

(1994) 01 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No's. 28876-28878 etc of 1993

A.P. John and Others

APPELLANT

Vs

Karnataka State Transport Corpn. and Another

RESPONDENT

Date of Decision : 18-01-1994

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (c), 226

Citation : (1994) 2 KarLJ 377 : (1995) 1 LLJ 678

Hon'ble Judges : N.Y. Hanumanthappa, J

Bench : Single Bench

Advocate : K. Subba Rao and V. Gopala Gowda, for the Appellant; K. Lakshminarayana Rao and B.B. Mandappa, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—The petitioners in all these petitions who are either Drivers or Conductors in the Karnataka State Road Transport Corporation (hereinafter referred to as the Corporation) and working in various Divisions have filed these petitions challenging the competency, correctness and propriety of the transfer orders transferring them from one division to another. Since the questions for consideration in all these petitions are almost identical, all the petitions are clubbed together and disposed of by a common order.

2. The official status of the petitioners and the power of the Corporation to transfer its employees are not in dispute. The dispute is only in respect of (1) whether there can be a transfer ignoring Clause 14(c) of the Memorandum of Settlement of 1981 (in short the 1981 Settlement); (2) when the seniority of the employees appointed in a Division is maintained by the same Division, whether are they liable to be transferred to another division; (3) when enquiries on the allegations made against the employees are pending, is it proper to transfer such employees on the basis of such allegations without enquiry ; (4) whether the transfers of the petitioners can be said as administrative orders in the public interest and will improve efficiency or whether the transfers are in the nature of victimisation and with a mala fide intention on the part of the Corporation and

(5) since the petitioners are all Class III employees belonging to lowest cadre, is it proper to transfer them in the middle of the year to far off places.

3. On behalf of the petitioners learned Advocates Sriyuths Narasimhan and K. Subba Rao addressed arguments while Sri. V. Gopala Gowda and Sri. Lakshminarayana, learned Advocates, adopted the same.

4. On behalf of the Corporation its panel of Advocates Sriyuths K. Lakshminarayana Rao, B.B. Mandappa, L. Goyindaraj and Smt. Manjula Devi advanced their arguments.

5. In order to answer the points raised above it is proper to bear in mind the service conditions of the employees. Settlements which govern their service conditions including transfer and how far the Settlements bind the employees and the Corporation.

6. Service conditions of the employees are governed by the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982 (hereinafter referred to as the Regulations). Regulation 13(4) of the Regulations defines which are the Statewise posts and Divisionwise posts. It reads as under:

"(4) Statewise and Divisionwise posts:

(a) the following posts shall be Statewise posts :-

(b) All posts other than those specified in Sub-clause (a) above shall be divisionwise posts.

Department

Posts

Mechanical Engineering (common categories) for both Mechanical Engineering Maintenance and Production

Chargemen and above

Traffic

Traffic Inspector and above

Stores and Purchase

Store Keeper/Stock Verifier and above

Civil Engineering

Draughtsman/Junior Engineer and above

Administration

Supervisor/Senior Stenographer and above

Statistical

Supervisor (Statistical) and above

Security and Vigilance

Divisional Security Inspector and above

Accounts

Supervisor (Accounts) and above

(c) Normally, the employees holding Divisionwise posts will be considered for promotion under these Regulations, in respect of promotional vacancies in the Divisionwise posts in their respective Divisions only. In respect of the employees who are transferred from one Division to another on administrative grounds, the entire service rendered by them in the Division from which they are transferred shall count for seniority in the division to which they are transferred. Such transfers shall be resorted to sparingly. The employees who are transferred to another Division on request shall take seniority in the post held by them on such transfer from the date on which they report in the Division to which they are transferred.

NOTE:- "Division" means the administrative Units of the Corporation functioning as such on all matters concerning establishment, viz. operating Units (including the depots functioning under them) Central Office including KST Press, Regional Workshops and Civil Engineering Divisions."

The posts of Drivers and Conductors are not enumerated in the Statewise list. Hence, the only inference that can be drawn is that they are Divisionwise. This is also clear from Sub-clause (b) of Clause 4 of Regulation 13 of the Regulations. Competency to transfer the employees from one Unit to another is not in dispute. It is a common feature that in any private or public undertaking where provisions of Industrial Disputes Act and other Labour laws are applicable normally there will be apart from Rules and Regulations settlement between management and workmen. Such settlements will have arrived at in order to see that peace prevails in the organisation; that the organisation runs smoothly and the joint efforts of both the Management and the workmen result in progress of the organisation. It is the expectation of the society that both the Management and the workmen shall work as partners in the public interest. This settlement or agreement reached between the Management and the workmen by way of negotiations is called "Settlement" which deals on various aspects touching the problems of Management and workmen. The settlement usually includes the subject of transfer also.

7. In the Corporation right from 1958 on a number of occasions settlements had taken place between the Corporation and the employees touching on different aspects including some facilities, benefits and transfers.

8. Since it is not possible for the employees to ventilate their grievance to the Corporation more effectively because of their illiteracy, ignorance and helpless

position, the employees chose to have collective bargaining through their Unions formed under the Trade Union Act. Existence of Unions in most of the organisations is a normal feature. Recognition of such Unions is left to the discretion of the Corporation. Once the Unions are recognised, they will strive for achievement of social law. Further, they care for the interest of their members which includes their pay-protection, promotion, transfer, etc. In order to avoid unnecessary confrontation and adjudication the Corporation and the petitioners' Union which is one of the major recognised Unions entered into negotiations on various issues including transfer which ultimately resulted in the 1981 Settlement. Clause 14 of the 1981 settlement deals with the facilities to the Federation and Unions affiliated to the Federation. Whereas Sub-clause (c) of Clause 14 reads as under:

"The Office Bearers of the Recognised Federations/Recognized Unions affiliated to the recognised Federations, should not be transferred from the place of work during the term of their office."

Clause 25 of the 1981 Settlement is the Savings clause which reads thus:

"Benefits already granted under earlier settlements excepting those covered under this settlement shall be deemed to have been continued."

This 1981 Settlement was superseded by another settlement dated July 15, 1985 which was almost similar to the 1981 Settlement. The Settlement dated July 15, 1985 was again superseded by another settlement dated July 17, 1989. This Settlement, i.e, 1989 Settlement was entered into between the Chairman & Managing Director of the Corporation and the President of the KSRTC Staff & Workers Federation. Clause 27 of the 1989 Settlement deals with the facilities to the recognised federation and recognised Unions like Clause 14 of the 1981 Settlement. However, the provision found in 1981 Settlement which was agreed by both that Office Bearers of the Recognised Federations/Recognized Unions affiliated to the recognised Federations should not be transferred from the place of work during (he term of their office is absent in the 1989 Settlement. Whereas Clause 25 of the 1981 Settlement which states that "Benefits already granted under earlier settlements excepting those covered under this settlement shall be deemed to have been continued" is re-produced in Clause 33 of the 1989 Settlement.

9. The appointments of employees who come under the category of Drivers and Conductors are Divisionwise can be transferred only within the Division. But transfer outside the division is only on promotion. Regulation 13 of the Regulations came to be modified by issuing circulars and Notifications, for example, Circular No.844 dated November 16, 1991. The relevant portion of the said Circular is extracted here-under:

"The authorities concerned shall take necessary action to prepare and finalise the seniority of the employees working in their respective Units and to grant officiating/temporary promotions and also to review the promotions as stated

above with effect from September 28, 1991.

In respect of employees holding Division-wise posts who are likely to be transferred to the newly formed Divisions i.e., Bangalore, Rural, Gadag, Davanagere, Bagalkot and Bidar, the promotions of eligible employees shall be considered by the parent divisions i.e., Bangalore, Hubli, Bijapur, Bellary, Raichur, Hasan and Gulbarga divisions on the basis of the seniority of the employees holding Divisionwise posts in the existing seniority lists of the respective Divisions. All these promotions to the extent of vacancies available in different cadres in the Division-wise posts, must be completed before December 31, 1991 positively.

Thereafter, the new divisions shall prepare a separate seniority list in respect of employees who are transferred to those Divisions either on administrative grounds or on request, as in Regulation-13(4) and after finalisation of the seniority lists in the respective new divisions future promotions shall be accorded on the basis of the said lists in the respective new Divisions, This shall be effective from January 1, 1992."

Thereafter another circular came to be issued on February 8, 1992 the relevant portion of which touching seniority of transferred employees is extracted below:

"While preparing the seniority list of divisionwise posts from January 1, 1983 onwards the seniority of the employees holding divisionwise posts who are transferred from one division to another either on administrative grounds or on request on or after January 1, 1983 shall be regulated as provided under Sub-Regulation-4(c) of Regulation-13 of the KSRTC (Cadre & Recruitment) Regulations, 1982, circulated vide Circular No. 844 dated November 16, 1991.

Some of the employees holding divisionwise posts have been transferred from their parent divisions either on request or on administrative grounds to other Units during the period from February 1, 1968 to December 31, 1982. Seniority of these transferred employees has been computed in their parent divisions only and eligibility dates for the next divisionwise posts are assigned in their parent divisions only in the divisionwise seniority lists published as on December 31, 1982, though they are continued in the transferred units. When these employees were offered officiating promotions in their parent divisions they refused the same and requested to compute their seniority in the transferred Units as per the Circular No. 775 dated February 9, 1983 onwards, seniority of such transferred employees is to be determined in the transferred Units by placing them below the employees working as on December 31, 1982."

Thus the Corporation by making above provision felt that it protects the seniority of the employees even if they are transferred outside the Division.

10. It is submitted that the Corporation has got the strength of about 58,000 employees throughout the State and these employees are members of different Unions. A few Unions are recognised. In the Corporation there are 3 Federations,

viz., KSRTC Staff & workers Federation, KSRTC Employees Federation and Akhila Karnataka Rajya Raste Sarige Nowkarara Maha Mandali. Out of these three Federations, KSRTC Staff & Workers Federation is the recognised Federation at the Corporate level. There are 24 Unions recognised at the Unit level. Out of these 24 recognised Unions, 20 Unions are affiliated to KSRTC Staff & Workers Federation, 3 Unions are affiliated to KSRTC Employees Federation and 1 Union is affiliated to Akhila Karnataka Rajya Raste Sarige Nowkarara Maha Mandali. The above facts are undisputed.

11. Now coming to the real controversy, the petitioners have filed these writ petitions contending that the Corporation has transferred the petitioners who are working either as Drivers or Conductors from their parent Divisions to other Divisions situated at a distance of more than 400-500 k.m. away. Secondly, the transfers are made in the middle of the year without mentioning that the same has been made on administrative grounds. By these transfers from one Division to another made some of the Office Bearers of the Unions as victims. Some of the employees against whom allegations of misconduct, insubordination, etc. alleged have been transferred. Some of them who have family difficulties and domestic problems have been transferred. All the petitioners feel that the present transfers are not in public interest, but they have been made with a mala fide intentions, to see that their seniority in the parent Division is deprived and that the Office Bearers who are actively ventilating the grievances of the members of the Unions be suppressed and the Unions are destabilised. The transfers have been effected in the middle of the year without taking into consideration whether transfer of such employees who are getting a meagre salary is advisable and their children are admitted to schools and colleges.

12. There is unanimity in the arguments advanced by the learned counsel for the petitioners/employees that the present transfers are not in public interest, but contrary to Clause 14(c) of the 1981 Settlement which has been saved under the 1985 and 1989 Settlements. According to them the transfers are made with a view to satisfy the ego of some of the officers of the Corporation. Even on humanitarian grounds transfer of officials in the middle of the year is not at all reasonable.

13. Under Clause 14(c) of the 1981 Settlement no office bearers of the recognised Unions are liable to be transferred. There are various orders and circulars both by the Government and by the Corporation that the office bearers shall not be transferred from parent Division to another. While effecting transfers of the employees belonging to the lowest cadre, the guidelines and circulars issued in respect of transfer should be respected. Such transfers shall be made sparingly, namely when transfers are inevitable.

14. The transfers within the Unit are permissible and valid. Though the transfer is an incident of service, this can be effected when the authority has got power and made in the public interest and not for any extraneous consideration. If the Corporation really wanted to transfer the petitioners, nothing prevented it to

transfer them within the Division at appropriate time. Now the transfers have been made to another division in the middle of academic year which affects the education of their children. By such transfers it is practically impossible for the employees of the petitioners" type to maintain their families at two places, viz., at the original place and also at the place of transfer.

15. According to Sri. Narasimhan, learned counsel for the petitioners, the present transfers are quite arbitrary, illegal and in clear breach of the solemn promise made by the Corporation while entering into the 1981 settlement. In view of the Saving clause in the 1989 Settlement, it has to be understood that Clause 14(c) of the 1981 Settlement holds the field. By virtue of the Settlements and the assurances given by both the Corporation and the Government, the employees appointed to a particular division shall not be transferred from that Division to another.

16. Sri. K. Subba Rao, another counsel for the petitioners, argued that the benefits conferred under Clause 14(c) of the 1981 Settlement shall not be construed that they are exclusively meant for the members of the recognised Unions. But, they are applicable to all the employees. After all the ultimate idea is that there shall be cordiality between the employees and the Corporation. According to him the posts to which the petitioners were appointed are Division wise posts. Therefore, transfers as far as possible shall be within the Division and if any transfer has to be effected outside the Division it has to be made sparingly and only in emergency. There was no need to transfer the petitioners from their parent Divisions to another. The petitioners with their poor economic position cannot withstand the effect of their transfer from one division to another. Though it is mentioned in the transfer orders that they are administrative orders, the only inference that can be drawn is that the transfers have been effected with mala fide intentions to put the petitioners under pressure and harassment. Thus the transfer orders though look administrative in nature in reality the same are the result of foul play and victimisation. The transfer orders lack fairness and reasonableness. The learned counsel for the petitioners also argued that Clause 14(c) of the 1981 Settlement is a benefit given to the employees of the Corporation after due deliberation and the benefit so extended cannot be curtailed in the absence of any valid reason. Since the transfers are prima facie illegal, the petitioners need not go to the Labour Court to work out their rights.

17. In support of their contentions, the learned counsel for the petitioners relied upon the following decisions:

(1) For the proposition that the Corporation cannot transfer its employees from one Division to another when the employees were appointed in a particular Division and their seniority, etc. are maintained in that parent Division, the learned counsel for the petitioners placed reliance on the decision of the Supreme Court in Kundan Sugar Mills Vs. Ziyauddin and Others, wherein the Supreme Court held thus (Para 7):

"....None of these cases holds, as it is suggested by the learned counsel for the appellant, that every employer has the inherent right to transfer his employee to another place where he chooses to start a business subsequent to the date of the employment. We, therefore, hold that it was not a condition of service of employment of the respondents either express or implied that the employer has the right to transfer them to a new concern started by him subsequent to the date of their employment".

(2) In Management of Nippani Urban Co-operative Bank Ltd. Vs. Workmen, a Division Bench of this court held thus:

"At the time when the workmen were employed by the appellant, the appellant had only one office at Nippani and no branch. It is nobody's case that at the time when the said workmen were employed the appellant intended to branch out or that in any event, the workmen were told that there was a possibility of such branching out and of their transfer in such contingency. The said workmen, when employed, would have agreed to serve only in the Nippani office then in existence and the appellant would have employed them only in respect of that office. There is, here, no contract of service that contains an express power of transfer. Upon the facts no such power can be implied."

(3) In K.N. Cheluviah Vs. Management, Bharat Heavy Electricals Ltd., this court held thus:

"The question of transfer of an employee has been the subject matter of industrial adjudication. Employment being primarily a creature of contract its terms are modified only to the extent they are superseded by law, contract or award. The rights and obligations of the employer and the employees in matters of transfer would, therefore, be governed by this position that unless proved to the contrary and unless the transfer changes the identity of employment or breaches employment conditions an employer has always a right to transfer his employee. Transfer of an employee is considered to be a managerial right which however is subject to contract to the contrary. However, if the transfer is effected as punishment or as a consequence of victimisation or made not observing the relevant conditions in relation to transfer of Union office bearers or protected employees such transfers can be questioned. Subject to these limitations the employers have a right to distribute work as they think fit and transfer is an incident of service. The managements the best judge to distribute, manpower and whether a transfer can be avoided or not.

A transfer can be successfully challenged on the following grounds:

- i) Transfer is in violation of the Rules or Standing Orders or Contract;
- ii) It is actuated by mala fides as a result of unfair labour practice or some other ulterior motive not connected with the business establishment;
- iii) the transfer effects a change in the conditions of service in subjecting the employee to more onerous work."

(4) In Shanmugam Vs. Mysore Mineral Ltd., this Court held as follows: (p.467):

"(i) The Supreme Court has held that transfer of an employee from one department to another was at the discretion of the management provided, the terms and conditions of service are not affected and if the order of transfer was invalid, the burden of proving that it was invalid lay on the workman; the transfer of an employee from one department to another or from one place to another is part of managerial powers of the employer.

(ii) It has been held that an employer has no right to transfer his employee to a new concern started by him subsequent to the date of employment of the consumed workman."

(5) The Supreme Court in Union of India v. R. Reddappa (1993) LLJ 1233 held that, when there is arbitrariness or injustice, High Court can very well exercise the power under Article 226 of the Constitution to render justice. The relevant portion reads thus: (p. 1236):

"True the jurisdiction exercised by the High Court under Article 226 or the Tribunal is not as wide as it is in appeal or revision but once the Court is satisfied of injustice or arbitrariness then the restriction, self imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of rendering justice."

(6) The Madras High Court in Tamil Nadu Electricity Board Accounts and Executive Staff Union Vs. Tamil Nadu Electricity Board, held thus: (p.251)

"To say that no right of the petitioner is affected is totally wrong because pursuant to the recognition, the petitioner had entered into various settlements in regard to clerical and accounts employees. It has been granted facilities of rent free accommodation, right to negotiate in regard to clerical and accounts staff and other facilities as provided for in the Code of Discipline. Whatever may be these rights and however unsubstantial they may be, in law they give them a right or even a "semblance of a right that cannot be interfered with, except for reasons which any reasonable person would accept as correct. That is not so in this case. Therefore, to say that an administrative order cannot be interfered with is relying upon law which had become either decayed or dead."

(7) In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, the Supreme Court held that State actions in contractual matter can be reviewed under Article 14 of the Constitution. The relevant portion reads thus:

"The personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Exclusion of

Article 14 in contractual matters is not permissible in Constitutional scheme. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, it can be said that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters, therefore, it would be difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14."

(8) The question of transfer cannot be a subject matter of Industrial Dispute as such the same cannot be agitated before the Labour Court. In support of this proposition, they placed reliance on the following decision, viz., Life Insurance Corporation of India Vs. D.J. Bahadur and Others, wherein the Supreme Court held thus (p.21):

"After expiry of the specific period contractually or statutorily fixed as the period of operation of an award or settlement, the same does not become non est but continues to be binding. Law abhors vacuum. Until a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. The precedents on the point, the principles of industrial law, the constitutional sympathy of Part-IV and the sound rules of statutory construction converge to the same conclusion."

(9) This Court in Umesh S. Naik Vs. Karnataka Food and Civil Supplies Corporation, held that, when complicated questions are not involved to decide, it has to be said that existence of alternative remedy is not a bar, because Rule of exhaustion of statutory remedy before seeking relief under Article 226 of the Constitution of India is a self imposed limitation on the Court, it is a Rule of policy, convenience and discretion rather than Rule of law.(p.460).

18. As an answer to the above contentions, Sriyuths K. Lakshminarayana Rao, B.B. Man-dappa, L.Govindaraj and Smt. Manjula Devi, learned counsels for the Corporation, argued as follows:

Transfer is an incident of service. There cannot be any interference with transfers unless it is shown that the transfer is not by a competent authority or the transfer made with a mala fide intention to favour others. According to Sri Lakshminarayana Rao, correctness or otherwise of the transfers of the petitioners depends upon the facts which are different in each case. If there is breach of any term of the Settlement, it cannot be agitated under Article 226 of the Constitution of India, but only before a Labour Court raising a dispute. For the proposition that transfer is an incident of service, when transfers are made in the ordinary course purely on administrative grounds, the same cannot be challenged under Article 226 of the Constitution of India, the learned counsel for

the Corporation relied on the following decisions:

a) Mrs. Shilpi Bose and others Vs. State of Bihar and others, The Supreme Court held thus (p.592):

"Court should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest."

b) Vijaya Bank Officers Congress and Others Vs. Vijaya Bank, This Court held as follows (p.40): :

"The transfer is an incidence of service, this power is inherent to an employer. Transfer cannot be assailed in the absence of rules or the same made not in the public interest but made for extraneous consideration or made with a mala fide intention to victimise an employee or such a transfer has resulted in reverting an employee. This position has been clearly explained by the Supreme Court in case of B. Varadha Rao Vs. State of Karnataka and Others, referred to earlier. While explaining the scope of guidelines in the matter of transfers the Supreme Court extracted the observations of this Court made in Varadharao case (vide supra). The Division Bench of this court in the case of Syndicate Bank v. Sunder K. Paniyadi 1992 I LLJ 273 took almost the similar view in the matter of transfer which is also referred to earlier in the writ petitions."

Sri. Lakshminarayana Rao submitted that merely because of the recognised Union, that itself will not exclude them from the purview of transfer. Further, transfers can be interfered with only when existing Rules or Settlements are in violation. The recognition that was given to the KSRTC Employees Federation expired long ago and the same has not been extended. According to Sri. Lakshminarayana Rao, the terms "facilities" and "benefits" are altogether different. The term "facilities" cannot be equated to the term "benefits". Retention of the employees at the place of their work, term of office, etc. not saved by the subsequent Settlement, as Clause 14(c) of 1981 Settlement was not incorporated in subsequent Settlements.

1. In Kundan Sugar Mills Vs. Ziyauddin and Others, it is held that though transfer is an incident of service, it shall be within the Unit and not outside.

2. Regarding the role of Unions and how far it applies, this Court in Shanmugam

Vs. Mysore Mineral Ltd., observed that transfers shall always be respected unless it alters the seniority of the transferred official. Merely because some of the petitioners are office bearers of the recognised Union, it cannot be contended that they are not liable to be transferred.

3. For the proposition that transfer will affect chances of promotion is a ground to interfere, he placed reliance on the decision of the Supreme Court in *Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another*, wherein the Supreme Court held that chances of promotion is not a condition of service. The relevant portion reads as follows (p.52):

"Subsequent executive circular could not be treated to be one affecting adversely any condition of service. Its only effect was that the chance of promotion which had been accelerated by the earlier circular was deferred and made dependent on selection according to the rules. Chances of promotion is not a condition of service. In the absence of legislative rules it is competent to the State Government to take a decision in the exercise of its executive power under Article 162 of the Constitution. Such executive instruction could make a provision only with regard to a matter which was not covered by the rules and such executive instruction could not override any provision of the rules."

The learned counsel for the respondents to support their contentions also placed reliance on an order of this Court in Writ Petition No. 15970 of 1986 and connected cases disposed of on August 20, 1992 (*Rame Gowda P v. The Karnataka Silk Industries Corporation and Anr.*) wherein transfer of Drivers from one Division to another division was upheld.

4. the Supreme Court in *Union of India and Others Vs. S.L. Abbas*, held as follows: (Para 7)

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however does not confer upon the Government employee a legally enforceable right."

In this case, the Supreme Court further observed that unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it.

(5) the Supreme Court in *D.A.V. College, Vs. State of Punjab and Others*, which, says that the right under Article 19(1)(c) of the Constitution extends inter alia to the formation of a Union held thus (Para 30):

"The right to form an association implies that several individuals get together and form voluntarily an association with a common aim, legitimate purpose and having a community of interests. It was sought to be suggested that the compulsory affiliation with the University affects the aims and objects of the Association; as such its freedom is infringed. There is in our view a fallacy in this argument which on earlier occasions had also been repelled. In the All India Bank Employees' Association Vs. National Industrial Tribunal and Others, it was observed that the right guaranteed under Article 19(1)(c) does not carry with it a concomitant right that the Associations shall achieve their object such that any interference in such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) as being in the interests of public order or morality. The right under Article 19(1)(c) extends inter alia to the formation of an Association or Union."

6. In A.C. Mukherjee v. Union of India 1972 Lab IC 929 (Cal) it is held that recognition of a Union is not a fundamental right and withdrawal of recognition is not violative of Article 19(1)(c) of the Constitution of India, the relevant portion reads thus (Para 12):

"The fundamental right under Article 19(1)(c) guaranteed by the constitution is only to form associations or unions. The order derecognising a Union does not affect such right at all, because the employees' right to form an association or union remains intact. There is no fundamental right guaranteed in the Constitution regarding recognition of any union formed by, any of the citizens. There is no fundamental right that the employer must have to recognise a Union of the choice of the employees and, if that is not so recognised, it cannot be said that non-recognition or withdrawal of recognition amounts to a violation of Article 19(1)(c)."

7. In The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, the Supreme Court held that writ of mandamus cannot be issued to enforce a contractual obligation. Relevant portion of para 15 which deals with this aspect reads thus :

"There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that "there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance".

In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4

which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No.1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High court was not competent to issue the same."

18. In Bahadur's case (supra) the Supreme Court observed thus:

"The object of the Industrial Disputes Act is "the investigation and settlement of industrial disputes". Parliament has picked out the specific subject of industrial disputes for particularised treatment, whether the industry "be in the private sector or otherwise." The core of the Industrial Disputes Act is settlement of industrial dispute and not conditions of employment or contract of service as such."

According to the learned counsel for the Corporation, appointments of Drivers and Conductors for a Division are only for administrative convenience. Transfers of Drivers and Conductors are made by the authorities who possess competence. By such transfers seniority of the transferred employees not to be affected. On the other hand, the same has been assured by the Corporation.

19. According to Sri B.B. Mandappa, some of the petitioners are not entitled to take shelter under Clause 14(c) of the 1981 Settlement. Further, 1981 Settlement and 1985 Settlement were not between the Corporation and the KSRTC Staff & Workers Federation, but between the Corporation and altogether a different association. That apart, if the petitioners are not the members of the Federation, they cannot ask the Corporation to implement the said settlement. Sri. Mandappa also submitted that in the subsequent settlements there is no provision that Office bearers of the recognised Unions shall not be transferred. If there is any doubt about the settlement, difficulty or any employee feels that the Corporation is not respecting the Settlement, the proper forum is the Labour Court and not under Article 226 of the Constitution. Any concession shown earlier is not a condition precedent to be adhered to subsequently.

20. Smt. Manjula Devi, learned counsel for the Corporation, submitted that the writ petitions are not maintainable as some of the petitions have been filed after the relieving orders were passed and the employees reported for duty at the place of transfer.

21. Sri Govindaraju submitted that the petitioners who are not office bearers of the recognised Union are liable to be transferred and an employee who has been appointed to a transferable post cannot challenge his transfer unless the transfer is with mala fide intention or in violation of service conditions, as held by the Supreme Court in Rajendra Roy Vs. Union of India (UOI) and Another, The relevant portion of the said decision is extracted below (Para 7):

"It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the

order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. We are in agreement with the Central Administrative Tribunal that the appellant has not been able to pay any firm foundation to substantiate the case of malice or mala fide against the respondents in passing the impugned order of transfer. It does not appear to us that the appellant has been moved out just to get rid of him and the impugned order of transfer was passed mala fide by seizing an opportunity to transfer Shri Patra to Orissa from Calcutta. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances."

Thus arguing, the counsel for the Corporation submitted that all the petitions be dismissed, as the petitioners have not established that the transfer orders are made by an incompetent authority or they have been made contrary to the Rules or the Regulations or made with mala fide intention or such transfers caused great injustice to the transferred employees.

22. Arguments, advanced by both sides are based on their pleadings. No petitioner has questioned the competency of the authority who passed the transfer orders. But, what the petitioners have questioned is non-observance of Clause 14(c) of 1981 Settlement; inter-division transfer not permissible as the petitioners were appointed to a particular division; and some of the petitioners have been transferred on the basis of allegations as such, without enquiry the same is penal in nature.

23. As far as legal position of transfer is concerned, if a post is under the transferable category, the employee appointed to that post cannot question the transfer because transfer is an incident to service. It is for the Management and not for the workmen to point out when and to where transfers have to be made. Order of transfer can be interfered with only when it is shown that the transfer has been made not in public interest but with mala fide intention to victimise the petitioners. This is the view in most of the decisions referred to above. No doubt in some decisions it is said that the circulars and guidelines issued in the matter of transfer shall be respected, whereas in some cases it is held that the guidelines and circulars are only to regulate the internal administration of the department and such guidelines and circulars have no statutory force. The principles laid down in all the cases referred to above have been subsequently referred and observations made therein have been incorporated in the latest decision of this Court in Writ Petition No. 33605 of 1993 disposed of on December 22, 1993 (A.S. Pattabhiraman v. The State Bank of India), On the informations furnished by both sides and the principle laid down by this Court and also other High Courts and the Supreme Court under similar circumstances,

the conclusion to be drawn is that even though the Corporation had got the power to transfer, it ignored Clause 14(c) of the 1981 Settlement in case of some of the petitioners. Non-mentioning of such a clause in the subsequent Settlements has not taken away the effect of Clause 14(c) of 1981 Settlement as it has been saved by 1989 Settlement, viz., by incorporating Clause 33 of the 1989 Settlement, i.e., Saving Clause, which revives the benefits accrued to the employees under the previous settlements. While interpreting the Rules, they shall be read in conjunction and not in isolation. While considering the intention of the rule making Authority, if two views are possible, then the one which will be beneficial in nature shall be accepted by applying the doctrine of harmonious construction. If such a principle is applied, the conclusion shall be that Clause 14(c) though not found in 1989 Settlement is still in force and the petitioners are entitled to seek protection under the said clause. Since the Settlements are solemn promise made by both sides, it is the duty of the employees and the Corporation to respect such promise. If this court feels that breach of Clause 14(c) has been made, normally the employees have to approach the Labour Court for adjudication as required under the Industrial Disputes Act and not under Article 226 of the Constitution of India. Regarding exhausting alternative remedy, it is not a rule of law, but one of policy, discretion and convenience. Further, when it is apparent that there is violation of a particular clause can be decided without leading any evidence and interference by this Court will nip the litigation in the bud itself and bring both the warring groups to the place of settlement. In this Court can definitely exercise power under Article 226 of the Constitution of India. This view is supported by my earlier view in Umesh S. Naik's case (supra) wherein it is held as follows (p.460):

"Regarding the second proposition that whether alternative remedy is a bar to exercise powers under Article 226 of the Constitution of India, in view of the peculiar circumstances of the case explained above, that too when complicated questions are not involved to decide, it has to be said that existence of alternative remedy is not a bar, because it is clear from the decisions referred to above that Rule of exhaustion of statutory remedy before seeking relief under Article 226 of the Constitution of India is a self imposed limitation on the Court, it is a rule of policy, convenience and discretion rather than rule of law. When there is a violation of any of the fundamental rights as enshrined in Part III of the Constitution, or order is resultant of infraction of any of the statutory provisions or an act or order in violation of principles of natural justice this Court under Article 226 of the Constitution can definitely exercise powers to issue writ. Thus exercising, powers under Article 226 is one of discretion and not of its jurisdiction."

In view of Clause 14(c) of 1981 Settlement, Corporation cannot transfer an office bearer of a union.

24. Regarding the transfer of employees from one Division to another, it is clear from the pleadings that the recruitment of Drivers and Conductors as per

Regulations are made Divisionwise and not Statewise. When seniority of these employees is maintained divisionwise separately, their posts to be treated as separate and distinct until the said posts are Statewise and their seniority maintained accordingly. Hence, transfer from one Division to another Division has to be held as bad. Though the power of transfer is inherent, it shall be beneficial and not punitive in nature.

25. Always administrative orders shall be just, reasonable and fair and not in a partisan manner. In case of some officials, the Corporation in its Statement of Objections stated that those employees have to be transferred as they involved in activities which require initiation of disciplinary proceedings. Transfer under such circumstances is not in public interest and not

under normal circumstance, but due to pendency of proceedings. Hence such transfers deserve to be held as arbitrary and illegal.

26. Regarding the 4th point whether the transfers are in the public interest or in the nature of victimisation, one has to take into consideration the status of the transferred officials, their economic position and whether such transfers improve efficiency or will adversely affect the same. In each Division there will be more than a thousand Drivers and Conductors. But the Corporation picked up only a few and posted them to different divisions that too in the middle of the academic year ignoring the regulations and the difficulties pleaded. One has to see that whenever there is power it shall be exercised always for a constructive purpose and to improve efficiency of the workman. It is not the case of the Corporation that the Divisions to which these petitioners are transferred are in need of Drivers and Conductors.

27. The fifth point to be answered is that the present transfers are detrimental to the employees. The employees will have to maintain family at 2 places and it will disturb the education of their children that too when the transfers are effected in the middle of the academic year. No doubt, the circulars or guidelines issued in the matter of transfers will have no statutory force. But, the same shall be respected by both. Otherwise, it will curtail the mutual trust and faith existing between the Corporation and the employees. Though the Authorities have powers to transfer and Court cannot interfere with administrative orders, if it is shown such orders are not fair and just and suffer from arbitrariness and discrimination, this Court under Article 226 of the Constitution can interfere as held in Kumari Shrilekha "s case (supra):

28. Reliance is placed by Sri. Lakshminarayana Rao on some of the unreported decisions of this Court (mine and also of the Division Bench) wherein the question of transfer of the employees of the Corporation was considered and this court declined to interfere with the transfers holding that the transfers are purely administrative orders and they will not affect the service conditions of any of the employees. But the petitioners in the said writ petitions did not raise the effect of Clause 14(c) of the 1981 Settlement. Also they did not attack the orders of

transfer on the ground, viz., there cannot be transfer from one Division to another, as their appointments were made Divisionwise. Lastly, there cannot be transfer when allegations are made against the transferred employees. Hence, the unreported decisions referred to and relied upon by Sri. Lakshminarayana Rao on facts have no application.

29. Having answered the above points, the order to be made in all these petitions is whether the orders of transfers are to be quashed as bad or whether it is proper to direct the petitioners to approach the Corporation and seek for their retention, since there are some differences which are to be sorted out by both sides?

30. Since both parties have no sufficient information that who are the office bearers of the recognised union entitled to the benefits under Clause 14(c) of the 1981 Settlement and against whom disciplinary proceedings are pending, to avoid confusion and further litigation it is proper for both parties to work out their rights as observed hereunder:

(1) Wherever it is shown by giving representation that office-bearers have been transferred, the same shall be withdrawn in view of Clause 14(c) of the 1981 Settlement;

(2) The respondent-Corporation is directed to consider withdrawal of the transfer orders relating to Drivers and Conductors from one Division to another, since the petitioners were appointed to a particular Division that too when the Disciplinary and Appointing Authorities are different. Further the Corporation has to first determine the date on which the petitioners were appointed and what was the regulation applicable regarding protection of service conditions of these employees and whether the 1991 notification which amended the relevant provision in the Recruitment Rules regarding marinating of seniority of those who were appointed Division-wise retrospective effect applies to the case of the petitioners;

(3) Seniority of the transferred employees at their parent Division if not properly protected at the Division to which they are transferred, transfer of such employees has to be held as incorrect and arbitrary;

(4) Where disciplinary proceedings are initiated against such of the employees who have been transferred on a complaint or pending enquiry the same shall have to be withdrawn as otherwise it amounts to penalty without enquiry. If the Corporation feels that serious allegations are made against such employees it is at liberty to initiate disciplinary proceedings;

(5) Regarding the request made by some of the petitioners that transfer in the middle of the year will affect the education of their children and also drive the petitioner to hardship, even though the Corporation is not legally bound to consider the same, in order to maintain good relationship between the Corporation and the employees as master and servant it is always advisable to

keep in mind the convenience of the employees while effecting transfer. Since it is not advisable that transfer in the middle of the academic year, if any representation is given by any of the employees, the Corporation may consider the same.

31. Before parting with the case, as far as 1991 notification is concerned, though it gives power to transfer an employee from one Division to another, since the word "sparingly" used indicates, the employees can be transferred only under extraordinary circumstances. But the circumstances which are narrated in the orders of transfer do not warrant such an urgent action of transfer. As such the Corporation may think of transfer when it is inevitable.

32. If the Corporation makes proper amendment that the employees will be transferred from one Division to which they were appointed to another Division, their seniority as in the parent Division will be protected and under such circumstances the contention that there cannot be any transfer as contended by Sri Narasimhan and Sri Subba Rao may not be valid. To show the bona fides of the Corporation Sri Lakshminarayana also filed a memo to the effect that seniority of the employees of the Divisions where they were appointed will not be ignored and their seniority at the parent Division will be counted.

33. As far as the power of the Corporation to transfer an employee within the parent Division is concerned, it cannot be questioned by any employee and the employee cannot say that he shall be posted to a particular place in the Division.

34. Wherever any enquiry is pending against those Drivers and Conductors who have been transferred, the authorities shall consider to withdraw such transfer, if the concerned gives a proper representation.

35. Transfer in the middle of the year will definitely affect the education of their children. Since transfer shall be in the public interest, if transfer not given effect, in such an event the Corporation shall consider the petitioner's request for transfer.

36. Regarding last proposition that transfer in the middle of the year will affect efficiency, authorities shall consider the request made.

37. Representations by the petitioners seeking cancellation of transfer for the reasons mentioned above shall be considered by the Corporation before the end of April, 1994.

38. With the above observations all these petitions are disposed of.