(2009) 05 KAR CK 0037

In the Karnataka High Court

Case No : Writ Petition No''s. 1718-1720 of 2009

Sri. H.S. Manjunath, Sri. G. Ramesh and Sri. P.S. Vijayendra APPELLANT

Vs

The Managing Director, KSRTC and Others RESPONDENT

Date of Decision : 25-05-2009

Acts Referred:
Constitution of India, 1950 — Article 162

Citation : (2009) ILR (Kar) 2482 : (2010) 6 SLR 453

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : V.S. Naik and Manjula N. Kulkarni, for the Appellant; L. Govindaraj, for R-1 to 5 and Udaya Holla, General for R-6, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—Petitioners in these writ petitions have called in question the orders of transfer dated 7.1.2009 issued by respondent No. 3 transferring the petitioner No. 1 from Tumkur Division, Karnataka State Road Transport Corporation (in short referred to as the K.S.R.T.C.) to Yadgir Division of North East Karnataka Road Transport Corporation (in short referred to as ''the N.E.K.R.T.C) and dated 7.1.2009 issued by respondent No. 3 transferring petitioner Nos. 2 and 3 from Tumkur Division, K.S.R.T.C. to Chikkodi Division. North West Karnataka Road Transport Corporation (in short referred to as ''the N.W.K.R.T.C.'') produced at Annexures-F and G respectively and for a mandamus directing the respondents to permit the petitioners to work in their parent division viz., at Tumkur.

2. All the petitioners were appointed as conductors during 1989, 2002 and 2004 respectively. The K.S.R.T.C. is established by the State in exercise of its power u/s 3 of the Road Transport Corporation Act, 1950 (hereinafter referred to as ''the Act''). Subsequently, the State Government exercising its power u/s 3 of the Act formed three separate Corporations viz., Bangalore Metropolitan Transport Corporation w.e.f. 15.8.1997, N.W.K.R.T.C. w.e.f. 1.11.1997 and N.E.K.R.T.C.

w.e.f 1.11.2000 apart from K.S.R.T.C. formed earlier by carving out separate area of operation for each of the Corporation, original area of KSRTC was reduced. All Corporations became independent by operation of law. Employees working in different area became the employees of respective Corporation, however, option was given to employees either to continue or change the Corporation. Petitioners continued in K.S.R.T.C.

3. Petitioners formed a new Trade Union and registered the same in the name and style as (hereinafter referred to as ''the Union'') w.e.f. 7.11.2008. The said Union is affiliated to C.I.T.U. i.e., Central Federation of Trade Union. In this regard, the Chief Labour and Welfare Officer. K.S.R.T.C. sent a letter dated 22.12.2008 calling upon the Union to submit a copy of bye-laws and list of all office-bearers. First petitioner is the General Secretary, petitioner Nos. 2 and 3 are the General Secretary and Organizing Secretary of the Union at divisional level. On 2.1.2009, a Conference was held at Tumkur Division and the Union submitted a list of office bearers to the Chief Labour and Welfare Officer, by its letter dated 9.1.2009 and a joint action committee of 7 Unions was also formed and raised the demands of the employees as regard to pay scale revision. When their demands were not met, a notice u/s 22 of the Industrial Disputes Act, 1947 was issued interalia informing the Corporation of the proposed strike from 19.1.2009. When the Union was actively thinking of taking the grievances of the employees before the Corporation, the Depot Manager issued a relieving order dated 8.1.2009 without issuing any transfer order and thereafter, petitioners got the order of transfer dated 7.1.2009 interalia transferring the petitioners from one Corporation to another Corporation.

4. The main grievance of the petitioners is that, they are the Class-III employees working in KSRTC. Their service conditions, seniority, promotions are confined to division only. The transfer by KSRTC from one Corporation to another Corporation is one without jurisdiction and it amounts to victimization and amounts to adopting unfair labour practice.

5. The K.S.R.T.C. has filed the statement of objections admitting that the KSRTC, the erstwhile monolithic corporation was established u/s 3 of the Act in the year 1960, subsequently, in 1997, 1999 and 2000, the Government established three more transport corporations. It is also admitted that, the area of operations of erstwhile KSRTC was curtailed, however, pending final allocation of employees to the newly created corporations, the existing employees were treated notionally as being on deputation and the final allocation of the employees could not be accomplished in view of the pending challenge to the very creation of the new Corporation in W.P. No. 22194/1997 wherein the creation of new Corporation was quashed, which is now pending in a writ appeal.

6. It is specifically contended that, Section 34 of the Act creates a mechanism providing for the movement of the employees between the Corporations, Government has empowered the Managing Director of the K.S.R.T.C. to exercise the power of inter-Corporation transfers in pursuance of the letter dated

8.10.2001 and also circular dated 21.11.2001 and the present transfers have been effected in exercise of said power. It is also alleged that, first petitioner himself was a beneficiary of such inter-Corporation transfer, as he was working in Yadgir division of NEKRTC. He requested for transfer to Tumkur and has been transferred to Tumkur division, KSRTC.

7. As regards to the motive, the Corporation denied that there is any oblique motive or mala fide intention in the transfer and the transfer is for administrative reasons. It is also stated that, all the employees of the Corporation are liable to be transferred for administrative reason.

8. When the matter was heard, the Government of Karnataka was also impleaded as a party - respondent No. 6.

9. Heard Sri. V.S. Naik, learned Counsel for the petitioners. Sri. Udaya Holla, learned Advocate General for respondent No. 6 and Sri. L. Govindaraj, learned Counsel for respondent Nos. 1 to 5,

10. Sri. V.S. Naik, learned Counsel submitted that Road Transport. Corporations are formed by virtue of power conferred on the State u/s 3 of the Act. Invoking the said power, the Government of Mysore by its notification dated 25.7.1961 formed the Mysore Road Transport Corporation. Till 1997, it was the only Corporation operating road transport throughout the State. However, in 1997 and 2000, three more Corporations were formed. In all, now there are five Corporations formed by the State of Karnataka. Each Corporation is headed by Board of Directors. All these Corporations are independent legal entities with power of regulating the transactions independently. No Corporation has power to regulate the affairs of another Corporation. Power to appoint is conferred on the Board of Directors. Each Corporation has got power to appoint and provide service conditions. Each Corporation functions on the basis of the decision of the Board of Directors, The only power that is given to the State Government u/s 34 of the Act is to give general direction to individual Corporation. General direction does not include the direction in the individual matters or in particular aspect, but directions, which are necessary for smooth functioning of the Corporation, could be issued by the Government. Such direction cannot be in derogation of power already vested in Corporation under the provisions of the Act, but only where no provision is made, State Government can issue general direction. When the new Corporations were formed, a Circular was issued by the K.S.R.T.C. dated 21.11.2001 produced by the Corporation at Annexure-R2 interalia giving options to the employees of the Corporation to give consent as to whether they would continue to remain in the same Corporation or seek transfer to another Corporation. Even on the administrative ground any transfer to be made from one Corporation to another, would be only based on the consent of the particular employee. He submitted that, this circular is issued not by the State Government in its exercise of power u/s 34 of the Act, but it is a circular by the Managing Director of the K.S.R.T.C. He submitted that, the Government has not passed any order in exercise of its power u/s 34 of the Act. He also referred to Annexure-R1

dated 8.10.2001 and submitted that, this is only a communication by the Under Secretary to Government to the Managing Director of K.S.R.T.C. and it is neither a direction issued by the Government in consonance with Section 34 of the Act nor it has any force of Government Order.

11. He submitted that in order to issue general directions, Government must take an appropriate decision and issue such direction in consonance with the requirement of Article 166 of the Constitution of India. Referring to Annexure-R1 he submitted that though it refers to Section 34, but does not indicate as to whether, said letter is an outcome of any decision or authority of the Government it only shows that Under Secretary to Government writing a letter to the Managing Director of the K.S.R.T.C.

12. He also submitted that, all the three petitioners being conductors, their seniority, promotions and transfers being within the division of the K.S.R.T.C, the transfer from one Corporation to another Corporation not only being without jurisdiction, but it is against the service conditions and amounts to victimization as these petitioners beings office-bearers of an Union. It is also stated that the act of the Corporation is an unfair labour practice as it amounts to destabilizing the activities of the Union to render the employees helpless even to make legitimate claim.

13. Sri. L. Govindaraj, learned Counsel appearing for the Corporation submitted that in terms of Annexure-R1, the Government of Karnataka invoking the provisions of Section 34 of the Act has directed the Managing Director of the K.S.R.T.C. to make a transfer of employees of one Corporation to another Corporation subject to consultation with the President of other Corporations and said authority is conferred on the Managing Director of K.S.R.T.C. Section 34 of the Act clearly confers power on the Government to issue general direction to the Corporations and the State Government having issued such direction, petitioners cannot allege that the said direction is without authority of law.

14. He also submitted that, the transfer order clearly states that, it is for the administrative reason the petitioners have been transferred and there is no mala fide intention nor the transfers are the result of formation of alleged Union. He also submitted that transfer is incidental to service, employee cannot claim privilege to work at one place. If the employer for administrative reasons for effecting the utilization of service makes a transfer it ordinarily cannot be interfered unless it is shown that, this transfer is with mala fide intention or without jurisdiction.

15. Sri. Udaya Holla, learned Advocate General submitted that, the Government has power to issue direction to the Corporations. Annexure-R1, the communication is a direction within the meaning of Section 34 of the Act. The direction issued is in exercise of executive power conferred on the State, there is no requirement that the direction should be either expressly in the name of Governor or Hon''ble authority of Governor, merely because the letter does not

state that it is in the name of Governor, it does not vitiate. He submitted that, the provisions of Article 166 of the Constitution is directory in nature, even the rules of business framed under Article 166(3) of the Constitution of India are directory in nature. Non-following of the format does not vitiate the legality of such directions. He referred to Annexure-R1 and submitted that the letter clearly states that, in exercise of power conferred on the Government the said letter is issued and this clearly shows the application of mind.

16. In support of his contention, he relied on the decision reported in Chairman and M.D., K.S.R.T.C. Vs. K.O. Varghese and Others, Referring to the said decision, he pointed out that the said case arises under the provisions of Section 34 of the Act in respect of Kerala State Road Transport Corporation and pointed out that, letter issued by the Government is a direction in terms of Section 34 of the Act and pointed out that the Apex Court has held that the letter issued by the Government is a direction in terms of Section 34 of the Act and same has been accepted by the Apex Court. Relying on the said decision, he further submitted that, merely because Annexure-R1 is a letter, it does not lose the character of direction issued by the Government Neither it is mandatory to issue any notification, order or a circular in the name of the Governor or under the authority of Governor nor non-following of provisions of Article 166 of the Constitution of India would vitiate the directions issued by the Governor in exercise of his statutory power. He also relied on another decision reported in State of Rajasthan and Another Vs. Sripal Jain, and submitted that, defect of form in the order by Government would not necessarily make it illegal and the only consequence of the order not being in proper form as required by Article 166 would throw the burden on the Government to show that the order was in fact passed by the Government. He submitted that, form in which the direction is issued is not material, but if it is shown that it is issued under the authority, that suffice the purpose. He relied on another decision of the Full Bench of Bombay High Court reported in Chandrakant Sakharam Karkhanis and Others Vs. State of Maharashtra and Others, and submitted that, the Full Bench of Bombay High Court has held that, the provisions of Article 166 of the Constitution and Rules made thereunder are directory in nature, non-compliance thereof would be a mere procedure defect and would not confer any right upon a citizen to approach the Court under Article 226 of the Constitution of India, He submitted that, form and formality, if any, that are required to be followed have gone through while making rules. Only thing that, need to be considered is, whether the instrument or the order is issued under the authority of the Governor, which can be proved by other evidence, if necessary. If it is proved, then there would be no question of order, circular or resolutions getting vitiated by reason of the absence of either in the name of the Governor or under the authority of Governor. He also submitted that, when the power is conferred on the State to issue direction and if the Corporation exercises its power in consonance with the direction, there is no reason for this Court to interfere with the order of transfer, more so, on the technicalities.

17. In the light of the rival contentions, the points that arise for consideration are as under:

1) Whether a communication in the nature of Annexure-R1 could be treated as a direction of the Government in exercise of power u/s 34 of the Road Transport Corporation Act, 1950?

2) Whether on establishment of separate Corporations by the State u/s 3 of the Act, a transfer of employees from one Corporation to another Corporation could be made by the Karnataka State Road, Transport Corporation?

3) Whether the transfer of petitioner Nos. 1 to 3 is a result of unfair labour practice or victimization?

18. In order to know the power of State Government u/s 34 of the Act, it is useful to refer to some of the provisions of the Act. Act came into force in December 1950. Section 3 of the Act confers power on the State Government to establish Road Transport Corporations in the State. Government having regard to the advantages offered to the public, trade and industry by the development of road transport, the desirability of co-ordinating any form of road transport with any other form of transport, the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein, State may, by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the State under such name as may be specified in the notification. Thus, it is clear from Section 3 that, the State Government either for the whole of the State or any part of the State can establish a Road Transport Corporation.

19. Every Corporation shall be a body corporate by the name notified u/s 3 having perpetual succession and a common seal, and shall by the said name sue and be sued. Corporation is an independent corporate body having perpetual succession. Section 5 provides for management of Corporation and Board of Directors. The general superintendence, direction and management of the affairs and business of a Corporation vests in a Board of Directors with the assistance of its committees and Managing Directors and may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation. This provision shows that, the management of the Corporation vests in the Board of Directors and Board of Directors has exclusive power of do all such acts, things, which may be done or exercised by the Corporation in connection with management of the affairs and business of the Corporation. Section 18 of the Act deals with general duty of Corporation and Section 19 deals with powers of Corporation amongst other powers.

20. Under Clause (c) of Section 19, the Corporation has power to provide for its employees suitable conditions of service including fair wages, establishment of provident fund, living accommodation, places for rest and recreation and other amenities. However, such exercise of power is subject to approval of the Government Section 44 of the Act confers power on the State Government to

make rules in relation to conditions and manner of appointment of Directors of a Corporation and their remuneration, allowances, etc. Section 45 of the Act confers power on the Corporation subject to previous sanction of the Government amongst other regulations to regulate the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or as the case may be, the Chief Accounts Officer-cum-Financial Adviser.

21. The provisions of Section 19 Clause (c) of the Act read as under:

19. Powers of Corporation.- Subject to the provisions of this Act, a Corporation shall have power-

(a)....

(b)....

(c) to provide for its employees suitable conditions of service including fair wages, establishment of provident fund, living accommodation, places for rest and recreation and other amenities.

22. Provisions of Section 45 Sub-section (2) Clause (c) of the Act read as under:

45. Power to make regulations,-

(1)....

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

(a)....

(b)....

(c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation oilier titan the Managing Director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Financial Adviser.

It is clear from these provisions that, insofar as the matters relating to service conditions of the employees, the legislation has conferred power on the Corporation and it has also conferred power on the Corporation to make regulations. It is also not in dispute that the Corporation has framed regulations in the matter of regulating the service conditions of its employees other than the authorities viz., Managing Director, Chief Accounts Officer and Financial Adviser, who are appointed by the State Government. When statute itself confers power on the Corporation to regulate the service conditions of its employees, whether the State Government in exercise of its executive power u/s 34 of the Act could issue directions de horn to the regulations, It is useful to refer to Section 34 of the Act, which reads as under:

34. Direction by the State Government- (1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under Sub-section (1) except with the previous permission of the State Government.

Reading of Section 34 certainly shows that the State Government after consulting with the Corporation may give general instructions to be followed by Corporation. Such direction may also include recruitment, conditions of service, training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks. Sub-section (2) of Section 34 also makes it mandatory for the Corporation not to depart from any general instructions without the permission of the Government. It is no doubt true that the State Government in consultation with Corporation can issue directions relating to service conditions, which are required to be followed. When the statute itself has conferred power on the Corporation to frame regulations and it also confers power on the Corporation to provide suitable conditions of service including the wages, etc., any general direction issued u/s 34 of the Act must be in consonance with the provisions of the Act and the regulation framed under the Act By virtue of Section 19 of the Act, the legislation has specifically conferred the power on the Corporation to provide for service conditions.

23. Section 45 of the Act confers the power on the Corporation to frame regulation in the matter of service condition for its employees other than the authorities mentioned u/s 15 of the Act. Regulation framed u/s 45 of the Act is subject to approval of the State Government

24. It is not in dispute that, the Corporation is an incorporate body as specified u/s 5 of the Act. Hence, in the light of the provisions of Sections 5, 19 and 45 of the Act, Section 34 of the Act has to be understood. u/s 34 of the Act, State is conferred with power to give general direction in the matter of service conditions of the employees of the Corporation, as such, direction must be general in nature and not for specific or particular person or individual, and such direction should not be in contravention of any other provision of the Act If power conferred u/s 34 of the Act is to be understood, as having power to give any direction dehors to the other provisions of the Act, then the very purpose for which the Corporation is created and conferred with the power manage its affairs would be defeated. When legislation has conferred power on the Corporation to do certain thing under the Act it cannot be taken away by the executive direction of the State u/s 34 of the Act.

25. Section 34 refers to direction to the Corporation in consultation with the

Corporation, Bach Corporation being an independent body and having independent power to make regulations and having statutory power to provide suitable service conditions to its employees, the general direction referable u/s 34 in consultation with the Corporation necessarily means ''the Corporation'' and not ''Corporations'', as the conditions of service may vary or differ from one Corporation to another, as each Corporation has power to decide the service conditions, wages, etc.

26. In this case, the documents, which are relied by the respondents viz., K.S.R.T.C. as well as the State are Annexures- R1 and R2. Annexure-R2 is a circular issued by KSRTC, which is dated 21.11.2001 i.e., much after the formation of three other Corporations. Annexure-R2 does not indicate that it is a direction either by the State Government or a circular issued by the K.S.R.T.C. in pursuance of the direction of the State Government Even referring to Annexure-R2 also, it only shows that in view of the establishment of new Corporations, option is given to the employees to choose the Corporation where they want to continue. Even in the said circular of the K.S.R.T.C., in case of transfer of employee from one Corporation to another on the administrative ground, it has to be with the consent of the said employee. Whether the circular has a character of direction of the Government or whether is legally valid or not, even otherwise, the said circular does not confer any power on the K.S.R.T.C. to transfer an employee of its Corporation to another Corporation. Under the provisions of the Act no power is conferred on the K.SJR.T.C. to regulate or interfere with affairs of the other Corporations, nor such circular has binding effect on the other Corporations under the provisions of the Act.

27. In this case, transfer orders are issued as per Annexures-F and G. Annexure-F is issued by the Managing Director of K.S.RT.C, transferring the first petitioner from Tumkur Division to Yadgir Division ie., from K.S.R.T.C. to N.E.K.R.T.C. Annexure-G is also a transfer order issued by the Managing Director of K.S.R.T.C. transferring the petitioner Nos. 2 and 3 from Tumkur Division to Chikkodi Division of N.W.K.R.T.C. These two orders do not specify the authority of the Managing Director of K.S.R.T.C. to transfer its employees from one Corporation to another Corporation. The Corporation has relied on Annexure-R1 to show that the Managing Director has an authority to transfer.

28. All executive directions by the State are issued either in exercise of power under Article 162 or 166 of the Constitution of India. In this case, the State Government is exercising its power u/s 34 of the Act. State under the said Section exercises its executive power, Article 166 of the Constitution of India confers power on State to exercise its executive power. It is no doubt true that, every direction need not be in the name of Governor or under the authority of Governor, that itself may not invalidate the instrument nor that would become the ground to invalidate such instrument. It is also true that, the requirement of Article 166 and the requirement of rules framed thereunder are directory in nature. In case if question is raised as regard to the authority to issue such

executive direction, the State has power to establish the same by showing with other materials, though notification does not refer to the authority of the Governor or the name of the Governor, still it can be shown as issued in exercise of power under Article 166 based on the other material, it can show that it is issued under the authority of Governor.

29. Learned Advocate General had relied on a decision of the Apex Court reported in Chairman and M.D., K.S.R.T.C. Vs. K.O. Varghese and Others, . In the said case, in respect of revision of pensionary benefits to the retired employees in terms of Fifth Pay Commission, the matter had come up before the High Court and in pursuance of the direction by the High Court, the Government issued a communication dated 24.9.1992 and the Apex Court treated the said letter as a direction. No doubt, the letter is treated as a direction in exercise of power u/s 34 of the Kerala State Road Transport Corporation Act. but in the said case, the Apex Court found that, the Government after considering the matter had taken a policy decision and thereafter, had issued a letter dated 16.5.1995. Thus, it is clear that, the direction, though it is in the form of letter, but it is a communication of the decision of the Government.

30. In tins case, Annexure-R1 does not indicate as to whether there was any decision by the Government. Further, even looking into the contents of the letter, it refers to two letters dated 21.6.2001 and 14.8.2001 both written by K.S.R.T.C. There is no reference to any decision or order of the Government Learned Advocate General has also relied on another decision of the Apex Court reported in State of Rajasthan and Another Vs. Sripal Jain, As far as the principle enunciated in the said decision is concerned, there cannot be two opinion. It is also well settled law that, any defect in the form, same does not make an instrument illegal, it may put burden on the Government In the said decision it is held that, in case if it is not in the form or if it is not in conformity with the requirement of Article 166 of the Constitution, the burden is thrown on the Government to show that the order was in fact passed by it Nothing has been shown in this case to establish that the letter in fact is issued based on the decision of the Government If one officer of the Government replying to a letter of the Managing Director of K.S.R.T.C., that by itself will not partake the character of a direction by the Government To substantiate the arguments, neither the State Government nor the Corporation has produced any material to show that the letter of the Government in fact is based on the decision of the Government Mere reference to the provisions of Section 34 by one of the officers of the Government, it does not become an order of the Government unless the authority issuing the letter traces the decision of the Government If one authority is responding to another authority of the K.S.R.T.C., that will not be a direction in terms of Article 166, at the best it may be his individual opinion. No doubt even the direction of the State Government can be in the form of a letter, and it need not be in a particular form, or it should specifically state that it is in the name of the Governor, but it must show that it is the direction of the State. Even if the direction is in the form of letter and is without referring to any decision of the

Government it can still be substantiated that it is the direction by the Government by placing the relevant materials, however, neither the State nor the K.S.R.T.C. has produced any material to substantiate the same.

31. Reading of Sections 3, 4 and 5 of the Act shows that power is conferred on the State Government to form a Corporation in respect of the entire State or part of the State. Initially the State Government had formed one Corporation in the entire State. Again invoking power u/s 3 for different area, different Corporations are formed. It is not the case of the Government or the K.S.R.T.C. that the other Corporations formed are subsidiary Corporations u/s 17-A of the Act Section 17-A, no doubt, confers power on the Corporation in concurrence with the State Government to establish one or more subsidiary Corporation. These Corporations are formed by the State Government only u/s 3 of the Act. Each Corporation being independent legal entity having power to regulate the service conditions of its employees, the Managing Director of the K.S.R.T.C. cannot issue direction or pass order in respect of matters pertaining to the other Corporations. Each Corporation is managed and maintained by its Board of Directors and the Board of Directors is the supreme authority for the Corporation. Hence, Managing Director of one Corporation cannot impose his decision or issue direction on the other Corporation and same will not have any binding effect on another Corporation nor the Managing Director of one Corporation has jurisdiction to issue direction to another Corporation. Reading of Annexures-R1 and R2 and other documents produced by the Corporation, nowhere it suggests that, the K.S.R.T.C. has got any supreme power over the other Corporations nor any such power could be conferred on one of the authority of the Corporation to exercise its power over the other Corporation. Even u/s 34 of the Act, the State Government has power to issue general direction to a Corporation, Said Section does not refer to the ''Corporations'', even assuming that corporation has to be understood as general direction to respective Corporations. In my view, one Corporation cannot transfer its employees to another Corporation as the effect of transfer would amount to exercising power by one Corporation over the other Corporation.

32. Apart from this, from the pleadings, it is clear that the petitioners being office-bearers and admittedly, they are working as Class-III employees (conductors), their seniority, promotions are confined only to the division, normally their transfers are within the division. In this case, it is not a transfer within the division but it is to another Corporation itself. In this case, from the pleading it appears that, the Managing Director of K.S.R.T.C. having noticed that these petitioners are office bearers of the Union and they had given notice for certain demand and wanted to go on strike, the Managing Director of K.S.R.T.C. to get rid of these Union leaders has issued the transfer orders, placing them at a distant place. It is a case of victimization.

33. Hence, in the light of the above discussion. I am of the opinion that, Annexure-R1 is not a direction in terms of Section 34 of the Act, nor respondent

- Managing Director of K.S.R.T.C. has power to transfer its employees to another Corporation.

34. Hence, I pass the following order:

(i) The Writ Petitions are allowed.

(ii) The impugned transfer orders at Annexures-F and G dated 7.1.2009 are quashed.

(iii) Annexure-R1 is not a direction in terms of Section 34 of the Act.

(iv) Managing Director of K.S.R.T.C. has no power to transfer its employees from one Corporation to another Corporation nor Managing Director of another Corporation to do the same.

