therefore, the transfer order is in contravention of the terms and conditions of his appointment. Since the respondent refused to join at the new place at TLC Offsite, Trichy, he was terminated from service on 12.10.2010. Therefore, he raised an industrial dispute and sought reference to the tribunal for adjudication. The Central Government, Ministry of Labour and Employment, by order dated 31.03.2014, referred the dispute to the tribunal for

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adjudication. The dispute was numbered as I.D. No. 43 of 2014. The claim statement of the workman/respondent and the response of the respondent/management was considered to adjudicate the questions: (i) Whether the action of the management of M/s.Bajaj Allianz Life Insurance Company Limited, Nagercoil, in terminating the services of Sri.M.Anthony Dhass with effect from 12.10.2010 is legal and justified? and ii) What relief the workman is entitled to?

3. Before the Tribunal, the respondent was examined and on his behalf, 28 exhibits (Ex.W1 to Ex.W28) were marked. On behalf of the management, four witnesses were examined, but no documentary evidence produced.

4. The Tribunal framed the following points of consideration:

> *1. Whether the action of the Management in terminating the services of the petitioner is legal and justified?*
>
> *2. What is the relief to which the petitioner is entitled?*

5. The Tribunal, on analyzing the facts and circumstances of the case, held that the order of termination is punitive in nature, for the respondent's

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refusal to do the work of tele-calling assigned to him. The Management, under the pretext of transfer, forced him to join a non-existing company at Trichy and upon his refusal to accept the transfer order, without any inquiry, the Management has arbitrarily terminated the respondent.

6. The Tribunal further recorded that there is justifiable reason for the respondent/workman for not obliging the transfer order. The Management has failed to disprove the contention of the workman that TLC office at Trichy had no connection with M/s.Bajaj Allianz Life Insurance Co., Ltd and admitted that the M/s.TLC Offsite office is not a Branch Office of M/s.Bajaj Allianz Life Insurance. Therefore held that the termination order is illegal, the Tribunal after holding so ordered reinstatement to the Respondent with 50% back wages and other attendant benefits, together with interest at the rate of 7.5% p.a., from the date of the award.

7. Being aggrieved by the award passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai, in I.D.No.43 of 2014, dated 05.11.2015, the Management filed W.P.No.19579 of 2019. The learned Single Judge dismissed the writ petition, holding that there is no perversity in the findings of the Labour Court and same does not call for any interference.

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8. Challenging the order of the Learned Single Judge, confirming the award passed by the Industrial Tribunal-cum-Labour Court, Chennai, the present Intra-Court Appeal is filed on the ground that the appointment order issued to the respondent specifically states that the company reserves the right of transfer to any location where the Company had office or a newly established office, as per its requirements of the company and the service are transferable. Further, the appointment order dated 22.04.2026 had described the job description specifies that the normal work will consist of the duties assigned from time to time, and he may be called upon at any time to discharge any other duties which, in the opinion of the company, are within his capacity to perform. The respondent's refusal to carry out tele-calling work and his refusal to accept the transfer order is contrary to the conditions imposed in the appointment order. Hence, the order of the Tribunal and the order of the Learned Single Judge confirming the order of the Tribunal is bad in law for not properly appreciating the terms and conditions of the appointment.

9. The Learned Counsel appearing for the appellant referring to the reply of the respondent for the transfer order, state that, the Workman has stated that he is not accepting the transfer letter and also not willing to get transferred outside Kanyakumari District. By referring to this e-mail reply to the transfer

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order, the Learned counsel appearing for the appellant submitted that while in the appointment order it is specifically indicated that it is a transferable job and he can be posted anywhere where the company functions, the refusal to accept the transfer order, stating that he is not willing to go out of Kanyakumari District, amounts to clear insubordination and misconduct, inviting loss of trust. The Tribunal, without appreciating the tenor of the reply given by the respondent, ordered reinstatement with wages for workman who outrightly refused to do the work assigned and refused to join duty at the transferred place. The Learned Single Judge has ordered reinstatement with 50% backwages erroneously without considering the merits of the Management case.

10. Per contra, the Learned counsel appearing for the respondent/workman submitted that the reply to the transfer order cannot be read in isolation. The response of the respondent, soon after the termination order, also be considered, since it discloses the reasons why the termination order is illegal. The Tribunal as well as the learned Single Judge has considered the said representations, marked as Ex.W13 dated 27.02.2011 and Ex.W15 dated 14.05.2012, narrating the circumstances and the reason for forcing the respondent to do tele-calling work, which is outside the scope of his employment conditions and the transfer to a place outside Kanyakumari District

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where the appellant company had no branch for itself. In the inter-court appeal, the Division Bench need not re-appreciate facts, unless perversity implicitly seen. In this case, the concurrent finding of facts does not suffer any perversity to interfere.

11. On hearing the rival submissions, the points for consideration are:

(i) Whether the order of appointment issued by the appellant envisaged demanding tele-calling work from the respondent and if so, whether refusal to do tele-calling job amounts to misconduct to attract the capital punishment of termination?

(ii) Whether the respondent had a right to refuse to accept the transfer order outside Kanyakumari District, and

(iii) Whether refusal to accept the transfer order on the ground that the TCL Offsite, Trichy is not a branch office of M/s.Bajaj Allianz Insurance Company is justified?

12. The Tribunal, while considering the issue of refusal to take up tele-calling work, relied upon the oral evidence of Branch Manager of the appellant company that tele-calling is not specified in the appointment order as the duty of the petitioner. Taking note of the statement of the respondent/

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workman that tele-calling work been specifically assigned to two other staff in the Company, the Tribunal held that refusal to do the job which is not part of duty is justifiable. The Tribunal has held that the transfer order was issued only because the workman refused to take up the assigned job of tele-calling and it was a shortcut method adopted by the Management to relieve the respondent from service. The tribunal has observed that, after refusal to accept the transfer order, the workman was terminated immediately with three months' wages. The hasty decision to terminate without affording an opportunity to the respondent/workman is held to be illegal.

13. Regarding refusal to accept the transfer order, the Tribunal relied upon the oral evidence of MW1, the Assistant Manager of the appellant company that the TLC Offsite office at Trichy is not a Branch Office of the respondent but only a corporate agent of M/s.Bajaj Allianz Life Insurance. For want of documentary evidence to substantiate their statement, the Tribunal has held that, even assuming the transfer was on account of work exigency as claimed by the respondent, it was only a camouflage to send away the petitioner.

14. When this finding was challenged as perverse, the Learned Single

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Judge, in the writ petition has dismissed the appeal, recording that between the transfer order and the termination order there was more than a month's time for the Management to take disciplinary proceedings against the respondent for the misconduct of not accepting the transfer order, but no domestic inquiry was conducted. Therefore, the finding of the Labour Court that the Management had adopted a shortcut method to terminate the workman from service and its appreciation of the evidence by the Labour Court, does not suffer any perversity.

15. We find that, though the respondent was able to successfully correlate his earlier refusal to take up tele-calling workd assigned to him and his refusal to accept the transfer order before the tribunal as well as the learned Single Judge, his success in convincing the tribunal and the learned Single Judge is due to improper appreciation of material evidence and due to gross failure of appreciating the terms and conditions contained in the appointment order.

16. The order of appointment dated 22.04.2006 contains several conditions and terms. As far as the post offered to the respondent is termed as Customer Support Executive in Grade L1-B. His location is based at Nagercoil

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Branch office. However, the Company has reserved the right to transfer him at any other location where the Company had office or a newly established office, as per the requirements of the Company.

17. M.W.1, the Assistant Manager of the Management has clearly deposed that the TLC office at Trichy is one of the corporate agents of Bajaj Allianz. No doubt, the Management has not furnished any document to show whether the TLC office was established to carry out the requirements of the Company. However, it is to be noted that the respondent did not refuse to join the TLC Offsite office at Trichy because it is not an establishment carrying out the requirements of the appellant company. He had refused to accept the transfer order because he is not willing to go out of Kanyakumari District. It is also to be noted that, when the Management asked the respondent to carry out tele-calling job, he refused to accept the additional job, though the appointment order, under the head "Job Description," stated:

> *"Although your normal work will consist of the duties assigned to you from time to time, you may at any time be called upon to discharge any other duties which in the opinion of the Company are within capacity to discharge and you will forthwith undertake to discharge those duties with diligence and care."*

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18. Taking note of the fact that two persons exclusively employed for tele-calling job, the Tribunal has justified the refusal of the respondent to carry on the additional work. When the Management has confronts a workman who refused to take up additional responsibility, had thought fit to transfer him to a place where he can carry on the job of Customer Support Executive alone and not to do the follow-up action of tele-calling to remind the existing customers for renewals of the policy. This action of transfer cannot be termed as malafide action. Even the employee/respondent, initially had not stated that the transfer is a malafide action, so he will not join at the transferred place. He has refused to join the place of transfer because he was not inclined to go out of Kanyakumari District. The appointment order specifically states that it is a transferable job, though the initial appointment was based at Nagercoil branch, it is not a non-transferable job. The refusal to join at the transferred place, simpliciter without assigning any reason and the reasons assigned subsequent to the termination in our view is only to fill up the lacuna, on advice hence same cannot be accepted.

19. In ***Novartis India Limited vs. State of West Bengal and others*** reported in ***(2009) 3 SCC 124,*** the Hon'ble Supreme Court, while dealing with a

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similar case of dismissal without conducting an enquiry for not joining service at he transferred place, observed that:

> *"18. When an employee does not join at his transferred place, he commits a misconduct. A disciplinary proceeding was, therefore, required to be initiated. The order of discharge is not a substitute for an order of punishment. If an employee is to be dismissed from services on the ground that he had committed a misconduct, he was entitled to an opportunity of hearing. Had such an opportunity of hearing been given to them, they could have shown that there were compelling reasons for their not joining at the transferred places. Even a minor punishment could have been granted. The appellant precipitated the situation by passing a post-haste order of termination of their services."*

20. In exceptional cases, termination without a formal enquiry can be justified by leading evidence before the Labour Court. This proposition delivered by a Bench of Three Judges of the Hon'ble Supreme Court in ***State of Uttarakhand and others vs. Sureshwati,*** reported in ***(2021) 3 SCC 108***, holds the field, so we extract the relevant portion of the Hon'ble Supreme Court observations below extensively.

> *"**18.** This Court has in a catena of decisions held that where an employer has failed to make an enquiry*

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before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.

19. *A four-Judge Bench of this Court in Workmen v. Motipur Sugar Factory (P) Ltd. [Workmen v. Motipur Sugar Factory (P) Ltd., AIR 1965 SC 1803] held that:*

> *"11. It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron & Steel Co. Ltd. v. Workmen [Indian Iron & Steel Co. Ltd. v. Workmen, AIR 1958 SC 130]) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sasa*

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Musa Sugar Works (P) Ltd. v. Shobrati Khan [Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan, AIR 1959 SC 923], Phulbari Tea Estate v. Workmen [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111], and Punjab National Bank Ltd. v. Workmen [Punjab National Bank Ltd. v. Workmen, AIR 1960 SC 160]. These three cases were further considered by this Court in Bharat Sugar Mills Ltd. v. Jai Singh [Bharat Sugar Mills Ltd. v. Jai Singh, (1962) 3 SCR 684], and reference was also made to the decision of the Labour Appellate Tribunal in Ram Swarath Sinha v. Belsund Sugar Co. [Ram Swarath Sinha v. Belsund Sugar Co., 1954 LAC 697] It was pointed out that 'the important effect of omission to hold an enquiry was merely this: that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out'. It is true that three of these cases, except Phulbari Tea Estate case [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111], were on applications under Section 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required

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by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate case [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111] was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."

20. *Subsequently in Delhi Cloth & General Mills Co. v. Ludh Budh Singh [Delhi Cloth & General Mills Co. v. Ludh Budh Singh, (1972) 1 SCC 595] this Court held that:*

"60.... (1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the

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Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

* * *

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence."

21. *Reliance is also placed on the judgment of this Court in Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. [Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813: 1973 SCC (L&S) 341] wherein the broad principle regarding holding of the enquiry were spelt out as:*

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"32. From those decisions, the following principles broadly emerge:

'(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or malafide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to

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give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

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(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in Panitole Tea Estate v. Workmen [Panitole Tea Estate v. Workmen, (1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal.'

21. From the material in hand, we find from the evidence that the respondent herein admittedly refused to take up the additional responsibility of

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tele-calling, which form part of his duties as Customer Support Executive. He further refused to accept the transfer order, insisting that he must be retained in Kanyakumari and he will not accept the transfer elsewhere. The Learned Single Judge has observed that, before termination, the Workman ought to have been given an opportunity of participating in an enquiry and that the order of termination without enquiry suffers infirmity. However, from the judgments cited above, an enquiry can be dispensed with even in cases of termination but the Management has to prove the misconduct by leading evidence before the Labour Court. The documents relied by the Workman itself indicate that his refusal to accept the transfer order anywhere outside Nagarcoil District was apparently a disregard or breach of the conditions of service.

22. Therefore, we hold that there is no necessity for conducting any domestic enquiry when a workman refuses to accept the transfer order and insist for retaining at the existing place of work. His refusal contained not only before termination but even after termination. If he had offered to join in the transferred place, atleast after termination his claim that summary dismissal is illegal could have been a plausible reason to interfere the termination order. A workman who is insubordinate to accept the order of transfer, inspite of a condition that his appointment is transferable, we find there can be no lesser

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punishment than termination of service. Having paid three months' salary in lieu of notice, as contemplated under the Act, there can be no more service benefit or monetary benefit could be given to the respondent.

23. Hence, we are constrained to set aside the order of the Learned Single Judge as well as the order of the Labour Court and we confirm the order of termination passed by the Management for misconduct.

24. In the result, the Writ Appeal stands allowed. The order of the learned Single Judge as well as the award of the Labour Court are set aside. The order of termination passed by the management against the respondent is confirmed. Consequently, the respondent shall not be entitled to any service benefits or monetary benefits other than three months' salary already paid in lieu of notice. However, we make it clear that if any amount paid to the respondent as interim relief, same need not be recovered.

25. Accordingly, ***W.A.No.3286 of 2024 is allowed.*** There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(**Dr**. **G. JAYACHANDRAN, J.**) & (**E. MANOHARAN, J.)**
27-10-2026

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Dr. G.JAYACHANDRAN, J.
&
E. MANOHARAN, J.

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W.A.No.3286 of 2024

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W.A.No.3286 of 2024
& C.M.P.No.25475 of 2024

Judgment delivered on
27-10-2026

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