

(2009) 07 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17269 of 2008

P. Nani (Late) Ramachandra Rao and Another

APPELLANT

Vs

Certifying Officer-cum-Deputy Commissioner of Labour (Twin Cities) and Another

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 2
Industrial Disputes Act, 1947 — Section 2, 33
Industrial Employment (Standing Orders) Act, 1946 — Section 1(3), 10, 10(1), 12A, 13
Industrial Employment (Standing Orders) Central Rules, 1946 — Rule 2
Payment of Wages Act, 1936 — Section 2
Railways Act, 1890 — Section 2

Citation : (2009) 6 ALD 562 : (2009) 5 ALT 665 : (2009) 123 FLR 880 : (2010) 1 LLJ 117

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : K. Balagopal, for the Appellant; GP for Respondent No. 1 and M. Radhakrishna Murthy, Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—This writ petition has been instituted seeking a writ of mandamus for declaring the Standing Orders certified by the 1st respondent for the 2nd respondent establishment as ultra vires and illegal and for setting aside the order passed by the 2nd respondent on 25.6.2008 transferring the 1st petitioner in terms of such Standing Orders.

2. The 2nd respondent is a Star Hotel located at Hyderabad wherein the 1st petitioner was initially employed in the Housekeeping department. He was subsequently shifted to Horticulture wing. By an order passed on 25.6.2008, the 1st petitioner has been transferred to one of its units coming up at Chennai. This gave rise to the present writ petition. It is the case of the petitioners that

prior to the year 2003, there was no trade union in the 2nd respondent establishment and the 2nd petitioner is a trade union which was registered on 3.1.2003 for which the 1st petitioner was one of the two Organising Secretaries. Because, the 2nd petitioner - trade union has been espousing the causes of the workmen employed in the 2nd respondent - establishment and that the 1st petitioner has been very actively involved in the affairs of the said union, he has been subjected to victimization by transferring him to the Chennai unit. Since the order of transfer has referred to the Standing Orders, as the source of power for affecting such a transfer, the present writ petition has been instituted questioning the validity of the certification accorded to the Standing Orders by the 1st respondent. It is contended that the 2nd respondent being a Hotel, falls within the definition of "industry" as defined u/s 2(s) of the Industrial Disputes Act. But, it is not an industrial establishment to fall within the ambit and scope of Section 2(e) of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the `Act'). It should be noted that that the 1st petitioner has carried out the orders of transfer by joining duty at Chennai, though he protested about the lack of bona fides of issuing such an order.

3. The respondents have entered appearance and contested the writ petition. The 1st respondent - Deputy Commissioner of Labour and the Competent Authority to certify the Standing Orders under the Act, has pointed out that even a Hotel answers the definition of the expression `industrial establishment' as elaborately defined u/s 2(e)(i)(ii) of the Act. It was also further pointed out that the Standing Orders for the 2nd respondent establishment have been certified duly following the procedure spelt out u/s 5 of the Act as of 19th November 1994. The 1st respondent has also pointed out that in somewhat similar circumstances, the Supreme Court in G.L. Hotels Limited and Others Vs. T.C. Sarin and Another, held that a `hotel' is also a "factory" as spelt out u/s 2(m) of the Factories Act, 1948. If a hotel can be a factory, then it automatically falls within the definition of an `industrial establishment' as defined u/s 2(e) of the Act. It must be stated, at this stage, that Sri K. Bala Gopal, learned Counsel for the petitioner has fairly conceded that the provisions of the Act would get attracted to the establishment of the 2nd respondent and in view of the fact that it would be more beneficial for the workmen employed in the 2nd respondent establishment, he did not press the contention about the competence of the 1st respondent in certifying the Standing Orders for the 2nd respondent establishment on 19.11.1994, any further.

4. But, however, what Sri Bala Gopal submits is that "transferability of an employee" not being a condition of service, for which no provision need be made in the Standing Orders and hence to the extent that the Certified Standing Orders 7(h) has provided for matters relating to the power to effect transfers of employees of 2nd respondent unit, shall be declared as ultra vires. The 2nd respondent while reiterating that a `hotel' also is an industrial establishment and hence the Standing Orders can be certified by the 1st respondent to such an industrial establishment, has pleaded that the 1st petitioner has been employed

initially in the Housekeeping department of the 2nd respondent and subsequently, he has been shifted to the Horticulture Department and that a new unit is coming up at Chennai and for the purpose of supervising the horticulture work at the new unit, the 1st petitioner has been shifted and that apart, the contract of service provided for transferring the 1st petitioner to any other unit and hence, it has also been taken care of by the Certified Standing Orders and hence no exception need be taken to the order of transfer passed on 25.6.2008 insofar as the 1st petitioner is concerned. It was further contended that transferability of the employees being purely an incidence of service and the conditions of service of the 1st petitioner upon transfer having not been varied to the disadvantage of such an employee, no exception need be taken thereto. It was also contended that the 2nd respondent being a purely private employer and the contract of service entered into by and between the 1st petitioner and the 2nd respondent having provided for the transferability of the 1st petitioner to any other unit at any other place, the present writ petition cannot be maintained for judicially reviewing such an act of private employer or the term of a contract between 2 private parties. Hence, the 2nd respondent contended that the writ petition deserves to be dismissed as not maintainable.

5. In view of the rival submissions, the question that needs to be determined is whether the Standing Orders as certified by the 1st respondent on 19.11.1994 for the 2nd respondent establishment could have validly provided for the transferability of it's employees at all or not.

6. It is important, right at this stage, to peruse various Provisions of the Act, which extends, in its operation, to the whole of India. This Act was made applicable to every industrial establishment, wherein hundred or more workmen are employed.

7. The expression "industrial establishment" has been defined in Section 2(e) of the Act in the following manner:

(e) "industrial establishment" means-

(i) an industrial establishment as defined in Clause (ii) of Section 2 of the Payment of Wages Act, 1936, or

(ii) a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948, or

(iii) a railway as defined in Clause (4) of Section 2 of the Indian Railways Act, 1890, or

(iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen, or;" Insofar as the State of Andhra Pradesh is concerned, a new Clause (v) has been added to this definition, which reads as under:

(v) such other establishment, as the State Government may, by notification in the Andhra Pradesh Gazette, specify in this behalf, which does not fall within any

of Sub-clause (i) to (iv), and in respect of which the State Government is the appropriate Government.

8. The expression "standing orders" has been defined in Section 2(g); as, the rules relating to the matters set out in the Schedule.

9. Section 3 is the all important Provision, which casts an obligation on the employer of every industrial establishment to submit to the certifying officer the draft standing orders proposed by him for adoption in his industrial establishment, within six months from the date on which the Act becomes applicable to such an industrial establishment.

10. Section 13 of the Act recognizes the failure to comply with this obligation as punishable with fine, which may extend to five thousand rupees and in case of a continuing offence, with a further fine, which may extend to two hundred rupees for every day.

11. Sub-section (2) of Section 3 of the Act, has not left any discretion in the hands of the employer of the industrial establishment in the matter of preparation of the standing orders to be adopted by him. Sub-section (2) of Section 3 reads as follows:

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

12. Sub-section (2), therefore, makes it abundantly clear that the standing orders are required to cover every matter set out in the Schedule, which may be applicable to the industrial establishment.

13. Section 4 casts a duty upon the certifying officer to ensure that the proposed standing orders submitted by the employer are;(1) certifiable under the Act; (2) necessary Provision is made therein for every matter set out in the Schedule as applicable to the industrial establishment; and (3) the contents of the standing orders are otherwise in conformity with the Provisions of this Act. By the Amending Act No. 36 of 1956, the Parliament has also entrusted a duty upon every certifying officer or the appellate authority to adjudicate upon fairness or reasonableness of the Provisions of any standing orders. Therefore, the standing orders, as proposed by every employer of the industrial establishment, shall be adjudicated upon to ascertain that they conform, as far as is practicable to the model standing orders furnished.

14. As was already noticed supra, Sub-section (2) of Section 3 had granted enough freedom for every employer of industrial establishment to depart from the model standing orders, if the exigencies of the employment so warrant. The expression used by the Parliament "as far as practicable" offers the necessary guidance both to the employer as well as the certifying officer or the appellate authority, who were called upon to adjudicate the fairness or reasonableness of

the contents of the proposed standing orders. To my mind, it is clear that all fair and reasonable conditions of employment, with an element of specific applicability to the industrial establishment concerned, are liable to be certified. In fact, under Sub-section (1) of Section 10 of the Act, it was explicitly made clear that the standing orders are not liable for any modification until expiry of six months period from the date of such certification, while Sub-section (2) thereof granted liberty to an employer or a workman or a trade union or any other representative body of the workmen, to apply to the certifying officer to have the standing orders modified and any such request is liable to be dealt with in the same manner as the first standing orders are dealt with Section 10 of the Act, therefore, made it clear that the standing orders, even if they are certified once before, they can still be a subject matter of reconsideration at the request of any of the parties concerned. The only limitation being that a minimum period of six months must expire from the date of original or the last certification, as the case may be. Therefore, in the entire spectrum, enough flexibility has been conceived and contemplated by the Act.

15. It is, at this stage, important also to notice that after Section 12A has been introduced by the Amending Act No. 39 of 1963, it was made clear that till such time the standing orders applicable to industrial establishment are certified, the model standing orders prescribed shall be deemed to have been adopted. That was, to ensure that no hiatus is created in the matter of conditions of employment of workmen in industrial establishments, when once the Act is attracted. It will also be appropriate, at this stage, to notice that Section 15 granted power for the appropriate Government to make rules to carry out the purposes of this Act. Sub-section (2)(a) thereof made it abundantly clear that such rules may prescribe "additional matters" to be included in the Schedule and the procedure to be followed in modifying the standing orders once certified under the Act, to bring them in accord and conformity with any such modifications or additions made to the Schedule.

16. The expression "appropriate Government" has been defined in Section 2(b) in the following terms:

(b) appropriate Government" means in respect of industrial establishments under the control of the Central Government or a [Railway administration] or in a major port, mine or oilfield, the Central Government, and in all other cases the State Government.

17. It will also be relevant, at this stage, to notice what are all the areas chartered out in the Act for the State Governments. The Proviso to Sub-section (3) of Section 1 conferred power upon an appropriate Government to apply the Provisions of the Act to any industrial establishment where even less than hundred persons may be employed. Therefore, power has been conferred upon the appropriate Government to widen the net of the applicability of the Provisions of the Act to larger number of industrial establishments, even though they may not employ hundred persons.

18. As was already noticed supra, the State Government of Andhra Pradesh has added Clause (v) to the definition of "industrial establishment" found in Section 2(e).

19. Similarly, u/s 14, power has been granted to the appropriate Government, by notification, either conditionally or unconditionally, to exempt any industrial establishment or class of industrial establishments from all or any of the Provisions of the Act.

20. Apart from the above, as was already noticed supra, rule making power has also been conferred upon the appropriate Governments, but, at the same time, it will be relevant to bear in mind that Sub-section (3) has been added to Section 15 by the Amending Act No. 16 of 1961 making it obligatory upon the Central Government to lay before each House of the Parliament every rule made by it and if both the Houses of Parliament agree in making any modifications in the rules, the rules shall, thereafter, have the effect only in such modified form. Therefore, by introducing Sub-section (3) to Section 15, it is intended to ensure that the rules made by the Central Government, under Sub-section (2)(a) of Section 15 prescribing "additional matters" to be included in the Schedule, is placed before both the Houses of the Parliament for consideration and approval. The significance being that if the Central Government amends the Schedule by including additional matters therein, such additional matters can get attracted for adoption in the standing orders already certified or liable to be certified thereafter.

21. The Central Government has framed the Industrial Employment (Standing Orders) Central Rules, 1946, in terms of Clause (b) of Sub-section (2) of Section 15 of the Act. Rule 2(a) has been inserted therein on 17-01-1983 providing for certain additional matters in the Schedule to the Act after Item No. 10. In particular, Item No. 10-B, which is, thus, introduced, reads as under:

10-B. Additional matters to be provided in the Standing Orders relating to all industrial establishments,-

(1) Service Record-matters relating to service card, token tickets, certification of service, change of residential address of workers and record of age ;

(2) Confirmation ;

(3) Age of retirement ;

(4) Transfer ;

(5) Medical aid in case of accidents ;

(6) Medical examination ;

(7) Secrecy ;

(8) Exclusive Service.

22. Therefore, on and from 17-01-1983, the items provided for in Entry 10-B are

required to be provided for and taken care of in the standing orders relating to all industrial establishments. Item No. 4, thereof, specifically deals with the subject matter of "transfer". Consequently, in the model standing orders prescribed in the Schedule to these rules, the model standing orders on additional items applicable to all industries have also been included therein as Schedule 1-B and as is required, they dealt with the subject matter of transfer of the employees.

23. Further, when once the Central Government adds additional items to the Schedule of the Act, either they may be rendered applicable only to certain industrial establishments or a class of industrial establishments, such as, Railways, Shipping and Transport, Posts and Telegraphs, etcetera, or if the Government adds additional matters to the Schedule with an intent to cover all the establishments, they become applicable across the board to all industrial establishments. Similarly, the power available to the appropriate State Government to add additional items to the Schedule of the Act, is intended to enable it to take care of the special or peculiar local requirements of the industries or they can also be specific in their applicability to a class of industries, where particular items relating to the conditions of service are needed in the opinion of the appropriate State Government to be provided for compulsorily in the Standing Orders. Therefore, the most appropriate way to understand the power available to both the Central as well as the appropriate State Governments in the matter of making additions to the Schedule of the Act, is only to serve the needs of the industry by rendering precise conditions of service for workmen therein. After all, by compulsion of making the Standing Orders, what is attempted is only to make known to the workmen in clear and unambiguous terms with necessary degree of precision the conditions of service by which they are bound. As was noted supra, the Statute has provided for deletion or modification of any particular Standing Order, which warrants such modification or deletion. Therefore, to my mind, the additional items incorporated as Entry 10-B of the Schedule of the Act by the Central Government would get attracted to the 2nd respondent industry also. Since, transfer of the employees is one of the subject matters covered by Entry 10-B of the Schedule, the power exercised by the certifying officer u/s 5 of the Act, duly certifying the Standing Order 7(h) for the 2nd respondent industrial establishment is perfectly legitimate and valid. It does not call for or warrant any interference.

24. The Act has been ushered in for the purpose of standardizing the conditions of service/employment in industrial establishments and for purpose of ensuring that such conditions of service are clear, unambiguous and precise and importantly be made known to the workman employed herein and hence, the certification of the Standing Orders has been rendered compulsory. This measure is intended by the Act to prevent any vague or improper and otherwise unjust conditions being prescribed unilaterally by the employers against their workmen in industrial establishments, taking advantage of superior position and power as employers. Prescription of the conditions of service with necessary precision and clarity is a measure intended to secure industrial tranquility and peace. There will

be fairness in the matter of dealing with the work force in every establishment and on a uniform basis. Such standardization would prevent preferential or adverse treatment of select workmen by the employers. Standardization across the board would help in uniform conditions prevailing in the industrial establishments all over. Harmonious industrial relations would not only contribute directly to the productivity of the unit concerned but would help in achieving stability in industrial growth. The Act intended to ensure that fair conditions of employment alone would get prescribed and followed which will secure industrial progress and prosperity. The Act has never contemplated that different conditions of employment, than those prescribed in the model standing orders, cannot be prescribed at all. Adaptation of "workmen specific requirements" as conditions of employment is not impermissible. However, they should not be left confined to unspecific charter of imagination of the employer. When conditions of employment get specified, they leave no room thereafter for elements of speculation. Adherence and their uniform application would become the order. Therefore, conditions of employment considered as ideally suitable or more adaptable keeping in view the requirements of a specific industry so long as they do not visit the work force with a totally unfair or unreasonable conditions of employment need not be viewed with disfavour or as impermissible. For instance, the Standing Orders can provide for certain specific or peculiar requirements for employability in a particular industrial establishment. Such conditions can be in the form of educational or technical qualifications or be in the form of additional man hours to be put in even on paid holidays, provided they are paid or compensated for appropriately. Similarly, the age of superannuation can also be a factor for variation in certain industrial establishments. Depending upon physical and intellectual contribution required to be put in, the age of superannuation can be 60 years in one industrial establishment while in the others it could be 58 years. But, what is necessary is that the precise specification of the condition in that regard before hand, leaving no room for vagaries or whims or fancies to play any role thereafter. Therefore, I am not able to agree with the contention of Sri K.Bala Gopal that transferability not being a condition of service, no provision can be made in the Standing Orders in that regard and that the Standing Orders having made such a provision, Standing Order 7(h) as certified by the 2nd respondent is illegal.

25. The learned Counsel for the Petitioner has placed reliance upon the judgment rendered by the Supreme Court in *Kundan Sugar Mills Vs. Ziyauddin and Others*, ; *Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others*, and also a judgment rendered by the Division Bench of the Allahabad High Court in *Air Gases Mazdoor Sangh Vs. Indian Air Gases Ltd. and Others*, and contended that it is impermissible for an employer to transfer an employee from one unit to another unit, particularly when the new unit was acquired after the employee has been engaged in the service of the former unit.

26. Learned Counsel would submit that since the 2nd respondent is now putting up a new unit at Chennai, which is a subsequent development to the date of

employment of the petitioner and hence, he could not have been transferred to the new unit at Chennai. Before we analyse the principle enunciated by the Supreme Court in Kundan Sugar Mills case cited (supra), it will be important to notice that transfer of an employee from one unit to another unit can be a matter of an express term of the contract of employment itself. In certain given circumstances, such a term can also be implied. But, in the instant case, learned Counsel for the 2nd respondent has placed reliance on the order of appointment dated 1.12.2001 of the 1st petitioner wherein it has been unmistakably made clear to the 1st petitioner about his transferability in the following manner:

8. You are liable to be transferred from one post to another, from one job to another, from one department to another and your services are liable to be transferred to any of our units, and you will automatically be governed by the service conditions and other terms applicable at the new unit.

9. xxxxxxxxxxxxxxxxxxxx.

10. You shall be governed by the standing orders, company rules and regulations applicable to your category and are in force time to time." This apart the Standing Orders as certified on 19.11.1994 for the 2nd respondent establishment in Clauses 7(e) and (h) provided for the same in the following manner:

(f) The Management has the sole right to direct and control the employees including the right to lay off, promotions, transfer, and to determine the strength of the employees required for manning the Hotel. This shall be exclusively the domain of the Management

(g) xxx

(h) Every employee is liable to be transferred at any time from one type of work to another type of work, from one department to another department, from one section to another section, in the same Hotel or be transferred from one Hotel/ establishment to another controlled/operated/managed/ owned by the Company or its Associates whether in existence at present or to be started or taken over or acquired at a later date, at any place within this country or abroad. Upon such transfers the employee will be governed by the terms and conditions of service, rules and regulations etc., as may be applicable to the employees of his/her category at the place of his/her transfer.

Undoubtedly, these Standing Orders have been certified and exhibited by the 2nd respondent establishment much prior to the employment of the 1st petitioner with it. It is therefore clear that transferability of the 1st petitioner is not only a term of the contract of employment, but the same is being treated as a condition of employment itself by the 2nd respondent. In this writ petition, I cannot pronounce upon the validity of such a term 'contained' in the contract of employment between the 1st petitioner and the 2nd respondent inasmuch as the 2nd respondent is a private employer in juxta position to a public body. That apart, the conditions of employment which can be made part and parcel of a

contract of employment are not regulated by any statutory exercise.

27. Now, what has been found by the Supreme Court in KUNDAN SUGAR MILLS case is that the new unit acquired and started at Bulandshahr by the same partnership firm which established the sugar factory at Amroha, is a distinct and different unit from the one at Amroha. Except that both the units are run and managed by the same partnership firm, it was found as a fact, that the conditions of service at both the units are distinct and different including in the disparity of payment of bonus. Since the workmen employed at Amroha are not liable to be subjected to a transfer to a new unit, as any such measure would amount to entering into a new contract itself. In Kundan Sugar Mills case, for the peculiar and distinguishing features available relating to the conditions of service at Bulandshahr unit, the Supreme Court concluded the issue in the following manner:

...to import a term conferring a right on the employer to transfer respondents 1 to 4 to a different concern is really to make a new contract between them.

28. In fact, in Kundan Sugar Mills case, the Supreme Court has noticed the judgment rendered by the Privy Council in *Alexandre Bouzourou v. Ottoman Bank* AIR 1930 P.C. 119, wherein it was held that the transfer was one of the ordinary instances of the bank's employment, being usually concurrent with an increase of salary and responsibility, and suggested no more than that. Their Lordships have also noticed the earlier judgment rendered in *Bata Shoe Company Limited v. Ali Hasan Industrial Tribunal Patna* 1956 L.L.J. 278 wherein it was held that transfer of an employee from one post to another does not amount to alteration of any service condition within the meaning of Section 33 of the Industrial Disputes Act. Further, the principle enunciated in *S.N. Mukherjee v. Kemp & Company Limited* 1954 L.A.C. 903 that if an employer employed a person it was implicit in the appointment that he could be transferred to any place where the business of the employer in the same line was situated, unless there was an express condition to the contrary in the contract of employment was also noticed. Therefore, Kundan Sugar Mills case has turned out on the fact situation that the new unit at Bulandshahr is a completely new concern though belonging to the same partnership firm.

29. On the contrary, if the conditions of service of the employees working in different units are not at variance and if both the units are treated as similar units belonging to and owned by the same establishment carrying on identical nature of activity and the employees are not called upon to perform anything more or other than what has been done by him in his previous post or unit, in abstract terms, it cannot be said that the employees cannot be transferred from one unit to another, notwithstanding the specific terms contained in the contract of employment, providing for their transfer. While transferability of the employees could possibly be a purely incidental aspect flowing entirely as a corollary of employment itself, it is open to the employer to make the issue of such transferability a specific term of the contract of employment itself. As

already noticed supra, the order of appointment of the 1st petitioner dated 1.2.2001 has unmistakably made clear that he is liable to be transferred from one unit or establishment to another unit or establishment. Hence, the issue of the 1st petitioner's transfer, being a term of the contract between him and the 2nd respondent, is not amenable to judicial review in this writ petition. To that extent, the relief sought for declaring the order dated 25.6.2008 as illegal cannot be entertained.

30. In Rohtak and Hissar Districts Electric Supply Company's case cited (supra), the Constitution Bench of the Supreme Court was called upon to decide the challenge to the validity of certain orders passed by the certifying officers in respect of the draft Standing Orders, which the appellant before it has submitted for certification. The certifying officer, who examined the fairness and reasonableness of the Provisions contained in the draft Standing Orders, made several changes in them and thereafter, certified the same. The validity of such an action has been put in issue. Dealing with the scheme of the Act, this is what the Supreme Court has said:

The Legislature thought that in many industrial establishments, the conditions of employment were not always uniform, and sometimes, were not even reduced to writing, and that led to considerable confusion which ultimately resulted in industrial disputes. That is why the Legislature passed the Act making it compulsory for the establishments to which the Act applied to reduce to writing conditions of employment and get them certified as provided by the Act.

31. The effect of the amendments made to the Act by the Amending Act No. 36 of 1956 has been set out in the following words by the Constitution Bench:

In 1956, however, a radical change was made in the provisions of the Act. Section 4 has imposed upon the Certifying Officer or the Appellate Authority the duty to adjudicate upon the fairness or the reasonableness of the provisions of any Standing Orders....

32. Dealing with one of the contentions as to whether the Standing Orders can also include matters, which may not strictly be included in the Schedule, this is what the Supreme Court has pointed out:

...In our opinion, this contention is misconceived and must be rejected.... it is not possible to accept the argument that the draft Standing Orders can relate to matters outside the Schedule.... and so, the certifying authorities were quite justified in not including them in the certified Standing Orders.... Thus, the true position appears to be that u/s 3(2) of the Act the employers have to frame draft Standing Orders and they must normally cover the items in the Schedule to the Act. If, however, it appears to the appropriate authorities that having regard to the relevant facts and circumstances, it would be unfair and unreasonable to make a provision for a particular item, it would be competent for them to do so; but the employer cannot insist upon adding a condition to the Standing Order which relates to a matter which is not included in the schedule.

33. The Allahabad High Court in AIR Gases Mazdoor Sangh, Varanasi's case cited (supra) was called upon to deal with a question of the validity of transfer of the employees, who were working at the factory situate in Moghalsarai in Varanasi district, to its registered office at Kanpur, under Clause-8(b) of the Standing Orders, as certified for the said industrial establishment. It is worthy to note that at the time when the Allahabad High Court was dealing with this issue, there was no Entry relating to the transfer of workmen in the Schedule to the Act. That was made clear in Paragraph No. 5 of the judgment in the following terms:

5. There is no dispute between the parties that the Schedule to the Act does not contain any entry relating to transfer of workmen from one unit to any other unit. The appropriate Government, namely, the Uttar Pradesh Government, has not framed any rules nor added any item to the Schedule relating to transfer of workmen from one place to the other. In the absence of any such provision in the Act it is not open to the employer to make provision for the transfer of its workmen and the certifying officer had no jurisdiction to certify such a standing order.

34. Apart from getting guided by the ratio laid down by the Supreme Court in Rohtak and Hissar Districts Electric Supply Company's case, the Division Bench had also considered another judgment of the Supreme Court in The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen, and firmly concluded the issue that any subject matter of the conditions of service of workmen, which does not fall under any of the items of the Schedule to the Act, cannot form the basis for inclusion in the Standing Orders, any certification of such Standing Orders is liable to be concluded as illegal.

35. Sri Radhakrishna Murthy, learned Counsel for the 2nd respondent has placed reliance upon another Division Bench judgment of the Allahabad High Court in U.P. State Sugar Corpn. and Another Vs. Bipin Kumar Mishra, , which distinguished the earlier judgment rendered by the Division Bench of the Allahabad High Court in Air Gases Mazdoor Sangh, Varanasi's case. The Division Bench in Uttar Pradesh State Sugar Corporation's case cited (supra) has concluded the issue in the following manner:

...The schedule to the said Act contains several matters, but it does not contain the matter relating to transfer of an industrial worker from one place to another. The heading of the schedule is "Matters to be provided in Standing Orders under this Act." From the omission of the transfer matter from the schedule it is apparent that the Legislature did not intend any standing order to be framed in respect of transfer. Since under this Act there is no requirement to frame standing orders in respect of transfer, the employer cannot be denied the normal right available to him to transfer an employee from one place to another. The employer also cannot be denied the right to frame rules and regulations relating to transfer of his employees. The normal right of an employer to transfer his employees can, however, be curtailed by making a specific provision in the rules, regulations or statute.

36. Since, the attention of this Division Bench has been pointedly drawn to AIR Gases Mazdoor Sangh, Varanasi's case, it has distinguished the said judgment in the following words:

...This judgment cannot, therefore, be treated as an authority for the proposition that in the absence of a standing order authorising transfer, an industrial worker cannot be transferred.

37. With all humility at my command, I am unable to agree either with the reasoning or the ratio laid down in Uttar Pradesh State Sugar Corporation case.

38. To my mind, clearly, the Division Bench in Uttar Pradesh State Sugar Corporation's case, missed to note the ratio laid down by the Supreme Court in Rohtak and Hissar Districts Electric Supply Company's case, wherein the contention canvassed before it that the Standing Orders can also provide for on any matter, which may not have been included in the Schedule to the Act, has been repelled in clear and unambiguous terms. The Constitution Bench has firmly set at rest all speculative aspects relating thereto by terming such a contention as a misconceived one and not possible to accept any such argument. In view of this judgment of the Supreme Court, the principle must be taken to have been settled firmly that the Standing Orders cannot provide for on any other matter of conditions of service of the workmen, which has not been provided for in the Schedule to the Act. Therefore, I am of the opinion that the Uttar Pradesh State Sugar Corporation case, is not correctly decided. Sri Radhakrishna Murthy has also drawn inspiration for his submission from another Division Bench judgment rendered by the Mysore High Court in Mysore Kirloskar Employees' Association Vs. Industrial Tribunal, Bangalore and Another, , wherein the very first question that has been formulated for decision is noted in the following words and then answered as under:

(1) Is an employer confined to the matters set out in the schedule alone, including of course additional matters prescribed by the Government ?

...It does not, in our opinion, mean that provision cannot be made for any additional Matters at all. The Act is not intended to cover or provide for all contingencies and all matters which may be applicable to each and every industrial establishment in the country. Certain important matters which are more or less of general application to all industries are set out in the schedule. The appropriate Government is also given the discretion having regard to the special conditions of the industries within its jurisdiction to add further matters to the list contained in the schedule. All such matters may be shortly described as compulsory matters. A direction or mandate to do certain things cannot, in our opinion, be read as a direction or mandate not to do any other thing.

39. This judgment of the Mysore High Court is rendered earlier to Rohtak and Hissar Districts Electric Supply Company case and for the reasons already set out supra while dealing with Uttar Pradesh State Sugar Corporation case, the judgment of the Mysore High Court, to my mind, does not lay down the correct

principle.

40. Sri Radhakrishna Murthy then, placed reliance upon a Division Bench judgment of the Delhi High Court in G.S. Puri Vs. Indian Oil Corporation, , wherein the question, as to who should be transferred where, is a matter for the appropriate authority to decide or not, has been dealt with. The Division Bench of the Delhi High Court has considered a number of judgments rendered by the Supreme Court touching upon the contours of the exercise of power of judicial review by the High Courts in matters concerning the decisions taken by the competent authorities for effecting transfers. The long line of cases considered, related to either the Central or the State Government servants as well as to public sector undertakings.

41. In my opinion, this subject matter does not require elaboration. Suffice it to say that transferability of an employee from one post to another, from one department to another or from one unit to another, does not, normally, amount to violation of the conditions of service, as transferability of the employees is purely incidental to their employment itself. So long as the status of the individual, his pay and perquisites and any other tangible benefits, are not going to be adversely impacted, seldom Courts would exercise the power of judicial review, over administrative orders of transfer of employees. More importantly, in the instant case, the 2nd respondent is a completely private industrial establishment and consequently, its decision relating to transfer of its employees does not fall for judicial review of this Court under Article 226 of the Constitution of India. The present case has been entertained not for reviewing the decision of the 2nd respondent in effecting the transfer of the 1st petitioner, but what has been examined is the validity of the certification of the Standing Order 7(h) in terms of Section 5 of the Act.

42. I do not find any merit in the writ petition and the same is, accordingly, dismissed.