IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4200 OF 2024

Associated Cement Staff Union **...Petitioner**

V/s.

1 A. C. C. Ltd.

2 Presiding Officer, Industrial Tribunal, Bandra, Mumbai **...Respondents**

Mr. Sushan N. Mhatre *for Petitioner.*
Mr. Sudhir Talsania, Senior Advocate *with Mr. Vipul Patel i/b Mr. Haresh Mehta & Co., for Respondents.*

CORAM: SANDEEP V. MARNE, J.
RESERVED ON: 9 JULY 2026
PRONOUNCED ON: 21 JULY 2026

JUDGMENT:

1) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final disposal.

2) By this Petition, Petitioner-Union has assailed Award dated 13 September 2022 passed by the learned Presiding Officer, 10th Labour Court, Mumbai, answering Reference (IDA) No. 176 of 2019 in the negative. The reference was with regard to the demand of the Petitioner

for payment of wages for a period 2 January 2009 to 17 November 2011 with continuity in services.

3) Briefly stated, facts of the case are that the Petitioner is a trade union, which is also the recognized union of employees working with the Respondent-ACC Ltd. which is engaged in the business *inter alia* of manufacturing and sale of cement. Petitioner espouses cause of its President, Mr. Lakshman Seshadri who joined service of the Respondent-Company as Grade X-Typist/Telex Operator in the year 1980. It appears that Mr. Lakshman Seshadri was posted in the Share Department at Head Office of the Respondent-company at Mumbai. By the year 2009, he was working as Typist Grade-VIII in the Share Department. On 2 January 2009, Respondent-company issued transfer orders in respect of about 10 employees working in the Share Department on the ground of non-availability of work in the Share Department due to dematerialization of shares. So far as Mr. Seshadri is concerned, he was transferred to Chaibasa P.O. Jhinkpani, Dist. West Singhbhum (Jharkhand State). The Union protested against the transfer and filed complaint of unfair labour practice bearing Complaint (ULP) No. 14 of 2009 before Industrial Court, Mumbai. It appears that the complaint was filed *inter alia* on behalf of Mr. Lakshman Seshadri and Mr. P. B. Hajare in addition to other workmen. By judgment and order dated 26 September 2011, the Industrial Court disposed of the Complaint. The management was directed to reconsider the transfers in respect of 9 employees favourably and to adjust them at stations nearer to their native places / residence. So far as Mr. Lakshman Seshadri and Mr. P. B. Hajare are concerned, they were directed to be retransferred either at Mumbai or Thane. In

pursuance of the judgment and order dated 26 September 2011 passed by the Industrial Court, Respondent-management re-transferred Mr. Seshadri to Thane in November 2011. Similarly, Mr. P. B. Hajare was also re-transferred to Mumbai/Thane. The Respondent, however, refused to pay salary to Mr. Seshadri and Mr. Hajare from 2 January 2009 to 17 November 2011.

4) Mr. P. B. Hajare filed Complaint (ULP) No. 114 of 2010 *inter alia* for payment of wages from 2 January 2009 to 17 November 2011. By order dated 6 April 2018, the complaint was allowed by the learned Judge, Labour Court, directing Respondent to pay to Mr. Hajare salary for the period from 2 January 2009 to 17 November 2011. It appears that the order dated 6 April 2018 was implemented by the Respondent in the case of Mr. Hajare.

5) The Union demanded grant of similar treatment to Mr. Seshadri and since the demand was not met, reference was made at the instance of the Union by the appropriate Government to 10th Labour Court, Mumbai for adjudication of the dispute relating to payment of salary from 2 January 2009 to 17 November 2011. The Union filed Statement of Claim, which was resisted by the Respondent by filing written statement. Based on pleadings, issues were framed by the Labour Court. Evidence of Mr. Lakshman Seshadri was led by the Union. In addition to relying on several documents, on behalf of the Respondent, General Manager Mr. Mayuresh Adarkar was examined. After considering the pleadings, documentary and oral evidence, the Labour Court has

answered the reference in the negative by Award dated 13 September 2022, which is the subject matter of challenge in the present Petition.

6) Mr. Mhatre, the learned counsel appearing for Petitioner submits that the Labour Court has grossly erred in answering the Reference in the negative. That the Respondent has given discriminatory treatment to Mr. Seshadri as compared to Mr. P. B. Hajare, who is awarded salary during the intervening period by the Labour Court. That the order passed by the Labour Court in the case of Mr. Hajare is implemented by the Respondent. That the intervening period is computed for payment of gratuity and erroneously excluded for payment of salary. That principle of 'no work no pay' cannot be applied in the facts and circumstances of the present case where the transfer itself is found to be illegal. That the transfer was effected without issuing notice under Section 9A of the Industrial Disputes Act, 1947 **(ID Act)**. That Mr. Seshadri has rendered meritorious service for 37 long years with the Respondent-employer. In support of his contentions, Mr. Mhatre relies on judgment of the Apex Court in ***Caparo Engineering India Ltd. vs. Ummed Singh Lodhi***[1]. That in the case before the Apex Court, the transfer was at a distance of 900 km, whereas the transfer in the instant case was at a place exceeding the said distance. That, therefore, provisions of Section 9A of the ID Act are clearly attracted in the present case. That once transfer is found to be illegal, the consequential benefit of salary and allowances must be extended to Mr. Seshadri. He prays for setting aside the impugned Award.

[1] 2021 SCC OnLine SC 973

7) Mr. Talsania, the learned Senior Advocate appearing for Respondent No. 1, opposes the Petition and submits that the transfer of Mr. Seshadri and other employees in the Shares Department was necessitated on account of absence of any work due to dematerialization of shares. That the transfer was thus necessary. That Mr. Seshadri received benefit of technical aspect of his being office-bearer of the Union. That otherwise there is absolutely no illegality in the transfer order. He submits that the chronology of events would indicate that the transfer order was issued on 2 January 2009 and though initially stay was granted to the transfer, the same was vacated by this Court on 21 March 2009, setting aside the order of the Single Judge Bench and dismissing the application for interim relief. That the Special Leave Petition preferred by the Union against order of the Division Bench was dismissed by the Apex Court on 15 May 2009. That thus, there was no stay to the transfer, but Mr. Seshadri failed to report to the transferred place. He relies on judgment of the Apex Court in the ***The Tamil Nadu Agricultural University and anr. Etc. Vs. R. Agila etc.***[2] in support of his contention that an employee not joining the transferred place is not entitled to salary for the period of unauthorized absence. He accordingly prays for dismissal of the Petition.

8) Rival contentions urged on behalf of the parties now fall for my consideration.

9) The short issue that arises for consideration is whether Mr. Lakshman Seshadri is entitled to salary, wages and continuity for the

[2] SLP (C) No.13070-13075 of 2022 decided on 20 August 2024.

period from 2 January 2009 to 17 November 2011 when he did not join the transferred place at Chaibasa (Jharkhand). As observed above, lack of work in Shares Department of Respondent No. 1 led to issuance of transfer order in respect of about 11 employees at various places across India. Mr. Lakshman Seshadri was lucky enough to survive the consequences of transfer. While the Industrial Court did not grant complete relief in favour of nine employees and directed mere reconsideration of transfers favourably for posting them near native place / residence, Mr. Lakshman Seshadri and Mr. P. B. Hajare were directed to be re-transferred either of Mumbai or at Thane by judgment and order dated 26 September 2011 passed in Complainant (ULP) No. 14 of 2009. Shri. Lakshman Seshadri was accordingly posted at Thane. He has not joined the transferred place and accordingly did not work for the period from 2 January 2009 to 17 November 2011. As observed above, initially, interim stay was granted to the transfer order by the Industrial Court on 30 January 2009 and the Petition of Respondent No. 1 challenging the same was dismissed by this Court on 16 February 2009. However, the Appellate Court set aside the interim stay to the transfer by its judgment and order dated 21 March 2009. The SLP against the order of Appellate Court came to be dismissed by the Apex Court on 15 May 2009.

10) In the light of the above position, the short issue that fell for consideration before the Labour Court in Reference (IDA) No. 176 of 2019 was whether Mr. Lakshman Seshadri was entitled to salary and wages for the intervening period from 2 January 2009 to 17 November

2011. The Labour Court has answered the issue in the negative by applying the principle of 'no work no pay'.

11) The sheet anchor of the Petitioner in support of his demand for payment of wages from 2 January 2009 to 17 November 2011 is the judgment and order dated 6 April 2018 passed by the Labour Court in Complaint (ULP) No. 114 of 2010 filed by Mr. P. B. Hajare. As observed above, Mr. Hajare was also directed to be reposted at Mumbai or Thane and he was posted at Thane on 18 November 2011. Therefore, there appears to be some similarity in the cases of Shri. Seshadri and Shri. Hajare. The Labour Court directed payment of salary to Mr. Hajare for the period from 2 January 2009 to 17 November 2011 vide judgment and order dated 6 April 2018. Respondent No.1 did not challenge the decision of the Labour Court in the case of Shri. Hajare and implemented the same. Thus Mr. Hajare has received full salary from 2 January 2009 to 17 November 2011.

12) A belated demand was raised by the Union for payment of salary to Mr. Seshadri by submitting letter dated 19 June 2018 i.e., after delivering judgment of Mr. Hajare on 6 April 2018. A reference was thereafter made to the Labour Court which was registered in the year 2019. Thus, it appears that Shri. Seshadri on his own did not file any proceedings for payment of salary during intervening period for a long period during 2011 till 2019. He was a fence sitter who waited for outcome of the complaint filed by Mr. Hajare and initiated proceedings only after Shri. Hajare's Complaint was allowed.

13) Mr. Seshadri admittedly did not join the transferred place and remained at home for a long period from 2 January 2009 to 17 November 2011. In ***The Tamil Nadu Agricultural University*** (supra), the Apex Court has considered almost a similar case. In case before the Apex Court, issue for consideration was whether the transferred employee was entitled to receive salary when they had not reported for duty at the transferred place. In the opening part of the judgment, the Hon'ble Apex Court has made strong observations noticing a trend where the employees continue to litigate without joining the place of transfer. The Apex Court has held in paragraph Nos. 2 to 7 of the judgment as under:

> 2. The instant matter is a typical case in an array of service law litigation where an employee gets transferred by the administrative authorities to another place, however instead of joining the new place of posting, they challenge the said order of transfer while also demanding the salary for the period they remained in unauthorised absence. At the outset, we deem it important to highlight that our chief condemnation in such matters is not to the said challenge to transfer orders, rather the act of refusing to join the new place of posting while the legal or administrative battle is underway.
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> 3. It is established as a part of service law jurisprudence that transfer is an exigency of service. As such, when a person becomes an employee of the Government, the incidence of transfer becomes inherent in the terms of service unless it is specifically barred under certain provisions governing conditions of service.
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> 4. Under such terms and conditions of service, an employee has no right to remain absent or refuse to join the new place of transfer once relieved from their current place of posting. The employee is entitled to avail all available remedies for redressal of grievances, but it does not entitle them to not comply with the transfer orders. The employee is well within his rights to join the transferred place of posting and still continue to avail the remedies available under the law for redressal of his grievances against the transfer.
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> 5. The focal consideration behind it is that the intent of transfer is to fill up certain vacancies at the new place of posting and when the transferred employees fail to join such posts, the said vacancy would continue and the goal of providing optimal service at full capacity remains defeated. An even worse situation would arise when the authorities, while the challenge to such transfer

is underway, would have to employ other individuals to fill up such vacancies and has to ultimately spend from both the pockets by providing salary to the employee who is actually delivering such service as well as to the employee who has remained absent from service unauthorizedly. It cannot be ignored that such a situation would result in nothing but burning a hole in the pocket of public exchequer, lead to excessive financial burden on the Government institutions, and would fundamentally jeopardize public interest.

6. It is not uncommon to see employees who challenge such orders of transfer before various forums, extending the litigation to several years, while choosing to not join the service and still seeking full salary, and often citing medical conditions as a ground for such inability to join. It is of utmost importance that, while the legal challenge runs its course, the needs of administration are treated paramount in comparison to the inconvenience faced by the employees in cases of transfer. In this regard, the Government employers should also take stern measures against such employees who fail to join the new places of posting without any rationale or an order of stay being in place.

7. We also find it relevant to quote here a judgment of this Court on the same subject in Tushar D. Bhatt v. State of Gujarat, (2009) 11 SCC 678

> "16. The legal position has been crystallised in a number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies.
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> 17. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11-10-1999 to 27-4-2000 i.e. more than six months. In the interest of discipline of any institution or organisation such an approach and attitude of the employees cannot be countenanced.
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> 18. In Gujarat Electricity Board v. Atmaram Sungomal Poshani [(1989) 2 SCC 602 : 1989 SCC (L&S) 393 : (1989) 10 ATC 396 : AIR 1989 SC 1433] this Court had an occasion to examine the case of almost similar nature. This Court observed as under: (SCC p. 607, para 4)
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> "4. ... Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would

> expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.""

14) Thereafter, referring to the facts of case before it in the ***Tamil Nadu Agricultural University*** (supra), the Apex Court held that the employees therein remained absent despite being relieved from original place of posting when there was no interim order. Though the transfer order was ultimately quashed by the Single Judge, the Apex Court held that no salary would be payable to them in respect of unauthorized absence. However, the intervening period is directed to be counted for continuity of service. It is held in paragraph No. 18 of the judgment as under:

> 18. Despite there being no interim order in their favour, respondent nos. 4 and 7 continued to remain absent after being relieved from their original place of posting. As such, this Court is not inclined to extend any benefit of salary for the period of unauthorised absence. However, as the transfer order was quashed by the learned Single Judge, their service periods shall continue to be treated in continuity, and they would be entitled to whatever other benefits accrued to them due to this continuity, but no salary for the said period of unauthorised absence.

15) Applying the principles discussed by the Apex Court in the recent judgment of ***The Tamil Nadu Agricultural University***, in my view, Mr. Seshadri cannot be awarded salary for the period he did not join the place of transfer. The interim stay to the transfer order was granted on 30 January 2009 which had a short life and it was vacated on 21 March 2009. Thus, except the period from 30 January 2009 to 21 March 2009, there was no interim stay to the order of transfer and Mr. Seshadri was under obligation to join the transferred place. He is fortunate that he is

not punished despite remaining unauthorizedly absent for a long period from 2 January 2009 to 17 November 2011. His transferred order is not quashed by the Industrial Court, but he received benefit of his position as office-bearer of the union and secured an order for being transferred back at Mumbai/Thane. Thus, his transfer was not held to be bad in law and he did not secure transfer back to original place in the Shares Department at Head Office in Mumbai. Instead, he received posting at Thane in pursuance of order passed by the Industrial Court. Thus, the facts of the present case are far worse than those involved in the case before the Apex Court in ***The Tamil Nadu Agricultural University***.

16) In my view therefore, the Labour Court has rightly applied the principle of 'no work no pay' for denying salary and allowances to Mr. Seshadri during the intervening period from 2 January 2009 to 17 November 2011. Mere action of the Respondent in payment of salary by Respondent No.1 to Mr. P. B. Hajare towards implementation of Labour Court's order dated 6 April 2018 cannot be a reason for Mr. Seshadri to receive similar benefits. The Respondent-employer had already fought a long litigation in relation to the transfer order dated 2 January 2009 up to the Hon'ble Apex Court. Maybe because of this reason, it thought it appropriate not to challenge the Labour Court's order dated 6 April 2018 passed in the case of Mr. Hajare. This, however, would not mean that Mr. Seshadri should also receive the same treatment. More importantly, the judgment in the case of Mr. Hajare was rendered when the declaration of law by the Hon'ble Apex Court in ***The Tamil Nadu Agricultural University*** (supra) was not available. Though, the judgment of the Apex

Court in the case of ***Tushar D. Bhat vs. State of Gujarat***[3] was available at that time, it appears that the ratio of the same was not taken into consideration by the Labour Court while rendering judgment dated 6 April 2018. Be that as it may. Correctness of that judgment is not the subject matter of inquiry in the present Petition. Suffice it to observe that this Court is bound by the ratio of the Apex Court judgment in ***The Tamil Nadu Agricultural University***. Also, Mr. Seshadri was a fence sitter and did not initiate any contemporaneous proceedings with Mr. Hajare for claiming salary for the period from 2 January 2009 to 17 November 2011. Therefore, this Court is unable to extend similar benefit as granted to Mr. Hajare by the Labour Court.

17) Mr. Mhatre has strenuously relied on provisions of Section 9A of the ID Act in support of his contention that issuance of notice of change was mandatory before transferring Mr. Seshadri to Chaibasa (Jharkhand). Reliance is placed on judgment of Apex Court in ***Caparo Engineering India Ltd***. In my view, however, the Labour Court was not called upon to determine the correctness or the legality of the transfer in the present litigation and provisions of Section 9A are irrelevant for deciding the issue of payment of salary for the period from 2 January 2009 to 17 November 2011. Legality of transfer order has already been determined by the Industrial Court, and it has not quashed or set aside the transfer order but merely granted the relief of re-posting either at Mumbai or Thane. Therefore, provisions of Section 9A of the ID Act are absolutely irrelevant for deciding the present Petition.

[3] (2009) 11 SCC 678

18) It appears that the intervening period from 2 January 2009 to 17 November 2011 has already been computed by the Respondent-employer towards gratuity. The same needs to be computed towards continuity of services for various benefits such as leave, notional increment etc. In ***The Tamil Nadu Agricultural University***, the Apex Court has directed that the period of unauthorized absence due to non-joining at the transferred place should be treated as continuity. The Apex Court has also directed the appellant therein to pay the benefits in respect of the intervening period of unauthorized absence except salary. In my view therefore, the intervening period from 2 January 2009 to 17 November 2011 needs to be computed for continuity in service and Mr. Seshadri needs to be paid all the consequential benefits arising out of such continuity. This would include notional pay fixation, thereby making him entitled for release of annual increment notionally so that his salary is increased after 17 November 2011.

19) The Petition accordingly succeeds in part, and I proceed to pass the following order:

(i) Award dated 13 September 2022 passed by the Labour Court in Reference (IDA) No. 176 of 2019 is modified to the limited extent that period from 2 January 2009 to 17 November 2011 be treated only for the purpose of continuity by notional release of annual increments in favour of Mr. Seshadri.

(ii) All financial benefits arising out of notional release of increments during 2 January 2009 to 17 November 2011, resulting in increased pay from 17 November 2011 onwards till the date of retirement as well as arrears of retirement benefits be paid to Mr. Lakshman Seshadri within a period of two months.

(iii) If the awarded amount is not paid within the stipulated period, the same shall carry interest @ 8% per annum from the date of expiry of period of 2 months.

20) With the above directions, the Petition is **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

Signed by: Renuka S Thakur
Designation: PA To Honourable Judge
Date: 21/07/2026 19:55:28