

(2003) 04 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26948 of 2001

Moti Lal

APPELLANT

Vs

Bharat Electronics Limited (Government of India, Enterprise)
and Another

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2(K)
Industrial Employment (Standing Orders) Act, 1946 — Section 12, 13A

Citation : (2003) 2 UPLBEC 1620

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : K.P. Agarwal and Bushra Maryam, for the Appellant; Bharti Sapru, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—The petitioner has filed this writ petition under Article 226 of the Constitution of India, inter alia praying for issuance of writ, order or direction commanding the respondents not to enforce their orders dated 5.7.2001 (Annexure 1 to the writ petition) and the order dated 13th July, 2001 (Annexure 4 to the writ petition) by transferring the petitioner from Ghaziabad to Bangalore.

2. It has, inter alia, been alleged by the petitioner in the writ petition that the petitioner is an employee in Bharat Electronic Limited and has at all relevant times and also at all time been posted in its Ghaziabad Unit, and that the petitioner has been working as Junior Accountant in the Wage Group-VII, I.A./ G.A.D. and has been transferred to Internal Audit, Bangalore Complex, Bangalore by the order dated 5.7.2001 (Annexure 1 to the writ petition); and that the petitioner made a representation against the said order of transfer, but the same was rejected by the order dated 13.7.2001 (Annexure 3 to the writ petition); and that by an order of the same date i.e., 13.7.2001 (Annexure 4 to the writ

petition), the petitioner was informed that he had been relieved from duty with effect from 13.7.2001.

3. It has, inter alia, been further alleged by the petitioner in the writ petition that the respondent Bharat Electronics Limited (hereinafter also referred to as "the respondent-Company") has no power to transfer an employee from Ghaziabad to Bangalore; and that the conditions of service in the respondent - Company at Ghaziabad are governed by the Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, a true copy whereof has been filed as Annexure 5 to the writ petition; and that a perusal of the said Standing Orders (Annexure 5 to the writ petition) would show that there is no clause for transferring an employee from Ghaziabad to any other Unit of the respondent-Company; and that the Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946 have statutory force; and that there being no stipulation regarding transfer in the Standing Orders which lay down statutorily the conditions of service of employees in an Industrial Establishment, the respondent-Company at Ghaziabad cannot transfer the petitioner from Ghaziabad to Bangalore.

4. Counter-affidavit sworn on 10th August, 2001 has been filed on behalf of the respondent No. 1 in reply to the aforesaid writ petition.

5. It has, inter alia, been alleged in the said counter-affidavit that the petitioner Moti Lal was engaged originally as an Apprentice and appointed as Clerk/Typist "B" on 29.1.1980. A copy of the first engagement dated 29.1.1980 has been filed as Annexure CA-1 to the counter-affidavit.

6. It has, inter alia, been further alleged in the counter-affidavit that the petitioner was given an offer of appointment on the post of Clerk and Typist "B", and the conditions of service were attached with the said offer. A copy of the offer along with the terms of appointment has been filed as Annexure CA-2 to the counter-affidavit.

7. It has, inter alia, been further alleged in the counter-affidavit that the said offer was accepted by the petitioner in to including Condition No. 6 under which it was open to the respondent - Company to post him any where in India or abroad.

8. It has, inter alia, been further alleged in the counter-affidavit that on 7.5.1992, the petitioner was transferred to the Audit Department. A copy of the transfer letter dated 7.5.1992 has been filed as Annexure CA-3 to the counter-affidavit.

9. It has, inter alia, been further alleged in the counter-affidavit that as the petitioner was transferred to the Audit Department, he was placed functionally and administratively under the direct control of the General Manager (Audit), Corporate Office in view of the order dated 12.5.1990 (Annexure CA-4 to the counter-affidavit); and that thus, the petitioner has been working under the

direct control of the General Manager (Audit), Corporate Office, but the petitioner has not made him a party in the writ petition.

10. It has, inter alia, been further alleged in the counter-affidavit that by the order dated 31.8.2000 (Annexure CA-5 to the counter-affidavit), the petitioner was promoted with effect from 1.9.2000 and was also informed that he would be governed by the terms of appointment contained in his initial appointment order, i.e., the terms as contained in Annexure CA-2 including Term No. 6 under which he could be transferred anywhere in India and abroad.

11 It has, inter alia, been further alleged in the counter-affidavit that the petitioner at the time of transfer was working under the Audit Department of the Corporate Office and was posted at Ghaziabad Centre; and that by the transfer order dated 5.7.2001 issued by the Additional General Manager (Audit), Corporate Office, Audit Department, Bangalore, the petitioner has been transferred to the Audit Department at Bangalore; and that the services of the petitioner were transferred by the said order dated 5.7.2001, in the exigencies of service. A copy of the said transfer order dated 5.7.2001 has also been filed as Annexure CA-6 to the counter-affidavit.

12. It has, inter alia, been further alleged in the counter-affidavit that the petitioner moved a representation before the authority Additional General Manager (Audit) at Bangalore, and his representation has been decided stating that he has been transferred to Bangalore in view of the exigencies of work at the Bangalore Complex.

13. It has, inter alia, been further alleged in the counter-affidavit that the respondent-Company relieved the petitioner on 13.7.2001 to enable him to join his duty at the Internal Audit Department, Bangalore. A copy of the relieving order dated 13.7.2001 has also been filed as Annexure CA-7 to the counter-affidavit.

14. It has, inter alia, been further alleged in the counter-affidavit that transfer is an incident of service and the petitioner has been transferred as per the requirement of the respondent-Company in the Audit Department; and that under the terms of appointment, accepted by the petitioner, it is open to the respondent-Company to transfer the petitioner anywhere in India and even abroad.

15. It has, inter alia, been further reiterated in the counter-affidavit that the petitioner has been working as a Clear-A in the Internal Audit Department of the Corporate Office, Bangalore, Ghaziabad Centre with effect from 7.5.1992; and that the petitioner has been posted at Ghaziabad Centre, but he is attached to the Internal Audit Department, Bangalore since 7.5.1992; and that under the said office order issued on 12.5.1990, the petitioner has been working under the direct control of the General Manager (Audit), Corporate Office, Bangalore.

16. It has, inter alia, been further alleged in the counter-affidavit that Annexure

5 to the writ petition is a copy of the Standing Orders of the Bangalore Unit, but the petitioner has wrongly mentioned the said orders as the Standing Orders of the Ghaziabad Unit. It has, inter alia, been further alleged in the counter-affidavit that the Ghaziabad Unit has separate Standing Orders which are being filed as Annexure CA-9 to the counter-affidavit.

17. It has, inter alia, been further alleged in the counter-affidavit that the Standing Orders of the Ghaziabad Unit (Annexure CA-9 to the counter-affidavit) are not applicable to the petitioner, but the Standing Orders applicable to the Corporate Office, Bangalore (Annexure 5 to the writ petition) are applicable to the petitioner.

18. It has, inter alia, been further alleged in the counter-affidavit that a perusal of the Standing Orders as applicable to the Corporate Office at Bangalore, would show that transfer of an employee is clearly contemplated between one department to the other and from one job to the other; and that the petitioner has, thus, been rightly transferred from Audit Department, Ghaziabad to the Bangalore Complex.

19. It has, inter alia, been further alleged in the counter-affidavit that in view of the decision of the Supreme Court in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, the certified Standing Orders do not have statutory force.

20. I have heard Sri K.P. Agarwal, learned Senior Counsel for the petitioner and Miss Bharti Sapru, learned Counsel for the respondent.

21. Sri K.P. Agarwal, learned Senior Counsel for the petitioner has made the following submissions :

1. The certified Standing Orders have statutory force. If there is no provision in the certified Standing Orders for transfer of employee, then the employer has no power to transfer the employee. It is submitted that in the present case, there is no provision in the Standing Orders permitting transfer from Ghaziabad to Bangalore, and as such, the impugned transfer order dated 5.7.2001 was without jurisdiction.

2. No employer has inherent power to transfer unless contracted for or incorporated in the service conditions. Reliance is placed on a decision of the Apex Court in Kundan Sugar Mills Vs. Ziyauddin and Others,

3. In case, there is conflict between the terms of the contract of service entered into between an employee and the employer and the terms of the Standing Orders applicable to the establishment of the employer then, the terms of the Standing Orders would prevail over the terms of the contract of service. Reliance is placed on a Full Bench decision of this Court in S.P. Srivastava and Anr. v. Banaras Electric Light and Power Co. Ltd., Bhelupura, Varanasi and Ors 1968 (16) FLR 386.

It is submitted that even if there was a condition, namely, Condition No. 6 in the terms of appointment of the petitioner that the petitioner would be liable to be transferred to any part of India or abroad, the said condition being contrary to the certified Standing Orders applicable to the respondent-Company, the certified Standing Orders would prevail over the said Condition No. 6 in the terms of appointment of the petitioner.

4. Standing Orders are framed for a particular Industrial Establishment; each Industrial Establishment has its own Standing Orders. As such, the Standing Orders applicable to one Industrial Establishment cannot be applied to another Industrial Establishment.

It is submitted that the Standing Orders applicable to the Bangalore Establishment of the respondent-Company would not be applicable to the Ghaziabad Establishment of the respondent-Company, and similarly, the Standing Orders of the Ghaziabad Establishment would not be applicable to the Bangalore Establishment of the respondent-Company. This is because, the submission proceeds, the two establishments are different.

5. Under Standing Order No. 7 of the Standing Orders (Annexure 5 to the writ petition), transfer is permissible from one department to other or from one section to other or from one job to the other. The said Standing Order, it is submitted, permits transfer only within Ghaziabad Unit. The said Standing Order does not permit transfer from the Ghaziabad Establishment to the Bangalore Establishment.

6. In view of Section 12 of the Industrial Employment (Standing Orders) Act, 1946, oral evidence cannot be given to add to or vary or contradict the certified Standing Orders. Therefore, it is submitted, no reliance can be placed on the terms of appointment of the petitioner (Annexure CA-2 to the counter-affidavit) as the same would amount to doing something, which is prohibited by Section 12 of the said Act.

22. In reply, Miss Bharti Sapru, learned Counsel for the respondents has made following submissions :

1. By the order dated 5.7.2001, the petitioner has been transferred to Internal Audit, Bangalore Complex in his existing Wage Group Pay and pay scale. Hence, there was no question of any malafide in the issuance of the said transfer order or of any harassment of the petitioner by the issuance of the said transfer order.

2. The petitioner was under the administrative control of the Audit Department of the Corporate Office, Bangalore, and as such, the Standing Orders applicable to the Bangalore Unit applied in the case of the petitioner. Annexure 5 to the writ petition is, infact, a copy of the certified Standing Orders applicable to the Bangalore Unit of the respondent-Company.

3. Condition of transfer of service is contained in Standing Order No. 7 of the Standing Orders (Annexure 5 to the writ petition). The said Standing Order No. 7

permits transfer of workmen from one department to other or from one section to other or from one job to the other. The petitioner was/is under the administrative control of the Audit Department, Corporate Office, Bangalore, and was attached to the Audit Department at Ghaziabad. Even during his attachment to the Audit Department at Ghaziabad, he remained under the administrative control of" the Audit Department, Corporate Office, Bangalore, and as such, the transfer of the petitioner would amount to transferring him from one job to the other within the same department, and the same was, thus, permissible under the said Standing Order No. 7 of the Standing Orders (Annexure 5 to the writ petition).

4. The certified standing Orders do not have statutory force. Reliance is placed on a decision of the Apex Court in the Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others,

5. Condition No. 6 of the terms of appointment of the petitioner (Annexure CA-2 to the counter-affidavit) clearly contemplated that the petitioner could be transferred to any part of India or abroad at the discretion of the management. In the promotion order dated 31.8.2000 (Annexure CA-5 to tile counter-affidavit) whereby the petitioner was promoted as Junior Accountant (W.G.- VII), it was reiterated that the petitioner would be governed, inter alia, by the .terms of appointment contained in his initial appointment order i.e., Annexure CA-2 to the counter-affidavit.

6. Condition No. 6 as contained in the terms of appointment of the petitioner was not contrary to the Standing Orders, and as such, there was no question of the Standing Orders prevailing over the said Condition No. 6 contained in the terms of appointment of the petitioner.

It is further submitted that as Condition No. 6 was contained in the original order of appointment itself, there was no question of any alteration in the conditions of service by incorporating the said Condition No. 6 in the terms of appointment.

Reliance is placed on a decision of the Apex Court in Cipla Ltd. Vs. Jayakumar R. and Another,

7. The petitioner has an alternative remedy u/s 13-A of the Industrial Employment (Standing Orders) Act, 1946. It is submitted that the question as to whether the transfer order dated 5.7.2001 was in violation of the Standing Order No. 7 of the Standing Orders would necessarily involve the question "as to the application or interpretation" of the said Standing Order, and as such, the question could be referred to the Labour Court u/s 13-A of the said Act.

It is further submitted that in any case, the petitioner can seek reference under the Industrial Disputes Act, 1947.

As the petitioner has an alternative remedy, the writ petition is liable to be dismissed on the said ground. Reliance in this regard is placed on the decision of the Apex Court in the Rajasthan State Road Transport Corporation case (supra).

8. Bharat Electronics Limited (respondent - Company) is Government of India Undertaking. The transfer of the petitioner by the said order dated 5.7.2001 has been made on account of the exigency of service. No interference is, therefore, called for with the said transfer order dated 5.7.2001. It is submitted that the High Court in writ jurisdiction normally does not interfere with the order of transfer unless the same is shown to have been issued malafide or in violation of any statutory rule. The petitioner has not been able to establish any malafide on the part of the respondents in issuing the said transfer order, nor has the petitioner been able to show violation of any statutory rule by the issuance of the said transfer order. Reliance is placed on the following decision of the Apex Court:

(A) Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani,

(B) National Hydro-Electric Power Corporation Ltd. v. Shri Bhagwan and Anr.ILR 2001 (SC) 1222 .

23. In rejoinder, Sri K.P. Agarwal, learned Senior Counsel for the petitioner has made the following submissions :

(i) Even though in view of the decision of the Apex Court in the Rajasthan State Road Transport Corporation case (supra), the certified Standing Orders may not have statutory force, but the certified Standing Orders are binding between the parties. Certification gives the seal of sovereign to the Standing Orders certified Standing Orders become public document, and do not remain simply agreement between the parties. Therefore, the writ petition by the petitioner was maintainable despite the existence of alternative remedy.

(ii) Neither the remedy of making reference to the Labour Court, nor the remedy of filing civil suit is equally efficacious remedy, as such, the existence of alternative remedy is no bar to the entertainment of the writ petition.

(iii) Once the writ petition has been entertained by this Court, it cannot be dismissed on the ground of alternative remedy.

(iv) Condition No. 6 in the terms of appointment of the petitioner was contrary to the Standing Orders, and as such, the same was not binding. It is further submitted that the said Condition No. 6 cannot be relied upon as the same would amount to doing something which is in violation of Section 12 of the Industrial Employment (Standing Orders) Act, 1946.

(v) The decision of the Apex Court in CIPLA Limited case (supra), is distinguishable. The said decision, it is submitted, did not deal with power of transfer. The said decision only laid down that the transfer did not amount to alteration of service condition.

24. I have considered the submissions made by the learned Counsel for the parties and perused the record.

25. Let us first take up the objection raised by Miss Bharti Sapru, learned Counsel for the respondents to the maintainability of the writ petition on account

of availability of alternative remedy to the petitioner.

26. It is not disputed that Bharat Electronics Limited (respondent-Company) is Government of India Undertaking; hence, writ petition is maintainable against the respondent-Company under Article 226 of the Constitution of India. However, the question is whether the petitioner has any alternative remedy, and if yes, whether the remedy is equally efficacious.

27. It is submitted by the learned Counsel for the respondents that the petitioner has an alternative remedy u/s 13-A of the Industrial Employment (Standing Orders) Act, 1946. It is, however, submitted that in any case, the petitioner could seek reference under the Industrial Disputes Act, 1947.

28. Learned Senior Counsel for the petitioner, on the other hand, submits that the alternative remedy, if any, available to the petitioner is not equally efficacious remedy. It is further submitted that the writ petition can be filed for the enforcement of the certified Standing Orders.

29. To appreciate the rival submissions made by the learned Counsel for the parties on the question of availability of alternative remedy to the petitioner, it is pertinent to quote Section 13-A of the Industrial Employment (Standing Orders) Act, 1946 which provides as follows :

"13-A. Interpretation, etc. of Standing Orders.-If any, question arises as to the application or interpretation of a Standing Order certified under this Act, any employer or workman (or a trade union or other representative body of the workmen) may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

30. A perusal of the aforesaid Section 13-A of the Industrial Employment (Standing Orders) Act, 1946 shows, that, if any, question arises as to the "application or interpretation of a Standing Order certified" under the said Act, such question may be referred to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette. Such reference may be made by the employer or workman of trade union or other representative body of the workmen. The Labour Court to which the question is so referred shall decide the said question after giving the parties an opportunity of being heard. The decision of the Labour Court shall be final and binding on the parties.

31. The words "application or interpretation of a Standing Order Certified" under the Industrial Employment (Standing Orders) Act, 1946 are no doubt, words of wide amplitude. The questions arising in the present case, namely, as to which of

the said two Certified Standing Orders (i.e., the Certified Standing Orders applicable to the Bangalore Unit of the respondent-Company and the Certified Standing Orders applicable to the Ghaziabad Unit of the respondent-Company) is applicable to the present case, and further, as to whether the Certified Standing Orders applicable to the present case permit transfer of workman from one Unit (e.g., Ghaziabad Unit) to another Unit (e.g., Bangalore Unit), depend on the interpretation of the said two Certified Standing Orders, and are, therefore, question "as to the application or interpretation" of the said two Certified Standing Orders within the meaning of Section 13-A of the Industrial Employment (Standing Orders) Act, 1946.

32. However, the said question are not to be determined in isolation. On the determination of these questions is dependent the adjudication of the main dispute in the present case, namely, the dispute between the petitioner (workman/ employee) and the respondent - Company (employer) regarding transfer of the petitioner from the Ghaziabad Unit to the Bangalore Unit. In other words, the main dispute to be adjudicated in the present case is the dispute between the petitioner and the respondent-Company, and the adjudication of this dispute involves the determination of questions regarding "application or interpretation" of the said two Certified Standing Orders. The said main dispute to be adjudicated in this case, in my opinion, cannot be said to be covered by the expression "question.....as to the application or interpretation of a Standing Order Certified under this Act" occurring in Section 13-A of the Industrial Employment (Standing Orders) Act, 1946, and as such, the said main dispute cannot be referred to the Labour Court u/s 13-A of the Industrial Employment (Standing Orders) Act," 1946. Therefore, it cannot be said that the petitioner has alternative remedy available u/s 13-A of the Industrial Employment (Standing Orders) Act, 1946 for adjudication of the dispute between the petitioner and the respondent- Company regarding transfer of the petitioner from the Ghaziabad Unit to the Bangalore Unit.

33. However, even though the said dispute cannot be referred to the Labour Court u/s 13-A of the Industrial Employment (Standing Orders) Act, 1946, still the said dispute between the petitioner (workman/employee) and the respondent-Company (employer) is an "industrial dispute" within the meaning of Section 2(K) of the Industrial Disputes Act, 1947. Hence, it is open to the petitioner to raise an industrial dispute Under the Industrial Disputes Act, 1947, and seek reference of the said industrial dispute to the Labour Court/Industrial Tribunal Under the Industrial Disputes Act, 1947. While adjudicating upon the said industrial dispute, it would be open to the Labour Court/Industrial Tribunal to decide the questions as to the application or interpretation of the said two Certified Standing Orders in so far as they are necessary for a proper adjudication of the question or dispute referred. Hence, even if Section 13-A of the Industrial Employment (Standing Orders) Act, 1946 is not applicable to the present case, still the petitioner has got alternative remedy of raising an industrial dispute Under the Industrial Disputes Act, 1947. I am unable to accept

the submission of the learned Senior Counsel for the petitioner that the said remedy open to the petitioner is not an equally efficacious remedy. In this regard, it is pertinent to refer to the following observations of their Lordships of the Supreme Court in the *Rajas than State Road Transport Corporation* case (supra) (Pages 217 to 219 of the said FLR):

"It is evident from a perusal of the above decisions that while the first decision referred to Certified Standing Orders as constituting "the statutory terms of employment", they were described as "conditions of service in a statutory form" and as "binding on the parties at least as much, if not more, as private contracts embodying similar terms and conditions of service" in the second decision. The third decision, reiterated the holding in the first decision. So far as the two last mentioned decisions are concerned, it is obvious, they only purport to set out the purport of the earlier decisions. *Vaidialingam, J.*, used the very expression "part of the statutory terms and conditions of service", while *K. Ramaswamy, J.*, stated more emphatically that "Certified Standing Orders have statutory force". It must, however, be said that in the decision rendered by *Ramaswamy, J.*, the question as to the nature and character of the Certified Standing Orders did not arise for consideration; the said observation was made in another context. The consensus of these decisions is the certified Standing Orders constitute statutory terms and conditions of service. Though, we have some reservations as to the basis of the above dicta as pointed out supra, we respectfully accept it both on the ground of stare decisis as well as judicial discipline. Even so, we are unable to say that they constitute "statutory provisions" within the meaning of the dicta in *Sukhdev Singh*, where it was held. "The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in. employment when their dismissal or removal is in contravention of statutory provisions". Indeed, if it is held that certified Standing Orders constitute statutory provisions or have statutory force, a writ petition would also lie for their enforcement just as in the case of violation of the Rules made Under the proviso to Article 309 of the Constitution. Neither a suit would be necessary nor a reference Under Industrial Disputes Act. We do not think the certified Standing Orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves.

So far as the meaning and ambit of Section 13-A of the Standing Orders Act is concerned, a good amount of debate took place before us. Certain decisions of the High Courts have also been brought to our notice. The Section provides, that "if any, question arises as to the application or interpretation of a Standing Order certified under this Act" any employer or workman or their union may refer the question to "the Labour Court constituted under the Industrial Disputes Act, 1947 and specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette". The determination of the Labour Court is made final and binding on the parties, the contention of *Sri Altaf Ahmed*, learned Additional Solicitor General is that any and every violation of

Standing Order entitles the workman to approach the Labour Court directly under this provision and obtain relief. He submits that the Labour Court is empowered under this provision to adjudicate disputes between workmen and employer arising from the certified Standing Orders and grant such relief as is appropriate in the circumstances of the case. We are afraid, we cannot give effect to this submission. Acceptance of the said submission would mean that Section 13-A creates a parallel forum for adjudication of the very questions which the Labour Court or the Industrial Tribunal has been empowered to adjudicate under the Industrial Disputes Act and that too without the requirement of a reference by the Government. While we agree that language of Section 13-A is not very clear, it cannot certainly be understood as creating a forum for adjudication of industrial disputes involving the application and/or interpretation of the Standing Orders. That is the function of the Courts and Tribunal constituted under the Industrial Disputes Act. The limited purpose of Section 13-A is to provide a forum for determination of any question arising "as to the application or interpretation" of the certified Standing Orders as such, in case either the employer or the employee(s) entertain a doubt as to their meaning or their applicability. Probably it was thought that a decision of the appointed forum on the said question would itself facilitate the resolution of an industrial dispute, whether existing or apprehended. So far as the Labour Court, Industrial Tribunal or other adjudicatory bodies under the Industrial Disputes Act are concerned, it is agreed on hands and we endorse it that where a dispute is referred to any of them they are undoubtedly competent to go into and decide questions as to the application or interpretation of the certified Standing Orders in so far as they are necessary for a proper adjudication of the question or dispute referred."

34. This decision shows that even if Section 13-A of the Industrial Employment (Standing Orders) Act, 1946 is not applicable for adjudicating dispute between workman and employer arising from the certified Standing Orders and granting appropriate relief in the circumstances of the case, still it is open to make reference of such dispute to the Labour Court, Industrial Tribunal or other adjudicatory bodies under the Industrial Disputes Act, 1947. In deciding such dispute, the Labour Court, Industrial Tribunal or other adjudicatory bodies under the Industrial Disputes Act, 1947 will be competent to go into and decide questions as to the application or interpretation of the certified Standing Orders in so far as they are necessary for a proper adjudication of the question or dispute referred.

35. It is, thus, evident that the petitioner has got an alternative remedy, which is equally efficacious. Therefore, the present writ petition is liable to be dismissed on the ground of the availability of alternative remedy to the petitioner. However, as the present writ petition has already been entertained by this Court, and the counter-affidavit has already been filed pursuant to the notices issued to the respondents, it would not be proper to dismiss the writ petition on the ground of alternative remedy. Reference in this regard may be made to the decision of the Apex Court in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, (Paragraph 12),

wherein it has been laid down that if a writ petition is filed instead of availing of statutory remedy and the High Court entertains the writ petition and gives hearing on merits, then the writ petition cannot, thereafter be rejected on the ground that statutory remedy was not availed of.

36. Before proceeding further, it would be pertinent to deal with the submissions made by the learned Counsel for the parties on the question as to whether the certified Standing Orders have statutory force or not.

37. It is submitted by Sri K.P. Agarwal, learned Senior Counsel appearing for the petitioner that the certified Standing Orders have statutory force.

38. In reply, Miss Bharti Sapru, learned Counsel for the respondents has submitted that in view of the decision of the Apex Court in the Rajasthan State Road Transport Corporation case (supra), it is well established that the certified Standing Orders do not have statutory force, and the writ petition to enforce the same is not maintainable.

39. In rejoinder, Sri K.P. Agarwal, learned Senior Counsel appearing for the petitioner has submitted that even though in view of the decision of the Apex Court in the Rajasthan State Road Transport Corporation case (supra), the certified Standing Orders may not have statutory force, but in view of the certification, the certified Standing Orders partake the character of public document, and the writ petition for the enforcement of certified Standing Orders would be maintainable.

40. Having considered the submissions made by the learned Counsel for the parties, I am of the opinion, that the submission made by Sri K.P. Agarwal, learned Senior Counsel appearing for the petitioner cannot be accepted. In view of the observations made by their Lordships of the Apex Court quoted above in the Rajasthan State Road Transport Corporation cases, it is evident that the Certified Standing Orders do not constitute statutory provisions themselves, nor do they have statutory force. It is further, evident that the writ petition for enforcement of certified Standing Orders would, therefore, not lie. Hence, the present writ petition is liable to be dismissed on this ground.

41. However, as the learned Counsel for the parties have made their submissions on merit of the case also, I proceed to deal with the said submissions made by the learned Counsel for the parties.

42. The first question, which arises, is as to which of the two sets of the certified Standing Orders (namely, the Standing Orders of the Ghaziabad Unit and the Standing Orders applicable to the Corporate Office, Bangalore) is applicable to the petitioner.

43. It is submitted by Sri K.P. Agarwal, learned Senior Counsel appearing for the petitioner that as the petitioner was posted in the Ghaizabad Establishment of the respondent-Company, the Standing Orders applicable to the Ghaziabad Establishment would be applicable to the petitioner, and not the Standing Orders

applicable to the Bangalore Establishment of the respondent-Company.

44. In reply, Miss Bharti Sapru, learned Counsel for the respondents submits that the petitioner was/is under the administrative control of the Audit Department, Corporate Office, Bangalore and was attached to the Audit Department at Ghaziabad. Even during his attachment to the Audit Department at Ghaziabad, it is submitted, the petitioner remained under the administrative control of the Audit Department, Corporate Office, Bangalore. As such, the contention proceeds, the Standing Orders applicable to the Bangalore Unit applied in the case of the petitioner.

45. I have considered the submissions made by the learned Counsel for the parties. As is evident from a perusal of the transfer letter dated 7.5.1992 (Annexure CA-3 to the counter-affidavit), that the petitioner was transferred to the Internal Audit Department on 7.5.1992.

46. The order dated 12th May, 1990 (Annexure CA-4 to the counter-affidavit) dealt with the functions and responsibilities of the General Manager (Audit)/ Corporate Office.

47. Paragraph 2.2 of the said order dated 12th May, 1990 (Annexure CA-4 to the counter-affidavit) lays down as follows :

"2.2. All the staff of the Internal Audit located at the Corporate Office, at the various Units and other locations will be functionally and administratively under his direct control."

48. In view of the aforesaid provision contained in the said order dated 12th May, 1990, it is evident that all the staff of the Internal Audit located at the Corporate Office, at the various Units and locations would be functionally and administratively under the direct control of the General Manager (Audit), Corporate Office, Bangalore. Hence, when the petitioner was transferred to the Internal Audit Department by the transfer letter dated 7.5.1992 (Annexure CA-3 to the counter-affidavit), the petitioner came under the direct control of the General Manager (Audit), Corporate Office, Bangalore functionally as well as administratively. The petitioner has remained under the direct control of the General Manager (Audit), Corporate Office, Bangalore functionally as well as administratively even during the posting/attachment of the petitioner at the Ghaziabad Unit of the respondent-Company. However, in my opinion, even though, the petitioner has remained under the direct control of the General Manager (Audit), Corporate Office, Bangalore functionally as well as administratively during the posting/attaching of the petitioner at the Ghaziabad Unit of the respondent-Company, it does not mean that the Standing Orders applicable to the Corporate Office at Bangalore would remain applicable to the petitioner even during his posting/attachment at the Ghaziabad Unit. Once, the petitioner was posted/attached to the Ghaziabad Unit, the Standing Orders applicable to the Ghaziabad Unit would be applicable to the petitioner also, and the petitioner would be governed by the said Standing Orders during his posting/

attachment at the Ghaziabad Unit. Therefore, in my opinion, merely because the petitioner remained under the direct control of the General Manager (Audit), Corporate Office, Bangalore functionally as well as administratively even during the posting/attachment of the petitioner at the Ghaziabad Unit of the respondent-Company, it would not mean that the Standing Orders applicable to the Ghaziabad Unit would not be applicable to the case of the petitioner. The Standing Orders of the Corporate Office, Bangalore would, in my opinion, not apply to the petitioner during his posting/attachment at the Ghaziabad Unit.

49. It, therefore, follows that the Standing Orders applicable to the Ghaziabad Unit would apply in the present case, and not the Standing Orders applicable to the Corporate Office at Bangalore.

50. As noted above, in the counter-affidavit, it has been stated that the Standing Orders annexed as Annexure 5 to the writ petition are in fact the Standing Orders applicable to the Corporate Office, Bangalore, while the Standing Orders annexed as Annexure CA-9 to the counter-affidavit are in fact the Standing Orders applicable to the Ghaziabad Unit of the respondent-Company.

51. Hence, the Standing Orders applicable to the present case are the Standing Orders annexed as Annexure CA-9 to the counter-affidavit.

52. Let us now consider as to whether there is any provision in the Standing Orders annexed as Annexure CA-9 to the counter-affidavit prohibiting transfer of an employee from the Ghaziabad Unit to the Corporate Office at Bangalore.

53. Clause (a) of Standing Order No. 2 of the said Standing Orders defines the word "Company" as follows :

"(a) "The Company" means Bharat Electronics Limited having its registered office at Bangalore (or any other place in which it may be located in future) having various constituent Units/Factories, Regional and Sales Offices Marketing Centres etc., in India and abroad including Bharat Electronics Limited, P.O. Bharat Nagar, Ghaziabad."

54. Standing Order No. 7 of the said Standing Orders provides as follows :

"7. Transfer.-A workman may be transferred due to exigencies of work from one job to another, from one Shop to another, one Department to another or Unit to another Unit or one office to another office under the management of Bharat Electronics Limited, on protection of Basic Pay and continuity of service provided that on transfer to another Unit or office he will be entitled to the benefits available to the other employees of that Unit in the same category.

Standing Order 2(a) shows that the respondent-Company has its registered office at Bangalore and has various constituent Units/Factories, Regional and Sales Offices/Marketing Centres etc., in India and abroad including Bharat Electronics Limited, P.O. Bharat Nagar, Ghaziabad.

Standing Order No. 7 provides, inter alia, that a workman may be transferred

due to exigencies of work from one "Unit to another Unit" under the management of Bharat Electronics Limited."

55. Reading the aforesaid Standing Order No. 2(a) and Standing Order No. 7, together, it is evident that a workman may be transferred from one Unit of the respondent-Company to another Unit of the respondent-Company due to exigencies of work.

56. Hence, instead of prohibiting transfer from one Unit to another Unit of the respondent-Company, the Standing Orders applicable to the present case (Annexure CA-9 to the counter-affidavit), in fact, permit the transfer of a workman from one Unit of the respondent-Company to another Unit of the respondent-Company. Therefore, it was permissible under the Standing Orders applicable to the present case, to transfer the petitioner from the Ghaziabad Unit of the respondent-Company to the Corporate Office of the respondent-Company at Bangalore. The said transfer order dated 5.7.2001 transferring the petitioner from the Ghaziabad Unit of the respondent-Company to the Corporate Office of the respondent-Company at Bangalore cannot be said to be in violation of the Standing Orders applicable to the petitioner.

57. One more aspect may also be considered in this regard. By the communication dated 9.2.80 (Annexure CA-2 to the counter-affidavit), the petitioner was given an offer of appointment for the post of Clerk and Typist "B", and the conditions of service were attached with the said offer.

58. Condition No. 6 of the said conditions of service attached with the said offer provided as follows :

"6. Your duties will be allocated by the Management i.e., you should be prepared to serve in any position and in any Department and in any shift allotted to you from time to time subject to the provisions of Factory Legislations. You will be liable to serve in any part of India or abroad at the discretion of the Management."

59. The said offer of appointment alongwith the said conditions of service including the aforesaid Condition No. 6 was evidently accepted by the petitioner. In view of the aforesaid Condition No. 6, it was open to post the petitioner anywhere in India or abroad at the discretion of the Management of the respondent-Company.

60. By the order dated 31.8.2000, (Annexure CA-5 to the counter-affidavit), the petitioner was promoted as Junior Accountant (WG-VII) in CP-5 with effect from 1st September, 2000 and posted to Internal Audit, Ghaziabad. Paragraph 4 of the said promotion order dated 31.8.2000 provided as follows :-

"4. You will be governed by the terms of appointment contained in your initial Appointment Order, Standing Orders of the Company, Rules and Regulations of Service now in force and which may be amended, altered or extended from time to time."

61. In view of the aforesaid Paragraph 4 of the promotion order dated 31.8.2000, it is evident that even after his promotion, the petitioner would be governed, inter alia, by the terms of appointment contained in his initial appointment order. Hence, Condition No. 6 of the conditions of service attached to the offer of appointment dated 9.2.1980 (Annexure CA-2 to the counter-affidavit) remained applicable to the petitioner even after his promotion by the said promotion order dated 31.8.2000. Therefore, even after the promotion of the petitioner, it was open to the respondent-Company to transfer the petitioner any where in India and even abroad.

62. Thus, the said transfer order dated 5.7.2001 transferring the petitioner from the Ghaziabad Unit of the respondent-Company to the Corporate Office of the respondent-Company at Bangalore was in accordance with the conditions of service of the petitioner.

63. Reference in this regard may be made to the decision of the Apex Court in M/s. Kundan Sugar Mills case (supra), relied upon by the learned Senior Counsel for the petitioner. It is submitted by the learned Senior Counsel for the petitioner that in view of the said decision of the Apex Court, it is evident that an employer has no inherent right to transfer his employee to another place, and that the transfer of an employee is possible only when contracted for or incorporated in the service condition.

64. In M/s. Kundan Sugar Mills case (supra), their Lordships of the Apex Court laid down as follows (Paragraph 7 of the said AIR):

"7. We have referred to the decisions only to distinguish them from the present case, and not to express our opinion as to the correctness of the decisions therein. It would be enough to point out that, in all the said decisions the workers had been employed in a business or a concern and the question that arose was whether in the circumstances of each case the transfer from one branch to another was valid or amounted to victimization. None of these decisions deals with a case similar to that presented in this appeal, namely, whether a person employed in a factory can be transferred to some other independent concern started by the same employer at a stage subsequent to the date of his employment. 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."

65. Their Lordships further observed as follows (Paragraph 8 of the said AIR):

"8.This does not prevent the employer to transfer an employee if he has the right to do so under the contract of service or under any statutory provisions. We have already held that the employer, in the present case, has no

such right."

66. The aforesaid decision relied upon by the learned Senior Counsel for the petitioner is not applicable to the present case. In the present case, as noted above, there is an express condition (namely, Condition No. 6) in the conditions of service applicable to the petitioner permitting the transfer of the petitioner anywhere in India and even abroad. Therefore, no question of exercise of any inherent right to transfer arises, in the present case.

67. Further, in M/s. Kundan Sugar Mills case (supra), the transfer of an employee was sought to be made to a new mill started by the employer subsequent to the date of the employment of the said employee.

68. In view of the said facts, it was laid down by their Lordships of the Apex Court that an employer has no inherent right to transfer his employee to another place where he chooses to start a business subsequent to the date of the employment of the said employee. Such a transfer can be made only when there is an express term of the contract of service between the employer and the employee that the employee would serve in any future concern, which the employer might acquire or start.

69. The facts of the present case are evidently different from the facts of M/s Kundan Sugar Mills case (supra). In the present case, the transfer of the petitioner has not been made to any new concern started by the respondent-Company.

70. Hence, in my opinion, the decision of the Apex Court in M/s Kundan Sugar Mills case (supra), is not applicable to the present case.

71. The question may be examined from another angle also. As noted above, the Standing Orders annexed as Annexure 5 to the writ petition are the Standing Orders applicable to the Corporate Office of the respondent-Company at Bangalore. However, even though it is submitted by the learned Senior Counsel for the petitioner that the Standing Orders applicable to the Ghaziabad Unit would apply to the case of the petitioner, reliance has been placed by the learned Senior Counsel for the petitioner on the Standing orders annexed as Annexure 5 to the writ petition.

72. In reply, learned Counsel for the respondents has submitted that the Standing Orders annexed as Annexure 5 to the writ petition are in fact the Standing Orders applicable to the Corporate Office of the respondent-Company at Bangalore, and the said Standing Orders are applicable to the present case.

73. It has already been held above that the Standing Orders applicable to the Ghaziabad Unit (Annexure CA-9 to the counter-affidavit) are applicable to the present case. The said Standing Orders (Annexure CA-9 to the counter-affidavit) permit the transfer of a workman from one Unit of the respondent-Company to another Unit of the respondent-Company.

74. However, as submissions have been made by the learned Counsel for the parties on the premise that the Standing Orders annexed as Annexure 5 to the writ petition are applicable to the present case, I proceed to deal with the submissions made by the learned Counsel for the parties in this regard.

75. It is submitted by Sri K.P. Agarwal, learned Senior Counsel for the petitioner that the said Standing Orders (Annexure 5 to the writ petition) do not contain any provision permitting the transfer of an employee from one Unit of the respondent-Company to another Unit of the respondent-Company. It is submitted that under Standing Order No. 7 of the said Standing Orders (Annexure 5 to the writ petition), transfer is permissible from one department to another or from one section to other or from one job to the other. The said Standing Order, it is submitted, permits transfer only within the Unit itself, and not from one Unit to another Unit.

76. It is further submitted by the learned Senior Counsel for the petitioner that Condition No. 6 in the terms of appointment of the petitioner was contrary to the said Standing Orders (Annexure 5 to the writ petition), and therefore, the said Standing Orders would prevail over the said Condition No. 6. Reliance is placed by the learned Senior Counsel for the petitioner on the Full Bench decision of this Court in S.P. Srivastava case (supra).

77. In reply, Miss Bharti Sapru, learned Counsel for the respondents submits that as the petitioner remained under the administrative control of the Audit Department, Corporate Office, Bangalore even during his attachment to the Audit Department at Ghaziabad, the transfer of the petitioner by the said order dated 5.7.2001 would amount to transferring the petitioner from one job to the other within the same department, and the same was, thus, permissible under the said Standing Order No. 7 of the Standing Orders (Annexure 5 to the writ petition).

78. It is further submitted by the learned Counsel for the respondents that Condition No. 6 as contained in the terms of appointment of the petitioner was not contrary to the said Standing Orders (Annexure 5 to the writ petition), and as such, there was no question of the said Standing Orders prevailing over the said Condition No. 6 contained in the terms of appointment of the petitioner. It is further submitted that as Condition No. 6 was contained in the original order of appointment itself, there was no question of any alteration in the conditions of service by incorporating the said Condition No. 6 in the terms of appointment. Reliance has been placed by the learned Counsel for the respondents on the decision of the Apex Court in CIPLA Limited case (supra).

79. I have considered the submissions made by the learned Counsel for the parties.

80. In S.P. Srivastava case (supra), relied upon by the learned Senior Counsel for the petitioner, the Full Bench of this Court was dealing with the following question (at Page 387 of the said FLR):

"In the case of a conflict between the contract of service entered into between the employee and the Company and the Standing Orders of the latter, which would prevail ?"

81. Answering the said question, the Full Bench laid down as follows (Page 398 of the said FLR) :

"For all the reasons given above, our answer to the question referred to the Full Bench is that the terms of a Standing Order would prevail over the terms of a contract which conflicts with the Standing Orders."

82. The question which arises in the present case is as to whether Condition No. 6 of the conditions of service applicable to the petitioner is contrary to the Standing Orders annexed as Annexure 5 to the writ petition. Standing Order No. 7 of the said Standing Orders (Annexure 5 to the writ petition) laid down as follows :

"7. Transfers between Departments.-Depending on the exigencies of work, workmen may be transferred from one department to other or from one section to other or from one job to the other provided that their emoluments and service conditions are not affected."

83. A perusal of the aforesaid Standing Order No. 7 shows that depending on the exigencies of work, a workman may be transferred from "one department to other or from one section to other or from one job to the other". This Standing Order No. 7 evidently contemplates transfer within the same Establishment/Unit of the respondent-Company. In view of this Standing Order No. 7, a workman may be transferred from one department to other or from one section to other or from one job to the other within the same Establishment/Unit of the respondent-Company. However, this Standing Order No. 7 does not provide for or deal with the transfer of a workman from one Establishment/Unit of the respondent-Company to another Establishment/Unit of the respondent-Company.

84. Condition No. 6 of the conditions of service applicable to the petitioner, as noted above, permits transfer of the petitioner anywhere in India and even abroad. Therefore, in view of the said Condition No. 6, the petitioner may be transferred from one Unit/Establishment of the respondent-Company to any other Unit/Establishment of the respondent-Company anywhere in India.

85. As the said Standing Order No. 7 does not provide for or deal with the transfer of a workman from one Establishment/Unit of the respondent-Company to another Establishment/Unit of the respondent-Company, the said Condition No. 6 is evidently not contrary to the said Standing Order No. 7. Therefore, the question of the said Standing Order No. 7 prevailing over the said Condition No. 6 of the Conditions of Service does not arise. Therefore, the Full Bench decision in S.P. Srivastava case (supra) is not applicable to the present case. The said transfer order dated 5.7.2001 transferring the petitioner from the Ghaziabad Unit of the respondent-Company to the Corporate Office of the respondent-Company

at Bangalore was, thus, fully in accordance with the said Condition No. 6 of the Conditions of Service applicable to the petitioner, and was, thus, legal and valid.

86. Reference in this connection may be made to the decision of the Supreme Court in CIPLA Limited case (supra), relied upon by the learned Counsel for the respondents. Their Lordships of the Supreme Court laid down as follows (Paragraphs 8, 9, 10 and 11 of the said FLR):

"8. It was vehemently contended by the learned Counsel for the respondent that notwithstanding the aforesaid Clause 3 in the letter of appointment the position in law is that if there is nay clause which is in conflict with the Standing Orders then the Standing Orders must prevail. It was submitted that Clause 11 of the letter of appointment clearly stipulated that the Standing Orders would be applicable. The learned Counsel drew our attention to the relevant clause in the Standing Orders which reads as follows :

"A workman may be transferred from one department to another, or from one section to another or from one shift to another within Factory/Agricultural Research Farm, provided such transfers do not involve a reduction in his emoluments and grade. Worker who refuses such transfers are liable to be discharged."

9. It was while placing reliance on it that it was submitted that when the Standing Orders talk of transfer it permits a transfer only in terms of the said clause and transfer de-hors this is not permissible.

10. It is the aforesaid argument which found favour with the High Court, both before the Single Judge as well the Division Bench.

11. In our opinion, the aforesaid construction does not flow from the provisions of the Standing Orders when read along with the letter of appointment and, therefore, the conclusion arrived at by the High Court was not correct. As has already been noticed the letter of appointment contains both the terms namely for the respondent being transferable from Bangalore as well as with regard to the applicability of the Standing Orders. These clauses, namely, Clauses 3 and 11, have to be read along with the Standing Orders, the relevant portion of which has been quoted hereinabove. Reading the three together we do not find that there is any conflict as has been sought to be canvassed by the Teamed Counsel for the respondent. Whereas the Standing Orders provide for the department wherein a workman may be asked to work within the establishment itself at Bangalore, Clause 3 of the letter of appointment on the other hand, gives the right to the appellant to transfer a workman from the establishment at Bangalore to any other establishment of the Company in India. Therefore, as long as the respondent was serving at Bangalore he could be transferred from one department to another only in accordance with the provisions of the Standing Orders but the Standing Orders do not in any manner refer to or prohibit the transfer of a workman from one establishment of the appellant to another. There is, thus, no conflict between the said clauses."

87. This decision, thus, supports the conclusion arrived at above.

88. There is yet another aspect of the case.

89. It is submitted by the learned Counsel for the respondents that the transfer of the petitioner by the said order dated 5.7.2001 has been made on account of the exigency of service in his existing wage group pay and pay scale. It is submitted that the petitioner has not been able to establish any malafide on the part of the respondents in issuing the said transfer order, nor has the petitioner been able to show violation of any statutory rules by the issuance of the said transfer order. Therefore, the contention proceeds, no interference is called for with the said transfer order dated 5.7.2001 in exercise of writ jurisdiction under Article 226 of the Constitution of India.

90. Sri K.P. Agarwal, learned Senior Counsel for the petitioner, on the other hand, submits that the said transfer order dated 5.7.2001 being contrary to the certified Standing Orders was liable to be quashed by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

91. I have considered the submissions made by the learned Counsel for the parties. As noted above, Condition No. 6 of the Conditions of Service applicable to the petitioner is not contrary to the Standing Orders. Further, the transfer order dated 5.7.2001 being in accordance with the said Condition No. 6 was legal and valid. Therefore, the submissions made by the learned Senior Counsel for the petitioner that the transfer order dated 5.7.2001 was contrary to the Standing Orders, cannot be accepted.

92. Further, as noted above, the certified Standing Orders are not statutory provisions, nor do they have any statutory force. Hence, even if the transfer order is said to be in violation of the Standing Orders, it cannot be said that the transfer Order is in violation of any statutory Rules.

93. It is well established that the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India normally does not interfere with the order of transfer unless the same is shown to have been issued malafide or in violation of any statutory Rules. The petitioner has not been able to show violation of any statutory Rules by the issuance of the said transfer order. The petitioner has not been able to establish any malafide on the part of the respondents in issuing the said transfer order.

94. Therefore, no interference is called for with the said transfer order dated 5.7.2001 by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

95. In Gujarat Electricity Board case (supra), their Lordships of the Apex Court laid down as follows (Page 477 of the said FLR):

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government

Servant or employee of Public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open, to him to make representation to the Competent Authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned Public Servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would exposed himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

96. In National Hydro-Electric Power Corporation Ltd. case (supra), their Lordships of the Supreme Court laid down as follows (Paragraph 4 of the said LLR):

"4. On a careful consideration of the submissions of the learned Counsel on either side and the relevant Rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well settled and often reiterated by the Court that no Government servant or employee of public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine as though they are the Appellate Authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the case before us, we are also unable to agree with the learned Counsel for the respondents that Rule 4.11 of the seniority rules interdicts any transfer of the employees from one office or project or unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present cases, at any rate, no such result is bound to occur since the project undertaken to which the respondents have been transferred is itself a new one and, therefore,

we see no rhyme or reason in the alleged grievance."

97. Before parting with the case, one more submission, made by the learned Senior Counsel for the petitioner may be dealt with. It is submitted by the learned Senior Counsel for the petitioner that in view of Section 12 of the Industrial Employment (Standing Orders) Act, 1946, oral evidence cannot be given to add to or otherwise vary or contradict the certified Standing Orders. Therefore, it is submitted, no reliance can be placed on the terms of appointment of the petitioner (Annexure CA-2 to the counter-affidavit) as the same would amount to doing something, which is prohibited by Section 12 of the said Act.

98. Having considered the said submissions, I find myself unable to accept the same. Section 12 of the Industrial Employment (Standing Orders) Act, 1946 provides as follows :

"12. Oral evidence in contradiction of Standing Orders not admissible.-No oral evidence having the effect of adding to or otherwise varying or contradicting Standing Orders as finally certified under this Act shall be admitted in any Court."

99. Thus, Section 12 on its plain reading prohibits giving of any "oral evidence" having the effect of adding to or otherwise varying or contradicting the certified Standing Orders. This Section 12 is evidently not applicable to a case, where the Conditions of Service are reduced to writing as in the present case. Therefore, by relying upon the Conditions of Service applicable to the petitioner, in my opinion, nothing is being done which is prohibited by the aforesaid Section 12 of the Industrial Employment (Standing Orders) Act, 1946.

100. In view of the aforesaid discussion, I am of the opinion that this writ petition lacks merit, and the same is liable to be dismissed. The writ petition is accordingly dismissed. The interim order passed in the writ petition is discharged. However, on the facts and circumstances of the case, there will be no order as to costs.