Circular No – 072/2024

Date: 04.12.2024

To
All Members of The Association

RIGHTS OF EMPLOYER TO TRANSFER EMPLOYEES REITERATED AND CONFIRMED BY THE SUPREME COURT

1. The Hon'ble Supreme Court in the case of **Divgi Metal Wares Ltd. Vs. Divgi Metal Wares Employees Association and Others AIR 2024 SC 1686** =2024 LLR 478 has reiterated that the employers may transfer the employees in accordance with the contract of employment and the Certified Standing Orders of the Establishment.
2. The brief facts relating to the case are that Divgi Metal Wares Ltd are the manufacturers of automobile gates. The company had factories at Sirsi Karnataka and also Pune Maharashtra. The service conditions of the workmen were governed by the Certified Standing Orders and also the letter of appointment and confirmation issued to the employees.
3. The standing orders of the company were certified on 03.07.1989. Clause-20 of the Standing Orders read as under:

   "20. Transfers: An employee shall be liable to be transferred at any time from the unit/factory/office/establishment of the company located anywhere in India or from one department to another within the same unit/factory/office/establishment or from one job of similar nature and capacity to another job of same nature and capacity from one job to another similar job or from one shift to another shift, provided such a transfer does

not affect his normal wages. Any refusal to accept a transfer as above will be treated as mis-conduct as per Rule 31.2.1949."

4. Clause 31 of the Certified Standing Order read as under:

"Nothing contained in these standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage, or an agreement settlement or award applicable to the establishment."

5. Clause-5 of the letter of appointment issued to the workmen and also clause 1 of letter of confirmation in service issued to the workmen contained the following clauses with regard to transfer of workmen.

"Your services are transferable at short notice to any department or any works, offices belonging to the Company. In the event of transfer the terms and conditions stipulated in this letter shall continue to apply, and you will be governed by the Rules and Regulations of the establishment where your services are transferred."

6. While the matter stood thus, the company in the months of April to September 1998 on account of reduction in orders and lack of sufficient work, transferred 66 workmen from the Sirsi Factory to Pune Factory. All the workmen were paid in advance for one week's leave with pay @ Rs. 1,000/- towards travel expenses. Though the employees collected the said amount, they did not report at the Pune Factory.

7. There were litigations at different forums in the matter and ultimately the matter reached Supreme Court. The Hon'ble Supreme Court inter-alia held as under:

- Upheld the employers right to transfer employees based on the terms of their appointment and confirmation letters even though the terms differed from company's Standing Orders.
- The terms of appointment and confirmation clearly stated that the employees' services were transferable to any department or office belonging to the company.
- Clause 31 of the Standing Orders acknowledged that standing orders could not override any existing laws or contract of service.
- The terms of appointment, confirmation which stipulated transferability prevail over any conflicting clauses in the Standing Orders.
- Referred to the decision of the Supreme Court in the case of **Cipla Ltd Vs. Jayakumar.K and Another 1999 (1) SCC 300** and reiterated that the terms of appointment letter permitting transfer to different establishment could co-exist with Certified Standing Orders addressing transfer within the same establishment.

For KARNATAKA EMPLOYERS' ASSOCIATION
Sd/
[B C Prabhakar]
President

2024 INSC 237

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2032/2011

M/S. DIVGI METAL WARES LTD. ...APPELLANT(S)

VERSUS

M/S. DIVGI METAL WARES EMPLOYEES ASSOCIATION & ANR. ...RESPONDENT(S)

WITH

C.A. NO. 2035/2011

C.A. NO. 2033/2011

J U D G M E N T

B.R. GAVAI, J.

1. These appeals challenge the judgment and order passed by the Division Bench of the High Court of Karnataka, Circuit Bench at Dharwad dated 02.02.2009, vide which the appeal filed by the M/s. Divgi Metal Wares Employees Association, which is respondent No.1 herein, came to be allowed. Similarly, by the said order, the Writ Petition No.31808/2003

filed by Respondent No.1 was also allowed and the Writ Petition No.7993/2006 filed by M/s Divgi Metal Wares Ltd., the appellant herein, came to be dismissed.

2. The facts leading to the filing of the present appeals are as under:-

2.1 The appellant is a company which manufactures automobile gears at two factories, one in Pune, Maharashtra and the other at Sirsi, Karnataka. The Respondent No.1 is a Trade Union registered under the provisions of the Indian Trade Unions Act, 1926. The relations between the appellant and the respondents are governed by the Industrial Employment (Standing Orders) Act, 1946 (for short, 'the said Act'). It is also not in dispute that, it was at the instance of the employer that the Deputy Labour Commissioner and Certifying Officer passed an order on 03.07.1989 thereby certifying the Standing Order. Clause 20 of the Standing Orders reads thus:-

> "20. Transfers: An employee shall be liable to be transferred at any time from the unit/factory/office/establishment of the company located anywhere in India or from one department to another within the same unit/factory/office/establishment or from one job of similar nature and capacity to another job of same nature and capacity from one job to another similar job or from one shift to another shift, provided such a

> transfer does not affect his normal wages. Any refusal to accept a transfer as above will be treated as mis-conduct as per Rule 31.2.1949."

2.2 It will also be relevant to refer to Clause 31 of the Certified Standing Order. It reads thus:

> "Nothing contained in these standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage, or an agreement settlement or award applicable to the establishment."

2.3 It is also not in dispute that Clause 5 of every letter of appointment and Clause 1 of every letter of confirmation in service issued to the workmen contains the following stipulation:-

> "Your services are transferable at short notice to any department or any works, offices belonging to the Company. In the event of transfer the terms and conditions stipulated in this letter shall continue to apply, and you will be governed by the rules and regulations of the establishment where your services are transferred."

2.4 The appeal challenging the Certified Standing Order dated 03.07.1989 came to be filed before the learned Industrial Tribunal which rejected the appeal as time barred vide order dated 06.04.1996. Indisputably, the same order has not been carried forward.

2.5 In the months of April to September, 1998 on account of reduction in orders and lack of sufficient work, 66 workmen from the Sirsi Factory were transferred to Pune Factory. All the workmen were paid in advance for one week's leave with pay @ Rs.1,000/- towards travel expenses. Though the employees collected the said amount, they did not report at the Pune Factory.

2.6 These workmen, whose services were transferred raised Industrial Disputes vide Nos.42/1998, 2/1999 and 3/1999.

2.7 On the application of the respondent, the Deputy Labour Commissioner and Certifying Officer modified the Certified Standing Orders and deleted the following words from Clause 1 on 30.09.1999:-

> "from the unit/factory/office/establishment in which he is working to any other unit/factory /office/establishment of the Company located anywhere in India, or"

2.8 The said deletion came to be challenged by way of an appeal by the appellant before the learned Industrial Tribunal. The learned Industrial Tribunal by the judgment and order dated 03.03.2001 partly allowed the appeal and set aside the modifications to the Standing Order of 3rd July, 1989. The same came to be challenged by the respondent by way of Writ

Petition No.44810/2001.

2.9 In the meanwhile, the learned Industrial Tribunal, Hubli vide its common award, rejected the aforesaid three references, viz., ID Nos. 2/1999, 3/1999 and 42/1998 filed by the workmen on 30.05.2002. The Tribunal also held that the transfers were not malafide. A Writ Petition No.31808/2003 was filed before the High Court by the respondents challenging the said award dated 30.05.2002.

2.10 In parallel proceedings, 03 workmen who were similarly transferred on 08.02.1999 raised Reference ID no.220/2001 and 16 workmen who had been earlier transferred on 27.04.1998 raised the Reference ID No.9/2002.

2.11 These references were allowed by the learned Industrial Tribunal at Hubli vide award dated 28.02.2006 leading to filing of Writ Petition No.7993/2006 by the present appellant before the learned Single Judge of the Karnataka High Court.

2.12 In the meanwhile, the learned Single Judge dismissed the Writ Petition No.44810/2001 filed by the respondents vide order dated 20.03.2006, which led to filing of Writ Appeal No.877/2006 before the Division Bench of the High Court. The learned Judges of the Division Bench, while hearing the

appeal, also called for the papers of the aforesaid two writ petitions which were pending before the learned Single Judge and passed the order as aforesaid.

3. We have heard Shri C.U. Singh, learned senior counsel for the appellant and Shri S.G. Hasnen, learned senior counsel appearing for the respondents.

4. Shri C.U. Singh submits that, the reasoning of the Division Bench to the effect that since the Schedule of the said Act does not contain provisions with regard to transfer and therefore the 1999 amendment itself was not tenable is without substance. He further submits that, as per Section 3 of the said Act, though for every item in the Schedule a provision has to be made in the Standing Order, there is no restriction for providing of additional items. He further submits that, in view of provisions of Section 7 read with Section 10(3), the modified Standing Order would have taken effect only after the period of seven days from the date on which the copies of the order of the Appellate Authority are sent to the employer and to the trade union or other prescribed representatives of the workmen under sub-Section (2) of Section 6 of the said Act. It is submitted that the 1999 modification was challenged by way

of an appeal and the said appeal was dismissed. The writ petition challenging the said appellate order was also dismissed and therefore during the period in which the transfers were made, it was the Standing Orders certified on 03.07.1989, which were in vogue.

5. Shri Singh further submits that, even if the words from Clause 20 as were directed to be deleted by the amendment of 30.09.1999; still, in view of the law laid down by this Court in the case of ***Cipla Ltd. vs Jayakumar R. and Another***[1], the transfer of workmen from Sirsi Factory to Pune Factory could not be interfered.

6. Learned counsel for the respondents, on the contrary submits that, learned Judges of the Division Bench have rightly held that there was no power to provide stipulation for transfer in the Standing Order and therefore, the Division Bench of the Karnataka High Court has rightly held the 1999 amendment to be unsustainable.

7. We find that, for deciding the present appeal, it would not be necessary for us to address the first two issues raised by Shri C.U. Singh, inasmuch as, even for the sake of argument

1 (1999) 1 SCC 300

if it is accepted that the words directed to be deleted by the amendment of 30.09.1999 are deleted from Clause 20, still in view of the law laid down by this Court in the case of ***Cipla Ltd.*** (supra) the transfers could not have been held to be invalid.

8. It will be relevant to refer to paragraph 3 of the judgment of this Court in the case of ***Cipla Ltd.*** (supra), which refers to Clause 3 and Clause 11 of the terms of appointment. It reads thus:

> "**3.** Briefly stated the facts are that the respondent was appointed as a mechanic by a letter of appointment dated 31-1-1983 in the appellant's establishment at Bangalore. Two of the terms of appointment which are relevant for the purposes of the present case namely clause 3 and clause 11 are as follows:
>
> *Clause 3*:
>
> You will be in full time employment with the Company. You are required to work at the Company's establishment at Bangalore or at any of its establishments in India as the Company may direct without being entitled to any extra remuneration. You shall have to carry out such duties as are assigned to you, diligently and during such hours as may be stipulated by the management from time to time. While you are in service, you shall not be employed elsewhere or have any interest in any trade or business.
>
> *Clause 11*:

> You will be governed by the Standing Orders applicable for workmen of the Company, a copy of which is attached for your reference."

9. It will also be relevant to refer to paragraph 9 of the judgment of this Court in the case of ***Cipla Ltd.*** (supra), wherein the argument on behalf of the employee and the relevant clause in the Standing Order applicable to the parties have been reproduced. It reads thus:

> "**9.** It was vehemently contended by the learned counsel for the respondent that notwithstanding the aforesaid clause 3 in the letter of appointment the position in law is that if there is any clause which is in conflict with the Standing Orders then the Standing Orders must prevail. It was submitted that clause 11 of the letter of appointment clearly stipulated that the Standing Orders would be applicable. The learned counsel drew our attention to the relevant clause in the Standing Orders which reads as follows:
>
> > "A workman may be transferred from one department to another, or from one section to another or from one shift to another within factory/Agricultural Research Farm, provided such transfers do not involve a reduction in his emoluments and grade. Worker who refuses such transfers are liable to be discharged."

10. In the said case, it was sought to be argued on behalf of the employees that when the Standing Order talks of transfer, it permits the transfer only in terms of the said clause and

transfer de hors the same was not permissible. The argument was accepted by the learned Single Judge as well as the Division Bench of the High Court. While reversing the order of the learned Single Judge this Court observed thus:-

> "**12**. In our opinion, the aforesaid construction does not flow from the provisions of the Standing Orders when read along with the letter of appointment and, therefore, the conclusion arrived at by the High Court was not correct. As has already been noticed the letter of appointment contains both the terms namely for the respondent being transferable from Bangalore as well as with regard to the applicability of the Standing Orders. These clauses, namely, Clauses 3 and 11 have to be read along with the Standing Orders, the relevant portion of which has been quoted hereinabove. Reading the three together we do not find that there is any conflict as has been sought to be canvassed by the learned Counsel for the respondent. Whereas the Standing Orders provide for the department wherein a workman may be asked to work within the establishment itself at Bangalore, Clause 3 of the letter of appointment, on the other hand, gives the right to the appellant to transfer a workman from the establishment at Bangalore to any other establishment of the Company in India. Therefore, as long as the respondent was serving at Bangalore he could be transferred from one department to another only in accordance with the provisions of the Standing Orders but the Standing Orders do not in any way refer to or prohibit the transfer of a workman from one establishment of the appellant to another. There is thus no conflict between the said clauses."

11. It could thus be seen that, this Court has clearly held that, when Clauses 3 and 11 of the appointment order are read alongwith the Standing Order, there is no conflict as was sought to be canvassed by the employee. It has been held that, whereas the Standing Orders provided for the department wherein a workman may be asked to work within the establishment itself in Bangalore, Clause 3 of the letter of appointment, on the other hand, gives the right to the employer to transfer a workman from the establishment at Bangalore to any other establishment of the Company in India. It has been held that the Standing Order does not in any way refer to or prohibit the transfer of a workman from one establishment of the appellant to another and thus, there is no conflict between the said clauses.

12. The terms of appointment, which fell for consideration of this Court in the case of ***Cipla Ltd.*** (supra) are almost similar to the terms of the appointment in the appointment order as well as the confirmation order in the present case. They clearly stipulate that the services are transferable to any department or any work offices belonging to the company. It is further

clarified that; upon transfer, the terms and conditions stipulated in the appointment order would continue to apply and the employees would be governed by the rules and regulations of the employment where his/her services are transferred.

13. Even for a moment if it is accepted that the reasoning of the Division Bench that the amendment to clause 20 of the Standing Order by order dated 30.09.1999 is not permissible; still, in view of the law laid down by this Court in the case of ***Cipla Ltd.*** (supra), it would make no difference. If the reasoning of the Division Bench is accepted, Clause 20 would read as under:-

> "20. Transfers: An employee shall be liable to be transferred at any time from one department to another within the same unit/factory/office/establishment or from one job of similar nature and capacity to another job of same nature and capacity from one job to another similar job or from one shift to another shift, provided such a transfer does not affect his normal wages. Any refusal to accept a transfer as above will be treated as mis-conduct as per Rule 31.2.1949."

14. If that be so, the clause in the Standing Order would be similar with the clause that fell for consideration before this Court in the case of ***Cipla Ltd.*** (supra), and as such, there

would be no conflict between the Standing Order and the terms and conditions as stipulated in the order of appointment/confirmation. Whereas the Standing Order would cover the transfer from one department to another within the same unit/factory/office/establishment or from one job of similar nature and capacity to another job of same nature and capacity and also from one job to another similar job or from one shift to another shift. Per contra, the terms of appointment and confirmation would permit the transfer of an employee to any department or any works or offices belonging to the company. Another aspect that needs to be taken into consideration is that clause 31 of the Schedule of the Standing Order, which is reproduced herein above specifically provides that nothing contained in the Standing Order shall operate in derogation of any law for the time being in force or cause prejudice to any right under contract of service, custom or usage or an agreement, settlement or award applicable to the establishment. It can thus be seen that nothing contained in the Standing Orders can operate in derogation or to the prejudice of the provisions as provided in the contract of service.

15. In this view of the matter, we find that the Division Bench has erred in allowing the writ petition of the respondents, thereby holding the transfers to be illegal. Similarly, the learned Division Bench also erred in dismissing the writ petition filed by the appellants herein, which was filed challenging the award dated 28.02.2006. It is to be noted that the said award was totally contrary to the earlier award passed by the very same Tribunal on 30.05.2001.

16. For the aforesaid reasons, we find that the impugned judgment and order is not sustainable. However, we clarify that we have not considered the larger issue with regard to power of modification of the standing order and leave it open to be adjudicated in an appropriate proceeding. We find that the learned Division Bench was in error in calling the writ petitions filed by the appellant as well as the respondent(s) and deciding them without even discussing the reasonings as were adopted by the learned Tribunal. It is to be noted that, in the first order dated 30.05.2002, the learned Industrial Tribunal apart from holding that in view of Clause 20 and in terms of appointment and confirmation orders, the challenge to the transfer orders was not sustainable, also after discussing the

entire material on record, found that the transfers were not mala fide.

17. The award dated 28.02.2006 only considers that Clause 20 stood modified on 30.09.1999 and as such the transfer orders were not permissible. However, the award passed in 2006 fails to take into consideration that on 03.03.2001, the appeal against the modification was partly allowed by the learned Industrial Tribunal setting aside the order dated 30.09.1999.

18. It will be relevant to refer to Section 7 of the said Act. It reads thus:

> "**7. Date of operation of standing orders**.- Standing orders shall, unless an appeal is preferred under Section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of Section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Section 6"

19. It could thus be seen that, in view of the provisions of Section 7, the Standing Orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies thereof are sent under sub-section (3) or Section 5.

However, where an appeal, as provided under sub-section (2) of Section 6 is preferred, the same would come into operation only upon the expiry of seven days from the date on which copies of the order of the appellate authority are sent. Section 10 of the said Act deals with the duration and modification of standing orders.

20. It will also be relevant to refer to sub-section (3) of Section 10 of the said Act, which reads thus:

> "**10. Duration and modification of standing orders**.-
>
> (3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders."

21. It could be seen from the perusal thereof that all foregoing provisions including the provision in Section 7 of the said Act would also apply in respect of the application under sub-section (2) as they apply to certification of the first Standing Order. As such, in view of the order dated 03.03.2001 passed by the learned Industrial Tribunal, the amendment made in the year 1999 had not come into effect in view of the appeal being allowed by the learned Tribunal.

22. We therefore find that, on the date of the orders of

transfer as well as the date on which the learned Industrial Tribunal passed the award dated 28.02.2006, it is the 03.07.1989 Standing Order which would be in operation. More so when the appeal challenging the same by the respondents came to be dismissed on 06.04.1996 and which order was not carried further by the respondents.

23. We further find that the learned Division Bench has also erred in not taking into consideration the law laid down by this Court in the case of ***Cipla Ltd.*** (supra) though the said judgment was specifically cited before it.

24. In the result, the impugned judgment and order is quashed and set aside. Writ Appeal No. 877 of 2006 filed by the respondent No.1 is dismissed. The order dated 20.03.2006 passed by the learned single judge in Writ Petition No. 44810 of 2001 is upheld. Writ Petition No.31808/2003 filed by the respondent No.1 is dismissed. Writ Petition No.7993/2006 filed by the appellant is allowed. The order passed by the learned Tribunal dated 28.02.2006 is quashed and set aside. However, we clarify that we have not considered the larger issue with regard to the powers of the Certifying Officer to provide a clause in the Standing Orders, reserving the power

of the employer to transfer its employees anywhere in India.

25. In our view, in view of the law laid down by this Court in the case of ***Cipla Ltd.*** (supra), it was not necessary for the Division Bench to go into the said issue, inasmuch as the facts of the case at hand, are squarely covered by ***Cipla Ltd.*** (supra).

26. The appeals are disposed of in the aforesaid terms. There shall be no orders as to costs.

27. Pending application(s), if any, shall stand disposed of.

.....J
(B.R. GAVAI)

.....J
(SANDEEP MEHTA)

NEW DELHI;
MARCH 21, 2024