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SUPREME COURT ON NOTICE OF CHANGE IN SERVICE CONDITIONS ON TRANSFER OF EMPLOYEES

A. Introduction

The Supreme Court (**SC**), in the case of *Caparo Engineering India*,¹ held that the Section 9A² of the Industrial Disputes Act, 1947 (“**ID Act**”) is attracted if transfer of workmen results in change of service conditions and nature of their work.

B. Brief Facts:

1. The Respondents (“**Employees**”) were employed in the Dewas factory in Madhya Pradesh of the Appellant (“**Caparo**”). By transfer order dated January 13, 2015, the employees were transferred to another district situated 900 kms away from Dewas.
2. The employees, objecting the transfer order, approached the Labour Court (**LC**). The main issues raised before the LC were whether the transfer of the employees was valid and proper and if not, what relief must be granted.
3. LC found that the employees were transferred from Dewas with an intention to reduce employee number at that establishment and that such act is covered by Clause 11 of Schedule 4 of the ID Act.³
4. LC observed that the transfer affected the nature of work of the employee as their status would change from workmen to that of supervisors. It held that the transfer constituted a change in service conditions and compliance of Section 9A of the ID Act was a requisite which Caparo had failed to fulfil. Thus, the order of transfer was declared null and void.
5. Caparo, aggrieved at the order by the LC, appealed before the Madhya Pradesh High Court (**HC**). On dismissal of the petition in the HC, it approached the SC.

¹ *Caparo Engineering India Ltd. v. Gummed Singh Lodhi and An.* Civil Appeal Nos.5829-5830 Of 2021.

² Notice of Change (in any conditions of service).

³ Clause 11 of Schedule 4, ID Act: “Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control.”

6. Before the SC, Caparo submitted that as such the order of transfer does not bring about a change in the terms and conditions of service within the meaning of Section 9A read with Schedule 4.
7. The employees, however, argued that the transfer was an unfair labour practice, and it was done with an intention to retrench the employees without following the mandatory provisions of law. They contended that the transfer would change the nature of work was hence in violation of Section 9A.

C. Order and Reasoning:

The SC's observations are summarised below:

1. Section 9A contemplates three stages:
 - a. The first stage is the proposal by the employer to effect a change;
 - b. The second stage is when the employer gives notice,
 - c. The last stage is when the employer effects a change in any conditions of service on the expiry of 21 days from the date of notice.
2. The conditions of service do not stand changed either when the proposal is made, or the notice is given out only when the change is affected. The actual change takes place only when the new conditions of the service are introduced.⁴
3. In the instant case, with respect to whether Section 9A is attracted, it was held that:

“(A)nd after their (the employees’) transfer to Chopanki, they will have to work in the capacity of supervisor and, therefore would be deprived of the beneficial provisions of the Industrial Disputes Act. Therefore, on such transfer from Dewas to Chopanki, the nature of service conditions and the nature of work would be changed, therefore, in such a case Section 9A read with Fourth Schedule would be attracted.”
4. The transfer would change the status of the employees from “workmen” to “supervisors” and the findings of the LC and HC were examined to conclude that the transfer had resulted in reduction of the workforce as opposed to the submission of Caparo that the employees had proportionately become surplus. It observed: *“The question is not about the transfer only; the question is about the consequences of transfer. In the present case, the nature of work/ service conditions would be changed, and the consequences of transfer would result in the change of service conditions and the reduction of employees at Dewas factory, for which the Fourth Schedule and Section 9A shall be attracted.”*
5. Therefore, the transfer attracted the application of Section 9A for the following reasons:
 - a. There was a reduction in the workforce.
 - b. The transfer would change the status of the employees from “workmen” to “supervisor”.

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⁴ *North Brook Jute Co. Ltd. and Ors. vs. Their Workmen* (23.03.1960 - SC) : MANU/SC/0233/1960.