

(1994) 02 BOM CK 0030
In the Bombay High Court
Case No : Writ Petition No. 4854 of 1991

Adil K. Patel

APPELLANT

Vs

Tata Iron and Steel Company Ltd. and others

RESPONDENT

Date of Decision : 15-02-1994

Acts Referred:

Industrial Disputes (Bombay) Rules, 1957 — Rule 62
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 18, 2(p)

Citation : (1995) 1 BomCR 441 : (1997) 3 LLJ 164 : (1995) 1 MhLj 574

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : C.U. Singh, for the Appellant; K.M. Naik, instructed by M/s. Salgaonkar, for the Respondent

Judgement

1. The question that arises for consideration in this writ petition is whether an employer can ask his employee to forego his employment with it and accept the offer of employment with some other employer and on his refusal to do so, terminate his service. The petitioner was in the employment of Tata Iron And Steel Company Ltd., Respondent No. 1 herein. He was retrenched from service with effect from March 10, 1986. Aggrieved by the order of retrenchment, the petitioner filed a complaint of unfair labour practice against the respondent before the Labour Court which was rejected. The petitioner has challenged the above order by this writ petition.

2. The material of the case, briefly stated, are as follows : The petitioner is a qualified Accountant holding a B. Com degree. He had also passed Intermediate examination of the Institute of Chartered Accountants. On May 15, 1979, the petitioner received an interview call for the post of Accounts Assistant in the Accounts Department of M/s. Tata Iron and Steel Co. Ltd. (the 1st respondent, hereinafter referred to as "the respondent company"). The petitioner appeared for the interview. He was selected for the said post and appointed by the respondent company by appointment letter dated July 5, 1979. The appointment took effect

from July 15, 1979. The petitioner was put on probation for a period of six months from the date of joining. He was confirmed in that post on December 11, 1979. The petitioner worked in the said post for about 5 years till July 31, 1984 when by an office order dated July 26, 1984 it was directed by the Chief Accountant of the respondent company that the petitioner who was working as accounts Assistant in the Accounts Department of the Head Office would work in the Central Share Department. He was required to report to one Mr. K. R. Bharucha of the Central Share Department at Maker Towers, Cuffe Parade, Bombay. By the very same office order one Mr. Surti who was working as Assistant in the Central Share Departments was directed to work in the fixed deposit section. On August 1, 1984, the petitioner reported to Mr. K. R. Bharucha of the Central Share Department and he was allotted work in that department. While working in the share department, the petitioner came across some reports about the likely transfer of his service to a newly formed company viz., Tata Share Registry Private Limited along with other members of the staff working in the share department. On the basis of the above report, the petitioner made a representation to the Director of Finance of the respondent company on December 31, 1985 expressing his disinclination to go on transfer to the new company in the event of any such transfer taking place. On January 30, 1986, the petitioner was informed by the Company Secretary of the respondent company Mr. Y. M. Bhangle that the Tata Central Share Department had been closed down and the work of handling share registry had been entrusted to a new company called Tata Share Registry Private Ltd. (Tata Share Registry). He was also informed that the new company, Tata Share Registry Private Ltd. had agreed to provide employment to the petitioner on their terms and conditions and were additionally offering a lump sum compensation in consideration of his foregoing employment with the respondent company. He was asked to get in touch with one Mr. Ashok Maitra of the Tata Share Registry for finalisation of the formalities. It may be pertinent to mention here that the petitioner since his employment in the year 1979 as an Assistant in the Accounts Department of the respondent company was althroughout in the employment of respondent company. He never ceased to be the employee of respondent company. By office order dated July 26, 1984 of the Chief Accountant of the respondent company, the petitioner was asked to work with effect from August 1, 1984 in the Central Share Department of the respondent company in place of Accounts Department where he had been working so long. The above transfer did not affect his service with the respondent company. He continued to be on the rolls of the respondent company. There is no dispute about it. His salary was also paid by the respondent company. This is also evident from the tax deduction certificate issued by the respondent company for the relevant period when he was working in the Central Share Department.

3. The petitioner replied to the letter of the Company Secretary of the respondent company dated January 30, 1986 by his letter dated February 7, 1986. He informed him of his unwillingness to accept the offer. The petitioner

categorically declined to resign from respondent company and accept the new employment offered to him. By another letter dated February 12, 1986 addressed to the Company Secretary of the respondent company the petitioner put on record that he was orally threatened with termination of service in the event of his refusal to accept the new offer which was contrary to law. In reply, the Company Secretary of the respondent company wrote letter dated February 19, 1986 to the petitioner. In the said letter it was stated that the Tata Central Share Department where the petitioner was working had been closed down and the work of handling the share registry had been taken over by another company called Tata Share Registry Private Limited. It was also stated that 16 other employees like the petitioner working in the erstwhile Tata Central Share Department who were rendered surplus consequent to the said closure of the Central Share Department had agreed to accept employment with the new Tata Share Registry Private Limited, on the terms and conditions agreed upon between them. He was informed that two of the employees instead of accepting the new employment had opted for retirement. It was also mentioned in the above letter that before making the offer of new employment to the employees working in the Central Share Department the matter had been discussed with their representatives. It was emphasised that the offer of employment made by Tata Share Registry Pvt. Ltd. to the employees of the respondent company working in Central Share Department had been accepted by all other employees working in the said department except the petitioner. The petitioner was informed that though the new company Tata Share Registry Ltd. was different from respondent company, care had been taken to protect the gross emoluments of the employees and in addition they were given a compensation of Rs. 40,000/- to take care of loss of other benefits to the extent possible. The petitioner was, therefore, asked to accept the employment offer made by the new company Tata Share Registry Pvt. Ltd. as had been done by his other colleagues placed in similar situation. The petitioner did not accept the offer. On the other hand, by letter dated February 25, 1986, he reiterated his resolve to continue in the employment of the respondent company and to retire as an employee of the said company and not to accept the new employment offered to him. In the said letter the petitioner also explained to the Company Secretary of the respondent company that he could not be equated with other employees who had accepted the offer of employment in the new company or opted to retire because they were working on the permanent rolls of the Central Share Department whereas he had been appointed in the year 1979 on the permanent rolls of the Accounts Department and had althroughout been working in the said department till he was directed by office order dated July 26, 1984 to work in the Central Share Department. The case of the petitioner, in other words, is that his working in the Central Share Department was a temporary phenomena. He was qualified to work only in the Accounts Department and was accordingly employed specifically in that department where he worked for long 5 years till the issue of office order by which he was asked to work in other department. The Company Secretary of the respondent company, by letter dated March 10, 1986, reiterated

his statements about the closure of Central Share Department etc. and the offer of employment in the new company to the persons working in that department. The petitioner was also informed by the said letter that "there was no other position in the company where his experience in the share department could be fruitfully utilised". It was also mentioned that it was not feasible for the company to disturb its established work set up by retaining the petitioner in employment and retrenching some other employees junior in service but doing work of altogether different nature than what the petitioner had been doing in the share department. For the above reasons the petitioner was informed that his services would stand terminated with effect from March 10, 1986.

4. Aggrieved by the above action of the respondent company the petitioner filed a complaint under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (MRTU and PULP Act) in the Labour Court at Bornbay. The contention of the petitioner was that the termination of his services by the respondent company amounted to retrenchment and/or dismissal from service. According to him, under the facts and circumstances of the case, his retrenchment was mala fide and amounted to unfair labour practice within the meaning of items 1(a), 1(b), 1(d), 1(f), 1(g), 9 and 10 of Schedule IV to the MRTU and PULP Act. According to the petitioner, his retrenchment/dismissal was on patently false grounds. In fact it was a dismissal due to his refusal to follow the dictates of the respondent company to forego its employment and to accept the employment offered by the newly formed company. It was contended by the petitioner that primarily he belonged to the accounts department and it was only for a temporary period of 11/2 years that at the direction of the employer he worked in the Central Share Department. In that view of the matter, in the event of that department being closed down, he should have been sent back to the Accounts Department which was his parent department. In support of his contention that the termination was on patently false grounds the petitioner also emphasised that there was sufficient work available in the Accounts Department even at the time of closure of the Central Share Department which is evident from the fact that not only a number of new persons were appointed therein but one of the persons from Central Share Department who was working in that department for long 28 years and who was only a matriculate was also directed to work in the Accounts Department with effect from August 1, 1984 by the very same office order by which the petitioner was directed to work in the Central Share Department. The petitioner contended that the above facts clearly exposed the falsehood of the stand of the respondent company that there was no other position in the company where the experience of the petitioner could be freely utilised. The petitioner could have been easily put back in the Accounts Department where he had worked for about 5 years.

5. Before the Labour Court the respondent company placed reliance on a letter dated February 7, 1986 written to the respondent company by the Head Office Employees' Association which was signed by its General Secretary, Vice-President and Special Representative of "the Share Department employees". In

the said letter it was stated that the 14 employees of TISCO who were deputed to Tata Central Share Department had agreed to take up employment in Tata Share Registry in consideration of certain additional assurances given by the management of the respondent company. The said assurances were reflected in the said letter. It was contended by the company that the said letter amounted to an agreement/settlement between the management and the recognised union which was binding on all employees even if some of them were not members of the Union. The petitioner seriously objected to the above contention. According to him the letter of the union was neither a settlement nor an agreement within the meaning of Section 2(p) of the MRTU and PULP Act read with Section 18 of the Industrial Disputes Act, 1947. It was contended that in no event the said letter can give a right to the respondent company to terminate the services of the petitioner more so when he was not an employee of the Central Share Department. The Labour Court, however, did not accept this contention of the petitioner. It agreed with the respondent company that the above letter was an agreement/settlement between the management and the union which was binding on all employees of the establishment and the petitioner, having refused to accept the same, lost his right to the employment and monetary compensation available to him in terms of the said settlement. It was, therefore, held that the petitioner failed to prove any of the unfair labour practices enumerated in Item 1 of Schedule IV to the Act. This above order of the Labour Court is the subject matter of challenge in this writ petition.

6. Learned counsel for the petitioner Mr. C. U. Singh submits that the Labour Court had failed to appreciate the facts and circumstances of the case, the real issues involved in the case and the letter of the Union in proper perspective. According to him, the Labour Court committed a manifest error of law in treating the letter of the Union as an agreement or settlement within the meaning of Section 2(p) of the Act binding on the employees u/s 18 of the Act. Counsel further submits that no union by issuing such a letter can agree to the termination of services of the employees. The union can only arrive at an agreement in regard to service condition etc. Counsel further states that the petitioner was never employed in the Central Share Department and, as such, any agreement between the respondent company and the employees working in the share department cannot be binding on him. It was also pointed out that at no point of time, the management had told the petitioner that there was an agreement between the management and the union. The mere fact that the matter was discussed with the Union cannot justify the same being labelled as an agreement or settlement with the union. Counsel also submits that in any view of the matter the above discussion cannot be treated as an agreement for the purpose of Section 18.

7. Learned counsel for the respondent company, on the other hand, submits that this is not a case of unfair labour practice by the management. There was bona fide closure of the Central Share Department as a result of which the employees working therein became surplus which would have necessitated their

retrenchment. Instead of doing so, the respondent company made all efforts to get an alternative employment for them and also to get them compensated for any loss that might be caused to them on account of change in their service conditions. The matter was discussed not only with them but also with their union and the offer of the company, having been found just and reasonable, was accepted by all the employees working in the Central Share Department except the petitioner. Under the circumstances, learned counsel submits that it is not proper on the part of the petitioner to allege any unfair labour practice on the part of the respondent company. It is also submitted that the letter of the union is an agreement within the meaning of Section 2(p) and Section 18 of the Act and non-fulfilment of the requirements of Rule 62 of the Industrial Disputes (Bombay) Rules, 1957 cannot make it void or non est. The contention is that a settlement with the union is binding on every employee of the establishment u/s 18 of the Act even if any employee is not a member of the recognised union. According to him the Labour Court was fully justified in holding that there was no unfair practice on the part of the company as alleged by the petitioner.

8. I have considered the rival submissions. I have carefully perused the order of the Labour Court which runs into more than 70 typed pages. It is really distressing to note that except the last two pages, it contains mere reproduction of the complaint, written statement and the written submissions of the parties. The observations of the Court on the rival submissions are totally absent. The complaint has been disposed of only on the ground that the respondent company had entered into an agreement with the union representing the workmen of the Central Share Department which was closed down by it in pursuance to which all employees of that department were required to accept fresh employment in the new company with continuity of service etc. and lump sum payment by way of compensation for loss of more favourable terms of employment. According to the Labour Court, in view of such an agreement it was not open to the petitioner-employee to challenge the action of the management and to raise any complaint of unfair labour practice.

9. I have examined the above letter of the Union. It is written by the Tata Head Office Employees' Association to respondent company on February 7, 1986 and is signed by the Hon. General Secretary and Vice-President of the said union and one Mr. G. Jayagopalan Iyer, Special Representative of the Share Department employees. This letter does not even speak of any agreement between the union and the management. It merely purports to put on record that 14 employees had agreed to take up employment in the newly formed company. Evidently, those 14 employees did not include the petitioner because, the admitted position is that besides the petitioner who came on transfer from the Accounts Department, there were 16 employees on the permanent rolls of the Shares Department, two of whom resigned. The petitioner was in addition to these 14 employees and in that view of the matter, on the face of it, the above letter does not even purport to include the petitioner when it refers to the 14 employees of the said Department. Otherwise also, it is difficult to hold the above letter to be a

settlement or an agreement which might be binding u/s 18 of the Act. Section 18 of the Act which is relevant for the present purpose as it stood at the material time is as follows :

"18. Persons on whom settlements and awards are binding. - (1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement :

....."

Section 2(p) of the Act which defines a settlement is in the following terms :

"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;"

From the above definition it is clear that in order to be a settlement within the meaning of Section 2(p) of the Act (i) it has to be a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding (ii) such agreement should be signed by the parties thereto in such manner as may be prescribed and (iii) a copy of it should be sent to an officer authorised in this behalf by the appropriate Government. Rule 62 of the Industrial Disputes (Bombay) Rules, 1957 speaks of the form of settlement and the manner in which it should be signed by the parties. Sub-rules (1), (2) and (4) thereof read as follows :

"62. Memorandum of settlement. - (1) A settlement arrived at in the course of the conciliation proceedings or otherwise, shall be in Form XVI.

2) The settlement shall be signed by -

a) in the case of an employer, by the employer himself, or by his authorised agent, or where the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of such company or body;

b) in the case of workmen, either by the President or Secretary or such other officer of a trade union of the workmen as may be authorised by the Executive Committee of the Union in this behalf, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

.....

4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings before a Conciliation Officer or Board, the parties to the settlement shall jointly send a copy thereof to

the Secretary to the Government of Maharashtra, Industries and Labour Department, Bombay, the Commissioner of Labour, Bombay, the Deputy Commissioner of Labour (Administration), Bombay, the Deputy Commissioner of Labour, Poona, the Deputy Commissioner of Labour, Nagpur and the Conciliation Officer concerned."

It is clear from the above provisions that while saying that a settlement between the employer and the recognised union shall be binding on all the employees, the legislature also made inbuilt safeguards against its misuse by providing that such agreement should be in proper form and signed by the parties and copies thereof signed by both employer and the workmen should be forwarded to the concerned parties for their information. These requirements are not empty formalities. They are intended to protect the interests of the workmen. That purpose will be frustrated if these requirements are not strictly construed or duly complied with. In other words, the requirements contained in clause 2(p) and Rule 62 are mandatory and non-compliance of these requirements will have a serious dent on the binding effect of any settlement arrived at between the parties. In the instant case, it is evident that it is merely a letter written by the union to the employer which is sought to be termed as "settlement". It is neither in the Form XVI nor is it signed by both the parties nor its copies have been sent to any of the authorities mentioned in rule 62. This letter was not even referred to by the employer not to speak of relying upon the same at any stage till the production of the same before the Labour Court in the course of hearing of the complaint of the petitioner. This clearly goes to show that it was never intended to be an agreement by the employer itself. Besides, the letter itself speaks of 14 workmen having agreed to the offer of fresh appointment and purports to put on record the said offer of the employer. Such a letter, in my opinion, cannot be termed as a settlement within the meaning of Section 2(p) of the Act which can have a binding effect u/s 18 of the Act. Reference may be made in this connection to the following observations of the Supreme Court in *C. Mackertich Vs. Steuart and Co., Ltd.* :

"In the light of these provisions we do not think Section 18(1) vests in the management and the union unfettered freedom to settle the dispute as they please and clothes it with a binding effect on all workmen or even on all member workmen of the union. The Settlement has to be in compliance with the statutory provisions".

Reference may also be made to another decision of the Supreme Court in *Brooke Bond India Ltd. Vs. The Workmen*, . In this case, a controversy arose whether the office-bearers of a trade union can sign an agreement without there being specific authorisation to do so either in the constitution of the union or in a resolution adopted by the union. It was held by the Supreme Court : (at P 186)

"It cannot be disputed that unless the office bearers who signed the agreement were authorised by the executive committee of the union to enter into a settlement or the constitution of the union contained a provision that one or

more of its members would be competent to settle a dispute with the management, no agreement between any office bearer of the union and the management can be called a settlement as defined in Section 2(p)".

Referring to its earlier decision in *M/s. Delhi and General Mills v. Management of M/s. Delhi Cloth and General Mills* (supra) it was further observed that rule 58 of the Industrial Disputes (Central) Rules, 1957 was similar to Rule 62(2)(b) of the Bombay Rules. The Rule must be fully complied with if the settlement is to have a binding effect on all workmen. It was observed that the procedure prescribed by Rule 62 of the Bombay Rules presupposes the existence of a valid settlement. The Supreme Court also referred to the decision of the Delhi High Court in *Hindustan Housing Factory Ltd. v. Hindustan Housing Factory Employees' Union*; 1971 XI LLJ 222 wherein it has been held that :

"The language of Section 18(1) clearly shows that settlement will be binding only "on the parties to agreement". The definition of "settlement" in Section 2(p) of the Act also states that "settlement" means a settlement arrived at "between the employer and the workmen". So, normally in order that a settlement between the employer and the workmen may be binding on them, it has to be arrived at by agreement between the employer and the workmen. Where the workmen are represented by a recognised union, the settlement may be arrived at between the employer and the union."

10. Reference may also be made to the decision of the Delhi High Court in *International Airports Authority of India Union v. I. A. A. of India* 1991 LLR 481. In the above case the minutes of the meeting were recorded and duly signed by two representatives of the management and two of the union. The said minutes were sought to be "relied upon as settlement by the management within the meaning of Section 2(p) of the Act. It was held by the Delhi High Court that :

"Since the memorandum dated March 22, 1991 does not comply with the requirements of Section 18 and Rule 58 it is no Settlement in the eye of law. Neither the Employees' Union nor the Management is bound by the same".

11. In view of the above decisions, it is clear that the requirements of Section 18 and Rule 62 are mandatory and unless any agreement between the union and employer is strictly in compliance with the requirements thereof it will not be a settlement within the meaning of Section 2(p) of the Act and will not be binding u/s 18 of the Act.

12. Counsel for the respondent company relied on the decision of the Supreme Court in *The Workmen and Others Vs. Hindustan Lever Ltd.*, in support of his contention that there may be a settlement even by exchange of correspondence and strict compliance with the requirements of Rule 62 is not necessary. I have carefully perused the said decision. his decision was rendered in the peculiar facts and circumstances of that case and cannot be treated as an authority for a general proposition that the requirements of Rule 62 are not mandatory. It was a case where a particular agreement was not in the form and manner required by

the Rules. The employer which swore by the agreement and repeatedly succeeded in getting thrown out certain references at the threshold on account of the said agreement wanted to contend that there was no concluded agreement. "Re Supreme Court fell heavily on the employer and observed (at page 397) :

"Having meticulously examined various references pertaining to various industrial disputes between the parties at different centres in India since the agreement in 1957 it unquestionably emerges that the employer till the present reference never once even whispered that the agreement was not a concluded agreement or that it was an inchoate one left hanging at the stage of negotiations. But in the present reference the contention raised was that the agreement was not a concluded agreement because that is how the Tribunal has approached the problem. The Tribunal has observed in this behalf as under :

"According to the management the three letters do not constitute an agreement because in an agreement there should be an offer and the offer must be accepted as such. They have argued that the offers made in Ex. W-2 have not been accepted as such in Ex. W-3 .."

The employer which swore by the agreement and repeatedly succeeded in getting thrown out certain references at the threshold on account of the agreement, now wants to contend that there was no concluded agreement and ignoring the whole history, the Tribunal falls into an error in accepting this contention. The weight of evidence not only not at all referred to by the Tribunal but frankly wholly ignored clearly and unmistakably led to one and one conclusion alone that according to the employer there was the concluded agreement between the parties. It is a solemn agreement, the agreement of which effective and wholesome advantage has been taken by the employer and when it now does not suit it, it in breach of the solemn agreement wants to turn round and not only repudiate it but disown it as having never been entered into. No Court of justice can ever permit such a thing to be done."

It is clear from the above observations that this was rendered in the facts and circumstances of that case. In fact, the employer was stopped from challenging the agreement in view of his conduct althroughout. This decision is not based strictly on the interpretation of Section 2(p) or the relevant Rule.

13. The next submission of counsel for the petitioner is that the petitioner being an employee of the respondent company could not be forced to join employment with another company. In support of this contention reliance is placed on a number of decisions of the Supreme Court. I have carefully considered the above submission. In *Manager, Pyarchand Kesarimal Ponwal Bidi Factory Vs. Omkar Laxman Thange and Others*, it was held by the Supreme Court that even when an employer lends services of his employee to third person, the employee still continues to be in the employment of his employer and hence the third person cannot terminate the services of the employee. It was also held that a contract of service being incapable of transfer unilaterally, a transfer of service from one

employer to another can only be effected by a tripartite agreement between the employer, the employee and the third party, the effect of which would be to terminate the original contract of service and to make a new contract between the employee and the third party. So long as the contract of service is not terminated, a new contract is not made and the employee continues to be in the employment of the employer. When an employer orders him to do a certain work for another person, the employee still continues to be in his employment. The employee has the right to claim his wages from the employer and not from the third party. Such third party-hirer may pay his wages but that is because of his agreement with the employer. The hirer may also exercise control and direction in the doing of the thing for which he is hired or even the manner in which it is to be done. But the hirer third party cannot dismiss him. The right of dismissal vests in the employer. The same opinion was expressed by the Supreme Court in its decision in *Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others*, . This was a case where an Assistant Professor appointed at one centre of the Jawaharlal Nehru University was sought to be transferred to Manipur University in terms of the Resolution of the Jawaharlal Nehru University. It was held by the Supreme Court (at page 590) :

"In this appeal the main contention of the appellant is that the respondent was appointed at the Centre of Post-graduate Studies, Imphal, and when the Centre was transferred to that University, his services were automatically transferred to that University, and consequently he could not claim to be an employee of the appellant University. The argument proceeds on the assumption that the Centre of Post-graduate Studies at Imphal was an independent entity which existed by itself and was not a department of the appellant University. The submission proceeds on a fallacy. The Centre of Post-graduate Studies was set up at Imphal as an activity of the appellant University. To give expression to that activity, the appellant University set up and organised the Centre at Imphal and appointed a teaching and administrative staff to man it. Since the Centre represented an activity of the appellant University the teaching and administrative staff must be understood as employees of the appellant University. In the case of the respondent, there can be no doubt whatever that he was, and continues to be, an employee of the appellant University. There is also no doubt that his employment could not be transferred by the appellant University to the Manipur University without his consent, notwithstanding any statutory provision to that effect whether in the Manipur University Act or elsewhere. The contract of service entered into by the respondent was a contract with the appellant University and no law can convert that contract into a contract between the respondent and the Manipur University without simultaneously making it, either expressly or by necessary implication, subject to the respondents' consent. When the Manipur University Act provides for the transfer of the services of the staff working at the Centre of Post-graduate Studies, Imphal, to employment in the Manipur University, it must be construed as a provision enabling such transfer of employment but only on the assumption that the employee concerned is a

consenting party to such transfer. It makes no difference that the respondent was not shown in the list of Assistant Professors of the appellant University or that the provision was not indicated in its budget; that must be regarded as proceeding from an erroneous conception of the status of the respondent. The position in law is clear, that no employee can be transferred, without the consent from one employer to another. The consent may be express or implied. We do not find it necessary to refer to any case law in support of this conclusion.

Inasmuch as the transfer of the Centre of Post-graduate Studies from the appellant University to the Manipur University could not result in a transfer of the employment of the respondent from the one to the other, it must be concluded that the respondent continues in the employment of the appellant University. The transfer of the centre of Post-graduate Studies to the Manipur University may be regarded as resulting in the abolition of the post held by the respondent in the appellant University. In that event, if the post held by the respondent is regarded as one of a number of posts in a group, the principle "last come, first go" will apply, and someone junior to the respondent must go. If the post held by him constitutes a class by itself, it is possible to say that he is surplus to the requirements of the appellant University and is liable to be retrenched. But it appears that the respondent has been working there without break during the pendency of this litigation, and we cannot, therefore, permit the appellant University to retrench him".

14. Counsel for the petitioner further submits that the services of the petitioner were terminated for patently false reasons which amounts to unfair labour practice under item 1(d) of Schedule IV to the MRTU and PULP Act. This submission is based on the fact that the petitioner's services were terminated on the ground that his experience in the Central Share Department could not be used in any other department of the respondent company which is patently false. I have carefully considered the above submission. I find force in it. The ground on which the services of the petitioner were terminated, on the face of it, is not correct or, to use the expression used in the MRTU and PULP Act, is patently false inasmuch as the petitioner had more experience of the Accounts Department where he worked under the directions of the employer only for 11/2 years. He has also the requisite qualifications for working in the Accounts Department. Moreover, he was appointed in that department and worked there althroughout except for a short period of 15-16 months when under the direction of the Accounts Officer, and that too under protest, he worked in the Central Share Department. In such situation, it was not correct on the part of the respondent company to ignore his experience in the Accounts department and to say that he possessed only experience of the Central Share Department and which was of no use to the respondent company any more. The petitioner could have been very well put back in the accounts department to which he belonged. This position gets support from the fact that one Mr. Surti working in the Central Share Department too had been asked to work in the fixed deposit section of the Accounts Department with effect from August 1, 1984 despite the fact that he

worked in the Central Share Department right from the inception of his service in 1964 till 1984 and was simply a matriculate. He continued in service of the respondent company in the Accounts Department despite the change in the functioning of the Central Share Department. In that view of the matter, it is clear that the ground on which the petitioner's services were terminated was patently false. Counsel for the petitioner also laid emphasis on the admitted position that the work in the Accounts Department went up althroughout and number of fresh recruitments had also been made even before the termination of the services of the petitioner and also thereafter. I do not think that it is necessary to go into this aspect of the matter as I am of the clear opinion that keeping in view the service record of the petitioner, his qualification etc., his appointment in the rolls of the Accounts Department, his working in that department for long 5 years, his dismissal on the ground of his experience in the Share Department where he worked only for 15-16 months clearly falls within the expression "patently false reasons" within the meaning of item 1(d) of MRTU and PULP Act.

15. Counsel for the petitioner also submitted that even if it is a case of retrenchment as contended by the respondent company, in view of the closure of the Central Share Department of the Tata Services Ltd. The retrenchment of the petitioner and/or termination is illegal the same being in violation of the provisions of Section 25G read with Rule 81 of the Industrial Disputes (Bombay) Rules, 1957. I do not propose to go into this aspect of the matter in view of the finding arrived at by me that the termination was illegal.

16. Before I conclude, it is expedient to refer to the last submission of the respondent company that Section 25FF applied in the present case and by operation of it the services of the petitioner stood transferred to the new company. I find it difficult to accept this contention. Section 25FF applies to cases of transfers of an undertaking. In the instant case, I do not find any such transfer. The Central Share Department of the respondent company cannot be termed as an undertaking nor anything as such was taken over by the new company. In fact, nothing had been taken over by the new company from the respondent company. The respondent company simply assigned some of its work to the new company which resulted in some modification in the day to day working of some of the departments of the respondent company. Such a change or effect cannot be described as "transfer of an undertaking" within the meaning of Section 25FF of the Act.

17. In view of the foregoing discussion I am of the clear opinion that the order of the Labour Court is not tenable in law. The same is liable to be set aside. I am also of the opinion that in the instant case the termination of the services of the petitioner amounted to unfair labour practice within the meaning of items 1(b) and 1(d) of Schedule IV to the MRTU and PULP Act. The impugned order of termination is therefore liable to be set aside which I hereby do. The petitioner shall be deemed to be in the service of the respondent company althroughout.

The respondent company is directed to reinstate him from the date of termination within eight weeks from today and give him all salary and other benefits excluding, however, any payment made to him during the pendency of the proceedings before the Labour Court and this Court.

18. In the result this writ petition is allowed. Under the facts and circumstances of the case, there shall be no order as to costs.

19. Certified copy expedited.