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RIGHTS OF EMPLOYERS TO TRANSFER EMPLOYEES

In March 2024, the Supreme Court (**SC**) in the *Dingji Metal Wares* case¹ discussed the enforceability of transfer clauses in employment contracts, particularly in relation to the Industrial Employment (Standing Orders) Act, 1946 (**Act**).

Brief Facts

Divgi Metal Wares Ltd. (**DMWL**), are manufactures of automobile gears and have factories located in Pune, Maharashtra and Sirsi, Karnataka.

Divgi Metal Wares Employees Association (**Association**), is a registered trade union.

DMWL transferred 66 workmen from Sirsi to Pune citing a reduction in orders and lack of work at Sirsi.

The transfer was in accordance with the Standing Orders made under the Act, and clauses in the appointment letter and confirmation letter.

DMWL provided the workers with one week's leave, as well as Rs. 1,000 for travel expenses. The workmen accepted the payments but did not report at the Pune factory. The transferred workmen also initiated three industrial disputes to contest the transfers.

The Deputy Labour Commissioner and Certifying Officer modified the certified Standing Orders, removing the provision that permitted transfers between different factories of DMWL located anywhere in India.

DMWL appealed against the modification to the Industrial Tribunal at Hubli (**Tribunal**), which partly allowed the appeal and reinstated the original transfer clause. It issued a common award rejecting the three references filed by the workmen. It also determined that the transfers were not carried out with malicious intent.

Three other workmen who were also transferred filed separate references which were allowed by the Tribunal in February 2006 (**Award**). This created a conflicting situation where the Tribunal had issued contradictory rulings on the legality of the transfers.

Aggrieved by this, DMWL filed a writ petition (**WP**) before the High Court of Karnataka (**HC**) challenging the Award. This was dismissed by the Single Judge bench (**SB**).

DMWL then appealed to challenge the SB's decision before the Division Bench (**DB**) of the HC.

The DB called for records of both the Award and the previous reference the and heard all the related cases.

It ultimately ruled in favor of the Association. It held that the 1999 amendment to the Standing Orders, which removed the provision allowing inter-establishment transfers, was valid. Consequently, it deemed DMWL's transfers of the workmen illegal.

Against this, DMWL approached the SC.

SC's Judgement and Reasoning

The SC:

- Allowed the appeals filed by DMWL holding that:
- Held that the transfers of the workmen were valid.
- Upheld the employer's right to transfer employees based on the terms of their appointment and confirmation letters, even if those terms differed from DMWL's Standing Orders.
- Observed that:

¹ *Dingji Metal Wares Ltd. v. Dingji Metal Wares Employees Assn.*, 2024 SCC OnLine SC 366.

- The terms of appointment and confirmation clearly stated that the employees' services were transferable to any department or office belonging to DMWL.²
- Clause 31 of the Standing Orders acknowledged that the Standing Orders could not override any existing laws or contracts of service.³
- Therefore, the terms of the appointment/confirmation, which stipulated transferability, prevailed over any potentially conflicting clauses in the Standing Orders.
- Referenced the *Cipla* case⁴ and reiterated that terms in an appointment letter permitting transfers to different establishments could coexist with Standing Orders addressing transfers within the same establishment.
- Clarified, however, that it was not making a broader ruling on the power of the certifying officer to include clauses regarding employee transfers in the Standing Orders. It stated that this issue remains open for future litigation.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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² Clause 5 of appointment letter and Clause 1 of confirmation letter: “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.”

³ Clause 31 of the Standing Orders: “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.”

⁴ *Cipla Ltd. vs Jayakumar R. and Another*, (1999) 1 SCC 300.