
(2005) 07 KAR CK 0004
In the Karnataka High Court
Case No : Writ Appeal No. 5326 of 2001

B.D.K. Process Controls Private Ltd. and Another	APPELLANT
Vs	
Bharatiya Mazdoor Sangha	RESPONDENT

Date of Decision : 05-07-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33 (1) (a), 33 (2) (b), 33 A

Citation : (2006) 108 FLR 306 : (2005) ILR (Kar) 5110 : (2006) 1 KCCR 3 SN : (2006) 2 LLJ 151

Hon'ble Judges : P. Vishwanatha Shetty, J;H.G. Ramesh, J

Bench : Division Bench

Advocate : S. Vijaya Shankar and C.K. Subramanya, for the Appellant; Anant Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—In this appeal, the appellants have called in question the correctness of the order dated 29th August 2001 made in W.P.Nos. 25578-79/2000 by the learned Single Judge wherein he has confirmed the award dated 9th May 2000 made in Complaint No. 1 /1999 by the Industrial Tribunal, Hubli (hereinafter referred to as the "Tribunal").

2. The facts in brief are as follows:

The appellants 1 and 2 are the Private Limited Companies incorporated under the provisions of the Companies Act. They have set up their factory at Gokul Road, Hubli. It is the case of the respondent (hereinafter referred to as "the workmen-Union") that 37 employees working in the establishment of the appellants went on strike on 22nd February 1999 which was prohibited by the Government by means of its Order dated 15th May 1999. Thereafter, the Union of India referred the dispute between the workmen-Union and the appellants to the Tribunal. During the pendency of the reference, the workmen-Union made an application on 6th July 19.99 before the Tribunal for a direction that the employees be paid

wages from 16th May 1999 and for a further direction that it should be provided with work. The said application was resisted by the appellants inter alia contending that there was no refusal of the work to the workmen and some of the workmen themselves had remained absent even though most of the workmen had reported for work even before the prohibition of the strike by the Government. On the said application, in the light of the stand taken by the appellants that the appellants were not refusing employment to the workmen, the Tribunal, by means of its Order dated 23rd July, 1999, held that the workmen may very well go and join to their duties without any permission. According to the workmen Union, though the Tribunal observed that the workmen could report to duties, the appellants provided employment only to 25 workmen and refused to provide employment to 12 workmen. It is the case of the workmen-Union that the appellants, by means of its Order dated 7th August 1999, without any justification and in contravention of Section 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), transferred 25 employees outside the State and refused employment to 12 employees. Aggrieved by the Order of Transfer, the Workmen-Union filed complaint No. 1 of 1999 u/s 33A of the Act on 16th August 1999 before the Tribunal challenging the Order of Transfer of 25 employees from Hubli to other companies referred to in the Order of Transfer and not providing employment to 12 employees referred to in the complaint on the ground that the said action of the appellants was in contravention of Section 33(1)(a) of the Act. They had also proved for stay of the order of transfer. In the complaint, the workmen-Union also prayed for a direction to pay wages to all the employees mentioned in the complaint from 15th May 1999. The complaint filed by the workmen-Union was resisted by the appellants inter alia contending that the orders of transfer effected was not in contravention of Section 33(1)(a) of the Act. The Tribunal, rejected their prayer to stay the orders of transfer. Aggrieved by the said orders, the workmen-Union filed Writ Petition No. 38087 of 1999, which is pending before this Court. Subsequently the Tribunal, by means of its award dated 9th May 2000, allowed the complaint filed by the workmen-Union and directed the appellants to give employment to all the workmen who were transferred and also directed the appellants to pay wages to the said workmen with effect from 28th July 1999. The Tribunal, in the course of its order, had taken the view that transfer of the workmen in question was effected by the appellants in contravention of Section 33(1)(a) of the Act in as much as said workmen were transferred to Companies other than the Companies in which they were working and therefore, the transfer of the said workmen is in violation of conditions of service of the workmen. It did not accept the case of the appellants that they had power to transfer the workmen and as such there was no violation of conditions of service of the workmen. Aggrieved by the said order, the appellants filed Writ Petition Nos. 25578-79 of 2000 out of which this appeal arises. The learned Single Judge after considering the rival contentions, as noticed by us earlier, rejected the writ petitions. Aggrieved by the said order, this appeal is presented.

3. During the hearing of this appeal, the Director of the 1st appellant has filed an affidavit setting out the details of the persons and the companies to which the workmen were transferred. It is useful to refer to the statement made in the said affidavit, which reads as follows:

"3. I state that both the appellants are the Engineering Industries and engaged in the manufacture of Industrial Valves of different kinds. The Appellants are Associated Companies having common Directors and common shareholders (except Professional Directors).

I State that there was a recession in the business of the Appellant Companies. In fact, a permission was sought for closure of the Machine Shop of the first appellant Company, which was granted by the State Government. However, this Hon'ble Court set aside the permission granted by the State Government. Therefore, the workers of the Machine Shop of the First Appellant Company, who had been retrenched had to be taken back on account of setting aside the Order of the State Government granting permission for closure. In view of the fact that there was no work, the workmen were asked to stay at their home and the Management was paying for idle wages for more than one year. Instead of retrenching the workmen, the Appellant Company had made alternative arrangements and transferred 37 workmen of the Appellant companies. Out of 37 workmen, one workman had resigned and therefore, 36 workmen were involved in the transfer. Out of 36 workmen, 27 workmen have been transferred to various Branches of BDK Marketing Services Private Limited situated outside the State of Karnataka. 7 workmen were transferred to various Units located in Hubli-Dharwad area. 3 workmen were not at all transferred, but they did not report for duty. Out of 36 workmen, 24 workmen were working in the First Appellant Company and the remaining 12 workmen were working in the Second Appellant Company. The Statement showing the

of	Place	of	Transfer	No.	Sl. Name Date Transfer
					1. K.S. Ingalagi 6-10-1998 Kolkata-BDKMktg. Services Pvt. Ltd.
					2. S.T. Roddannavar 19-10-1998 Baroda-BDK Mktg. Services Pvt. Ltd.
					3. R.M. Pattar 07-08-1999 Mumbai-BDK Mktg. Services Pvt. Ltd.
					4. S.S. Bangalore 07-08-1999 Chennai-BDK Mktg. Services Pvt. Ltd.
					5. C.S. Jammyal 07-08-1999 Kolkata-BDKMktg. Services Pvt. Ltd.
					6. B.G. Nayik 19-10-1998 Hubli (Perfect Actuators and Controls Pvt. Ltd. Hubli)
					7. D.M. Attar 19-10-1998 Hubli (Perfect Actuators and Controls Pvt. Ltd. Hubli)
					8. S.M. Dotihal 12-10-1998 Hubli-Technomech Valves Pvt. Ltd.
					9. R.K. Kulkarni 07-08-1999 Baroda-BDK Mktg. Services Pvt. Ltd.
					10. P.S. Gaonkar 28-07-1999 Hubli-Ashraya Machine Tools Pvt. Ltd.
					11. A. A. Halageri 07-08-1999 Chennai-BDK Mktg. Services Pvt. Ltd.
					12. L.K. Akkasali 07-08-1999 Baroda-BDK Mktg. Services Pvt. Ltd.
					13. V.H. Jadhav 17-11-1998 Kolkata-BDKMktg. Services Pvt. Ltd.
					14. V.F. Motagi 28-07-1999 Dharwad-Valtek Corporation
					15. N.S. Hubballi 28-07-1999 Dharwad-Valtek Corporation
					16. A.

Joseph 07-08-1999 Lucknow-BDK Mktg. Services Pvt. Ltd. 17. S.S. Balaji 07-08-1999 Delhi-BDK Mktg. Services Pvt. Ltd. 18. A.B. Dalavi 07-08-1999 Delhi-BDK Mktg. Services Pvt. Ltd. 19. C.P. Sinndangoudar 07-08-1999 Delhi-BDK Mktg. Services Pvt. Ltd. 20. D. Igneshious 07-08-1999 Baroda-BDK Mktg. Services Pvt. Ltd. 21. GE. Kulkarni 07-08-1999 Baroda-BDK Mktg. Services Pvt. Ltd. 22. R.K. Inamdar 07-08-1999 Hyderabad-BDK Mktg. Services Pvt. Ltd. 23. R.B. Hosamani 07-08-1999 Lucknow--BDK Mktg. Services Pvt. Ltd. 24. M.S. Mashetti 07-08-1999 Visakhapatnam-BDK Mktg. Services Pvt. Ltd. 25. V.M. Soratur 07-08-1999 Delhi-BDK Mktg. Services Pvt. Ltd. 26. T.F. Bengeri 07-08-1999 Hyderabad-BDK Mktg. Services Pvt. Ltd. 27. John Vergheese 07-08-1999 Kolkatta-BDK Mktg. Services Pvt. Ltd. 28. S.S. Sundal 07-08-1999 Lucknow-BDK Mktg. Services Pvt. Ltd. 29. R.P. Gudi 07-08-1999 Visakhapatnam-BDK Mktg. Services Pvt. Ltd. 30. N.R. Hotagi 07-08-1999 Visakhapatnam-BDK Mktg. Services Pvt. Ltd. 31. S.S. Saravale 07-08-1999 Kolkatta-BDK Mktg. Services Pvt. Ltd. 32. P.K. Lokhande 07-08-1999 Lucknow-BDK Mktg. Services Pvt. Ltd. 33. M.D. Bennur 07-08-1999 Chennai-BDK Mktg. Services Pvt. Ltd. 34. D.A. Kambli Not Transferred 35. Total Not Transferred 36. Badiger Transferred-within Hubli-Dharwad, but did not report.

4. From the particulars furnished in the affidavit filed referred to above, it is seen that as many as 36 workmen were transferred excluding the one who had resigned during the period from 6th October 1998 to 7th August 1999 by the appellants. Out of 36 workmen transferred, 24 workmen were working in the 1st appellant and the remaining 12 workmen were working in the 2nd appellant. However, in the table furnished, two workmen, set out at Sl.No. 34 and 35, it is stated that they were not transferred. There appears to be some inconsistency in the statement made in the affidavit and the table furnished.

5. Sri Vijaya Shankar, learned Senior Counsel appearing along with Sri Subramanya for the appellants challenging the correctness of the impugned award as well as the order made by the learned Single Judge, made three submissions. Firstly, he submitted that since the service condition permits the appellants to transfer their workmen from their Companies to any other Company, the conclusion reached by the Tribunal as well as the learned Single Judge that the orders of transfer were made in violation of Section 33(1)(a) of the Act is erroneous in law. In support of this submission, the learned Counsel brought to our notice the order of appointment dated 1st January 1979 issued by the 1st appellant to one of its workmen wherein under Clause (6) of the appointment order power was reserved to the 1st appellant to transfer the workman from one Department or place to any other place at the discretion of the 1st appellant. So far as the 2nd appellant is concerned, the learned Counsel also brought to our notice Clause (31) of the Standing Order wherein the power of transfer is reserved to the 2nd appellant to transfer its workmen from one job to another; or department; or branches and depute any workmen to work on firm's outside jobs situated anywhere in India. He also brought to our notice, in

addition to the Standing Orders of the 2nd appellant, the additional appointment order issued by the 2nd appellant, subsequent to the amalgamation of the 2nd appellant with two other Companies wherein the power as reserved to the 2nd appellant to transfer its employees to any other Company any where in India. The learned Counsel, in support of his submission, relied upon decisions in the cases of Management of Cipla Ltd. v. Jayakumar and Anr. 1998 (1)LLJ 460 in the case of The Management of the Syndicate Bank Ltd. Vs. The Workmen, and Bareilly Electricity Supply Co. Ltd. v. Sirajuddin and Ors. 1960(1) LLJ 556 Secondly, he submitted that though the Companies, to which workmen of the appellants were transferred are different Companies, the shareholders and Directors of the appellants and the Companies to which the workmen were transferred being the same, the said Companies must be treated, for all practical purposes, as subsidiary of the appellants. The learned Counsel pointed out that this Court should pierce the veil with regard to the constitution of these companies and treat the said Companies to which workmen were transferred as the establishment of the appellants. In support o this submission, he relied upon the decision of the Supreme Court in the case of State of U.P. and Others Vs. Renusagar Power Co. and Others, . Finally, he submitted that at any event of the matter, the workmen having failed to obey the order of transfer, especially when the Tribunal had rejected their prayer for stay of the order of transfer which has been affirmed by this Court in. Writ Petition Nos. 25578-79 of 2000, it must be held that the workmen are not entitled for award of any backwages. He further pointed out that since the workmen have failed to produce any material before the Tribunal that they were not gainfully employed during the period during which they were kept out of employment, the Tribunal was also not justified in awarding backwages. He submitted that the burden of proof being on the workmen to show that the workmen were not gainfully employed during the relevant period and having failed to prove such burden, the Tribunal has seriously erred in awarding backwages. He pointed out that this aspect of the matter has been completely overlooked by the learned Single Judge. He further submitted that since the workmen had failed to report for duty, it must be held that they had abandoned their service and as such, they are not entitled for backwages. In support of the said submission, he relied upon a decision of the Supreme Court in the case of UPSRTC through Its Managing Director and Anr. v. Jeewanprasad Misra and Anr. 2003 SCCL 101 and in the case of Allahabad Jai Sansthan v. Daya Shankar Rai 2005 LLR 534 and a Division Bench decision of this Court in the case of Management of Continental Construction Ltd. Vs. Workmen of Continental Construction Ltd., .

6. However, Sri Anant Kulkarni, learned Counsel appearing for the respondent-workmen-Union, while strongly supporting the impugned order passed by the Learned Single Judge and also the award passed by the Tribunal, pointed out that since admittedly the workmen were transferred to the Companies of which the workmen were not their employees, the Tribunal as well as the learned Single Judge were fully justified in taking the view that the orders of transfer

issued by the appellants would affect the service conditions of the workmen and as such, the same has been issued in contravention of Section 33(1)(a) of the Act. He submitted that the finding recorded by the Tribunal being purely a question of fact and that the transfer effected by appellants with regard to the workmen in question being in contravention of Section 33(1)(a) of the Act, the Learned Single Judge was fully justified in affirming the award passed by the Tribunal. It is his submission that neither the appointment order relied upon by the Learned Counsel for the appellants nor the Standing Order relied upon by him permits the appellants to transfer the workmen from the establishment of the appellants to any other Companies. According to him, the appointment order as well as the Standing Order relied upon by the Learned Counsel for the appellants only permits the appellants to transfer their workmen from one department to another department or from one establishment to another establishment of the same Company, may be outside the headquarters of the Company. He further pointed out that the principle "piercing of the veil" cannot be applied so far the condition of the service of the workmen are concerned. Therefore, he submitted that the principle laid down by the Supreme Court in the Case RENU SAGAR POWER COMPANY (SUPRA) has no application to the facts of the present case. The Learned Counsel further submitted that since the orders of transfer have been made in contravention of Section 33(1)(a) of the Act, the said orders of transfer must be held as inoperative and void in law and for all purposes the workmen should be deemed to be in service. In support of this submission he relied upon the decision of the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, . It is his submission that since the appellants had transferred the workmen from their Companies to outside agency, the workmen were fully justified in not reporting to the Companies to which they were transferred as in that event there would have been cessation of relationship between the appellants and the workmen. Therefore, he submits that there cannot be any justification to deny workmen the backwages to which they are entitled to as ordered by the Tribunal.

7. In the light of the rival contentions advanced by the Learned Counsel for the parties, two questions that would emerge for our consideration are:

(i) Whether the appellants were competent to transfer the workmen from their Companies to the Companies to which they are transferred?

(ii) Whether the workmen are entitled to full backwages, as ordered by the Tribunal?

Re. Question No. 1:

8. It is not in dispute that the transfers of the workmen of the appellants were made to Companies known as BDK Marketing Services Pvt. Ltd. Perfect Actuators and Control Pvt. Ltd. Technomech Valves Pvt. Ltd., and Ashraya Machine Tools Pvt. Ltd. It is also not in dispute that they are the Companies incorporated under

the provisions of the Indian Companies Act and they are separate legal entities. They have an independent existence of their own. The service conditions of the workmen of the appellants were governed by the service conditions formulated by them for the employees of those Companies. The employees of the BDK Marketing Services Pvt. Ltd., are bound by the service conditions of that Company. Even assuming that the shareholders of appellants and shareholders of BDK Marketing Services Pvt. Ltd. are same, in our view, since all these Companies have independent legal existence, it is not permissible for the appellants to transfer the workmen, who were working in their Companies to BDK Marketing Services Pvt. Ltd. Similar is the position in so far as Perfect Actuators and Controls Pvt. Ltd. is concerned, wherein some of the workmen of the appellants were transferred. Neither the appointment order given to the workmen of the appellants nor the Standing Orders governing the service conditions of the workmen of the appellants permits them to transfer the workmen of those Companies to other Companies. The appointment order dated 1st January 1979 relied upon by Sri Vijaya Shankar, only permits the 1st appellant to transfer its workmen to any other branch or department of the 1st appellant anywhere in India. It is clear from Clause (6) of the appointment order dated 1st January 1979 strongly relied upon by the learned Counsel, which reads as hereunder:

"6. During your services you may be transferred from one Department or place to another at the discretion of the Management."

9. Further, it does not permit the 1st appellant to transfer its employees to any other company. Similar is the position so far as Clause (31) of the Standing Orders of the 2nd appellant relied upon by the learned Counsel for the appellants. The extract of the same is as hereunder:

"31. TRANSFER:

The firm shall have the right to transfer any employee at any time from one job to another or department or branches to another and depute any employee to work on firm's outside jobs, situated any where in India. In case of refusal without satisfactory reasons, such employee shall be considered absent from duty for the period of such refusal and corresponding deduction of salary/wages will also be made in accordance with provisions of payment of Wages Act, such employees are also liable for disciplinary action as provided in the Standing Orders. The Management shall also have the right to transfer any employee at any time to the Branches, established at any time in future."

10. Therefore, we are of the view that the Tribunal as well as the Learned Single Judge were fully justified in taking the view that no power was reserved to the appellants either by virtue of the appointment order issued to the workmen in question or by virtue of the Standing Orders governing the appellants to transfer the workmen of those companies to the Companies to which they have been transferred as they have independent and separate legal existence. No doubt, it

is permissible for the Courts to pierce the veil of a Company, as laid down by the Supreme Court in the case of Renusagar Power Company (supra) relied upon by Sri. Vijaya Shankar. However, it is not possible to take the view that workmen of the appellants could be transferred to the Companies to which they are transferred on the ground that they are sister/associated companies of the appellants or that the said Companies to which they are transferred are subsidiaries of appellants. The appointment and service conditions of the employees of the appellants are governed by the service conditions formulated for the employees of those Companies. The relationship of "master and servant" exists between the appellants and their employees. In the guise of the transfer of employees of appellants, the appellants cannot compel their employees or workmen to work in Companies in which there is no relationship of "master and servant" between the employees of the appellants and the Companies to which they are transferred. The employees of the appellants cannot be compelled to be employees of the Companies to which they are transferred. As noticed by us earlier, there is no such power reserved to the appellants, therefore, transfer of the workmen in question by the appellants, we have no doubt in our mind, would seriously prejudice the interest of the workmen.

11. Section 33(1)(a) of the Act imposes restriction on the power of the employer to alter the service conditions applicable to the employees of the Companies during the pendency of any industrial dispute either before a Conciliation Officer or the Board or of any proceeding before the Labour Court or Tribunal or a National Tribunal or the Arbitrator in respect of an industrial dispute. As noticed by us earlier, since there is no power reserved to the appellants as per the terms of conditions applicable to the employees of the appellants to transfer its employees, in our view, transfer of the employees from the appellants to the Companies to which they were transferred would alter, to the prejudice of the employees, their service conditions. Admittedly, in the instant case, the dispute regarding certain demands placed by the workmen-Union was pending adjudication before the Industrial Tribunal. Before the workmen in question were transferred, admittedly the appellants had not obtained the express permission in writing of the Tribunal for transfer of the workmen in question.

12. Therefore, it is clear that the transfer of the workmen by the appellants has been done in violation of the provisions contained in Section 33(1)(a) of the Act. Under these circumstances, the Tribunal as well as the Learned Single Judge were justified in taking the view that the transfer of the workmen in question has been done in violation of Section 33(1)(a) of the Act. The decision in the case of Management of Cipla Ltd. (supra) relied upon by Sri Vijaya Shankar, in our view, has no application to the facts of the present case. In the case of CIPLA (supra), the transfer of the workmen was made from one department/branch of the Company to another department/branch of the same company. That is not the position here. So far in the case of Renusagar Power Company (supra) is concerned, the Supreme Court as noticed by us earlier, has no doubt, taken the view that it is permissible for the Courts to lift the veil of the Company. But that

principle cannot be applied here to frustrate the right guaranteed to the workmen u/s 33(1)(a) of the Act. Further, it is necessary to point out that the service conditions governing the employees of the appellants does not permit the appellants to transfer its employees to another Company including their subsidiary Companies. Such a power of transfer is not reserved to the appellants as per the service conditions governing their employees. In the light of the discussion made above, question No. 1 is answered against the appellants.

RE. QUESTION NO. 2:

13. The next question that is required to be considered is, whether the Tribunal is justified in awarding full backwages? In our view, there is no merit in the submission of Sri Vijaya Shankar that since the workmen having failed to obey the order of transfer, it must be deemed that they have abandoned the service and as such, they are not entitled for award of backwages. We are unable to persuade ourselves to the submission of Sri Vijaya Shankar that the conduct of the workmen does not warrant for award of any backwages, much less full backwages. The decision in the case of Allahabad Jai Sansthan (supra) relied upon by Sri Vijaya Shankar, in our view, has no application to the facts of the present case. We have agreed with the conclusions reached by the Tribunal that the transfer of the workmen was made by the appellants without the authority of law. Therefore, it is clear that under these circumstances, the transfer of the workmen has been made in contravention of Sub-section (1) (a) of Section 33 of the Act and therefore, it must be held that the transfer effected was inoperative and void in law, as noticed by us earlier. As noticed by us earlier, Section 33(1) (a) of the Act provides that during the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding without the express permission in writing of the concerned authority / Tribunal. Therefore, when there is an embargo put on the employer not to alter the service conditions of the workmen pending adjudication of the dispute before the Tribunal without the express permission in writing of the Tribunal, as noticed by us earlier, if an order is effected being in contravention of Section 33(1)(a) of the Act, it must be held that such orders of transfers are inoperative and void in law. The Hon'ble Supreme Court in the case of Jaipur Zilla Sahakaribhoom Vikas Bank Ltd. (supra) while considering the effect of an order made u/s 33(2)(b) of the Act has taken the view that the order made in contravention of Section 33(1)(b) of the Act is inoperative and void in law. In our view, the principle enunciated by the Supreme Court while considering the order made u/s 33(2)(b) of the Act must be made applicable in all cases where order is made in contravention of Section 33(1)(a) of the Act. In this connection, it is useful to refer to the observations made by the Supreme Court in the case of Jaipur (supra) at paragraph-14:

"14. Where an application is made u/s 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bonafide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint u/s 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory-conditions contained in the proviso or where the approval is refused, a workman should still make a complaint u/s 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside u/s 33-A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted".

(emphasis supplied)

14. Since the orders of transfer is inoperative and void in law, the workmen continues to be the employees of the appellants. Under these circumstances, the appellants cannot escape their liability of paying full backwages to the workmen till they are reinstated to duty. This obligation is cast upon the appellants even in the absence of complaint filed by the workmen u/s 33-A of the Act as laid down by the Supreme Court in the case of JAIPUR (supra). In the light of our

conclusion that the order of transfer of workmen are inoperative and void in law, their failure to report to duty to the Companies they are transferred, cannot be held against them to deprive them of their legitimate right to claim backwages. Further, for the same reason, we do not find any merit in the contention of the learned Counsel for the appellants that the workmen should have placed material before the Tribunal to show that they were not gainfully employed during the period in question. Further, it is also not the case of the appellants that at the relevant time the workmen were gainfully employed. Therefore, the decisions relied upon by the Learned Counsel for the appellants have no bearing to the facts of the present case. Accordingly, in the light of our above conclusion, question No. 2, is answered in favour of the workmen.

15. In the light of the discussion made above, the order impugned passed by the Learned Single Judge in W.P. Nos. 25578-79 of 2000 dated 29th August 2001 does not call for any interference and this appeal is liable to be rejected

16. Accordingly, this appeal is rejected. However, no order is made as to costs.