IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13945 OF 2026

1. Bosch Ltd.
2. Managing Director, Bosch Ltd.
3. Shrikant Dyaneshwar Chavan,
Sr. General Manager,(HR) Bosch Ltd. **...Petitioners**

V/s.

1. NETW Kamgar Sangathana
2. The President, Bosch Employees Union **...Respondents**

Mr. C.U. Singh, *Senior Advocate with Mr. Kiran S. Bapat, Senior Advocate, Mr. A.D. Patwardhan, Mr. C.A. Deolalkar & Mr. T.R. Yadav for the Petitioners.*

Mr. T.K. Prabhakaran *for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 30 OCTOBER 2026.

Judgment pronounced on: 19 NOVEMBER 2026.

JUDGMENT:

1) The Petition is filed by the employer-Bosch Ltd. challenging the judgment and order dated 29 September 2026 passed by the Industrial Court, Nashik allowing Complaint (ULP) No.46 of 2024 and setting aside transfer orders dated 7 September 2024, by which the members of Respondent Union were transferred at various places throughout the country claiming non-availability of work at Nashik Plant. While setting

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aside the transfer orders, the Industrial Court has directed the Petitioners to allow the transferred workmen to join at the Nashik plant.

2) ***Rule***. Rule made returnable forthwith. Since the Respondent Union has filed affidavit in reply opposing the Petition and the pleadings are complete, the Petition is taken up for final hearing with the consent of the learned counsel appearing for parties.

FACTS

3) Petitioner No. 1-Bosch Limited is an Indian incorporated entity headquartered in Bengaluru. It is an Indian arm of a German company, and is engaged in manufacture and supply of technology and services in various areas, including automobile parts. It has a manufacturing unit at MIDC, Satpur, Nashik where automobile parts are manufactured including diesel injectors. Petitioner Nos. 2 and 3 are the Managing Director and Senior General Manager (HR) of Petitioner No.1. They are joined as Petitioners because the Respondent No. 1-Union had impleaded them as Respondents in their Complaint. For the sake of convenience, the employer-Bosch Limited is referred to as 'Petitioner' or 'Petitioners' in the judgment. Respondent No. 1 is the unrecognized union espousing the cause of New Entrant Temporary Workman (**NETW**), on whose behalf the complaint of unfair labour practices was filed. Respondent No. 2 is the recognised union representing the majority of workmen working with the Petitioner establishment, who does not support the Respondent No. 1-Union.

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4) At its manufacturing facility at MIDC Satpur, Nashik, in addition to employing permanent workmen, the Petitioners had engaged several persons as On-Job Trainees (**OJTs**). Pursuant to a Settlement executed on 22 March 2018 with the recognized Union (Bosch Employees Union-Respondent No.2) in Complaint (ULP) No.30 of 2016, a category of NETW was created, and the OJTs were adjusted as NETWs. A NETW is neither a trainee nor a permanent employee. NETW fits between the two and is treated as a temporary workman. Respondent No. 1 Union represents the NETWs.

5) It is the case of the Petitioners that its major customer was Maruti Suzuki India Limited, who used to purchase diesel injectors for its diesel engine passenger cars. Owing to BS-VI emission norms introduced in India in the year 2017, Maruti Suzuki as well as other OEM customers of the Petitioners decided to exit diesel passenger vehicle market. The Petitioners claim that this step resulted into drop of almost 50% demand from its customers for diesel injectors. The Petitioners claim substantial downfall in the injectors manufacturing by around 50%. The Petitioners also cite the reason of COVID-19 pandemic for slowdown of the business during 2020 and 2021. The direct impact of reduction in the manufacturing process was on NETWs. Since Petitioners did not need services of the several NETWs, it implemented a concept of 'Red-Light Activation', under which some of the NETWs were given breaks, meaning thereby that NETWs whose services were not required were not allowed entry into the factory premises.

6) Aggrieved by implementation of Red-Light Activation, Complaint (ULP) Nos.106 of 2021 and 164 of 2021 were filed by the affected NETWs

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claiming relief of full wages even on days when work was not provided. An interim order was passed in those Complaints directing payment of full wages irrespective of Red-Light Activation. The Petitions preferred by the Petitioners challenging the interim order were rejected by this Court by order dated 1 July 2022. The Petitioners challenged order dated 1 July 2022 before the Hon'ble Apex Court. An attempt to resolve the disputes through mediation during pendency of SLPs failed. The Petitioners informed the Apex Court on 1 April 2024 that no work was available at Nashik plant and that the Petitioners were willing to provide meaningful work to NETWs by transferring them at various locations and offices of the Company. By order dated 8 July 2024, the Supreme Court directed the Petitioners to place on record names of persons, who would be continued in service alongwith the places at which they would be posted and the nature of work that would be assigned to them. The Petitioners accordingly filed an affidavit providing list of NETWs alongwith the proposed places of their transfers. In the alternative, the Petitioners gave settlement offer of payment of Rs.14,00,000/- to each NETW towards full and final settlement for 457 NETWs. However, the impasse could not be resolved and the Apex Court dismissed the SLPs by order dated 22 July 2024 observing *inter-alia* that once the NETWs were taken in service, they would be subject to the conditions of service as applicable to the Rules that govern them.

7) Following the dismissal of the SLPs, Petitioners called back NETWs to report for work on 21 August 2024 and wages amounting to Rs.3.5 lakhs to 128 NETWs and Rs. 8.5 lakhs to 470 NETWs were paid. Claiming that there was no work available at Nashik plant, the Petitioners issued transfer orders dated 7 September 2024 transferring the NETWs at

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various locations across the country. According to Petitioners, not a single NETW reported at the transferred locations. Instead, they filed Complaint (ULP) No.46 of 2024 before the Industrial Court at Nashik challenging the transfer orders dated 7 September 2024. By order dated 30 September 2024, the Industrial Court refused to stay the transfer orders, but directed that no coercive action be taken against the NETWs for non-compliance with transfer orders. The Respondent-Union filed Writ Petition No.18062 of 2024 challenging Industrial Court's order dated 30 September 2024. By order dated 15 January 2025, this Court disposed of the Petition requesting the Industrial Court to expedite decision of Complaint (ULP) No.46 of 2024. However, the limited protection granted by this Court on 12 December 2024 directing that no coercive steps be taken against NETWs was eventually continued. Cross SLPs were filed by both the sides before the Apex Court. In the SLP filed by the Petitioners, interim order dated 14 August 2025 was passed staying a part of this Court's order dated 15 January 2025 which prohibited taking of coercive steps against non-joining NETWs. Since NETWs did not join the transferred places, the Petitioners initiated disciplinary proceedings against them. In such disciplinary proceedings, the Petitioners dismissed several NETWs, who had not joined at the transferred places. The Apex Court disposed of the SLPs recording that the dismissal orders would be subject to the outcome of the Complaint. Requesting the Industrial Court to expedite decision of the Complaint, the SLPs were disposed of by order dated 24 February 2026.

8) Before the Industrial Court, the Respondent No.1-Union examined seven witnesses. The Petitioners examined five witnesses. After considering the evidence on record, the Industrial Court proceeded to

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allow Complaint (ULP) No.46 of 2024 by judgment and order dated 29 September 2026 holding that the Petitioners have engaged in unfair labour practices under Item Nos. 3, 9 and 10 of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act)**. The Industrial Court directed the Petitioners to cease and desist from engaging in unfair labour practices. The Industrial Court has set aside transfer orders dated 7 September 2024. By the impugned order, the Petitioners are directed to allow the transferred workmen to join at Nashik plant by making necessary arrangements to that effect within one month. The Complaint is dismissed against Respondent No.2-Union. Similarly, rest of the prayers in the Complaint are also declined. Only the Petitioners are aggrieved by judgment dated 29 September 2026 passed by the Industrial Court and have accordingly filed the present Petition.

SUBMISSIONS

9) Mr. Singh, the learned Senior Advocate appearing for the Petitioners would submit that the Industrial Court has grossly erred in allowing the Complaint filed by Respondent No.1-Union and in setting aside the transfer orders dated 7 September 2024. He submits that there is absolutely no work available for the NETWs at Nashik plant and that the Petitioners cannot accommodate the members of the Respondent-Union at the Nashik plant. That the very reason for transfer at various other places was to provide them meaningful work on account of non-availability of work at Nashik plant. He submits that because of introduction of BS-VI emission norms, the major customers of the Petitioners viz., Maruti Suzuki India Ltd and Honda Motors have

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completely stopped manufacturing diesel engine cars, thereby adversely affecting the manufacturing activities at Nashik plant where injectors and nozzles are manufactured. That the Petitioners cannot be forced to continue service of NETWs despite non-availability of work.

10) Mr. Singh further submits that the Industrial Court has recorded several findings throughout the judgment in favour of the Petitioners. He submits that the Industrial Court has rejected Union's contention that work of NETWs was given to other classes or categories of workmen for rendering NETWs surplus at Nashik. That the Industrial Court has held that the Union has failed to prove that work of NETWs was given to or is being performed by the contract workers. That the Industrial Court has held that the work of NETWs had not been given to or performed by apprentices. That the Industrial Court has further held that Nashik plant manufactures fuel injectors and nozzles used in diesel engine only. That it is further held that production of fuel injectors and nozzles had in fact come down as depicted by the management in the summary. That the Industrial Court also accepted that due to imposition of stringent carbon emission norms, Maruti Suzuki India Ltd. and Honda Motors have stopped manufacturing diesel cars. That the Industrial Court rejected Union's contention that pollution control capacity as per certificate issued by Pollution Control Board was evidence of increased production at Nashik plant. That the Industrial Court accepted Petitioners' contention that manpower requirement had gone down and expressly rejected contention of the Union that there was any direct co-relation between the quantum of production and the requirement of workmen. That the Industrial Court has categorically held that management has right to transfer NETWs and that the transfer was a condition of their

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employment. That it s further held that not a single NETWs had gone to the place of transfer. That the Industrial Court rejected claim that places of transfer were fictitious and non-existing. The claim of collusion with recognized Union /Respondent No.2 is also rejected. The Industrial Court has also rejected existence of personal bias. That these findings recorded by the Industrial Courts were sufficient for dismissing the Complaint.

11) Mr. Singh submits that despite recording above findings in favour of the Petitioners, the Industrial Court has still proceeded to record a patently perverse conclusion that the Petitioners had committed unfair labour practices. He submits that the Industrial Court erroneously held that the Senior General Manager (HR) was not authorised to transfer the workmen pan India. That an erroneous conclusion of transfer orders suffering from malice in law is recorded by taking into consideration the provisions of Section 9A of the Industrial Disputes Act, 1947 (**ID Act**) and Central Standing Order -32 (**CSO-32)**. That Section 9A notice was not at all required to be issued as held by this Court in ***VIP Industries Limited, Satara Vs. Maharashtra Kamgar Karmachari Sanghatana, Satara*** [1]. That the transfer being a condition of service stipulated in letter of appointment, the same cannot tantamount to change in service conditions. That Item 11 of Schedule IV applies only to reduction of posts as in cases of abolition of posts and not to reduction of workers as held by the Apex Court in ***Chaganlal Textile Mills Private Ltd. Vs. Chalisgaon Girni Kamgar Union*** [2] and in ***Amrit Banaspati Co. Ltd Vs. S. Taki Bilgrami*** [3] and Division Bench of this Court in ***Associated Cement Companies Ltd. Vs. Associated Cement Staff Union***[4]. That the notice

1 (2008) 5 Mh.L.J. 788
2 AIR 1959 SC 722
3 (1971) 2 SCC 633
4 2009 SCC Online Bom 2132

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under Section 9A is required only when workmen plead and prove that they are adversely affected by change in conditions. He relies on judgment of the Apex Court in ***Hindustan Lever Ltd. Vs. Ram Mohan Ray***[5] and ***Harmohinder Singh Vs. Kharga Canteen, Amabala***[6]. That in the present case, there is no change in the rules of discipline or wages or service conditions and therefore, it cannot be assumed that there is any adverse effect on conditions of service. He relies on judgment of this Court in ***Gulf AIR Bombay Vs. S.M. Vaze, Member, Industrial Court and Ors.*** [7]

12) Mr. Singh further submits that the Industrial Court has gravely erred in holding CSO-32 was violated due to adverse change in service conditions. Relying on judgments of the Apex Court in ***Management of CIPLA Ltd. Vs. Jayakumar R & Anr.*** [8] and ***Divgi Metal Wares Ltd. Vs. M/s. Divgi Metal Wares Employees Association*** [9] he contends that equivalent of CSO-33 read with clauses of appointment order would prevail over standing order which might restrict the transfers to the unit concerned. That once CSO-33 is read with Condition No.14 of the appointment letter, there was no question of relying upon CSO-32. He submits that findings of alleged adverse effect on service conditions are based entirely on speculation and not on any positive evidence.

13) Mr. Singh further submits that the transfers were neither sudden nor *malafide* and they were placed on record by affidavit before the Apex Court long before they were effected. That the finding of *malafide* is based on inference and not on evidence. That the Industrial Court has

5 (1973) 4 SCC 141
6 (2001) 5 SCC 540
7 1994 Mh.L.J.1060
8 (1999) 1 SCC 300
9 2024 SCC Online SC 366

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itself acknowledged that there is no substantial pleadings and evidence of personal bias against any of the Petitioners, yet it proceeded to hold behavioral *malafides* and malice in law. Relying on judgment of the Apex Court in ***Rajneesh Khajuria Vs. Wockhardt Ltd.*** [10] Mr. Singh submits that establishment of *malafides* requires proof of personal bias and oblique motive.

14) Mr. Singh further submits that though the case of fictitious locations is expressly rejected by the Industrial Court, the impugned order still carries the tenor of fictitious locations merely because some of the NETWs have been transferred to units in Mobility Aftermarkets (**MA**) Divisions. Three of the complainants' own witnesses admitted in cross-examination that Bosch offices exist at the transferred locations.

15) Lastly, Mr. Singh submits that the Industrial Court gravely erred in striking down transfers *en masse* without differentiating the cases of 120 NETWs, who were transferred to manufacturing units. That the General Secretary of Respondent-Union had admitted that 120 out of 234 NETWs were transferred to manufacturing units. Initially, no such NETW transferred to manufacturing units was examined. Later, one NETW transferred to manufacturing unit was examined and he admitted that though he did not return Rs.2,500/- paid to him for transfer, he did not join the place of transfer. That the Industrial Court applied completely erroneous standard of proof by shifting the burden on the employer. On above broad submissions, Mr. Singh submits that the judgment and order of the Industrial Court be set aside.

10 AIR 2020 SC 629

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16) Mr. Prabhakaran, the learned counsel appearing for Respondent No.1- NETW Kamgar Sangathana opposes the Petition. He submits that the Industrial Court has made an in-depth analysis of the entire evidence on record while allowing the Complaint. That the findings recorded by the Industrial Court are well supported by the evidence on record not warranting interference by this Court in exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India. He submits that the Petition suffers from suppression of facts as Petitioners have conveniently suppressed the fact that 235 NETWs out of 521 NETWs have been ultimately dismissed. In support of his plea for dismissal of the petition on the ground of suppression, he relies on judgment of the Apex Court in ***Dalip Singh Vs. State of U.P.***[11] That the Apex Court itself has made it clear that dismissal does not have independent force.

17) Mr. Prabhakaran further submits that the impugned transfer orders were in the teeth of CSO-32, under the Proviso to which, transfer of workmen outside Nashik is permissible only in respect of Setters, Tool Makers and Maintenance Mechanics. None of the transferred workers belong to the three categories and there is express admission to that effect by the management witness. Thus, breach of CSO-32 is clearly established. That the CSO-32, being statutory condition of service, would override clause 14 of the appointment letter. In support, he relies on judgments of the Apex Court in ***Western India Match Co. Ltd. Vs. Workmen***[12] and ***Bharatiya Kamgar Karmachari Mahasangh Vs. Jet Airways Ltd.***[13]**.** That 30 workmen were sent to New Tech Filter India Pvt.

11 (2010) 2 SCC 114
12 AIR 1973 SC 2650
13 2023 INSC 646

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Ltd., a separate company which requires consent of all three parties as held by the Apex Court in ***Sarita Singh Vs. Shree Infosoft Pvt. Ltd.***[14].

18) Mr. Prabhakaran further submits that the transfer orders are violative of Section 9A of the ID Act since no notice of change in condition of service was issued. Relying on judgment of the Apex Court in ***Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi and Anr***.[15], he submits that the question is not about the transfer only, the question is about the consequences of transfer. He relies on judgment of Full Bench of this Court in ***Gangadhar Balgopal Nair Vs. Voltas Limited and Anr***.[16] in support of his contention that concerned NETWs are actually permanent under clause 4-C of the Model Standing Order. That the transfer orders suffered from vice of the same being issued without any authority. That RW1 has given express admission to this effect. The motive behind issuing transfer orders is admitted by RW1. That the object was to undermine the court orders. That the workmen cannot be transferred for circumventing and evading the court orders and that such transfer amounts to malice in law and victimisation under Items 3 and 9 of Schedule IV of the MRTU & PULP Act as held by this Court in ***Bajaj Auto Limited Vs. Shrikant Vinayak Yogi and Ors.***[17] and in ***Sulzer Pumps India Private Limited Vs. Jayendra Arun Jog and Ors.***[18]. He further submits that Item 9 applies to breach of CSO regardless of motive and in support he relies on judgment of this Court in ***Kamani Tubes Ltd. Vs. Kamani Employees Union***[19]. In support of the contention that unfair labour practice is usually inferential, he relies on judgments of this Court in

14 Civil Appeal No.346 of 2022 decided on 12 January 2022
15 2021 AIR SC 5413
16 2007(1) MHLJ 754
17 2006 (4) BOM CR 197
18 Writ Petition No.5613 of 2023 decided on 3 October 2023
19 (1987) 89 Bom LR 417

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Delux Theatres Pvt. Ltd. Vs. Bombay Labour Union [20] and ***Exide Industries Limited, Ahmednagar Vs. Rashtrawadi Maharashtra General Kamgar Union Mumbai and Ors.***[21]

19) Mr. Prabhakaran further submits that destinations were in fact fictitious since out of 235 workmen, 125 workmen were sent to about 96 'M.A. Division' locations, with whole District being given as address. That no particulars of location of work place, etc. were indicated thereby creating an impression that the transferred places were fictitious. No post existed at the destinations and workers were sought to be carried with the posts which cannot be treated as transfer as held by this Court in ***Brihanmumbai Union of Journalists Vs. Nava Bharat Press Ltd***[22]. That where exigencies were not proved, the workmen's allegations carry weight and the burden lies on the employer as held by this Court in ***Snowcem Paints Pvt. Ltd Vs. Snowcem Paints Kamgar Karmachari Union*** [23]. That there is no need for workmen to first report for at the transferred places. He relies on judgment of this Court in ***Press Trust of India Ltd. and Anr. Vs. Press Trust of India Employees Union*** [24].

20) Mr. Prabhakaran further submits that the stand of non-availability of work at Nashik plant is clearly falsified. He demonstrates from summary made from SAP data by comparing the same with the availability of work force to demonstrate that the turnover of the Company has almost doubled from Rs.3700 crores in 2017-18 to Rs. 7700 crores in 2024-25 as admitted by Company's own Chartered Accountant.

20 (1995) III LLJ 257 BOM
21 Writ Petition No.11930 of 2017, Bench at Aurangabad
22 2002(6) Bom CR 361
23 Writ Petition No.11636 of 2014 decided on 3 February 2015
24 Writ Petition No.2014 of 2002 decided on 16 August 2002

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He takes the Court through admissions given by RW1 in support of his contention that the theory of non-availability of work at Nashik is clearly falsified. Mr. Prabhakaran further submits that transfer orders suffer from vice of malafides as the same are effected to ensure removal of workmen and to defeat court orders. On the above broad submissions, Mr. Prabhakaran, prays for dismissal of the Petition.

REASONS AND ANALYSIS

21) The Petitioner-employer is aggrieved by the judgment and order dated 29 September 2026 passed by the Industrial Court, Nashik allowing Complaint (ULP) No.46 of 2024 and setting aside transfer orders dated 7 September 2024 with further directions to the Petitioners to permit the transferred workmen to join at Nashik plant. Thus, the legality of transfer orders dated 7 September 2024 was at the heart of the controversy in the Complaint filed by the Respondent No. 1 Union before the Industrial Court. There is a background to issuance of transfer orders dated 7 September 2024. As observed above, the Petitioners-employer initially implemented an unusual concept of 'Red-Light Activation' under which NETWs whose work was not required on a particular day were asked not to report to duties. This system of Red-Light Activation was challenged by the affected NETWs by filing complaints of unfair labour practice before the Industrial Court. In those complaints, interim relief was granted in favour of the workmen by directing payment even for days when work was not provided and this Court upheld grant of interim relief on 1 July 2022. The Petitioners unsuccessfully tested the order passed by this Court before the Apex Court. By upholding the grant

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of interim relief against Red-Light Activation, the Apex Court dismissed the SLPs by order dated 22 July 2024.

22) Thus, Petitioners failed in their challenge to the interim order before the Apex Court and were forced to take back the NETWs affected by the Red-Light system and to pay them wages for the period they were prevented to work. Though the Petitioners failed before this Court and before the Apex Court, the affidavits filed by them before the Apex Court became the genesis of transfer orders. During pendency of the SLPs, Petitioners filed an affidavit before the Apex Court claiming non-availability of work at Nashik and expressed willingness to provide work to the affected NETWs at other offices/places. Noting this stand of the Petitioners, the Apex Court directed Petitioners to file an Affidavit disclosing the names of workmen who could be continued in service at transferred places and the nature of work to be assigned to them. Petitioners accordingly filed such an affidavit. The Petitioners also showed willingness to offer one time settlement amount of Rs.14,00,000/- to the workmen, who were willing to exit the employment. The relevant part of the affidavit dated 8 July 2024 filed before the Apex Court reads thus:

> 2. That this affidavit is being filed in compliance of the order dated 8-7-2024 by this Hon'ble Court.
>
> **3. That the total number of NETW-Respondents before this Hon'ble Court is 484.** Out of this 26 NETWs have already amicably settled matter by accepting the settlement amount offered by the Petitioner and one NETW namely Mr Sachin Vishnu Sangale (Respondent No.02 of ULP 164/2021) has unfortunately passed away during the pendency of these proceedings and an out of court settlement has already been made with the wife of the deceased. A list of the 26 NETWs, who have settled the matter, is being annexed herewith and marked as ANNEXURE A/1. A list of the remaining 457 NETWs, who have not

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> settled the matter, is being annexed herewith and marked as ANNEXURE A/2.
>
> **4. That out of the remaining 457 NETWs, the Petitioner undertakes to immediately provide work to 249 NETWs at various Bosch location on the same terms of employment contract on which they were working before the date of red-light activation i.e. 21-10-2021**. A list of 249 NETWs containing their names, place of future engagement and nature of work is being annexed herewith and marked as ANNEXURE A/3.
>
> 5. In addition to the applicable wages, the Petitioner shall also pay to the above referred 249 NETWs, a displacement allowance of INR 1500/- per month for a period of one year; 15 days free accommodation; and 2nd class AC train tickets to the new location. The Petitioner shall further provide paid vocational training to the NETWs at the new locations to equip/upskill them to perform efficiently in their new roles, if so required.
>
> **6. That the Petitioner undertakes to provide work to the remaining 208 NETWs as soon as possible in Bosch group companies or sister/associate companies. Till the time the Petitioner is able to provide work to these remaining 208 NETWs at any new location, the Petitioner shall pay base wages to the 208 NETWs.**
>
> **7. That in the alternative, the settlement offer of payment of Rs. 14,00,000/- by the Petitioner to NETW, as full and final settlement amount is open to all 457 NETWs.**
>
> *(emphasis and underlining added)*

23) Though the above affidavit dated 8 July 2024 was filed, the Apex Court did not go into the issue of permissibility to transfer the NETWs affected by Red-Light Activation and dismissed Petitioners' SLP by refusing to interfere with the order passed by this Court on 1 July 2022 confirming the interim relief granted by the Industrial Court. Order dated 22 July 2024 dismissing the SLPs reads thus:

> 1. Application(s) for deletion are allowed at the risk of the petitioners.
>
> 2. Heard the learned counsel appearing for the petitioners.

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> 3. We are not inclined to interfere with the impugned judgment passed by the High Court. Hence, the Special Leave Petitions are dismissed.
>
> **4. Needless to say that once the respondents are taken into services, they will be subject to condition of service as applicable to the Rules that govern them.**
>
> 5. Pending applications, if any, shall stand disposed of.
>
> *(emphasis and underlining added)*

24) The Petitioners rely upon the observations made in paragraph 4 of the order dated 22 July 2024 in support of their contention that the NETWs remained bound by their conditions of service once they were taken back. Towards compliance with interim order granted by the Industrial Court, which was upheld upto the Apex Court, the Petitioners called NETWs to report for work on 21 August 2024 and they were apparently paid backwages. It appears that sum of Rs.3.5 lakhs was paid to 128 NETWs and about Rs. 8.5 lakhs was paid to 470 NETWs.

25) Thus though the interim stay on Red-Light Activation was confirmed upto the Apex Court, which did not pass any order specifically permitting transfers out of Nashik, Petitioners used the observations made by the Apex Court in para 4 of the order dated 22 July 2024 for effecting transfers of the NETWs. Mr. Singh has relied on terms and conditions of appointment orders. Copy of appointment order dated 21 April 2018 issued to Mr. Pagar Kishor Dilip is produced on record. The relevant part of the appointment order reads thus:

> On successful completion of your On the Job Training, we are pleased to appoint you as a New Entrant Temporary Workman in our Company, in G1N wage category, with effect from 05-Jan-2016 on completion of 4 years from the date of joining as On Job Trainee in

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company. as agreed in the signed between management and union on 22.03.2018.

Your appointment would be purely on a temporary basis as an additional hand to meet the Vsporadic rise in orders received by the Company of its products. In view of this, your appointment will last only so far as the production is carried out to meet the increase in orders and shall be put to an end to as soon as the purpose for which you are appointed is fulfilled.

Please note that you will have no right or claim for any permanent position in the Company's Nashik Factory or in any of the other units of the Company, after completion of the specified period of your temporary appointment. Your employment will automatically cease at the end of the period of your temporary service unless your temporary service is extended in writing by the Company.

xxx

Your name will be entered and borne in the **service register of temporary workmen.**

xxx

7. You will be assigned work in any shift including night shift, for any period, as required by the Company. You shall continue to perform duties assigned or as may be assigned from time to time. Further, depending on the business requirement and work exigencies, you may be deployed to any area of work, within the Department or to any other Department.

xxx

11. You will be governed and will abide by the certified standing Orders of the Company in force from time to time, as applicable to the temporary workman. You further agree that you will comply with all other Rules, Regulations and Orders as are in force during the period of your employment.

xxx

14. During the temporary service, the Management reserves the right to send on deputation for transfer the services of the employees not only within the Company Its Factories, Offices, Sales Houses, Sales Offices, etc., to any place in India, but also to the employment of any of its subsidiary or associated Companies.

(emphasis added)

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26) According to the Petitioners, condition No.14 of the appointment order gave full right to the management to send on deputation or to transfer the services of NETW not only within the Company, its factories, Offices, Sales Houses, Sales Offices at any place in India but also to the employment of any of its subsidiary or associated companies. After the Petitioners were forced to call back the NETWs for work on 21 August 2024, in a short span of about 15 days, they were transferred at different locations throughout the country. Copy of one such transfer order dated 7 September 2024 is placed on record, which reads thus:

> As you are aware, the Nashik Plant of Bosch Limited primarily manufactures diesel injectors for the automotive market. Over the past decade, the market share for diesel passenger cars has significantly declined due to various government policies and initiatives aimed at achieving carbon neutrality. Additionally, the Government's plan to phase out diesel vehicles by 2027 has negatively impacted this market. As a result, many major automobile manufacturers, such as Maruti and Ford have exited the diesel automobile sector which has significantly impacted the diesel automotive industry with a bleak future putting the plant's viability at serious risk. We wish to inform you that the company is currently facing serious and challenging business environment, and the future of the Nashik plant remains uncertain.
>
> You are aware that the matter relating to your employment was also mentioned during the course of proceedings before the Hon'ble Supreme Court of India and order dated 22.07.2024 has been passed by the Hon'ble Supreme Court of India in SLP No. 3912-3913/2023 and SLP No. 13408/2024. The Company has complied with the direction of the various Hon'ble Courts and accordingly have discharged the arrears and also called upon to you to report from 21.08.2024 in person in terms of email dated 19.08.2024. **The Company has made every possible effort to find work for you and in the meantime, various refresher courses are being imparted. In view of business situation as explained above, the Company is not able to find any work for you at Nashik Plant.**
>
> **In view of the above circumstances, we are pleased to identify a suitable workplace where you can be gainfully engaged.**
>
> **As per the terms of your employment/engagement letter dated 18-Mar-2014, you are hereby informed that your services as New**

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> **Entrant Temporary Workman have been transferred from the Nashik Plant to Naganathapura Plant, Bosch Limited by issuance of this letter.** We shall ensure that your total wages drawn today shall be protected at the place of transfer.
>
> **Please note that you are hereby relieved from Nashik plant by issuance of this letter.**
>
> As a part of this transfer, the company will pay you a "Displacement Allowance" of INR 1,500 per month for a period of one year, subject to applicable taxes. This is in addition to your current wages.
>
> You are requested to report at BOSCH LTD., Naganathapura plant, PB No. 6887, Electronics City PO, Karnataka 560 100, Naganathapura on 12-Sep-2024 (reporting date) at 10.00 a.m. and your contact person for this purpose will be Mr. Nataraja G.V., and contact number is 9880001697 for your smooth transition. Please carry your Employee ID card along with you. You are also required to comply with respective work-related instructions, training if required.
>
> On reporting, you will be provided with minimum 15 days of free accommodation at to enable you in finding suitable housing on your own. The Travel Ticket details are enclosed. Details of Hotel booking will be shared separately. You are requested to carry your government certified ID during the travel. You will be paid onetime amount of Rs. 2500/- to cover the incidental expense.
>
> From issue of the said letter till the date of the reporting as mentioned above shall be marked as present and accordingly wages shall be paid.
>
> We trust you would appreciate the opportunity provided to you under the current circumstances of business uncertainty and we wish you success in your career endeavours.
>
> The transfer order is issued without prejudice to the contentions raised by the Company in Complaint (ULP) No. 106/2021.
>
> *(emphasis and underlining added)*

27) Referring to the transfer orders, Mr. Prabhakaran has contended that the transfers were to fictitious places and did not even communicate the exact places of work. He has invited my attention to transfer order dated 7 September 2024 issued to Mr. Amir Namdev Nikam in which, place of his transfer was communicated to him in following manner:-

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> As per the terms of your employment/engagement letter dated 21-Apr-2018, you are hereby informed that your services as New Entrant Temporary Workman have been transferred from the **Nashik Plant to Aizwal - Mizoram, MA Division, Bosch Limited** by issuance of this letter. We shall ensure that your total wages drawn today shall be protected at the place of transfer.
>
> (emphasis added)

According to Mr. Prabhakaran, the Petitioners did not even bother to indicate the exact place where the concerned workmen were required to report. Mr. Prabhakaran has invited attention of the Court to list of 96 MA Divisions to which various NETWs were transferred by orders 7 September 2024 without communicating the exact places of their work.

28) Mr. Prabhakaran has thus contended that the workers were not even informed about the exact place of work for reporting to duties. This is countered by Mr. Singh contending that each transfer order contained relevant particulars about the place of reporting as well as contact person alongwith his/her phone number. He submits that the travel tickets were also provided to each workman and the details of their hotel bookings were also promised to be shared with them. It does appear that details of person for reporting were disclosed in the transfer orders, which is clear from following portion of the transfer order of Mr. Amir Nikam:-

> To complete the preliminary formalities such as induction, completion of testimonial, please remain present at Office Tribe Coworking c/o Gauhati Tea Warehousing Pvt Ltd, Christian Basti, GS Road, Guwahati-781005 on 13-Sep-2024 (Reporting date) at 10 a.m. and your contact person for this purpose will be Mr. Atul Nath Deo, and contact number is 8918318279 for your smooth transition and who will further support you for any assistance if any. Please carry your Employee ID card along with you. The Travel Ticket details are enclosed. Details of Hotel booking will be shared separately.

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29) According to Mr. Singh, while transferring the NETWs, the transfer orders provided the following details:-

- Transfer location and Name, Address and contact number of the contact person at the place of transfer.
- Flight tickets, and hotel accommodation for 15 days at the transferred place.
- Displacement allowance of Rs. 1500/- per month for one year, and Rs. 2,500/- for incidental expenses.
- A joining period of 5 days, after which the employee would not be entitled to salary if he did not join.
- In addition, arrangements were made to transport the NETWs from designated pickup points in Nashik to the Airport, and to facilitate their departure and arrival pickups at the different Airports throughout the Country.

30) However, the details of person reporting were for the purpose of completion of preliminary formalities. Transfer location was very vague such as 'Aizwal-Mizoram'. The details of exact place of work are found missing in the transfer orders. Merely specifying that the worker is transferred at Aizwal-Mizoram was not sufficient. This aspect is being discussed in the latter part of the judgement.

31) It is a matter of fact that none of the workers reported at the transferred places. Instead, Complaint (ULP) No.46 of 2024 was filed before the Industrial Court by the first Respondent-Union alleging unfair labour practices under Items 1 and 4 of Schedule II and Items 3,5,9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. In their Complaint, the Industrial Court passed interim order dated 30 September 2024 refusing to stay the transfer orders, but protected the NETWs from any coercive

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action for not joining the places of transfer. By order dated 15 January 2025, this Court refused to interfere with the Industrial Court's order dated 30 September 2024 and directed expeditious decision of the Complaint within 4 months and continued the stay on taking of any coercive action against the NETWs not joining at the transferred places. When Petitioners challenged this Court's order dated 15 January 2025, the Apex Court stayed the protection against coercive action by order dated 14 August 2025. This resulted in Petitioners initiating disciplinary action against several NETWs, who did not join the transferred places. According to Mr. Prabhakaran, Petitioners dismissed 235 workmen out of the total 521 transferred workmen during pendency of cross SLPs before the Apex Court. One such dismissal order dated 12 January 2026 is placed on record, operative part of which reads thus:

> You are therefore dismissed from the services of the company from the date of the dismissal order. In view of the pending proceedings in Ref. IT 02/2025 before the Industrial Tribunal Nashik and though you have not reported at the place of transfer still in view of the pending reference the dismissal order is being issued at Nashik and the management is filing the Approval Application by way of abundant caution and without prejudice to its rights. In compliance with the provisions of Sec. 33(2)(b) of the ID Act, 1947 one month's wages have been credited to your salary account on the date of dismissal and that the approval application is also being presented on the date of dismissal itself.

32) Thereafter, the SLP filed by the Petitioners was disposed of by the Apex Court vide order dated 24 February 2026, which reads thus:

> 1. Delay condoned.
>
> 2. The present Special Leave Petitions are against the judgment and order passed by the High Court upholding the decision of the Industrial Court dated 30.09.2024 reusing to grant stay of transfer orders. However, the High Court contradicted itself by directing that

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> in the meanwhile its interim order dated 12.12.2024 staying the transfer shall continue.
>
> 3. While issuing notice, we had by our order dated 14.08.2025 stayed the judgment and order of the High Court. As a consequence, the Respondents had to report to the places to which they were transferred. We are, however informed that when the Respondents did not comply with the transfer orders the management has taken decision to dismiss them from service.
>
> 4. Mr. Vikas Singh and Mr. C.U. Singh learned senior counsels appearing on behalf of the petitioners submitted that the orders of dismissal will be subject to the final determination before the Industrial Court considering the legality and validity of the transfer orders.
>
> 5. While recording this submission, we clarify that the dismissal orders will have no independent force, their legality and validity will be subject to the final determination of the Industrial Court before which the transfer orders are pending consideration.
>
> 6. having considered the matter in detail, we are of the opinion that it is necessary for the Industrial Court to take up and dispose of the dispute as expeditiously as possible preferably within a period of two months from today.
>
> 7. With these clarifications and directions, the Special Leave Petitions stand disposed of.

33) After disposal of the SLPs by the Apex Court holding that the dismissals would not have any independent force and would be subject to the outcome of the Complaint, the Industrial Court proceeded to record evidence in the Complaint and has allowed the same by the impugned judgment and order dated 29 September 2026. Since the Complaint is allowed and transfer orders dated 7 September 2024 are set aside, the effect of order of dismissal issued by the Petitioners is automatically wiped out.

34) Thus, not only the transfer orders are set aside by the Industrial Court by the impugned Order, even the effect of dismissal orders has

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been wiped out. Respondent No.1-Union has accused Petitioners of suppressing the factum of issuance of dismissal orders. Perusal of the memorandum of the Petition indeed indicates that the Petitioners have not bothered to make any averment in the Petition about dismissal of the workmen nor have disclosed the exact number of workmen, who are dismissed from service. Even the copy of order dated 24 February 2026 passed by the Apex Court is brought on record by Respondent No.1 through its affidavit-in-reply, which again is not disclosed or produced in the Petition. Why Petitioners did not think it necessary to disclose these vital information is difficult to comprehend. However, though this Court would expect Petitioners to place all relevant information on record, it is not necessary to give too much importance to the aspect of non-disclosure and to base decision of the present Petition on the aspect of suppression. This Court would decide the Petition on merits rather than dismissing it on ground of suppression. In that view of the matter, it is not necessary to discuss the ratio of judgment of the Apex Court in ***Dalip Singh Vs. State of U.P.*** (supra) relied upon by Mr. Prabhakaran.

35) Coming to the merits of the impugned judgment and order dated 29 September 2026, Mr. Singh has contended that the Industrial Court has recorded several findings in favour of the Petitioners. In his written note of submissions, Mr. Singh has highlighted following 15 findings, which according to him, are recorded by the Industrial Court in Petitioners' favour:

> 1. The Ld. Industrial Court rejected the Union's contention that work of the NETWs was given to other classes or categories of workmen, in order to render the NETWs surplus at Nashik.
>
> 2. The Court held that the Union failed to prove that work of the NETWs had been given to, or was performed by, contract workers.

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3.The Court held that the work of NETWs had not been given to, nor was performed by Apprentices, and held that there was no proof of excess deployment of Apprentices.

4. The Ld. Industrial Court found that it was an admitted position that the Nashik Plant only manufactures Fuel Injectors and Nozzles used particularly in diesel engines only.

5. The Court held that production of Fuel Injectors and Nozzles at the Nashik Plant had in fact come down as depicted by the management in the Summary Exh. C-112 of the bulky 10,000-page production data for 2016-17 to 2024-25 at Exh. C-113, and further that there was no basis for the Union to dispute the first five years of the Summary Exh. C-112 while accepting without demur the following five years from the same Summary. The Court repeatedly held that though reduction of demand and production at the Nashik factory had been proved by the Company, the said reduction was not "all of a sudden".

6. The Ld. Industrial Court accepted due to the Central Government imposing stringent carbon emission norms as evidenced by the Gazette Notifications, the Petitioner's major customers like Maruti Suzuki and Honda Cars had stopped manufacturing diesel cars, and held that from the documentary evidence it transpired that the requirements of the products manufactured by the Petitioner had been either stopped or decreased by vehicle manufacturers.

7. The Court rejected the Union's contention that pollution control capacity as per the certificate issued by the Pollution Control Board was evidence of increased production at the Nashik Plant, and also that levels of capital investment allegedly showed enhanced production.

8. The Court accepted the Petitioner's contention that the manpower requirement had gone down also because of increase in productivity due to multi-machine operation by the permanent workmen brought about by two Settlements with the recognized union, and expressly rejected the Respondent Union's contention that the Court should assume a direct correlation between the quantum of production and the requirement of workmen. This is clearly borne out by the admission of the Union's President (UW-1) in his cross-examination.

9. The Ld. industrial Court categorically held that the Management had a right to transfer the NETWs, and that transfer was a condition of their employment, both under Clause 14 of their Appointment Letters, as also under CSO 32 and under CSO 33 read with the said Clause 14.

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> 10. The Court held that not a single workman had gone to the place of transfer, and they were therefore not entitled to question the status of the Contact Person named in each Transfer Order, nor to comment on the conditions prevailing at those places .
>
> 11. The Court further held that the Union and NETWs had failed to prove that the places of transfer were fictitious or non-existent, or that work was not available there .
>
> 12. The Court rejected the bedrock case of the Respondent (original Complainant) to the effect that the transfers were effected in collusion with the recognized union (Bosch Employees Union, R-4), and were therefore mala fide transfers.
>
> 13. Most importantly, the Industrial Court also held that there is no substantial pleading nor evidence of personal bias against any of the respondents, and therefore no malice in fact .
>
> 14. The Court also held that there were no pleadings nor proof to support the allegation that there was withdrawal of any customary concession or privilege or change in usage, so as to require a Notice of Change under S. 9A read with Item 8 of The Fourth Schedule.
>
> 15. The Ld. Industrial Court expressly held that the bulky 10,000-page production record maintained using the SAP system was required to be read in evidence, that it was admissible, and that it had evidentiary value, and that the Union was unable to establish any reason for disputing part of the summary of that record at Exh. C-112.

36) It is Petitioners' case that despite recording above vital findings in their favour and against Respondent No.1-Union, the Industrial Court has still proceeded to allow the Complaint. The impugned judgment of the Industrial Court is a bit prolific, sometimes making it difficult to locate the exact findings recorded against the Petitioners therein. However, in his Note of Submissions, Mr. Singh has broadly categorised following seven findings recorded against the Petitioners by the Industrial Court for allowing the Complaint of Respondent No.1:

> A. The transfer orders were signed by the Senior General Manager (HR) Shri Shrikant Dnyaneshwar Chavan, who was not proved to be authorized to transfer workmen pan-India.

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B. Though malice in fact, vindictiveness or personal bias were neither pleaded nor proved, the transfers suffered from malice in law as they were effected: (i) without issuing a Notice of Change under S. 9A of the I.D. Act, 1947, though conditions of service under Items 7, 9 and 11 of The Fourth Schedule were affected; and (ii) in violation of CSO 32, which required that transfers should not adversely affect the service conditions at the time of transfer.

C. The transfers were effected very suddenly and giving the workmen a short period of five days to meet the contact person and join duties.

D. No permanent workmen were transferred, and only NETWs were picked for transfer from the Nashik Plant.

E. Some of the office-bearers of the Complainant Union were transferred, and disciplinary action was also taken against some of them.

F. Most of the transfers are to units in the MA Division, but there is no pleading by the Respondent as to what is the MA Division, what work is being done there, and what will be the role of transferred workmen there.

G. Though there are 11 units in Maharashtra, no reason has been given for transferring the 235 NETWs to units outside Maharashtra.

37) Though in the Note of Submissions, the finding relating to malice in law is sought to be linked only to the aspects of violation of provisions of Section 9A of ID Act and CSO-32, the same actually has links with finding Nos. 'C' to 'G' as well. Many of the above findings are interlinked and for the purpose of determining their correctness, they can be broadly classified into four categories of (i) authority to issue transfer orders (ii) violation of Section 9A of ID Act, (iii) violation of CSO-32 and (iv) malice in law. I proceed to deal with each of them.

I. Authority to Issue Transfer Orders

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38) The Industrial Court has held that the transfer orders are signed by the Senior General Manager (HR) Shri. Shrikant Dnyaneshwar Chavan, who did not have authority to transfer the workmen pan-India. Though the Industrial Court has held that the officer did not have the authority to sign and issue the transfer orders, the pleadings in the Complaint in this regard were not very assertive. The allegation of lack of authority of the Senior General Manager (HR) was vaguely raised in paragraph 3.1 of the Complaint, which reads thus:

> 3.1. **The Impugned Transfer Orders are ultra-vires the powers vested in R-3, in fact and law. He does not have the power to transfer the workmen. He could not have transferred them to the places where he had no control.** He could not have issued the transfer order to vitiate the orders passed by the courts of law. He could not have passed such orders inconsistent with the provisions of the CSO. He could not have passed the order discriminating amongst workmen, more particularly leaving the workmen in Annexure-D untouched who are members of the Respondent-Union and cherry-picking the members and Office Bearers of the Complainant-Union. He could not have forced upon the Sales Office, Service Centers, Distributors, or Other Companies, to interview, train and employ the NETWs as trainees, and to any other unspecified suitable place. He could not have issued ambiguous and vague instructions, like the Workmen are required to comply with respective work-related instructions and training, without specifying who shall issue such instructions and training. He could not have changed the Employer, like: NewTech Filter India Pvt Ltd, Nalagarh. It is stated that the Company/Respondent-1 shall pay even in such cases. The Company/Respondent-1 shall protect the wages. It is inconsistent with the philosophy of transfer. All these activities of suspension, transfer, wrongful confinement of the NETWs are carried out for.
>
> *(emphasis added)*

39) There are no details pleaded as to why Petitioner No.3 (Respondent No.3 in the Complaint) did not have the authority to sign and issue transfer orders. Appointment orders of the concerned NETWs were issued by General Manager and Senior Manager (HR), whereas transfers are effected by a higher authority i.e. Senior General Manager

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(HR). The case thus involves effecting of transfers by a person higher in rank than the appointing authority. The evidence in support of plea of absence of authority is against the Union. In his cross-examination, Union President -Amir Nikam categorically stated that transfers were effected in accordance with the authority given in the letters of appointment. General Secretary, Kishor Pagar admitted in his cross-examination that Senior General Manager (HR) was senior (*higher in rank*) to the officers, who has signed the appointment letters of NETW i.e. General Manager of HR and Senior Manager (HR). The power to transfer has to be read in conjunction with the power to appoint. The appointment order contains transfer liability and the same is issued by General Manager and Senior Manager (HR). It is not important whether the General Manager and Senior Manager (HR) had any control over the places where the employee is to be transferred. They were empowered to appoint and include a condition for all India transfer liability. The issue of control over a particular place is thus irrelevant. Since the appointing authority need not possess control over all units/establishments across the country, the transferring authority also need not possess the same. The Industrial Court has thus applied an erroneous yardstick for holding that the Senior General Manager (HR) did not have the authority to transfer the NETWs pan-India.

40) In my view, therefore, the finding recorded by the Industrial Court about lack of authority for the officer signing the transfer orders cannot be sustained.

I. Failure to Issue Notice of Change under Section 9A

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41) The most vital finding recorded by the Industrial Court for upsetting the transfer orders is failure on the part of the Petitioners to issue notice under the provisions of Section 9A of the ID Act. Under Section 9A of the ID Act, the employer must give 21 days' advance notice to the workmen before making any adverse change to their conditions of service in respect of the matters specified in the Fourth Schedule. Section 9A of the ID Act provides thus:

> **9A. Notice of change.**-
>
> No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-
>
> (a)without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
>
> (b)within twenty-one days of giving such notice:
>
> Provided that no notice shall be required for effecting any such change-
>
> (a) where the change is effected in pursuance of any settlement or award; or
>
> (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

42) Since Section 9A of the ID Act provides for prohibition on effecting any change in the conditions of service in respect of any matter specified in the Fourth Schedule, it would be necessary to refer to the Fourth Schedule of the ID Act, which is as under:

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THE FOURTH SCHEDULE

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

[See Section 9-A]

1. Wages, including the period and mode of payment;

2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit for the workmen under any law for the time being in force;

3. Compensatory and other allowances;

4. Hours of work and rest intervals;

5. Leave with wages and holidays;

6. Starting, alternating or discontinuance of shift working otherwise than in accordance with standing orders;

7. Classification by grades;

8. Withdrawal of any customary concession or privilege or change in usage;

9. Introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders;

10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;

11. 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.

(emphasis added)

43) The Industrial Court has concluded that Items 7, 9 and 11 of the Fourth Schedule were affected and therefore notice of change under Section 9A of the ID Act was mandatory. The Industrial Court rejected the contention that notice of change under Item 8 of the Fourth Schedule was required to be given on account of absence of pleadings and evidence. According to Mr. Singh, same test ought to have been applied even to Item Nos.7, 9 and 11 of the Fourth Schedule as all of them suffered from the same vice of lack of pleadings or proof. Importance of the requirement to plead and prove the adverse effect of

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change in conditions of service attracting any item in Fourth Schedule of the ID Act is highlighted in the judgments of the Apex Court in ***Hindustan Lever Ltd.*** and ***Harmohinder Singh*** (supra). A workman or Union challenging a change must explicitly plead which item of the Fourth Schedule is violated and how the change creates a tangible, adverse impact on their service conditions. The requirement to plead and prove an adverse effect acts as a substantive filter. It prevents routine managerial reorganizations, operational rationalizations, or administrative realignments from being routinely dragged into statutory dispute resolution unless real prejudice is caused to the workforce. The burden lies squarely on the union or the aggrieved workman to specifically plead and substantiate through material evidence how a particular management decision detrimentally impacts wages, allowances, workload, or other protected service conditions.

44) So far as Item No.7 of the Fourth Schedule is concerned, the same relates to classification by grades. The Industrial Court has held that classification of grades 'may' change at the transferred place. This is clear from the following findings in the paragraph 45 of the impugned judgment:

> 45. ... It is not clear whether at these MA Divisions or other manufacturing plants, classification of workman as NETWs is available or not. Transfer order has not made it clear as to the post on which the workman is to work after transfer. It is for the respondent only being employer to make it clear whether there would be any change in the grades of the workmen, but the transfer order is not clear on that point. ...

Thus, the findings with regard to notice of change *qua* Item No.7 are clearly speculative in nature. There is no concrete finding that

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classification of grades would definitely change merely by virtue of transfer at various places.

45) So far as Item No.9 of the Fourth Schedule is concerned, the same relates to introduction of new rules of discipline or alteration of existing rules. According to Mr. Singh, no details were pleaded by Union as to how new rules of discipline would be introduced or how existing disciplinary rules would be changed at the transferred place. The Industrial Court has recorded following findings *qua* Item No.9 of the Fourth Schedule in paragraph 46 as under:

> 46. ...Complainant submits that due to the transfer at all places in India some new rules of discipline apart from Standing Orders would be imposed upon workmen. There are no details by complainant, but it is submission that being workmen and union they are not known about existence of any disciplinary rules at all the transferred places apart from Standing Orders. The submission is considerable, because the union has no existence as well as membership except Nashik Plant, so it could not be aware about applicability of Standing Orders or any rules apart from that at the transferred place. It was for the employer, respondent to plead and prove whether the Standing Orders would remain same and whether disciplinary rules apart from Standing Orders are existing at transferred place or not. There is neither pleading nor evidence by respondent to that effect. The rules of discipline are closely attached with the Standing Orders certified or Model whatsoever. The transfer order skillfully kept silent about applicability of any S.O. at transferred place. The C.S.O. placed on record in its definition of establishment provides about Nashik Plant. So also, the certifying officer has passed order of certification under I.E.S.O. Act by giving opportunity to the union which is respondent No.4. Admittedly, the said union is functioning in other States, hence, in such circumstances, which S.O. would be applicable to the workers thereat is not clear and specific. In absence of pleadings by employer because burden lies on it, it can be said that the said Item can be made applicable. **Due to transfer at various locations in different states it is possible that transferred workmen might be levied with new rules of discipline except the S.O.**
>
> *(emphasis and underlining added)*

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Thus, findings *qua* Item No.9 are equally speculative. Though no details were pleaded by the workmen and though it was not clear as to which of the Standing Orders would be applicable, the Industrial Court has recorded a possibility of transferred workmen being levied with new rules of discipline.

46) So far as Item No.11 of the Fourth Schedule is concerned, the same is about the increase or reduction in number of persons employed in any occupation or process or department or shift. This item essentially ensures that the employer does not effect change (*increase or decrease*) in number of employees in a particular department or shift so as to adversely affect the service conditions of the employees in that department or shift. The Item No. 11 of the Fourth Schedule does not really deal with reduction of employees in the employment by retrenchment, etc. The Industrial Court has apparently not appreciated this position and has held that there is definite reduction in the number of workmen, who were employed in the manufacturing process at Nashik plant due to transfer of NETWs. The relevant findings in paragraphs 47 to 50 of the impugned judgment read thus:

> 47. Advocate of complainant harped upon Item No.11 which is in respect of increase or reduction in employed persons in any occupation, process, department or shift. As per complainant, this item is squarely attracted on account of transfer. Item 11 has been enclosed with two riders. One is the increase or reduction should be in respect of other than casual workman and another is that, it was not due to the circumstances where employer has no control. It is a fact that the NETWs were appointed by respondent in the manufacturing activities. By way of transfer order under challenge, 235 NETWs have been transferred. So far as Item 11 is to be attracted, the reason for alleged increase or reduction is immaterial. It has to be brought on record that there is increase or decrease in number of person in occupation, process etc. complying the two riders mentioned above. All the facts and circumstances of present

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complaint denotes that there is reduction in number of person in manufacturing activities. Thus, it can be said that transfer of NETWs on this scale from manufacturing activity to all other places in India which may include other plant and offices would definitely be reduction in the number of person in manufacturing process as well as department. To attract item 11, other two riders has to be analyzed and discussed.

48. While submitting argument, learned advocate of respondent No.3 submit that those workmen are casual, so Item 11 would not attract. This argument does not find place in the pleadings as well as evidence of respondent No.3. It is matter of record that respondent Nos.1 to 3 have filed joint written statement and respondent No.3 has not examined himself. Therefore, this contention cannot be appreciated. There is another aspect for non consideration of the argument which is regarding employment of NETWs. As per complainant, all of them have worked for almost 10 or more years on the said designation till the transfer was effected. This fact has not been disputed by respondent. Though the NETWs have been categorized as temporary workmen, but taking work from them for several years with a title of temporary, cannot categorize them as casual worker. Moreover, what C.S.O. provides about casual workers is to be seen. As per Clause 3(2)(d) of C.S.O. casual workman means workman employed for work which is essentially of an occasional or casual nature. Respondent has specifically titled them as New Entrant Temporary Workmen and not as Casual. Working of NETWs for almost 10 years, in manufacturing process cannot be called as essentially for an occasional or casual nature. As such, they cannot be considered as casual workmen, hence contention of respondent is not considerable.

49. Advocate of respondent heavily contended about the subsequent rider at Item 11 and submit that the continuous decrease in demand of goods of respondent is due to several factors such as Government Policies, market situation etc. and respondent has no control on the same. As per respondent, due to the significant decrease in demand, it has to transfer the workmen. While considering this defence, it is to be noted that the so called circumstances beyond control of respondent does not include any natural calamity such as flood, earthquake etc. and neither it includes any circumstances having sudden impact on the demand for continuous period, like it was in the form of Corona Pandemic occurred in 2020-21. It is already mentioned that the alleged decrease in demand is not all of a sudden, but it may be gradually. The contention of respondent is mostly based upon stoppage or major decrease in production of diesel passenger cars and its major customers have taken exit from diesel segment. Though this fact is considerable, it is also not again all of sudden.

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> 50. So also, respondent has not clearly mentioned about other vehicles and machines wherein product of respondent is being used. There are other vehicles such as Truck, Bus, Tempo as well as off highway vehicles and generators wherein the injectors and nozzles manufactured by respondent are used. No data is brought on record by respondent regarding any reduction in demand to that effect. In fact first witness of respondent who is Plant Technical Head has admitted in clear terms that there is around 4% increase in the light and medium commercial vehicles. Surprisingly, there are no pleading by respondents regarding the defence taken about the rider in Item 11 about circumstances beyond control of employer. Another aspect regarding the so called reduction in demand needs attention is that demand of the products of respondent in secondary market. The product manufactured by respondent is not a complete product ready to sale, but it is important part of diesel engines. Even if some of original equipment manufacturer like Maruti and Honda have stopped diesel cars, but what about the vehicles which are already on road. The product of respondent definitely has demand in the spare market alongwith original manufacturer. There is admission by the witness at Exh.C-94 to that effect. The witness also admits that the supply of spare parts to Maruti Suzuki for BS-IV Standard Products would be continued for next 15 years. These facts establishes that henceforth for some years, there would be demand of the products in spare or secondary market. This fact about secondary market has not been mentioned anywhere by respondent. As such, in absence of specific pleading and evidence on record, this contention of respondent about circumstances reduction of employees beyond its control cannot be considered.

47) It is Petitioners' case that NETWs are extra workmen, who are not attached to any particular post or department or shift and they are utilised only for sporadic increase in the work load. The contention of NETWs being casual workers is rejected by the Industrial Court holding that though the NETWs have been categorized as temporary workmen, taking work from them for several years with a title of temporary workmen, cannot categorize them as casual worker. The Industrial Court has further held that since the NETWs are continued for almost 10 long years, they cannot be branded as casuals, who are to be utilized as per the need for work. Ordinarily what is held by the Industrial Court could have been accepted as correct. However, the Industrial Court has also

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recorded a finding that the Union was not able to prove that any work formerly done by the NETWs has been given to contract labour / apprentice / or any other category of workers. Thus, the case does not involve replacement of NETWs with contract workers. Therefore, there was no question of giving notice of change to the permanent workers who remained employed after transfers of NETWs as those permanent workers apparently do not have to shoulder the responsibilities of NETWs. Similarly no notice of change was required to be given to NETWs before effecting their transfers. The case involves absence of any effective work for NETWs at Nashik plant leading to their transfers. Therefore, there can be no question of any notice of change under Item No.11 of the Fourth Schedule.

48) In ***Chaganlal Textile Mills Private Ltd.*** (supra) the Apex Court has held that when an employer does not resort to reduce the posts, but only retrenches certain employees holding certain posts, there is no question of giving notice of change. Similarly, in ***Amrit Banaspati Co. Ltd*** (supra) the Apex Court has held in paragraphs 21 to 25 as under:

> 21. Section 42 (1) of the Act provides for an employer intending to effect any change in respect of an industrial matter specified in Schedule 11 to give notice of such intention in the prescribed form to the representatives of the employees. The other authorities to whom a copy of such notice is to be given as well as the publication to be given to the said notice are also contained therein. A notice under S. 42 (1) is called "notice of change". Section 46 (2) prohibits an employer from making any change in any industrial matter mentioned in Schedule 11, without giving the notice of change as required by the provisions of sub-section (1) of S. 42. Item 1 of Schedule 11 runs as follows:
>
> Schedule 11
>
> (1) Reductions intended to be of permanent or semipermanent character in the number of persons employed or to be employed in any occupation or process or

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> department or departments or in a shift not due to force majeure."

22. We have already indicated that the industrial Court, in particular, has placed very great reliance on the letter dated February 10 1958, for holding that by terminating the services of the clerks, the appellant has really effected a **reduction** in the clerical strength of the establishment which has the effect of reducing the posts of clerks. In fact the Industrial Court goes further and holds that there is an admission by the management itself in the said letter regarding their having effected reduction in the posts of clerks. This interpretation has found favour with the High Court.

23. We are not inclined to agree with the learned Judges of the High Court in the interpretation placed on the letter date February 10, 1958. The letter which has to be read as a whole clearly indicates that the termination of the services of the clerks was necessitated owing to the closure of the third shift and that the reduction in the clerical strength in consequence of such termination has not resulted in any increase in the work load of others. **This itself clearly shows that the appellant have not effected any reduction in the posts of clerks. On the other hand, they have only effected a retrenchment of the clerks**, whom they considered to be surplus, in consequence of the closure of the third shift. There is a marked difference between the matters dealt with under Items 3 and 10 of Schedule I and Item 1 of Schedule 11.

24. Item 1 of Schedule 11 has come, up for consideration before this Court in ***Chaganlal Textile Mills Private Ltd., v. Chalisgaon Girni kamgar Union***. After an analysis of the contents of Items 3 and 10 of Schedule 1 and Item 1 of Schedule 11, it has been held that Item 1 relates only to posts and not to the personnel occupying the posts. Dealing with item No. 1 of Schedule 11 this Court observes as follows:

> "**Furthermore, the language of Item No. 1 of Schedule 1 clearly refers to a reduction in posts**. It deals with the reduction not of persons employed but with the number of persons employed. **Therefore it clearly contemplates posts.** Again, this item also refers to the number of persons to be employed. **That of course has nothing to do with the retrenchment of persons actually employed.** Again, when a notice of change in respect of Item No. 1 of Schedule 11 is to be given, it is not to be given to any employee but to the representative of the employees which would include a union of employees. It could hardly have been intended that when employees were to be retrenched they would not be given any notice."

25. **From the above observations, it is clear that unless there is a reduction in posts. Item 1 of Schedule 11 will have no application and in consequence there is no necessity to give a notice of change under**

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> **S. 46 (2) read with S. 42 (1) of the Act**. In the light of the above principles, if we examine the facts of the case before us, it is clear that on the closure of the third shift what the employer did was to retrench the employees working in that shift as they were found to be surplus in the establishment. Therefore, it was a case of reduction of persons employed and not one of reduction of the number of persons employed. Hence it is not a case of reduction of posts.
>
> *(emphasis and underlining added)*

49) Thus, in ***Amrit Banaspati Co. Ltd*** (supra), following the ratio of its judgment in ***Chaganlal Textile Mills Private Ltd.*** (supra) the Apex Court has held that when reduction in number of posts of clerks is not effected and what is effected is a mere retrenchment of clerks, notice of change is not required. Thus, Item No.11 of the Fourth Schedule applies only in reduction of posts and not to reduction of workers. Same view appears to have been taken by the Division Bench of this Court in ***Associated Cement Companies Ltd.*** (supra) in which it is held in paragraphs 12, 13, 15 and 16 of the judgment as under:

> 12. In Item 9 of Schedule-IV the unfair labour practice consists of a breach of a settlement or agreement. Now it is settled law that compliance of mandatory provisions of the Industrial Disputes Act is an Implied term of a contract of employment. The question, therefore arises as to whether prima facie there was material before the Industrial Court to show that there was a breach of section 9-A of the Industrial Disputes Act, 1947.
>
> 13. The conditions of service for which a notice of change is required under section 9-A are spelt out in the Fourth Schedule. Item 11 of the Fourth Schedule reads as follows:
>
> xxx
>
> 15. Item-11 requires an increase or reduction in the number of persons employed or to be employed in any occupation, department or shift. Now it is all settled position of law that before the provisions of section 9-A are attracted the change which is proposed by the employer must be such as would adversely affect the conditions of service of the workmen. The Supreme Court in Hindustan Lever Ltd. v. Ram Mohan Ray, while interpreting Item 11 of Schedule IV observed that at p.431 of LLJ:

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> "9. As regards Item 11 it was urged that as one department out of three has been abolished, this item applies, though to bring the matter under this item the workmen are not required to show that there is increase in the workload, it must be remembered that the 4th Schedule relates to conditions of service for change of which notice is to be given and section 9-A requires the employer to give notice under that section to the workmen likely to be affected by such change. The word '**affected**' in the circumstances could only refer to the workers being adversely effected and unless it could be shown that the abolition of one department has adversely effected the workers it cannot be brought under Item 11.
>
> 16. Now so far as the complainant workmen are concerned, **once it is held that transferability is prima facie an Incident of service it is impossible to deduce as to how the Tribunal could surmise that the transferred workmen would be adversely affected by an order of transfer.** Apart from this the learned Counsel appearing on behalf of the management placed reliance upon **Amrit Banaspati Co. Ltd**. v. S. Taki Bilgrami, in support of his submissions.
>
> *(emphasis added)*

50) On the other hand, Mr. Prabhakaran has strenuously relied on judgment of the Apex Court in ***Caparo Engineering India Ltd.*** (supra) in which it is held in paragraph 7.8 as under:

> 7.8 Now, so far as the submission on behalf of the appellant that so far as the transfer is concerned, it is part of the service conditions and therefore Section 9A shall not be applicable is concerned, the same has no substance. <u>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.</u>
>
> *(Emphasis and underlining added)*

51) Relying on ratio of the judgment in ***Caparo Engineering India Ltd.*** (supra), Mr. Prabhakaran has contended that importance is required to be given to the consequences of transfer and where nature of work/service condition gets changed and where consequences of transfer result in

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change of service conditions, the Fourth Schedule and Section 9A of the ID Act would get attracted. However, the judgment in ***Caparo Engineering India Ltd.*** is delivered in the peculiar facts of that case where the workmen were transferred from Dewas Chopanki, District-Alwar and by such transfer, their status as 'workman' was changed to that of 'supervisor'. Therefore, the judgment rendered in the peculiar facts of that case cannot be relied upon in support of an abstract proposition in every case where there is a transfer of an employee, any item of Fourth Schedule of the ID Act (*and particularly Item No. 11*) would automatically get attracted requiring notice of change under Section 9A of the ID Act.

52) In the present case, condition no.14 in the letter of appointment clearly imposed transfer liability on all the NETWs. When transfer is a condition of service, it is difficult to accept a proposition that mere transfer from one place to another would automatically amount to change in condition of service attracting any particular item of the Fourth Schedule, requiring notice under Section 9A of the ID Act.

53) In the present case, specific assurance was given by the management to the Industrial Court that there will be no change of service conditions on transfer of NETWs. In the light of this assurance, unless any contrary material was produced to establish adverse effect on any particular service condition, it was not open for the Industrial Court to undertake a speculative process and presume that there was bound to be an adverse effect on conditions of service. Reliance by Mr. Singh on judgment of coordinate Bench of this Court in ***Gulf AIR Bombay*** (supra) is apposite, in which it is held in paragraph 11 as under:-

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> 11. **In the instant case, the specific averment of the employer before the Industrial Court was that by the appointment of GSA for Maharashtra there was no likelihood of retrenchment of any workman at all.** According to it, as a result of this arrangement, at the most there might be reduction of work to the extent of 5% in the particular section which would not lead to any retrenchment because it would be possible to absorb such workmen in various other departments. Moreover, a **categorical undertaking** was also given to the workmen by the petitioner that appointment of GSA would not affect the existing staff and their service conditions. **In such a case, it is difficult to hold that there is likelihood of retrenchment within the meaning of Item 10 of the Fourth Schedule to the Industrial Disputes Act.**
>
> (emphasis and underlining added)

54) Therefore, once an assurance is given by the employer that there would be no change in the service conditions after the transfers, in absence of contrary material on record, the Industrial Court could not have inferred otherwise. Thus, there is no material evidence on record to hold that transfer of NETWs would involve change in service conditions. Therefore, the findings recorded by the Industrial Court about violation of provisions of Section 9A of the ID Act are unsustainable.

I. Violation of CSO-32

55) The next vital point taken into consideration by the Industrial Court for upsetting the transfer orders is violation of CSO-32 by holding that transfer outside Nashik would violate CSO-32. Mr. Prabhakaran has placed on record booklet containing Certified Standing Orders of Petitioner No.1. For deciding the present Petition, CSO-32 and 33 are of relevance and it would be apposite to reproduce the same:

> **CSO 32**: A workman is liable for transfer from one department or section or group to another in the establishment and also to the employment of any other establishment of the Company without

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> affecting adversely his service conditions at the time of transfer. In case a workman is unable to accept transfer outside Nasik, for genuine reasons, such refusal shall not be deemed as a refusal of lawful orders of the establishment:
>
> **Provided that transfer of workman outside Nasik will be in respect of Setters, Tool-Makers and Maintenance Mechanics.**
>
> **CSO 33**: 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 applicable to the establishment. agreement, settlement or award applicable to the establishment.
>
> *(emphasis added)*

56) Mr. Prabhakaran has particularly relied on the Proviso to CSO-32 in support of his contention that transfer of workmen outside Nashik was restricted to the categories of Setters, Tool-Makers and Maintenance Mechanics. He submitted that RW1 has emphatically admitted that none of the transferred workers fall in the categories of Setters, Tool-Makers and Maintenance Mechanics.

57) The Industrial Court has accepted the case of breach of CSO-32 by recording findings in paragraphs 38 to 40, 56 and 66 of the impugned judgment. After reproducing the CSO-32 and 33 in paragraph 38, the Industrial Court has held in paragraphs 39 and 40 of its judgment as under:

> 39. As per complainant, these workmen are not liable for transfer and clause of transfer is in respect of setters, tool makers etc. On the contrary, as per respondent, any workman is liable for transfer. Considering the Clause 32, it transpires that contention of respondent is correct, because opening of words of the said clause states 'liability for transfer of workman'. The clause does not provide any stipulation with regard to transfer of a workman. According to the contention of complainant, respondent is restricted to make transfers of setters, tool makers and maintenance mechanics outside Nashik. It is seen that these categories have clearly mentioned in proviso part and it is not included main Clause 32. There are two sentences in clause 32 and after second sentence there is no full stop,

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but colon mark is used and then next part start. As there is no full stop after the last words 'the establishment' but use of colon, which provides that both these sentences are connected. Second sentence which starts from 'provided' is in explanation to the earlier sentence. So far as transfer clause is concerned, first sentence clearly provides that workman is liable for transfer and the category mentioned are from one department or section or group to another. It also provides employment of any other establishment of the company. The colon is used as an explanatory sign to connect both sentences. It does not mean that transfer outside Nashik is restricted to setters etc. only. As per Clause 32, the condition precedent is only not to affect service conditions adversely. Second sentence of Clause 32 and the proviso part makes it clear that workman in the named categories if unable to accept transfer outside Nashik for genuine reason, it shall not be taken as refusal of order. Therefore, contention of respondent is considerable that as per CSO 32 even NETWs are liable for transfer, because workman includes temporary but obviously on satisfaction of condition given therein.

40. Further, Clause 33 provides that provisions incorporated in the Standing Orders either shall not operate in derogation of any law or causing prejudice to any right accrued under contract of service, custom, agreement, settlement etc. Therefore, it prescribe that the right accrued to management under a contract of service would not be prejudiced by the Standing Orders. Therefore, respondents contends that contract of service and right accrued under the same shall prevail over the Standing Orders and any how as per CSO, a workman is liable for transfer. Complainant filed copy of sample appointment order at Exh.U-86 wherein Clause 14 provides – 'During the temporary service the management reserved the right to sent on Deputation or Transfer services of the employees not only within the company – its factories, offices, sales houses, sales offices etc. - to any place in India, but also to the employment of any of its subsidiary or associated companies. In line with the above you are also liable for transfer'. As per respondent, this clause specifically and particularly authorises the management for transfer of temporary workman at pan India level including its factories, offices, sales house etc. On plain reading of the Clause 14, it can be said that the temporary workman is also liable for transfer or deputation throughout in India including factories, offices, subsidiary or associated companies etc. As per respondent, this clause supersedes with the provisions of CSO as those are not causing prejudice to its right of transfer. Contention of respondent makes sense that in view of the appointment order a temporary workman is liable for transfer, but it has to understand that in view of CSO, the transfer clause of appointment does not have an unfettered right, but it has to qualify the provisions of CSO. As per Clause 32 of the CSO, the transfer should not adversely affect the service conditions and unless and until it does not so affect, it qualifies.

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58) According to Mr. Prabhakaran, the Certified /Model Standing Orders have statutory force and they override private contracts. Reliance is placed by him on the judgment of the Apex Court in ***Western India Match Co. Ltd.*** (supra) in which it is held that an inconsistent provision in a specific agreement cannot prevail over the standing orders and that so long as the standing orders are in force, the same binds the employer and the worker. He has also relied on judgment of the Apex Court in ***Bharatiya Kamgar Karmachari Mahasangh Vs. Jet Airways Ltd.*** (supra) in which the Apex Court followed the ratio of the judgments in ***Western India Match Co. Ltd.*** (supra) and ***Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corpn.***[25] and has held in paragraph 11 of the judgment as under:

> 11. Placing reliance on WIMCO (supra), this court in Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corpn.4 (2-Judge Bench) held that any condition of service, if inconsistent with certified standing orders, would not prevail, as the certified standing orders would have precedence over all such agreements. Any settlement, the employee Union enters into with the Employer would not override the Model Standing Order, unless it is more beneficial to the employees.

59) There can be no dispute to the proposition that Certified Standing Orders have statutory force and that private contract cannot override the same. However, Mr. Singh has relied upon CSO-33, which provides that nothing contained in Standing Orders shall operate to the prejudice of any right under a contract of service. Thus, the Standing Orders themselves clarify that the same would not affect the contract of service. Similar issue arose for consideration before the Apex Court in

25 (1985) 2 SCC 35

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Management of CIPLA Ltd. Vs. Jayakumar R & Anr.(supra) in which the contract of service provided for a condition of transfer at any part of the company's establishment in India, whereas reliance was placed by the workers on a provision in the Standing Order providing for transfer 'within the factory/agricultural research farm'. This is clear from the observations made by the Apex Court in paragraphs 3 and 9 of the judgment, which read 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 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.

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Disagreeing with the findings of the learned Single Judge and the Division Bench of the High Court holding that transfer was permissible only as per the Standing Order and not as per the clause in the contract of service, the Apex Court held in paragraph 12 of the judgment in ***Management of CIPLA Ltd. Vs. Jayakumar R & Anr.*** (supra) as under:

> 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.

60) More recently, in ***Divgi Metal Wares Ltd.*** (supra) the Apex Court has followed the ratio of the judgment in ***Management of CIPLA Ltd. Vs. Jayakumar R*** in which clause 20 of the Standing Order permitted transfer only within the same unit/factory/office/establishment. However, the terms of appointment permitted transfer to any department or any works or offices belonging to the company. The Apex Court held in paragraphs 13 and 14 of the judgment as under:

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> 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.

61) Thus, in ***Divgi Metal Wares Ltd.*** (supra) the Apex Court interpreted clause 31 of schedule of Standing Order (*which is equivalent of CSO-33 in the present case*) and held that nothing in the Standing Orders can operate in derogation of any law or to the prejudice to any right under the contract of service. Clause 31 of CSO applicable in ***Divgi Metal Wares***

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Ltd. is identically worded as CSO-33 in the present case. This is clear from paragraph 2.2 of the judgment of the Apex Court, which reads thus:

> 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."

62) Thus, in cases involving identically worded CSO providing that nothing in the Standing Order shall operate in derogation of or to the prejudice of any right under contract of service, the Apex Court has held that transfers can be effected in accordance with the contract of service. The present case is thus squarely covered by judgments of the Apex Court in ***Management of CIPLA Ltd. Vs. Jayakumar R*** and ***Divgi Metal Wares Ltd.*** (supra) and the Industrial Court has grossly erred in upsetting the transfer orders by holding that the same are in violation of CSO-32.

63) Additionally, it is seen that findings recorded by the Industrial Court about alleged adverse effect on the service conditions are premised entirely on speculation and not on any positive evidence. The Industrial Court has ignored specific statement in the transfer orders that '*total wages of the workman shall be protected at the transferred places*'. Also of relevance is the fact that no NETWs reported to the transferred places and they had no occasion to know whether there was any adverse effect on service conditions or not. Thus, the Industrial Court has taken into consideration hypothetical scenarios which practically do not exist for inferring violation of CSO-32.

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64) Since this Court is of the view that there is no violation of the Proviso to CSO-32, it is not necessary to discuss ratio of the judgment of the Apex Court in ***Ali M.K. and others Vs. State of Kerala and others*** [26] which discusses the function of a Proviso. In my view therefore, the findings recorded by the Industrial Court about violation of CSO-32 are clearly unsustainable.

I. Malice in Law

65) Under the broad category of malice in law, the Industrial Court's findings relating to sudden transfers, period of five days to report, no details of MA divisions, non-transfer of permanent workers, transfer of Union representatives, taking disciplinary action against them and deliberate postings outside Maharashtra, etc. are also covered.

66) On the aspect of the allegation of malice in effecting the transfers, the Industrial Court has held that personal bias in transferring the NETWs was neither pleaded nor established. However, it has held that *malafide* intention in legal sense is established. It is held by the Industrial Court in paragraph 65 of the judgment as under:

> 65.... In present case, there is no substantial pleading and evidence of personal bias against any of the respondent, but there was allegation of malafide intention in legal sense. ...

67) After holding that there is no personal bias in effecting transfers, the Industrial Court has recorded a finding that there is malice in law inferable from circumstantial factors. It has considered ratio of the

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judgment in ***Rajneesh Khajuria*** (supra), on which Mr. Singh has placed strenuous reliance. In ***Rajneesh Khajuria,*** the Apex Court has held in paragraphs 14 and 19 of the judgment as under:

> **14. The act of transfer can be unfair labour practice if the transfer is actuated by mala fide. The allegations of mala fide have two facets – one malice in law and the other being malice in fact.** The challenge to the transfer is based upon malice in fact as it is an action taken by the employer on account of two officers present in Conference. In a judgment reported as State of Bihar & Anr. v. P.P. Sharma, IAS & Anr. [1992 Supp(1) 222], this Court held that mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. **The plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.** As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions of the Act, the transfer by itself cannot be said to be an act of unfair labour practice unless it is actuated by mala fide. **Therefore, to sustain a plea of mala fide, there has to be an element of personal bias or an oblique motive.**
>
> xxx
>
> 19. The allegation in the complaint is that the transfer was actuated for the reason that the employee had raised voice against removal of Shri Khare from the venue of a Conference. The officers present in the said Conference were the Regional Manager or Sales Manager, whereas order of transfer was passed by Mr. Suresh Srinivasan, General Manager-HR. It is an admitted fact that there is power of transfer with the employer. The allegations are against the persons present in the Conference but there is no allegation against the person who has passed the order of transfer. None of the named persons including the person present in Conference have been impleaded as parties to rebut such allegations. Since the order of transfer is in terms of the letter of appointment, therefore, the mere fact that the employee was transferred will per se not make it mala fide. The allegations of mala fide are easier to levy than to prove.
>
> *(emphasis and underlining added)*

68) Thus, in ***Rajneesh Khajuria*** (supra) the Apex Court has held that effecting transfer *per se* does not amount to unfair labour practice,

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especially when the contract of service provides for transfer. It is further held that though a transfer actuated by *mala fides* can be interdicted, it is necessary to prove personal bias or oblique motive for establishing *mala fides*. For establishing mala fides, the Apex Court has laid down twin tests in ***Rajneesh Khajuria*** of (i) personal bias or oblique motive and (ii) action being contrary to the objects, requirements and conditions of a valid exercise of administrative power. Thus, existence of personal bias is not the only requirement for establishing mala fides. Even oblique motive in issuance of transfer order can amount to mala fides if it is also proved that the action is contrary to the objects, requirements or conditions of valid exercise of administrative power.

69) Also, in paragraph 14 of the judgment in ***Rajneesh Khajuria***, the Apex Court has referred to its judgment in ***State of Bihar & Anr. v. P.P. Sharma, IAS & Anr.***[27] and has emphasised that malice in law could also be inferred from doing of a wrongful act intentionally without any just cause or excuse or without there being a reasonable relation to the purpose of exercise of statutory power. In paragraph 16 of the judgment in ***Rajneesh Khajuria*** (supra), the Apex Court has held that 'legal malice' or 'malice in law' means something done without lawful excuse or an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is held in paragraph 16 of the judgment as under:

> 16. In a judgment reported as HMT Ltd. & Anr. v. Mudappa & Ors. [(2007) 9 SCC 768], quoting from earlier judgment of this Court reported as State of A.P. & Ors. v. Goverdhanlal Pitti [(2003) 4 SCC 739], it was held that 'legal malice' or 'malice in law' means

27 [1992 Supp(1) 222]

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> 'something done without lawful excuse'. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

70) Mr. Prabhakaran has relied on judgment of the Apex Court in ***Sarita Singh*** (supra) and judgments of this Court in ***Brihanmumbai Union of Journalists***, ***Snowcem Paints Pvt. Ltd***, ***Bajaj Auto Limited***, ***Press Trust of India Ltd.***, ***Exide Industries Limited*** and ***Sulzer Pumps India Private*** in support of his contention of mala fide transfers. It must however be observed that each of the judgments relied on by Mr. Prabhakaran deal with factual circumstances in those cases and not laying down any principle of universal application. However, this Court would keep in mind the principles discussed by the Apex Court in judgment of ***Rajneesh Khajuria*** (supra) for deciding whether a case of malice in law is made out in the facts and circumstances of the case or not.

71) The issue for consideration is whether malice in law can be inferred in the present case on the basis of the circumstances in which the transfer orders are effected. It is Petitioners' case that transfers are effected for the purpose of providing meaningful work to the NETWs. The transfers in the present case are not effected surreptitiously or as a knee-jerk reaction. They are effected after making the necessary disclosure before the Apex Court. Yet, mass transfers are effected on a single day by the Petitioner-employer by posting the employees at far off places in every nook and corner of the country, possibly on account of its presence all over the country in the form of mobility aftermarket divisions, handling sales, supply and distribution of automotive spareparts. As observed above, Mr. Prabhakaran has placed on record a

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list of 96 stations at which many of the NETWs are transferred. It would be appropriate to reproduce the list as under:

List of MA Divisions as per the transfer order dated 07-09-2024

1. Agra-UP, MA Division, Bosch Limited.
2. Ahmedabad- Gujarat, MA Division, Bosch Limited.
3. Aizwal - Mizoram, MA Division, Bosch Limited.
4. Ajmer-Rajasthan, MA Division, Bosch Limited.
5. Allahabad-UP, MA Division, Bosch Limited.
6. Alwar-Rajasthan, MA Division, Bosch Limited.
7. Ambala-Punjab, MA Division, Bosch Limited.
8. Amritsar - Punjab, MA Division, Bosch Limited.
9. Asansol-West Bengal, MA Division, Bosch Limited.
10. Bangalore - Karnataka, MA Division, Bosch Limited.
11. Bathinda - Punjab, MA Division, Bosch Limited.
12. Belgaum - Karnataka, MA Division, Bosch Limited.
13. Berhampor - West Bengal, MA Division, Bosch Limited.
14. Bhavnagar - Gujarat, MA Division, Bosch Limited.
15. Bhilwara - Rajasthan, MA Division, Bosch Limited.
16. Bhopal - MP, MA Division, Bosch Limited.
17. Bhuj - Gujarat, MA Division, Bosch Limited.
18. Bilaspur - Chhattisgarh, MA Division, Bosch Limited.
19. Calicut - Kerala, MA Division, Bosch Limited.
20. Chandigarh - Chandigarh, MA Division, Bosch Limited.
21. Chattarpur - MP, MA Division, Bosch Limited.
22. Chennai - Tamilnadu, MA Division, Bosch Limited.
23. Chindwada - MP, MA Division, Bosch Limited.
24. Coimbatore - Tamilnadu, MA Division, Bosch Limited.
25. Daltonganj - Jharkhand, MA Division, Bosch Limited.
26. Darbhanga - Bihar, MA Division, Bosch Limited.
27. Davanagere - Karnataka, MA Division, Bosch Limited.
28. Dehradun - Uttrakhand, MA Division, Bosch Limited.
29. Delhi - Delhi, MA Division, Bosch Limited.
30. Dhanbad - Jharkhand, MA Division, Bosch Limited.
31. Dharwad - Karnataka, MA Division, Bosch Limited.
32. Dimapur - Assam, MA Division, Bosch Limited.
33. Ernakulam - Kerala, MA Division, Bosch Limited.
34. Erode - Tamilnadu, MA Division, Bosch Limited.
35. Faridabad - Haryana, MA Division, Bosch Limited.
36. Gandhidham - Gujarat, MA Division, Bosch Limited.
37. Gautam Buddha Nagar - Delhi, MA Division, Bosch Limited.
38. Ghaziabad - UP, MA Division, Bosch Limited.
39. Gorakhpur - UP, MA Division, Bosch Limited.
40. Gurgaon - Haryana, MA Division, Bosch Limited.
41. Gwalior - MP, MA Division, Bosch Limited.
42. Haldwani - Uttarakhand, MA Division Bosch Limited.
43. Hanumangarh - Rajasthan, MA Division, Bosch Limited.
44. Hissar - Haryana, MA Division, Bosch Limited.

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45. Indore - MP, MA Division, Bosch Limited.
46. Jabalpur - MP, MA Division, Bosch Limited.
47. Jaipur - Rajasthan, MA Division, Bosch Limited.
48. Jalandhar - Punjab, MA Division, Bosch Limited.
49. Jammu-J&K, MA Division, Bosch Limited.
50. Jamnagar-Gujrat, MA Division, Bosch Limited.
51. Jamshedpur - Jharkhand, MA Division, Bosch Limited.
52. Jhansi-UP, MA Division, Bosch Limited.
53. Jodhpur - Rajasthan, MA Division, Bosch Limited.
54. Kakinada - Andhra Pradesh, MA Division, Bosch Limited.
55. Kannur-Kerala, MA Division, Bosch Limited.
56. Kanpur UP, MA Division, Bosch Limited.
57. Karimnagar - Telangana, MA Division, Bosch Limited.
58. Karnal - Haryana, MA Division, Bosch Limited.
59. Keonjhar - Odisha, MA Division, Bosch Limited.
60. Kota-Rajasthan, MA Division, Bosch Limited.
61. Kottayam-Kerala, MA Division, Bosch Limited.
62. Kozhikode - Kerala, MA Division, Bosch Limited.
63. Lucknow-UP, MA Division, Bosch Limited.
64. Ludhiana - Punjab, MA Division, Bosch Limited.
65. Madurai - Tamilnadu, MA Division, Bosch Limited.
66. Mandi - Himachal Pradesh, MA Division, Bosch Limited.
67. Mangalore - Karnataka, MA Division, Bosch Limited.
68. Mehsana-Gujarat, MA Division, Bosch Limited.
69. Merrut-UP, MA Division, Bosch Limited.
70. Moradabad - UP, MA Division, Bosch Limited.
71. Mysore - Karnataka, MA Division, Bosch Limited.
72. Nagoan - Assam, MA Division, Bosch Limited.
73. New Delhi, MA Division, Bosch Limited.
74. Pakur - Jharkhand, MA Division, Bosch Limited.
75. Patna Bihar, MA Division, Bosch Limited.
76. Purnia - Bihar, MA Division, Bosch Limited.
77. Raipur-Chhattisgarh, MA Division, Bosch Limited.
78. Rajkot Gujrat, MA Division, Bosch Limited.
79. Ranchi - Jharkhand, MA Division, Bosch Limited.
80. Rohtak - Haryana, MA Division, Bosch Limited.
81. Rourkela - Odisha, MA Division, Bosch Limited.
82. Salem - Tamil Nadu, MA Division, Bosch Limited.
83. Sasaram - Bihar, MA Division, Bosch Limited.
84. Sikar - Rajasthan, MA Division, Bosch Limited.
85. Siliguri - West Bengal, MA Division, Bosch Limited.
86. Siwan Bihar, MA Division, Bosch Limited.
87. Srinagar - J&K, MA Division, Bosch Limited.
88. Surat Gujrat, MA Division, Bosch Limited.
89. Thiruvananthapuram - Kerala, MA Division, Bosch Limited.
90. Thrissur - Kerala, MA Division, Bosch Limited.
91. Tiruchirappalli - Kerala, MA Division, Bosch Limited.
92. Tirunelveli - Tamilnadu, MA Division, Bosch Limited.
93. Udaipur - Rajasthan, MA Division, Bosch Limited.

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94. Vadodara - Gujrat, MA Division, Bosch Limited.
95. Varanasi - UP, MA Division, Bosch Limited.
96. Visakhapatnam - AP, MA Division, Bosch Limited.

List of Plants as per Transfer Order dated 07.09.2024
97. Chennai: Power Tools Plant, Bosch Limited.
98. Gangaikondan Plant, Bosch Limited.
99. Naganathpura Plant, Bosch Limited.
100. Nalagarh Plant, Newtech Filter India Private Limited,

72) Thus, the case does not involve transfer of a single or few workmen from one factory to another. According to Mr. Prabhakaran, the Petitioner-employer transferred 521 workmen. The transfers are admittedly not issued in usual administrative exigencies. On the other hand, it is Petitioners' own case that the transfers were aimed at providing meaningful work to the NETWs for whom there is no work at Nashik plant. In this pleaded case of the Petitioners, there lies an implied admission that the transfers are effected essentially to ensure that the NETWs need not be paid any wages at Nashik plant. Non-availability of work at Nashik plant is thus the only reason for transferring the workers en masse.

73) Ordinarily some flexibility for rearranging the workforce at different plants and factories must legitimately be conceded in favour of the employer. It can happen that the workload at a particular plant reduces over the years but there is increase in the workload at another factory thereby warranting rearrangement of the workforce. Such rearrangement of the workforce by transfer of employees from one factory to another would not ordinarily be presumed to be a mala fide exercise. But this is not what has happened in the present case. Petitioners have used the factor of availability of its MA Divisions across the country to ensure that the transferred NETWs are spread at far off

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and different locations in the country. None of them is posted in any MA division in Maharashtra, though the State possibly has the highest number of registered vehicles in the Country. This particular factor creates a suspicion of absence of *bonafide* intention on the part of the Petitioners while issuing the transfer orders.

74) There are also various other circumstances to infer absence of *bonafide* intention behind issuing the transfer orders. Though proposal for transfer of some of the workers was disclosed in the affidavit filed before the Apex Court in July 2024, the transfers of more than 500 workers took place on a single day on 7 September 2024. They were called back for work on 21 August 2024 and within few days en masse transfers of more than 500 workers were effected on a single day. They were given only 5 days to report to the transferred places. Though the names of persons for reporting were given, the exact place where the transferred workers were to work were not disclosed in the orders. As observed above, in case of the Union's representative Mr. Amir Nikam, the transfer order specified that '*you are hereby informed that your services as New Entrant Temporary Workman have been transferred from the Nashik Plant to Aizwal - Mizoram, MA Division, Bosch Limited by issuance of this letter*.' Where exactly he was to work at Aizwal was not specified in the transfer order. MA Divisions of the Petitioners merely look after sales requirements relating to spareparts. At which exact place at Aizwal is the unit/establishment of the Petitioners was not disclosed. Mr. Nikam was asked to report within 5 days at Aizwal at some Tea Warehousing Company, not for working but only for completion of preliminary formalities. The transfer order reads *"To complete the preliminary formalities such as induction, completion of testimonial,*

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please remain present at Office Tribe Coworking c/o Gauhati Tea Warehousing Pvt Ltd, Christian Basti, GS Road, Guwahati-781005 on 13-Sep-2024 (Reporting date) at 10 a.m. and your contact person for this purpose will be Mr. Atul Nath Deo, and contact number is 8918318279 for your smooth transition and who will further support you for any assistance if any." Mr. Nikam is the Union leader and is thrown at a far off place at Aizwal in Mizoram to ensure that he is inconvenienced the most.

75) Also, there is no material on record to show that the MA Divisions spread across the country needed manpower and had requested the management to post the workers. On the other hand, the tool of transfer is used after realizing that the Red-Light Activation concept was stayed upto the Apex Court. Thus, instead of paying wages to the workers for whom there was no work available (*on account of stay of Red-Light Activation*), Petitioners devised a way of moving out the NETWs to far off locations outside Maharashtra. This action is sought to be justified by claiming that the excess workers at Nashik can be provided meaningful work at other locations. But this justification needs to be accepted with a pinch of salt. Earlier the intention of Petitioners was to deny job/work to the workers by implementing the Red-Light Activation system. After they were forced to discontinue the Red-Light Activation system and after they faced the situation of paying wages to the NETWs, they came up with the idea of transfers. Thus, this is not an ordinary case of transfer of workers due to exigencies of service, but a devised method of finding a solution to the problem of paying wages to unwanted workers.

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76) Coming to the aspect of provision of meaningful work to the workers at the transferred places, it appears that over 500 workers are transferred at about 100 locations across the country. According to Mr. Singh, 120 workers are transferred to manufacturing units and the Respondents are transferred to MA divisions. Let us proceed on an assumption that some work is available at the transferred places. The Petitioners have also attempted to demonstrate their *bonafides* by providing the transferred workers with travel tickets, hotel accommodations, travel allowance, etc. This would dispel the notion that there is no real intention of providing work to the transferred workers. Since no worker joined at the transferred places, no material could be gathered as to whether the work was really available at the transferred places or not. The theory of fictitious places is also not fully accepted by the Industrial Court. However, because Petitioner No. 1 is a mighty organisation with presence through aftermarket sales divisions across the country, whether the transfer of unwanted workers at Nashik would automatically take the colour of *bonafide* action? The answer, to my mind, appears to be in the negative. This is essentially because of the reverse engineering method adopted by the Petitioners by first attempting to indirectly terminate the workers and later devising the tool of transfer to avoid payment of wages to them. These are ultimately temporary workers earning menial wages. All 500 odd workers are not shifted from one factory to another, but they are deliberately dispursed at every nook and corner of the country. It appears that the aim is to divide them so that they do not unite together to fight against the mighty employer. Petitioners are well aware of the fact that the temporary workers would not be able to work at such far off places and will be forced to give up jobs or be dismissed for not reporting at the

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transferred places. Thus, the real intention is to get rid of the workers and the tool of transfer is devised at achieving that objective. If the workers are not needed at Nashik factory, they ought to have been retrenched by following the process of law. Therefore, this Court is unable to hold that the action of the Petitioners in transferring such a large number of workers is free from malice in law. Since the object and the motive behind the transfers is oblique, malice in law would get established by applying the tests discussed by the Apex Court in its judgment in ***Rajneesh Khajuria*** (supra).

77) Therefore, though the findings regarding violation of provisions of Section 9A of ID Act or CSO-32 cannot be upheld in the present case, there is some room to assume that the action of the Petitioner-employer in transferring the NETWs is not entirely *bonafide*. The transfers appear to have been effected mainly to get rid of the excess workers, to whom the Petitioner was apparently finding it difficult to pay wages. The real intention behind their transfers was to discontinue their services. Petitioner knew very well that NETWs would not be able to work at far off places and therefore none of them was transferred within Maharashtra, which may have the highest number of MA Divisions. The fact that not a single worker joined at the transferred place would also indicate that the Petitioners have ultimately succeeded in their device. May be there are valid reasons for not continuing services of such large number of temporary workers on account of reduction of manufacturing activities. This aspect is being considered in the latter part of the judgment. However, the Petitioner ought to have come out clean and either retrenched their services or effected a valid lockout, etc. Implementation of concept of Red-Light Activation was itself found to be

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prima facie erroneous right upto the Apex Court. Since, this indirect method of discontinuation of services is *prima facie* frowned upon, the Petitioner was forced to take back NETWs in service and therefore it has engineered a device of getting rid of their services by throwing them in every nook and corner of the country. In my view, therefore, though there may have been valid reasons for discontinuing services of the excess NETWs, the Petitioners ought to have followed a lawful method for their discontinuation. Transferring them at far off places for securing indirect terminations cannot be countenanced in the facts and circumstances of the present case.

78) Coming to the aspect of reduction in the manufacturing activities and consequently in the need of manpower, the issue is highly contentious. Petitioners did produce voluminous evidence of over 10,000 pages to establish as to how there was reduction in the orders. The Industrial Court has refused to believe the contention of Petitioners about reduction in orders. However, this Court cannot ignore the known position that country's giant auto manufacturer-Maruti Suzuki India Ltd. has discontinued manufacture of diesel passenger cars. Similar is the position with Honda Motors. The Petitioners have contended that on account of loss of business of these two major clients, there has been gross reduction in its manufacturing activities. The Petitioners have produced at Exhibit-B of the Petition a summary made of SAP data running into over 10,000 pages to demonstrate that there is 57% reduction in injectors outward production and 17% in Nozzles production. On the other hand, Mr. Prabhakaran has placed reliance on an analysis based on Petitioners' summary in support of his contention that there is also substantial reduction in the number of permanent

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workmen from 1528 to 913 during 2016-17 to 2024-25. He has attempted to demonstrate that production per workman in 2016-17 was 5850 units, which has increased to 20258 units by 2024-25. Mr. Prabhakaran has also sought to highlight the position that there is also substantial rise in the turnover of the Petitioner-Bosch Limited, which has risen from Rs.3700 crores in 2017-18 to Rs.7700 crores in 2024-25. Based on the analysis, Mr. Prabhakaran has contended that there was absolutely no need to discontinue or transfer the NETWs from Nashik plant.

79) In my view however, it is not necessary to delve deeper into the aspect of reduction of production activity. I momentarily proceed on an assumption that there is reduction in the orders and manufacturing activities on account of stoppage of manufacture of diesel cars by Petitioners' major clients, Maruti-Suzuki and Honda Motors. This is particularly in view of the fact that even the Industrial Court has ultimately recorded a finding of absence of evidence of work of NETWs being carried out through contract labours / apprentices/ or any other category of workers. However, even if there is reduction of work, the Petitioners ought to have employed lawful methods in getting rid of the excess workers. It ought to have followed the statutory procedure for retrenching their services in a lawful manner. The Petitioner No.1 is a large organisation and is expected to act as a model employer and not to indulge into unlawful methods such as initial implementation of Red-Light Activation concept and later by resorting to throwing out over 500 NETWs at far off places across the country to ensure that they are ultimately dismissed on account of non-joining at the transferred places.

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80) In my view, therefore, though the order of the Industrial Court is not sustainable on the aspects of authority to issue transfer orders, non-giving of notice of change under Section 9A of the ID Act and violation of CSO-32, I find that the vice of malice in law is clearly established in the present case. To this limited extent only, interference in the transfer orders by the Industrial Court is found to be justified. I am therefore not inclined to interfere in the Order of the Industrial Court, which holds that the transfer orders of the NETWs are unlawful.

Whether Petitioners can be directed to reinstate transferred NETWs at Nashik Plant?

81) Having held that the transfer orders of the NETWs out of Nashik plant is unlawful, the next issue for consideration is whether the Industrial Court is justified in directing the Petitioners to allow the transferred NETWs to join at Nashik plant. This Court has upheld the finding of the Industrial Court about unlawful transfers only on account of malice in law. This Court is satisfied that the NETWs are excess at Nashik Plant and the Petitioners wanted to get rid of their services. However, the device of transfer engineered by the Petitioners for getting rid of excess workers has not found favour with this Court. Since this Court has accepted the contention of the Petitioners that there is reduction in its orders and manufacturing activities, it would not be appropriate to direct rejoining of services of transferred NETWs as a result of setting aside their transfer orders. As a result of setting aside the transfer orders, Petitioners will have to now follow the statutory procedure for retrenching the excess staff. Such action of retrenchment would again be subject matter of another round of long litigation between the parties. Parties have already litigated upto the Apex Court

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on two occasions till now. In my view, it would be appropriate to put an end to the disputes between the parties. Considering these peculiar facts and circumstances of the case, instead of directing resumption of work at Nashik plant, the members of Respondent No.1-Union covered in Complaint (ULP) No. 46 of 2024, need to be paid a lumpsum compensation as full and final settlement. This is because effecting of lawful retrenchments would require payment of retrenchment compensation and other dues to the NETWs.

82) Coming to the aspect of quantum of lumpsum compensation, as observed above, the Petitioners had filed affidavit before the Apex Court on 8 July 2024 offering amount of Rs.14,00,000/- per NETW towards full and final settlement for 457 NETWs. During the course of hearing of the Petition, this Court has made an attempt to settle the disputes and the Petitioners showed willingness to increase the offer upto Rs.18,00,000/-. The expectation of the workmen was however much higher and Mr. Prabhakaran claimed that unofficial offer of Rs. 35,00,000/- per worker was made. After taking instructions, Mr. Singh has expressed inability to pay such high amount towards settlement and therefore, the settlement could not go through.

83) Though, the settlement talks have ultimately failed, the figure of compensation disclosed in affidavit filed before the Apex Court as well as the ones suggested during the course of negotiations would provide some guidance to this Court for deciding the lumpsum compensation payable to each worker. Though Mr. Singh has contended that paying compensation of Rs.18,00,000/- for NETW would put financial burden of Rs.150 crores on Petitioner No.1, it is seen that the Petitioner No.1 is a

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large organisation with turnover of Rs.7,700/- crores in the year 2024-25, which are admitted figures by its own Chartered Accountant. The affected NETWs have rendered long services with the Petitioners. Their transfers are found to be unlawful. Resultantly, Petitioners will have to pay them wages from 7 September 2024 onwards. Additionally, if the concerned NETWs are to be now lawfully retrenched, Petitioners will have to pay them retrenchment compensation and other statutory dues. At the same time, the concerned NETWs have already received some amounts (*Rs.3.5 lakhs paid to 128 NETWs and Rs.8.5 lakhs paid to 470 NETWs*) as a result of interim order of stay on implementation of Red-Light Activation system. Considering these circumstances, in my view, it would be appropriate to determine the amount of lumpsum compensation at Rs. 25,00,000/- to each of the NETWs involved in Complaint (ULP) No.46 of 2024. This would balance the equities between the parties.

84) Though payment of lumpsum compensation may put some financial strain on Petitioner No.1, it would get relieved of the obligations to pay backwages since 7 September 2024 and of employing the workmen at Nashik plant towards implementation of the Industrial Court's order. On the other hand, NETWs are out of service for substantial time. The Red-Light Activation has begun from the year 2021 and for the past five years they are not in continuous service with Petitioner No.1. In such circumstances, payment of lumpsum compensation would provide them some solace from the employer, which does not have sufficient work for their continuous employment. Considering the peculiar facts and circumstances of the present case, in my view, it would be appropriate to put an end to the entire dispute by

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directing payment of lumpsum compensation of Rs.25,00,000/- to each NETW involved in the Petition (Complaint (ULP) No.46 of 2024).

ORDER

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

(i) Judgment and order dated 29 September 2026 passed by the learned Member, Industrial Court, Nashik in Complaint (ULP) No.46 of 2024 is partly set aside and modified.

(ii) While upholding the directions at Sr. Nos. 1 to 4 in the judgment and order of the Industrial Court, the direction at Sr. No. 5 for allowing transferred workmen to join at Nashik plant is set aside.

(iii) Instead, the Petitioner No.1 shall pay to each of the NETWs involved in Complaint (ULP) No.46 of 2024 a lumpsum compensation of Rs. 25,00,000/- within a period of six weeks.

(iv) Beyond the compensation so awarded, the concerned NETWs shall not be entitled to claim any other financial or service related benefits from Petitioner No.1-employer.

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(v) If the lumpsum compensation is not paid within the period specified, the same shall carry interest @8% per annum from the date of expiry of period of six weeks.

86) With the above directions, the Writ Petition is partly allowed and disposed of. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

87) After the judgment is pronounced, the learned counsel appearing for Respondent No.1-Union prays for stay of the judgment for a period of four weeks. The request is opposed by the learned counsel appearing for Petitioners. Considering the fact that the Petitioners are directed to pay lumpsum compensation to the concerned NETWs, this Court is not inclined to stay the judgment. The request is accordingly rejected.

[SANDEEP V. MARNE, J.]

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