

(1996) 11 AP CK 0064
In the Andhra Pradesh High Court
Case No : Writ Petition No. 7291 of 1992

Vidyadhar R.

APPELLANT

Vs

National Textile Corporation and Others

RESPONDENT

Date of Decision : 21-11-1996

Acts Referred:

Andhra Pradesh Factories Rules, 1950 — Rule 76B, 76B(4)(a)
Factories Act, 1948 — Section 49

Citation : (1996) 4 ALT 962 : (1998) 3 LLJ 57

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

Bench : Single Bench

Advocate : A.K. Jayaprakash Rao, for the Appellant; E. Manohar, for the Respondent

Judgement

S.R. Nayak, J.—An important question of law of general importance, whether a Chief Welfare Officer appointed by an occupier of a factory at a time when the number of workers in such factory exceeded 2000 can be reverted to the post of Welfare Officer when the number of workers in the factory is reduced to 2000 or below, or, whether despite such decrease in the number of workers his official status as Chief Welfare Officer and the scale of pay attached to that post should be protected, arises for decision in this writ petition.

2. The facts leading to the filing of the writ petition be stated briefly as under:

The petitioner was appointed as a Departmental Investigator on February 11, 1970 in the erstwhile Azam Jahi Mills, Warangal which company at that time was functioning as a private company. The said mill was nationalised in October, 1974 and thus it came under the control of the first respondent-the National Textile Corporation. The petitioner was appointed as Labour Welfare Officer on December 26, 1982 with the concurrence of Director of Factories. Subsequently, the petitioner was appointed as Chief Labour Welfare Officer on October 22, 1985 and he was working as such in the Azam Jahi Mills. When the matter stood thus, the management transferred the petitioner from Azam Jahi Mills, Warangal to

Nataraja Mills, Warangal by its proceedings dated April 26, 1988. The petitioner, being aggrieved by the said action filed W.P. No. 7357 / 88 in this Court. This Court suspended the transfer order, and subsequently the interim suspension was made absolute. Finally the writ petition was disposed of on April 24, 1992 holding that the petitioner is entitled for the scale of pay prescribed under Rule 76-B(4) (a) of Andhra Pradesh Factories Rules, 1950, for short "the Rules". The transfer order dated April 26, 1988 was not quashed. However, the petitioner was permitted to function as Chief Welfare Officer in Azam Jahi Mills even after the disposal of the writ petition. The management, without implementing the direction issued by this Court in W.P. No. 7357 of 1988, again issued the proceedings on June 10, 1992 transferring the petitioner from Azam Jahi Mills to Adoni Cotton Mills, Adoni in Kurnool district as Labour Welfare Officer, not as Chief Labour Welfare Officer. Hence this writ petition assailing the validity of the transfer order dated June 6, 1992. The petitioner filed W.P. M.P. No. 9013 of 1992 seeking a direction to the first and the second respondents to continue him as Chief Labour Welfare Officer, Azam Jahi Mills, Warangal pending disposal of the writ petition. The learned single Judge did not grant that interim relief but by his order dated June 17, 1992 he directed that " status quo as on that day shall be continued till further orders." The petitioner filed W. A. No. 608 of 1992 against that interim order. The Division Bench by its order dated July 14, 1992 disposed of the appeal with the following observations :

"After hearing Counsel on both sides and perusing the relevant pleadings, we are of the opinion that the interest of the appellant will be adequately protected by providing that the appellant shall be entitled to receive the emoluments attached to the post which he was occupying at the time of impugned order and that he shall be entitled to all statutory protections till such time as the writ petition is finally disposed of. Any amount which the appellant receives towards emoluments pursuant to this order will be subject to final justment as per orders of this Court or consequential order to be passed by the first respondent. We also make it clear that it is open to the appellant, notwithstanding the pendency of the writ petition, to take resort to any statutory provision enabling him to assail what he calls as reversion from the post of Chief Labour Welfare Officer to an unprotected post in Adoni Cotton Mills. Counsel for the appellant submits that he may be given one week's time to report at the new station.

We dispose of the writ appeal with the above observations."

3. It is stated by the learned Counsel for the petitioner that the petitioner accordingly reported for duty at Adoni Cotton Mills, Adoni and he is presently serving there.

4. Sri. A.K. Jayaprakash Rao, the learned Counsel for the petitioner submitted that the impugned transfer order has the effect of reverting the petitioner from the post of Chief Welfare Officer to the post of Welfare Officer, a lower post; in other words, the learned Counsel would maintain that what the management, in the garb of transfer, had done, in effect, amounts to reduction in rank and such

an order can be passed only as a disciplinary measure after holding a regular departmental or domestic enquiry. Alternatively, the learned Counsel would contend that the impugned action is also violative of provisions of Clause (iii) of Sub-rule (4) of Rule 76-B of the Rules. On the other hand, Sri E. Manohar, the learned Senior Counsel appearing for the respondent-management contended that in the earlier Writ petition No. 7357/88 filed by the petitioner, the Court rejected the claim of the petitioner that he should be posted only as Chief Welfare Officer wherever he is transferred and to whatever mills he is transferred, and therefore, the petitioner cannot be again permitted to put forth the same claim and his claim is hit by res judicata. The learned senior Counsel would maintain that the plea of the petitioner that he was appointed as Chief Welfare Officer on October 22, 1985 is factually incorrect; the petitioner was only designated, rather called, as Chief Welfare Officer as provided/required under the second proviso to Sub-rule (1) of Rule 76-B of the Rules and even after conferring such designation, the petitioner continued to be in the substantive post of Welfare Officer ; therefore, the petitioner has no vested right to claim that he should be continued as Chief Welfare Officer and he cannot be asked to function as Welfare Officer. Alternatively, the learned Senior Counsel would contend that the total number of workers in the Azam Jahi Mills at Warangal was below 2000 as on January 1, 1991, and as such, with effect from that date the petitioner is not entitled to the post of Chief Welfare Officer or to the scale of pay protected under Rule 76-B(4) (a) of the Rules.

5. Having heard the learned Counsel for the parties, three points arise for consideration and decision of the Court. They are the following:

- (i) Whether the present writ petition is barred by the principle of resjudicata;
- (ii) Whether the impugned transfer order, in effect, tantamounts to reduction in rank;
- (iii) Whether the petitioner is entitled to continue as Chief Welfare Officer and whether he is entitled to the scale of pay protected under Rule 76-B(4) (a) of the Rules after January 1, 1991 assuming that the number of workers in the Azam Jahi Mills, Warangal was less than 2000 as on that date.

6. Before dealing with these questions, it is beneficial to notice the provisions of Section 49 of the Factories Act, 1948, for short "the Act", and Rule 76-B of the Rules. They read :

Section 49. Welfare Officer :--(1) In every factory wherein five hundred or more workers are ordinarily employed, the occupier shall employ in the factory such number of welfare officers, as may be prescribed. (2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under Sub-section (1). Rule 76-B. Welfare Officers:-- (1) Number of Welfare Officers:--The occupier of every factory where 500 or more workers, are employed, shall appoint atleast one Welfare Officer:

Provided that where a group of factories in close proximity belong to the same management, the Chief Inspector may exempt the said factories from this rule in so far as it requires the appointment of a separate Welfare Officer in respect of each such factory subject to such conditions as he may impose:

Provided further that where the number of workers exceeds 2,000, one additional Welfare Officer shall be appointed for every additional 2,000 workers or fraction thereof over 500; and where there are more than one Welfare Officer, one of them shall be called the Chief Welfare Officer and the others Assistant Welfare Officers.

(2) Qualifications :-- A person shall not be eligible for appointment as Welfare Officer unless he possesses-

(a) Degree in Arts/Science/Commerce or Law of any University;

(b) a Degree or Diploma in Industrial Relations and Personnel Management covering Labour Welfare, as special subject, of not less than two years duration, conducted or recognised by a University of the State of Andhra Pradesh; and

(c) adequate knowledge of Telugu Language.

(3) Recruitment of Welfare Officers :

(i) The post of Welfare officer shall be advertised in two newspapers having a wide circulation in the State, one of which should be an English newspaper. (ii) Selection for appointment to the post of Welfare Officer shall be made from among the candidates applying for the post by a committee appointed by the occupier of the factory.

(iii) The appointment when made shall be notified by the occupier to the Chief Inspector giving the details of the qualifications, age, pay, previous experience and other relevant particulars of the Officer appointed and the terms and conditions of his service.

(iv) The required number of Welfare Officers shall be appointed within 120 days from the date on which such appointments are due to be made under Sub-rule (1) of Rule 76-A (sic. 76-B) or from the date of resignation/dismissal/termination of services of any Welfare Officer. (4) Conditions of service of Welfare Officers:

(i) Welfare Officers shall be given appropriate status corresponding to the status of a member of the Executive staff of the Factory and shall be fixed in a scale of pay which shall not be less than,--

(a) Rs. 2410-4050-Revised scale of 1986 (Plus such allowances as applicable to similar pay scale) obtaining in the concerned factory/establishment in the case of Chief Welfare Officer; and

(b) Rs. 1550-3080-Revised scale of 1986 (plus such allowances as applicable to similar pay scale) establishment in the case of Welfare Officer.

(ii) The conditions of service of Welfare Officer shall be the same as those of the other members of the Executive staff of corresponding status in the factory, (iii) The services of a Welfare Officer shall not be dispensed with, nor he shall be reverted, without the written concurrence of the Director of Factories, Hyderabad who shall report reasons therefor; (iv) No punishment such as withholding of increments, including stoppage at any efficiency bar, reduction to a lower stage in the time scale, suspension, dismissal or termination of service, except censure, shall be imposed by the management on a Welfare Officer, except with the previous concurrence of the Director of Factories, (v) A Welfare Officer, who has been dismissed from service or whose services have been terminated in any other manner than as provided in Clause (iv) above may within 30 days from the date of receipt of the order by him, appeal to the State Government against the order of punishment made by the management with the concurrence of the Director of Factories and the decision of the State Government thereon shall be final; Provided that when the management terminates the service or probation of a Welfare Officer the reasons for such a termination of service or probation shall be reported to the State Government or such authority, as may be, empowered by them in this behalf. (5) Duties of Welfare Officers:--The duties of Welfare Officers shall be (i) to establish contacts and hold consultations with a view to maintaining harmonious relations between the factory management and workers; (ii) to bring to the notice of factory management, the grievances of workers, individual as well as collective, with a view to securing their expeditious redress and to act as a Liaison Officer between the management and labour;

(iii) to study and understand the point of view of labour in order to help the factory management to shape and formulate labour policies and to interpret these policies to the workers in language they can understand; (iv) to advise on the fulfilment by the concerned departments of the factory management of obligations statutory or otherwise concerning the application of the provisions of the Factories Act, 1948 and the rules made thereunder and to establish liaison with the Inspector of Factories, and the medical services concerning medical examination of employees, health records, supervision of hazardous jobs, sick visiting and convalescence, accident prevention and supervision of safety committees, systematic plant inspection, safety education, investigation of accidents, maternity benefits and workmen's compensation;

(v) to advise on fulfilment by the management and the concerned departments of the factory of their obligations, statutory or otherwise, concerning regulation of working hours, maternity benefit, compensation for injuries and sickness and other welfare and social benefit measures;

(vi) to advise and assist the management in the fulfilment of its obligations, statutory or otherwise concerning prevention of personal injuries and maintaining a safe work environment, in such factories where a Safety Officer is not required to be appointed under the enabling provisions u/s 40B;

(vii) to encourage the formation of works and joint production committees, Co-

operative societies, and welfare committees and to supervise their work;

(viii) to encourage provision of amenities such as canteens, shelters for rest, creches, adequate latrine facilities, drinking water, sickness and benevolent scheme payments, pension and superannuation funds, gratuity, payments, granting of loans and legal advice to workers;

(ix) to help the factory management in regulating the grant of leave with wages and explain to workers the provisions relating to leave with wages and other leave privileges and to guide the workers in the matter of submission of applications for regulating authorised absence;

(x) to advise on provision of welfare facilities such as housing facilities, food-stuffs, social and recreational facilities and sanitation and on individual personal problems and on the education of children;

(xi) to advise the factory management on questions relating to training of new starters, apprentices, workers on transfer and promotion; instructors and supervisors; supervision and control of notice board and information bulletins; to further the education of workers and encourage their attendance at technical institutes;

(xii) to suggest measures which will serve to raise the standard of living of workers and in general, promote their well being, (xiii) Welfare Officers not to deal with disciplinary cases or appear on behalf of the management against workers:-- No Welfare Officer shall deal with any disciplinary case against a worker or appear before a Conciliation Officer, or in a Court or Tribunal on behalf of the Factory management against any worker or workers.

7. The posts of Welfare Officer and Chief Welfare Officer are, in a sense, very pivotal positions and they are statutorily required to assume the role of guardians of the workers on the one hand and the role of a negotiator, mediator, on the other hand. They are required to act as watch dogs/sentinels of the workers' rights. Such officers cannot be reduced as pawns in the hands of the occupier of the factory. Therefore, the statute itself in Sub-rule (4) of Rule 76-B advisedly defines and protects the terms and conditions of services of the Welfare Officers and the Chief Welfare Officer in the matter of tenure, scales of pay, determination of employment, disciplinary measures and appeals against such measures, with laudable object that they can freely and fearlessly perform the duties and functions entrusted to them under Sub-Rule (5) of Rule 76-B, in the best interest of the workers. In *Prem Narain v. Canpore Chemical Works* 1974 Lab. I.C. 479 a single Judge of the High Court of Allahabad while dealing with a case of the termination of the services of a Welfare Officer appointed under the Act and the Uttar Pradesh Factories Welfare Officers' Rules, 1955 and the significance of the post of Welfare Officer observed:

"The above catalogue of the duties of a Welfare Officer leaves no room for doubt that not only he holds an office but that it is a public office and his functions are

replete with all the elements of a public employment. In fact, his duties embody a high concept of social justice. He has to act as liaison officer between the workers and the management. He has to endeavour to secure real welfare and amenities to the workers in the modern industrial set up and in so discharging his functions has certainly in a measure to act as a curb on the management which has to be kept within, bounds. In these circumstances, it cannot be contended with force that a Labour Welfare Officer functions on the will of the employer. On the contrary his office is created by the Act. It is of a permanent nature and it is a public office. If, therefore, a Labour Welfare Officer has a right to continue in his post until he attains the age of superannuation and the management or the private company chooses to terminate his service prior to that contingency or without complying with the statutory procedure, the officer is entitled to ask for a writ of mandamus. He has a legal right to the office and the management is under a statutory obligation to retain him in office."

In *P. Madhavan v. Binny Limited* 1992 1 LLN 574 S. Nainar Sundaram, Acting Chief Justice, as he then was, speaking for the Division Bench of Madras High Court, and dealing with the nature and importance of the post of Welfare Officer, was pleased to observe :

"The post is not one created in ordinary service parlance. The post is one required to be created by Section 49 of the Act. In that sense, it could be characterised as a statutory post. Section 49(2) enjoins-upon the State Government to prescribe the duties, qualifications and conditions of service for the incumbent in the post. The rules got formulated towards that end. As already seen, Rule 4 prescribes the qualifications and Rule 5 sets down the method of recruitment. There is no escape from these statutory prescriptions. The implications of Rules 6 and 7 have already been noticed. Thus, the post is a substantive one created under and pursuant to statute. We have no ambiguity in our mind that the post is of a public nature and it carries with it the duties of significance of an office, which affects a section of the general public. The duties annexed to the post enjoins upon the incumbent to maintain harmonious relationship between the management and the workers, to bring to the notice of the management the grievances of the workers, individual as well as collective, with a view to secure expeditious redressal. The incumbent should act as a Liaison Officer between the management and the workers. He should encourage provision of very many amenities for the workers. He has got a role to play with reference to the provisions of welfare facilities and to suggest measures to raise the standard of living of the workers."

Now let me proceed to consider the points for decision,

Point No.(i):

8. The doctrine of *res judicata* is based on considerations of public policy as it envisages that finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and that individuals should not be made to face

the same litigation twice. This principle of law has been made applicable to writ proceedings as well through process of judicial interpretation on grounds of public policy, so as to debar a party from taking one proceeding after another and urge new grounds every time, in respect of one and the same cause of action, thus, causing harassment to the opponent.

9. Although by reason of the Explanation which was inserted in Section 141, CPC by the Amendment Act of 1976, Section 11, CPC does not in terms apply to any proceedings under Article 226 of the Constitution, the principle of *res judicata* does apply to all writ proceedings under Article 226, as held by the Supreme Court in *G.K. Dudani and Others Vs. S.D. Sharma and Others*, . The Supreme Court, in *Daryao and Others Vs. The State of U.P. and Others*, and in *Kunwar Ram Nath and Others Vs. Municipal Board, Pilibhit*, a and in *Grih Kalyan Kendra Workers' Union Vs. Union of India and others*, , held that the doctrines of *res judicata* and constructive *res judicata* apply to writ proceedings also.

10. The doctrine of *res judicata* is based on three maxims : (i) *nemo debet lis uexari pro una et eadem causa* (no man should be vexed twice for the same cause); (ii) *interest republicae ut sit finis litium* (it is in the State's interest that there should be an end to a litigation); and (iii) *res judicata pro veritate occipitur* (a judicial decision must be accepted as correct). As held by the Supreme Court in *Syed Mohd. Salie Labbai (Dead) by L.Rs. and Others Vs. Mohd. Hanifa (Dead) by L. Rs. and Others*, and in *Isher Singh Vs. Sarwan Singh and Others*, , before a plea of *resjudicata* can be given effect, the following conditions must be proved : (i) that the litigating parties must be the same; (ii) that the subject matter of the suit also must be identical; (iii) that the matter must be finally decided between the parties; and (i v) that the suit must be decided by a Court of Competent Jurisdiction. It is not enough to constitute a matter *resjudicata* that it was in issue in the former suit. It is further necessary that it must have been in issue directly and substantially. The Supreme Court in *Lonankutty Vs. Thomman and Another*, held that a matter cannot be said to have been "directly: and substantially in issue" in a suit unless it was alleged by one party and denied or admitted, either expressly or by necessary implication, by the other. Matter in issue is the right claimed by one and denied by the other. Claim of right in its very inception depends upon proved facts and application of the relevant law as held by the Supreme Court in *Mata Din Vs. A. Narayanan*, . Directly and substantially an issue could be constructively also. Matter in issue may be issue of fact, an issue of law, or one of mixed fact and law. An issue of fact or an issue of mixed fact and law decided by a competent Court is finally decided between the parties and cannot be reopened between them in another proceeding. When it is said that a previous decision is *res judicata*, it is meant that the right claimed has already been adjudicated upon and cannot again be placed in contest between the same parties. Even though decision on a pure question of law unrelated to facts which gives rise to any right cannot be deemed to be a matter in issue and as such *resjudicata*, when the law is applied to facts which are the foundation of rights and decided, the decision is *resjudicata*. The decision

on law cannot be dissociated from decision on facts on which the right is founded. In other words, when the finding on an issue is based on a certain view of the law, that view of the law, as an abstract proposition and dissociated from the actual matter in issue, will not be *res judicata* so as to be applicable to all future disputes between the same parties which may give rise to the applicability of the same abstract question of law. As held by the Supreme Court in *Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy*, the object of the doctrine of *resjudicata* is not to fasten upon the parties, special principles of law as applicable to them *inter se* but to ascertain their rights and the facts upon which those rights directly and substantially depend; and to prevent the ascertainment from being nugatory by precluding the parties from reopening or (*sic.*) recontesting that which has been finally decided. *Res judicata* is a rule of procedure. It cannot change the law of the land as applicable to specific parties by decisions of Courts.

11. Rules of procedure are intended to be a hand-maid servant to the administration of justice and a party cannot be denied justice merely because of some mistake, negligence, in advertance or even infraction of the rules of procedure. All procedural rules are intended to serve the cause or ends of justice and they cannot be applied or perverted to deny justice to a party. It is now well settled by the decision of the Supreme Court in *B.C. Chaturvedi Vs. Union of India and others*, that the mere fact that there is no provision parallel to Article 142 of the Constitution relating to the High Courts, that can be no ground to think that the High Courts have not to do complete Justice, and that power to do complete justice inheres in every Court. In other words, technicalities of procedural law shall not come in the way of the High Courts doing complete justice in any cause or matter brought before it.

12. In W.P. No. 7357/88 the petitioner sought two reliefs : (i) a direction to the respondents to implement the scale of pay stipulated under Rule 76-B(4) (a) of the Rules; (ii) declaration that the action of the respondents dated April 26, 1988 transferring him from Azam Jahi Mills, Warangal to Nataraja Mills, Warangal as illegal, arbitrary and without jurisdiction. There were no controversies between the parties on facts that the petitioner was designated as Chief Welfare Officer on October 22, 1985 when the number of workers in the factory exceeded 2000 and since then he had been functioning as such. The management of the factory claimed that the petitioner was entitled only to that scale of pay prescribed in the service regulations, non-statutory instruments, framed by it and not to the scale of pay stipulated in Rule 76-B (4) (a) of the Rules. The Court rejected the claim of the management and held that the petitioner was entitled to the scale of pay stipulated in Rule 76-B(4) (a) by observing that Rule 76-B(4) (a) should prevail over the regulations framed by the factory management. Dealing with the claim of the petitioner that he could be transferred only as Chief Welfare Officer and not as Welfare Officer, B. Subhashan Reddy, J. was pleased to observe:

"In so far as the other relief of continuance of status of Chief Labour Welfare

Officer irrespective of his posting in the factories, whether or not there is a strength of 2000 is concerned, I cannot countenance the said contention as it is by fortuitous circumstance that he will be designated as Chief Welfare Officer (and) if he is posted at a place of work where there is a strength of more than 2000 workmen. If he is not posted at such places, he has to content himself with the status of Labour Welfare Officer. It is, however, open to the 2nd respondent to deal with the aspect relating to the transfer of the petitioner in accordance with the service conditions governing the situation."

13. A. careful reading of the judgment in W.P.No.7357/88 clearly indicates that the learned Judge was called upon to decide only the aforementioned two points. No argument that the transfer in effect, tantamounted to reduction in rank was addressed to the Court nor the Court did deal with that question. The attention of the Court does not seem to have been drawn to the provisions of Rule 76-B of the Rules which have vital bearing on the question for the reasons to follow. The judgment in W.P.No.7357/88 was delivered on April 24, 1990 (sic. April 24, 1992). During the pendency of the writ petition, this Court had suspended the impugned transfer order. Therefore the petitioner continued to be in service at Azam Jahi Mills, Warangal as Chief Welfare Officer. Even after the disposal of the writ petition, the petitioner continued as such at Azam Jahi Mills. Therefore, it is quite obvious that the transfer order dated April 26, 1988 transferring the petitioner from Azam Jahi Mills, Warangal to Nataraja Mills, Warangal was not given effect to during the pendency of the writ petition by virtue of the interim order granted by the Court, and even after the disposal of the writ petition it was not given effect to by the management. The Court did not quash the transfer order nor it directed either directly or impliedly to continue the petitioner at Azam Jahi Mills only. Therefore, the management of the factory had no legal impediment to give effect to the transfer order dated April 26, 1988 after the disposal of the writ petition. Since the management did not do so and it permitted the petitioner to serve as Chief Welfare Officer at Azam Jahi Mills only till the present impugned transfer order was issued, it should be held that the management impliedly and voluntarily revoked or cancelled or waived the earlier transfer order dated April 26, 1988. Therefore, the grievance of the petitioner did not survive at that stage and I think that was why the petitioner did not seek further judicial remedy by filing a writ appeal despite certain adverse observations made by the Court relating to the petitioner's entitlement to continue as Chief Welfare Officer. Since the Court held that the petitioner was entitled to the scale of pay specified under Rule 76-B(4) (a) and the management did not give effect to the transfer order even after the disposal of the writ petition, the petitioner was no longer aggrieved inasmuch as the Court and the management granted him the two reliefs sought in the writ petition. Therefore, it is reasonable to hold that the point decided by the Court against the petitioner will not operate as res judicata where no appeal could be filed or where there was no necessity to file appeal by the petitioner because the reliefs were granted to him by the Court and the management. Looking from that angle

and in so far as the petitioner was concerned, the observation of the learned Judge assumes to be a decision on a hypothetical question. The observations of the learned Judge, extracted above, themselves indicate that. The hard fact is that till the order dated June 10, 1992 transferring the petitioner from Azam Jahi Mills, Warangal to Adoni Cotton Mills, Adoni was issued, the petitioner was never sent out of Azam Jahi Mills on transfer. For the first time, after his appointment as Chief Welfare Officer on October 22, 1985, the petitioner was forced to go and report for duty at the transferred place. Therefore, the contention of the petitioner that the transfer order, in effect, tantamounts to reduction in rank has become a "direct and substantial issue" in the present writ petition. Therefore, I hold that the observation of the Court in earlier writ proceeding that the petitioner is not entitled to continue as Chief Welfare Officer irrespective of the number of workers in the factory does not operate as *res judicata* barring the present writ petition.

14. Looking from another angle also, I do not find any substance in the first point raised by the learned senior Counsel for the management. What is the nature of the question whether a person appointed as Chief Welfare Officer by compulsion of the provision of the second proviso to Rule 76-B(1) is entitled to continue as such even in the event of the number of workers in the factory reducing to 2000 or below? Is it a question of fact, or is it a mixed question of fact and law, or is it a pure question of law, or is it a question of discretion? According to Salmond (Salmond on Jurisprudence, XI Edition by Glanville Williams), a question of law is a question which the Court is bound to answer in accordance with a rule of law - a question which the law itself has authoritatively answered to the exclusion of the right of the Court to answer the question as it thinks fit in accordance with what is considered to be the truth and justice of the matter. According to the learned author, all other questions are questions of fact - using the term fact in its widest possible sense to include everything that is not law. A question of fact means either (i) any question which is not predetermined by a rule of law, and (ii) any question except a question as to what the law is. The concept "law" includes the Judge-made law also. It is well settled judge-made law that a person appointed to a substantive post on regular basis cannot be reverted to a lower post except as a disciplinary measure or in exercise of a power reserved by the employer under the terms of contract of employment to revert the employee to a lower class or grade of post on the happening of a certain event, and if it is done otherwise, it would be invalid and illegal. If that is so whether the aforementioned question which falls for consideration can be answered authoritatively by the law itself? The obvious answer would be "yes". The question can be answered by way of an abstract legal proposition also in view of the settled law without reference to the facts of an individual case. As already pointed out *supra*, a decision on pure question of law unrelated to facts which gives rise to any right cannot be deemed to be a matter in issue and as such *res judicata*, and only when such decision on pure question of law is applied to the facts which are the foundation of rights and decided, such decision operates as *res judicata*. The

Supreme Court, in *Supreme Court Employees Welfare Association v. Union of India* held that a decision on an abstract question of law unrelated to fact cannot operate as *res judicata* even when it gives right to a right, but if the question of law is related to the fact in issue, it would operate as *res judicata* between the parties even if erroneous. The decision of this Court in the earlier proceedings on the question whether the petitioner is entitled to continue as Chief Welfare Officer after January 1, 1991 was not preceded by any such exercise, and, therefore, the decision on the said point will not operate as *res judicata*.

15. A transfer order, by its very nature, is a transient and temporary measure in any employment relations and a transfer order comes to an end the moment the transferred employee reports at the transferred place, whereas the protection of tenure, terms and conditions of services and scales of pay etc., of the Welfare Officers and the Chief Welfare Officers stipulated under Rule 76-B(4) is neither transient nor one-time measure, and the protection is co-extensive with the tenure and ever continuing and recurring till employment is determined in accordance with law. Therefore, it is permissible for any person holding the post of Welfare Officer or the post of a Chief Welfare Officer to complain every time the corresponding statutory obligation cast on the occupier of the factory is breached. With every breach of the obligation and every recurring breach of the obligation, a distinct and separate cause of action accrues to the employee. The cause of action for instituting W.P. No. 7357/88 is different from the cause of action for instituting the present writ petition. If the cause of action is the same both in the former and subsequent proceedings, then the decision on an issue of law will be *res judicata* between the same parties, but, when cause of action is not the same in both the proceedings, it will not operate as *res judicata*. To the same effect is the decision of the Supreme Court in *Matura Prasad v. Dossi Bai* (supra). If it is held otherwise, the provisions of Rule 76-B which are intended to protect the official status, tenure, scales of pay and other terms and conditions of the services of the Welfare Officers and the Chief Welfare Officers would be reduced to dead-letters in so far as the petitioner is concerned. There cannot be any estoppel against the statute. *Res judicata* is a rule of procedure. It cannot change the law. Kerala High Court in *Bharathi Amma and Others Vs. Kumaran Peethambaran and Another*, held that *res judicata* is a rule of procedure and it cannot change the law of the land as applicable to specific parties by decisions of Courts. At any rate, technical rules of procedure shall not come in the way of this Court's jurisdiction under Article 226 to do complete justice as held by the Supreme Court in *B.C. Chaturvedi v. Union of India* (supra). I find, on merit, that the petitioner has an excellent case to succeed. Therefore, I reject the preliminary objection raised by the management of the factory and hold that the present writ petition is not barred by principle of *resjudicata*.

16. There is also no merit in the contention of the learned senior Counsel that the petitioner came to be designated as the Chief Welfare Officer in a fortuitous circumstance. Strength of a work force in an establishment is determined by manifestation of will of the employer. Appointment of every worker is by a

manifestation of the employer's will. Similarly, determination of appointment of every worker is also by a manifestation of the employer's will. Therefore, it cannot be said that the petitioner was designated or appointed as the Chief Welfare Officer on account of a chance-happening or fortuitous circumstance.

Point Nos. (ii) & (iii)

17. The decision to be taken on point No. (ii) will have bearing on the decision to be taken on point No. (iii). Therefore, it is apt to deal with both the points together. The argument of the learned Counsel for the petitioner that the impugned transfer order, in effect, amounts to reduction in rank of the petitioner is well-founded. The learned senior Counsel for the management, too, did not and could not contend that the transfer order has not altered the official status and the scale of pay of the petitioner. But, his argument proceeds on these lines : What the management of the factory did on October 22, 1985 was not the appointment of the petitioner as Chief Welfare Officer ; the petitioner was merely called as Chief Welfare Officer as required under the second proviso to Sub-rule (1) of Rule 76-B and that act of the management could not be equated to the appointment of the petitioner as Chief Welfare Officer: despite calling the petitioner as Chief Welfare Officer, the petitioner continued to be in substantive post of Welfare Officer; the petitioner came to be called Chief Welfare Officer under a fortuitous circumstance; the fortuitous circumstance was that the number of workers in the factory exceeded 2000; and therefore the petitioner is not entitled to continue as Chief Welfare Officer at least with effect from January 1, 1991 when there was a change in the fortuitous circumstance thereby meaning that the number of workers in the factory was reduced to a number below 2000. Alternatively, the learned senior Counsel would contend that even before January 1, 1991, the petitioner had no vested right to the position of Chief Welfare Officer inasmuch as the petitioner's substantive post all-through is the post of Welfare Officer only.

18. Although the argument of the learned Counsel for the management built upon logistic interstices seems quite attractive at the periphery, a peeper will find the discernible fallacy of the argument without much difficulty, logicwise as well as reasonwise. The pith and substance of the argument of the learned senior Counsel is that, though he did not argue in the way I put it, that the act of designating the petitioner as Chief Welfare Officer vide proceedings dated October 21/22, 1985 was an "act of law", and not "an act in law" by the management. In other words, the argument seems to be that the law itself calls a Welfare Officer as Chief Welfare Officer when the number of workers in a factory exceeds 2000 and the law itself stops calling a Chief Welfare Officer as Chief Welfare Officer when the number of workers in the factory falls below 2000 ; both the events happen by operation of law i.e., provisions of Sub-rule (1) of Rule 76-B when the so called fortuitous circumstance comes to exist or disappears.

19. Section 49 of the Factories Act does not deal with appointment of Chief

Welfare Officer; it only provides for the appointment of such number of Welfare Officers as may be prescribed by the State Government in every factory wherein 500 or more workers are ordinarily employed. Under Sub-rule (2) of Section 49 of the Factories Act, the State Government is conferred with the delegated power to prescribe the duties, qualifications and conditions of service of Welfare Officers. Sub-section (1) mandates that "the occupier shall employ". Sub-Rule (1) of Rule 76- also mandates that "the occupier.....shall appoint". The second proviso to Sub-rule (1) provides that where the number of workers exceeds 2000, one additional Welfare Officer shall be appointed for every additional 2000 workers or fraction thereof over 500 ; and where there are more than one Welfare Officer, one of them shall be called the Chief Welfare Officer and the others Assistant Welfare Officers. For complying with the mandate incorporated in the Section and the rule, the petitioner was designated as the Chief Welfare Officer by the proceedings dated October 21/22, 1985. What was that proceeding? Was it an act of law or an act in law? "Act of the law" and "Act in the law" are two distinct and separate concepts, jurisprudentially speaking. According to SALMOND (Salmond on Jurisprudence, XI Edition by Glanville Williams) an act of the law is the creation, extinction, or transfer of a right by the operation of the law itself, independent of any consent thereto on the part of him concerned. An act in the law, on the other hand, is any expression of the will or intention of the person concerned, directed to the creation, transfer, or extinction of a right, and effective in law for that purpose. In innumerable cases the law allows a man to acquire or lose his rights by a manifestation or declaration of his will and intent directed to that end. In other cases it confers rights upon him, or takes them away without regard to any purpose or consent of his at all.

20. Neither Section 49 nor Rule 76-B, in terms, directs that when the number of workers exceeds 2000 a particular Welfare Officer shall stand appointed or called Chief Welfare Officer without intervention of human will or intent. They also do not direct that the senior most Welfare Officer shall be appointed or designated as the Chief Welfare Officer. The second proviso to Sub-rule (1) of Rule 76-B only directs that one of the Welfare Officers shall be called as the Chief Welfare Officer. Therefore, the occupier of the factory is given a discretion to appoint one of the Welfare Officers to the post of Chief Welfare Officer. Seniority rule is not insisted. Therefore, strictly speaking the post of Chief Welfare Officer cannot be said to be a promotional post from the post of Welfare Officer. Even assuming that the post of Chief Welfare Officer is a promotional post from the feeder post of Welfare Officer, the promotion will be by way of "selection on merit, and not by other modes of promotion. Similarly, neither Section 49 nor Rule 76-B directs that when the number of workers is reduced to 2000 or below, the Chief Welfare Officer working at the relevant time shall stand reverted to the post of Welfare Officer or his services as the Chief Welfare Officer shall stand terminated without the intervention of human will or intent, that is to say, without the act of the occupier of the factory. In other words, a person who was appointed as the Chief Welfare Officer when the number of workers in a factory exceeded 2000 will

continue to be Chief Welfare Officer even after the number of workers in the factory is reduced to 2000 or below unless his appointment as the Chief Welfare Officer is determined by the occupier of the factory in accordance with law. There is no legal bar for the occupier of the factory either to appoint or to continue a Welfare Officer even if the number of workers in the factory is less than 500. Similarly, there is no legal bar to appoint or continue a Chief Welfare Officer if the number of workers is reduced to 2000 or below. A benevolent factory management may appoint a Welfare Officer or Chief Welfare Officer even in the absence of statutory compulsions.

21. The discussion above makes it clear that the appointment or determination of appointment of a Welfare Officer or a Chief Welfare Officer in a factory do not take place by acts of law, but they take place by acts of the occupier of the factory, called acts in the law. Therefore it should be held that appointment of the petitioner as the Chief Welfare Officer on October 22, 1985 is an act of the occupier and not an act of the law. Looking from another angle also voidness of the base of the argument can be seen. The proceeding dated October 22, 1985 can never be called an act of the law because admittedly the occupier of the factory is the author of the proceeding and that proceeding reflects manifestation of his will and intention. The learned senior Counsel, perhaps sensing this position in law and its fall out, would put forth an ingenious argument that the petitioner was not appointed as the Chief Welfare Officer as such by the proceedings dated October 22, 1985, but he was merely designated, rather called, as a Chief Welfare Officer and despite calling him as Chief Welfare Officer, the petitioner continued to be in the substantive post of Welfare Officer and therefore the petitioner cannot claim any vested right to the post of Chief Welfare Officer.

22. Arguments based on verbalism are not uncommon to the Courts. The argument of the learned senior Counsel is based on an untenable assumption that calling a person to a post is different from appointing a person to a post. There is no difference between the two and both mean the same. According to Chambers 20th Century Dictionary edited by E.M. Kirkpatrick, the word "call" as a verb, means "to appoint or proclaim"; "to declare"; "to designate". According to the Chambers Dictionary, the word "call" as a verb, among other meanings, means "to declare", "to designate", "to select for a special office". In the same Dictionary, the word "appoint" means "to select for a position", "assign to a job or office". The post of Chief Welfare Officer is a Special Office in the sense that it is created by the statute and substantial terms and conditions of that office are specified and protected by the statute itself. Filling up of a post or an office is variously described as appointment, nomination, designation, calling etc., though the word "appointment" is generally used. These words may not have identical meaning in every respect, but in so far as filling up of a post is concerned, they mean the same thing. The proceedings of the occupier of the factory dated October 22, 1985 states that the petitioner was designated as Chief Welfare Officer, and therefore, it means that the petitioner was appointed to the post of

Chief Welfare Officer.

23. There is no substance in the other argument that since the number of workers in factory is reduced to 2000 or below, there is no statutory obligation to appoint or continue a Chief Welfare Officer, and therefore the petitioner cannot claim that he should be continued as Chief Welfare Officer. In the first place there is controversy between the parties about the actual number of workers working in the Azam Jahi Mills, Warangal. There is no necessity for the Court to record its finding on that factual controversy in view of the decision I have taken. Even assuming that the number of workers is reduced to 2000 or below, there is no legal bar to continue the services of the petitioner as the Chief Welfare Officer for the reasons stated supra. If the management of the factory thinks that there is no statutory obligation to appoint or continue the petitioner as Chief Welfare Officer in view of the changed circumstances, it may determine his appointment, if law permits it to do so. Whether the services of the petitioner can be determined in the changed circumstances is not a question which has arisen for decision in this case. That question is hypothetical question. Therefore, I decline to decide that hypothetical question. The hard-fact is that till date the appointment of the petitioner as the Chief Welfare Officer is not determined by the management.

24. The discussion supra establishes (i) that the petitioner was appointed as Chief Welfare Officer on October 22, 1985; (ii) that the petitioner is entitled to the scale of pay stipulated under Rule 76-B (4) (i) (a); (iii) that the appointment of the petitioner as the Chief Welfare is not yet determined; in other words, the petitioner still continues to be the Chief Welfare Officer; and (iv) that despite the fact that the number of workers in the factory is reduced to 2000 or below the petitioner is entitled to continue as the Chief Welfare Officer. In the premise of these findings, let me now advert to the effect of impugned transfer order. The impugned transfer order declares that the petitioner is "Labour Welfare Officer" and as such he is transferred to Adoni Cotton Mills, Adoni. In the affidavit filed in support of the writ petition, the petitioner has complained that the management did not pay him as per the scale of pay stipulated under Rule 76-B(4) (i) (a) and he was not paid at that scale even for the period anterior to January 1, 1991 despite the direction of this Court in the earlier writ proceedings. The petitioner, at present, is compelled to work as Welfare Officer at Adoni Cotton Mills and he is paid at the old rate (not even revised scale of pay) of scale of pay admissible to Welfare Officers. The effect of the transfer order is quite apparent and it speaks for itself. The effect is that the petitioner is reverted from the rank of Chief Welfare Officer to that of Welfare Officer. The action of the management clearly tantamounts to reduction in rank. "Reduction in rank" means reversion of an employee from a higher class or grade of post to a lower class or grade of post. The post of Chief Welfare Officer is higher post to that of Welfare Officer in terms of office as well as in terms of the scale of pay stipulated under Rule 76-B(4). If an employee has a right to hold a particular class or grade of post, reversion to a lower grade or class of post per se is violative of principles of natural justice and

tantamounts to punishment. An employee cannot be reverted to a lower post except as a disciplinary measure after holding a regular departmental/domestic enquiry in conformity with the relevant regulations or rules. Added to this the occupier of the factory cannot straight-away revert a Chief Welfare Officer to the post of Welfare Officer even as a disciplinary measure without the written concurrence of the Director of Factories as mandated in Rule 76-B(4) (iii). Admittedly the management did not obtain concurrence of the Director of Factories before the impugned action was taken. The impugned action suffers from errors of law apparent on its face and it cannot be sustained in law.

25. Before concluding, a clarification is necessary about the claim of the petitioner that he cannot be posted or transferred even as Chief Welfare Officer to any factory under the management of the National Textile Corporation where the number of workers is less than 2000. The post held by the petitioner is a transferable post. At the time of hearing Sri. E. Manohar, the learned senior Counsel for the management submitted that the work force is reduced to 2000 and below in all the units. If this assertion of the learned senior Counsel is factually correct, then, the petitioner cannot claim that he should be transferred only to a factory where the total number of workers exceed 2000 and if he does so, he will be asking the factory management to do something impossible. In such situation stated by the learned senior Counsel for the management, the petitioner is liable to be transferred to any unit irrespective of the fact that in such unit the total number of workers is less than 2000, but, he may be transferred only as Chief Welfare Officer, not as Welfare Officer, and he will be entitled to the scale of pay stipulated under Rule 76-B(4) (i) (a) of the Rules at the transferred place.

26. In the writ petition the petitioner has sought for a writ of mandamus declaring the impugned transfer order as illegal, arbitrary, malafide and without jurisdiction and to pass such further order or orders as this Court deems fit in the facts and circumstances of the case. It is settled position that the Court can mould the reliefs. Since I have found that the impugned action, in effect, tantamounts to reverting the petitioner from the post of Chief Welfare Officer to the post of Welfare Officer with the scale of pay admissible to the post of Welfare Officer, it has become necessary to mould the reliefs and pass appropriate orders.

27. In the result and for the foregoing reasons I make the following

ORDER

(i) It is declared that the impugned transfer order dated June 10, 1992 has the effect of reverting the petitioner from his substantive post of Chief Welfare Officer to the post of Welfare Officer, a lower post and it tantamounts to reduction in rank.

(ii) The impugned transfer order dated June 10, 1992 is therefore quashed. However, it is made clear that if in none of the factories under the management of the National Textile Corporation the number of workers does not exceed 2000,

it is permissible for the management to transfer the petitioner to Adoni Cotton Mills or any other factory but only as Chief Welfare Officer by issuing appropriate transfer order.

(iii) The petitioner is entitled to the scale of pay stipulated under Rule 76-B(4) (i) (a) of the Andhra Pradesh Factories Rules as revised from time to time with all other admissible allowances with effect from October 22, 1985. The arrears of salary and allowances shall be paid to the petitioner within a period of three months from today.

(iv) The petitioner is entitled to the cost of the writ petition. Advocate's fee is fixed at Rs. 1500/-.

28. The writ petition accordingly stands disposed of.