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**(2010) 08 KAR CK 0034**  
**In the Karnataka High Court**  
**Case No : W.A. No. 2632 of 2010**

Madura Coats Pvt. Ltd.

APPELLANT

Vs

Workmen of Madura Coats Ltd.

RESPONDENT

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**Date of Decision :** 17-08-2010

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 33, 33 A

**Citation :** (2011) 2 LLJ 286

**Hon'ble Judges :** J.S. Khehar, C.J.;Manjula Chellur, J

**Bench :** Division Bench

**Advocate :** K. Kasturi, SC for S.N. Murthy Associates, for the Appellant; T.S. Anantaram, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Manjula Chellur, J.—This appeal is filed by the management against the workmen of the management.

2. The Respondents who are 17 or so in number raised a dispute challenging the change of service conditions before the Assistant. Commissioner. The Assistant Commissioner and Conciliation officer held that the management violated Section 33 of the Industrial Disputes Act (for short "the I.D. Act"). However, the said order came to be quashed in W.P. No. 784/2007. The Respondent-union filed complaint, application No. 3/2006 in I.D. No. 160/2006 contending that, the Appellant violated Section 33 of the I.D. Act. Detailed objections came to be filed before the Additional Industrial Tribunal. After hearing both parties, the Tribunal held that the transfer of the workmen to Ambasamudram is covered with malafides and therefore, not valid in law. Aggrieved by the said award dated March 7, 2008 the Appellant filed W.P. No. 8576/2008. After hearing both the parties, the learned single Judge dismissed the writ petition.

3. Against the said order of dismissal of the writ petition, the management is before the Division Bench. The writ Petitioner before the learned single Judge

and the Appellant before us, is the management. It is not in dispute, the Appellants are the manufacturers of textile accessories, sewing threads, etc. at its factories at Ambasamudram and Tuticorin having about 3,000 workmen in all the locations. At 21 locations it has sales officers under C and F arrangement for stocking and distributing its products at different, places in the country. One such central warehouse and administrative office was located at No. 85, old Madras Road, Bangalore. At this place the transaction was receiving and storing of the goods from the mills and later distributing the same to the sales offices. It was housed in a rented premises and the lease of the premises came to an end by May 31, 2006. The landlord permitted the Appellant to continue in the premises till October 31, 2006. When the Appellant had to vacate the premises there were 28 workmen engaged in the activity of warehouse apart from 16 clerks discharging administrative functions like finance, purchase, etc. For good reasons the management decided to discontinue the work of warehouse at Bangalore and also decided to merge the warehouse already had in the mill at Ambasamudram.

4. So far as 16 clerical staff attached to administrative work, were transferred to its new administrative office at Marathhalli and those who were not engaged in the administrative work but engaged in the warehouse operations numbering 28 were transferred to its mills at Ambasamudram vide transfer order dated October 30, 2006. At that time the Respondent, raised the above said dispute. The learned single Judge was wrong in going by the provisions of the standing order in the matter of transfer when the transferee cannot be one of the items which could be included in the certified standing orders of the industrial establishment in the State of Karnataka, is the contention of the Appellant. The definition of company premises in the standing orders is only to show the place where the standing orders will be applicable and it cannot determine the right of an employee to transfer his workmen but this was understood wrongly by the learned judge and concluded that power to transfer workmen could only be to any of the branch offices, factory, warehouse or depot at Bangalore. Even the clause of transfer in the appointment, order was misread holding that the Appellant could transfer workmen to any of its branches or offices at Bangalore, though, no such intention could be read from the clause in the appointment order.

5. The Appellant relies upon Clause 4 of the appointment order issued to the workmen, which reads as under:

You are liable to be transferred to any department or to any of our branches at any time during your service with us. You are initially posted at our Central Warehouse, H-85, Old Madras Road, Banniganahalli, Bangalore." The Tribunal arrived at the conclusion based on the factual situation that all these years no workman was transferred to a place outside Bangalore by the management. Therefore, the present transfers should not have been effected. It is also borne on record that, on earlier occasions, workmen in the past depending on the need and also on compassionate grounds were transferred and this was brought to the notice of the Tribunal. However, till now, there was no occasion for the Appellant

to effect mass transfer of 28 persons at a time. The godown at Old Madras Road was in a rented place and it had to vacate its godown at the said premises. The management also decided to shift the work that was carried out at the existing warehouse to the warehouse at the mill premises of Ambasamudram. The Respondent workmen are not able to bring on record that other than clerical staff numbering 16 engaged in the administration functions, any workman was also absorbed at the new office at Marathahalli, Bangalore. Therefore, there is no discrimination shown to any of the workman who was at the warehouse doing other than die administrative work.

6. When the activity or the work that was carried on hitherto at the godown at Old Madras Road was shifted to warehouse at mill's premises at Ambasamudram, it would mean the Respondent workmen cannot do the same work what they were hitherto doing at Bangalore. When once the establishment is closed, the standing orders applicable to that establishment at Bangalore also come to an end. If service conditions are altered, then it falls u/s 33 of the I.D. Act but one has to see: whether such alteration of service condition is an intentional one.

7. In the present case, the Respondent/workmen had to establish that the transfers in question were for mala fide reasons and amounted to unfair labour practice. Even otherwise, if an alteration of conditions of service applicable to the workmen was in accordance with the standing orders, such alteration cannot be said to be in contravention of the provisions of the Act. Unless, mala fide and unfair labour practice is established, there cannot be scope for adjudication u/s 33-A of the Act. The appointment letter as stated above, even otherwise would indicate that their initial appointment was at Central warehouse, House No. 85, Old Madras Road, Banniganahalli, Bangalore. It also says that the workmen are liable to be transferred to any department, of the establishment or to any of their branches at any time during their service. Therefore, initial appointment of them at Bangalore at: Central Warehouse, Old Madras Road and their long tenure of working at Bangalore does not give them a right, to contend that they are entitled to stay at Bangalore and the management has to show them a place at Bangalore alone because the terms of the appointment letter indicates an option reserved by the management to transfer the workmen to any department or to any of its branches at any time of their service. Therefore, the workmen cannot complain that they also have to be housed at Marathahalli where warehouse activities are nil. Under these circumstances, all the authorities including the learned single Judge were not justified in holding that the intention between the parties while entering into certified standing orders was only empowering the management to transfer the workmen to any of their branches or depots at Bangalore. Mere transfer of certain workmen from one place to another place within Bangalore does not create any right in the Respondent workmen to substantiate their contention that they cannot be transferred outside Bangalore.

8. So far as violation of Section 33(1)(a) of the I.D. Act. the Court has to see

whether one of the demands pending before the Tribunal in I.D. 160/2006 was abolition of contract system. We are not concerned with "the said issue now. Second demand was complement, of workmen, namely, management not to reduce the existing complement, i.e. number of workmen who were in the establishment as on 1.11.2005; and the last demand was existing benefits and privileges which includes all existing facilities, amenities, privileges, rights, benefits monetary or otherwise enjoyed by the workmen either by virtue of earlier settlements or by statutory enactment, customs, conventions, etc. Mere placement of demands before the Tribunal, considering adjudication definitely would not amount, to conditions of service. This is contemplated under the Act with conditions of service applicable to workmen immediately before the commencement of proceedings should not be altered when it. is prejudicial to the interest of the workmen with reference to such dispute. Unless the Respondent union is able to establish that each of the, privilege or right that was already in existence was violated, question of adversely affecting the interest of the workmen would not arise. Here, there is no question of reducing the number of permanent workmen as alternative place was shown to the workmen by transferring them to the premises in which the Central warehouse had to be closed as it was not viable and further at the premises taken at Marathahalli, no warehouse activity like the one at Old Madras Road is in existence. Therefore, there is neither reduction of work force nor violation of any of the existing benefits and privileges by the management. When the terms of contract i.e. appointment, indicated that the management could transfer the workmen to any department or any of the branches at any time during the tenure of their service, by virtue of the present, transfer, it cannot be said that, there is violation of the privilege of conditions of service existing before the commencement of the proceedings before the Tribunal. Under these circumstances, we are of the opinion the orders of the Tribunal and the learned single Judge deserve to be set aside by allowing the appeal.

9. Accordingly, the appeal is allowed. Order of the learned single Judge dated 28.5.2010 in W.P. No. 8576/2008 is set aside. Order of the Industrial Tribunal in I.D. No. 160/2006 is quashed. Liberty is reserved to the Respondent/workmen to join duty at Ambasamudram within 15 days from the date of receipt of copy of this order.