
(2011) 01 GUJ CK 0084

In the Gujarat High Court

Case No : Special Civil Application No. 243 of 2011

Clutch Auto Limited

APPELLANT

Vs

Bhimsingh Bariya C/o. Navjagrut Labour Union

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 17, 25F, 31(2), 33

Citation : (2011) 2 GLH 242

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : D.G. Shukla, for the Appellant; T.R. Mishra With Mr. U.T. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.

Heard learned Advocates for the parties.

1. The petitioner who is opponent in complaint application No. 45/2010 in Reference (LCA-D) No. 41/2010, pending in the Labour Court No. 7, Ahmedabad, has approached this Court under Article 226 & 227 of the Constitution of India challenging the interim order passed by the Labour Court on 6/1/2011 below exhibit-2 stay application, where under the Labour Court has granted interim relief directing present petitioner/original opponent to give work to the workmen and pay them their monthly wages; and in alternative, if the petitioner/opponent chooses not to give them work, then pay them their wages till final disposal of the complaint exhibit-1. The complaint was fixed for hearing on 24/ 1/2011. Being aggrieved & dissatisfied with this order of interim relief passed by the Labour Court No.7, Ahmedabad, in complaint application No. 45/2010 in Reference (LCAD) No. 41/2010 the present petition is preferred wherein the workmen have also appeared through their Advocate on caveat.

2. The petitioner has put up a case that petitioner Company has one manufacturing unit at Faridabad and four manufacturing units at Ahmedabad. Petitioner Company had purchased unit of Gurukrupa Founders & Engineers which in fact is having four manufacturing units situated at (i) Kamal Industrial Estate, Sukram Nagar, Ahmedabad, known as "Unit No.1"; (ii) Ajanta Industrial Estate, Behind Gujarat Bottling, Rakhial, Ahmedabad, known as "Unit No.2"; (iii) Anupam Industrial Estate, Behind Nirala House, Amraiwadi, Ahmedabad, known as "Unit No.3"; and (iv) Vatva Industrial Estate, Vatva, Ahmedabad, known as "Unit No.4". The unit was purchased with liability of the workmen "as workmen of ongoing concern". As per say of the Company, the Company introduced change in the manufacturing activities by introducing induction furnace requiring specially skilled workmen. The said change warranted transfer of the workmen working on rotary furnace in unit No. 4 to its other 3 units situated in Ahmedabad and this was sought to be effected by notice of order dated 27/2/2009. Accordingly workmen were required to work at different units w.e.f. 1/3/2009. The said transfer was differed in due deference to workmen's request and once again on 27/5/2010 said transfer was postponed and ultimately when transfer was sought to be effected on 8/10/2010 there was call of strike. Respondent and other 24 workmen filed complaint No. 45/2010 in reference being Reference (LCAD) No. 41/2010 inter alia contending and complaining that Company could not have changed their service condition during pendency of the dispute which was covered by reference as stated herein above. The complaint was replied by the Company which was a combined reply to the complaint as well as application for interim relief exhibit-2. The concerned Court after due deliberation on rival submissions came to the conclusion that there was prima facie violation of provisions of Section 33 of I.D. Act and hence decided to grant interim relief which in terms came to be granted which is impugned in the present petition under Article 226 & 227 of the Constitution of India.

3. Learned Advocate Shri D.G. Shukla appearing for the petitioner Company contended that the Labour Court did not have jurisdiction and authority to pass interim orders on complaint made u/s 33-A of the I.D. Act. Learned Advocate for the Company submitted that the Labour Court could not have granted any interim relief without there being any adjudication of the complaint on question. The complaint, if any made u/s 33-A of the I.D. Act, is held to be required to be adjudicated upon and there after only interim relief could be granted. In the instant case Labour Court has patently erred and over-stepped its jurisdiction in granting interim relief which is contrary to established principle of granting interim relief and therefore on that count also the order impugned deserve to be quashed and set aside. Learned Advocate for the petitioner Company further submitted that learned Single Judge of this Court in case of Ahmedabad Municipal Transport Service Vs. Hisamudin Dosumiya Shaikh, held that Section 33-A of I.D. Act 1947 for grant of ex parte interim injunction is governed by same principles as laid down in Order 39 of CPC should be followed by the Industrial Courts. Industrial Courts or Labour Courts will also be governed by

principles which are enumerated in provision of Order 39 Rules 1,2 and 3 of CPC while granting interim relief u/s 33-A of th I.D. Act. In the instant case the Court while granting interim relief has not confined itself to this principles enumerated under Order 39 and hence it can well be said that the Court has exercised jurisdiction which was not vested in it for granting interim relief and therefore the order impugned in this petition deserves to be quashed and set aside.

4. Learned Advocate for the petitioner Company thereafter relying upon decision of the Apex Court in case of *The Bhavnagar Municipality v. Alibhai Karimbhai And Others*, reported in (1997) 2 SCC 350 contended that in a complaint u/s 33-A, even if the employer is found to have contravened provision of Section 33, the Tribunal has to pronounce upon merits of the dispute between the parties. The order passed in an application u/s 33-A is an award similar to be passed in a reference u/s 10 of I.D. Act. The award passed has to be submitted to the Government and the same has to be published u/s 17 of the Act. For the purposes of the Act the complaint u/s 33A takes, as it were, the form of a reference of an industrial dispute by the Appropriate Authority and the same has to be disposed of in a like manner. Thus relying upon the observations made in para-15 of the said judgment, learned Advocate for the Company submitted that the complaint is also required to be treated as if it were a reference only and hence without there being a proper adjudication on the aspect of the complaint, no interim relief could have been granted by the Court. The Court in the instant case has granted interim relief without adjudicating the complaint during pendency of the complaint and therefore, the order of interim relief is required to be quashed and set aside.

5. Learned Advocate for the petitioner thereafter contended that the transfer cannot be said to be a change of service condition as transfer is essentially an incident of service. In support of this proposition of law he relied upon decision of the Apex Court in case of *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*, and submitted that the employee cannot claim any immunity from transferability as transfer is said to be an incident of service.

6. Relying upon another decision in case of *The Hindustral Lever Ltd v. The Workmen*, reported in 1974 (1) LLJ 94, learned Advocate for the petitioner submitted that the transfer being essentially a function falling into the discretionary powers of the employers it cannot be said to be contrary to the provisions of law. The Labour Court's order was therefore in that case found to be untenable in eye of law.

7. Lastly, relying upon the decision of the Bombay High Court in case of *MRF Ltd, Goa vs. Goa MRF Employees Union, Goa & ANR.*, reported in 2003 11 CLR 985, the learned Advocate for the petitioner submitted that in cases where complaint is made u/s 33-A of the ID Act for breach of service conditions, the Court need not grant interim relief without appropriate adjudication upon the complaint.

8. Shri Mishra, learned Advocate, who appears for the workmen on caveat

contended that the Labour Court has elaborately discussed the rival contentions of the parties and recorded its prima facie view based upon the material on record and therefore, it cannot be said that Labour Court has not followed the principles laid down under Order 39 Rule 1 & 2 of CPC while granting interim relief. He further submitted that learned Advocate for the petitioner has not pointed out as to in what manner the principles laid down under Order 39 have not been followed by the Labour Court. Merely relying upon decision of this Court laying down principle of law that granting of interim relief shall be governed by principle enshrined under Order 39 in itself would not justify challenge to the order in question. It was therefore contended on behalf of the workmen that the submission with regard to non-compliance with provision of Order 39 is not available for assailing the order in question.

9. Learned Advocate for the workmen thereafter contended that the workmen are not liable to be transferred. The petitioner has not pointed out either before the Labour Court or before this Court as to under which provisions of law the workmen were liable to be transferred from one unit to another unit. In fact the change in service condition is not merely on account of transfer but it is on account of change in the service condition as the workmen as per their say, without any notice of change as envisaged u/s 9A have been called upon to go to some other work place as the machinery and other condition is changed from rotary machine to that of induction furnace machine. This in itself is blatant violation needing hardly any further material to prove that there is change in the circumstance and service condition.

10. Learned Advocate for the workmen thereafter contended that this Company does not have Certified Standing Order and the service conditions are governed by Model Standing Orders. When Model Standing Orders are governing service conditions of the workmen and especially when there is no bye-parte settlement rendering workmen's service transferable, then their transfers cannot be said to be a simply incidence of or exigency in service. Assuming for the sake of argument that there existed some provision under the employment order than also same would not have the effect of changing the Model Standing Order which are standing order governing service condition of the employees and the workmen in the instant case. The transfers of workmen in the instant case are not simply incidents of transfer so as to brush them aside by calling them as such. These transfers which were sought to be effected had a far reaching effect upon the working condition and the service tenure of the workmen concerned. In fact as could be seen from the petitioner Company's submission and written reply filed before the Labour Court, the change and transfer were warranted on account of change in the production method and machinery, namely the Company itself has admitted that earlier the rotary furnace was employed for production which now has been changed to induction furnace and therefore this is a clear change in the condition which as per the say of the Company has warranted transferring of the workmen. Thus the transfer of the employee cannot be viewed as a simplicitor transfer so as to brush it aside by saying that it is a

transfer incidental to service condition or incident of service.

11. Learned Advocate appearing for the workman relying upon the observations made in paragraphs 34,37,38 of decision of the Apex Court in case of M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, , contended that the petitioner management could not have validly effected the impugned transfers and the interim relief granted against them by the Competent Court need not be interfered with in the present proceedings.

12. Learned Advocate appearing for the workmen relying upon the decisions of Calcutta high Court in case of Samiran Kumar Mondal (Dr.) v. Vnio Of India & Ors., reported in 2000 III CLR 1015 and decision of Karnataka High Court in case of Management of Nippani Urban Co-operative Bank Ltd. Vs. Workmen, submitted that, all transfers are not to be viewed as merely incident of service, the facts and relevant provisions of service conditions should be taken into consideration for deciding as to whether transfer in question is permissible or not. The petitioner management has failed in pointing out any provisions of law permitting it to effect such transfers.

13. Learned Advocate appearing for the workmen relying upon the decision in case of Calcutta Electric Supply Corpn. Ltd v. Shew K. R. Singh & Ors, reported in 2000 (8) Supreme 126 submitted that workmen are entitled to bring action in Court of law on mere apprehension of breach of their service condition.

14. Learned Advocate appearing for the workman relying upon the decision of the Apex Court in case of Western India Match Company Ltd. Vs. Workmen, submitted that in absence of any specific provisions provided in Jaw, the provisions of Model Standing Orders should govern the relationship and it shall prevail upon even the contractual conditions also.

15. Learned Advocate appearing for the workmen submitted that in view of the aforesaid, the petition may be dismissed.

16. This Court has heard learned Advocates for the parties and perused the impugned order. Before advertng to rival submission of the learned Counsels of the parties, it would be most appropriate at this stage to set out few indisputable aspects emerging from submission and compilation, namely;

1. There exist an industrial dispute between the parties and it awaits it's final adjudication in the competent Court. The dispute being Reference (LCD) No. 41 of 2010 pertains to demands of regular wages and other benefits pertaining to workmen's services.

2. The petitioner management has averred in paragraph No. 3.1 in the petition as under "The petitioner Company was carrying on its manufacturing activities at Unit No. 1 to 4 by rotary furnace. However in unit No. 4 the Petitioner Company started manufacturing activities by Induction furnace which requires highly skilled workmen. The petitioner Company therefore started transferring all the workmen working on the rotary furnaces in Unit No. 4 to its other three units

situated in Ahmedabad as the repairing of furnace was going on etc, vide notice dated 27.02.2009." The petitioner has not pointed out any notice of change. The petitioner has rather clearly admitted that hitherto used rotary furnace machines are replaced with induction furnace machines. It is also admitted by the petitioner that on account of such change into the method of production and plant the workmen were required to be transferred.

3. The petitioner Company did not even remotely referred to any of their attempts before the Labour Court that the change so far effected did not pertain to the existing dispute requiring it to obtain prior permission for bringing about such change.

4. The Company has not attempted to refer to in this petition any where as to how the change being brought about is not pertaining to the pending dispute.

5. The petitioner Company has admittedly not taken care to seek any approval of the competent forum under the provisions of Section 33 of the I.D.Act, before effecting the change.

6. The petitioner Company has not disputed that it does not have any "Certified Standing Orders" containing any transferability of workmen as one of their service condition.

7. The petitioner Company has failed in establishing that it is not governed by "Model Standing Order". In other words it is clear that it is governed by the provisions of the "Model Standing Orders"

8. The petitioner Company failed in indicating any provisions of "Model Standing Order" entitling it to bring about transferability as one of the service conditions governing the present set of workmen.

9. The petitioner Company has challenged interlocutory order passed by the learned Labour Court.

10. The complaint wherein the impugned order is made is awaiting its final adjudication.

17. Against the aforesaid back drop of indisputable aspects, now let us examine rival contentions of learned Advocates for the parties.

18. As per the scheme of the Industrial Disputes Act 1947 there exist an unequivocal statutory restriction in terms of the provisions of Section 33 of the I.D.Act upon management in exercising its Managerial discretion in certain circumstances in effecting any change in services conditions of workmen during pendency of proceedings under the I.D.Act. These statutory restrictions are naturally additional restrictions otherwise than those provided for safeguarding service conditions of the workmen in other situation when even no proceedings are pending. The Legislature has therefore made special provisions to safeguard workmen's service conditions during pendency of the proceedings and hence this legislative mandate in form of Section 33 of the I.D.Act cannot be whittled down

by any interpretive efforts based upon and borrowed from archaic, intrinsically unconnected and totally different statutory scheme and it's judicial interpretations. Thus the essence of Section 33 of the I.D.Act in its special scheme needs to be constantly borne in mind while assessing and examining any questions arising therefrom.

19. The very manner of couching of Section 33A of the I.D.Act, and providing in it of instant remedy of straight way filing written "complaint" to the concerned, without requiring the workmen to undergo other usual machinery, indicates the special importance attached to this provision which needs to be acknowledged by all the concerned.

20. It is well established principle of law that the Court which has power to grant final relief has inherent jurisdiction to grant interim relief also. Thus Labour Court's power to grant appropriate interim relief in complaint made u/s 33 needs no elaboration.

21. This Court is unable to accept the submission of the learned Counsel for the petitioner that the Labour Court did not have power to grant interim relief without adjudicating the complaint. The legislature has, u/s 33A of the I.D.Act, provided that the complaints are also to be adjudicated as if they were disputes pending before it and pass appropriate award thereon. Now, therefore it is correct to say that the Labour Court or forum are under obligation to adjudicate the complaint before it, as if it were deciding disputes but it cannot be stretched further to say that no interim relief is to be granted without fully adjudicating the matter. This stretching would amount to say that in appropriate case also the competent forum did not have power to grant any interim relief, which may run counter to very proposition of law that a forum which has power to grant final relief has always power to grant interim relief. The decision of this Court in case of Ahmedabad Municipal Transport Services (supra) is of no avail to the petitioner for supporting the submission that Labour Court cannot grant relief without adjudicating the complaint. This Court has in that judgment has in fact said that it is not in disputes that labour Courts or industrial Courts as the case may be is competent to pass appropriate interlocutory orders or injunctions in given case. The learned Single Judge in that case while dealing with the challenge to an ex parte interim injunction u/s 33A observed that, as no statutory provisions exist on the point, the principles as laid down in Order 39 of CPC should be followed by the Industrial Court. The learned Single Judge, as could be seen form the Judgment made observations in respect of the peculiar facts & circumstances of that case. In that case the petitioner Ahmedabad Municipal Transport Service had assailed ad-interim order granted ex parte by the Industrial Tribunal staying the Circular No. 62 dated 30/11/1996 issued for & on behalf of Ahmedabad Municipal Transport Service, and as a result thereof Ahmedabad Municipal Transport Service was restrained from preparing the duty list in accordance with the decision rendered by the Industrial Tribunal in Complaint No. 9 of 1989, and confirmed in Special Civil Application No. 8885 of 1989 by the Division Bench of

this Court dated December 29, 1989. The Court observed in para-10 that it is in the aforesaid factual matrix the impugned ex-parte order recorded by the Industrial Tribunal was required to be tested & examined and Court further observed in para-11 that there cannot be any proposition of law that Industrial Court cannot pass interim orders. The Court after recording this observed that the only question which is required to be examined and adjudicated upon at that juncture in that petition was whether the impugned ex-parte impugned order recorded by the Industrial Tribunal restraining the Ahmedabad Municipal Transport Service from operating the new duty list pursuant to Circular No. 62 was justified, legal and valid or not. The Court in para-12 in fact has enumerated the factors which should weigh with the Court in grant of ex-parte order or injunction. Thus the ratio of the judgment in case of Ahmedabad Municipal Transport Service is to the effect that the granting of exparte interim relief u/s 33A should be governed by those principles incorporated in order 39 of Civil Procedure Code. This ratio cannot help the present petitioner in any manner. First of all it is required to be noted that the order impugned in this petition is passed after hearing both the sides. The petitioner has also filed its written statement in reply to the complaint as well as application of stay for interim relief. Therefore, the order impugned, when not having been passed ex-parte cannot be assailed on the ground mentioned in the aforesaid judgment of Ahmedabad Municipal Transport Service (*supra*). Having this being my view, therefore, that ratio has no applicability to the facts & circumstances of the present case.

22. The decision of the Apex Court in case of Bhavnagar Municipality (*supra*) relied upon by the learned Advocate for the petitioner would also be of no avail to the petitioner. In the case of Bhavnagar Municipality the petitioner Bhavnagar Municipality had preferred appeal against the order of this Court dismissing in limine writ application challenging the award of the Industrial Tribunal made u/s 33-A of I.D. Act. Thus at this very stage it is required to be noted clearly that the Apex Court was dealing with the challenge to the dismissal of writ petition filed by the Municipality challenging the final award made by the Industrial Tribunal u/s 33-A of I.D. Act., and not any interim order made by the Tribunal. Thus the entire discussion in respect of the controversy is required to be viewed from the fact that the said judgment was passed in the backdrop where the subject matter was challenged to the final award of the Tribunal u/s 33-A of I.D. Act., and not upon any interim order. In that connection the Apex Court observed that the complaint is also required to be adjudicated upon. As it is noted by the Apex Court in the para-2 & 3 that there was an industrial dispute pending between Bhavnagar Municipality and its workmen before the Industrial Tribunal in Reference 37/ 1974 and it related to several demands including the demand for permanent status of the daily rated workers of Water Works Section (WWS) of the Municipality who had completed 90 days service, while the aforesaid industrial dispute was pending before the Tribunal, the appellant Municipality passed orders retrenching 22 daily rated workmen attached to Water Works Section. Though Section 25-F of the Act was complied but the workmen failed to

make complaint to the Tribunal u/s 33-A of the Act that there was breach of Section 33 of the Act by the appellant Municipality. The Court has further observed that neither party adduced any oral evidence before the Tribunal. The Court observed that it is well settled that a complaint u/s 33-A is maintainable only if the employer contravenes Section 33 of the Act. It is well settled that in a complaint u/s 33-A even if the employer is found to have contravened the Section, the Tribunal has to pronounced upon the merits of the dispute between the parties. The order passed in an application u/s 33-A is an award similar to one passed in a reference u/s 10 of the Act. For the purpose of the Act complaint u/s 33-A takes as if it were the reference of an industrial dispute. The Apex Court therefore remanded the matter of the Tribunal giving its verdict on merits of the matter. Thus the Apex Court while dealing with the final award made bay the Tribunal u/s 33-A made observations, which cannot be said to be of any help to the present petitioner for challenging only the interim order, which is passed by the Tribunal bearing in mind the principle of Order 39 and was passed after affording due opportunity to both the sides and recording its satisfaction for passing the said order.

23. The decision cited at the Bar of the Bombay High Court in case of MRF Ltd Goa (supra) is also not much avail to the petitioner as could be seen from the facts of the matter. The facts indicated in the judgments are entirely different than the facts of the present case, therefore, in my view, the ratio would be have no applicability in the facts & circumstances of the present case.

24. The Court needs to be mindful of the fact that Section 33 is incorporated in the I.D. Act so as to safeguard the workmen from any action that might prejudice their status and case in the dispute. It is also required to be noticed that complaint u/s 33-A of the I.D. Act is required to be adjudicated upon, as if it was a reference. This Court in case of Ahmedabad Municipal Transport Service (supra) has observed that the Tribunal and Labour Court have power and jurisdiction to grant interim relief in a given case. Therefore, in my view, the real purport of Section 33 and 33-A need to be appreciated while testing the order impugned in this petition.

25. In fact the observations of the Apex Court in case of Bhavnagar Municipality (supra) would be rather going to help the case of the respondent workmen in the present petition. The Apex Court has in para-14, in case of Bhavnagar Municipality observed as under:

14. The character of the temporary employment of the respondents being a direct issue before the Tribunal, that condition of employment, however, insecure, must subsist during the pendency of the dispute before the Tribunal and cannot be altered to their prejudice by putting an end to that temporary condition. This could have been done only with the express permission of the Tribunal. It goes without saying that the respondents were directly concerned in the pending industrial dispute. No one can also deny that snapping of he temporary employment of the respondents is not to their prejudice. All the five

features adverted to above are present in the instant case. To permit rupture in employment, in this case, without the prior sanction of the Tribunal will be to set at naught the avowed object of Section 33 which is principally directed to preserve the status quo under specified circumstances in the interest of industrial peace during the adjudication. We are, therefore, clearly of opinion that the appellant has contravened the provisions of Section 33 (1) (a) of the Act and the complaint u/s 33A, at the instance of the respondents, is maintainable. The submission of Mr. Parekh to the contrary cannot be accepted.

26. Thus the interim relief is more of a status quo, requiring parties to maintain status quo so as to not gain advantage or inflict disadvantage on other side. Bearing this proposition of law in mind, one can say that the interim relief granted cannot be said to be an interim relief amounting to granting the final relief. Even assuming for the sake of argument that the relief is restraining the other side from implementing the transfer order, then also, there is no absolute proposition of law that in a given case the interim relief cannot be granted which may amounting to granting of final relief.

27. The decision of the Apex Court in case of Lokmat Newspaper (*supra*) is also very relevant so far as the present controversy is concerned. The observations of the Apex Court in para-34 & 38 deserve to be set out as under:

34. In fact the Labour Court has also come to this very conclusion in paragraph 13 of its judgment wherein the Labour Court on the admitted position on record has held as under:

The management had transferred about 11 hand compositors including the complainant to Jalgaon by order dated November, 4, 1981. It appears that at that time only the management was ready to get the work of composing done exclusively by that photo type setting machine and hence the services of hand compositors were no longer required at Nagpur. In fact at least at that time, the notice of change ought to have been given by the respondent because the services of hand compositors were not useful and were transferred only in "November 1981 obviously because the work of composing was done on the photo type setting machines.

The aforesaid finding of fact which was referred by the Revisional Court, as well as the learned Single Judge of the High Court leaves no room for doubt that by November 4, 1981 the scheme of rationalisation had already come into force and that scheme had a direct nexus and a realised possibility of making the respondent and other workmen surplus liable to retrenchment as surplus staff. Once that happened, it becomes obvious that there remained no occasion thereafter for the appellant-management to resort to Section 9-A of the Act belatedly by giving notice of change only in February, 1982. The appellant in this connection had missed the bus. It was a futile attempt to lock the stables after the horses had bolted.

38. In view of the aforesaid settled legal position, there is no escape from the

conclusion that the impugned notice dated March 25, 1982 u/s 9-A which was issued long after the actual installation of the photo composing machine had fallen foul on the touchstone of Section 9-A read with Schedule IV item No. 10. Such a notice in order to become valid and legal must have preceded introduction of such a machine and could not have followed the actual installation and effective commission of such a machine. The decision rendered by the Division Bench in this connection is found to be perfectly justified both on facts and in law. It must, therefore, be held that the impugned termination or discharge of the respondent was violative of the provisions of Section 9-A of the I.D. Act and he was discharged from service without the appellant's following the mandatory requirements of Section 9-A of the I.D. Act., renders the change in conditions of service void ab initio.

This legal position is well settled in case of Workmen of The Food Corporation of India Vs. Food Corporation of India, a three Judge Bench of this Court, speaking through Desai, J., in para 19 of the report, laid down as under-

It is at this stage necessary to examine the implication of Section 9-A of the I.D. Act, 1947. As hereinbefore pointed out, Section 9-A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Section 9-A which has no relevance here.

Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty u/s 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such, an illegal change would be wholly ineffective.

Point No.3, therefore, is answered in affirmative against the appellant and in favour of the respondent.

28. In view of the aforesaid discussions, I am of the opinion that, the order impugned cannot be said to be so perverse, so as to call for any interference under article 226 & 227 of the Constitution of India. This Court should be slow in interfering with the interlocutory order passed under its extraordinary jurisdiction vested under article 226 & 227 of the Constitution of India. As the order is not perverse, it does not call for any interference. The petition therefore deserves to be dismissed and is accordingly dismissed. However, there shall be no order as to costs.