GAHC010257662013

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WRIT PETITION (C) No. 1011/2013

Shri Bacha Babu Singh, General Secretary, Steelsworth Worker's Union, Makum Road, P.O. & District – Tinsukia, Pin : 786170, Assam.

……***Petitioner***

-Versus-

1. The Management of Steelsworth Pvt. Ltd., Makum Road, Tinsukia, Pin : 786170, Assam.
2. The Presiding Officer, Industrial Tribunal, Dibrugarh, Pin : 786001, Assam.

……***Respondents***

Advocates :

Petitioner : Ms. A. Bhattacharya, Advocate.
Respondent no. 1 : Mr. S. Chamaria, Advocate,

Date of Hearing, Judgment & Order : 19.09.2023

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

The present writ petition under Article 226 of the Constitution of India has been instituted by the petitioner to challenge an Award dated 20.10.2012 rendered by the learned Industrial Tribunal, Dibrugarh in Reference Case no. 01/2012 [Old Case no. 04/2008]. By the Award dated 20.10.2012, the learned Industrial Tribunal, Dibrugrah has decided the Reference forwarded to it for adjudication by the Labour & Employment Department, Government of Assam under Section 10 [1][c] of the Industrial Disputes Act, 1947. The Reference consisting of two issues has been decided by the learned Industrial Tribunal against the writ petitioner-Workman.

2. It was by a Notification bearing no. GLR.2016/2008/11 dated 11.11.2008, the Government of Assam in the Labour & Employment Department referred the dispute to the learned Presiding Officer, Industrial Tribunal, Dibrugarh and the Notification read as under :

GOVERNMENT OF ASSAM
LABOUR & EMPLOYMENT DEPARTMENT
ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 11th November, 2008.

No. GLR.2016/2008/11 : Whereas an industrial dispute has arisen in the matter specified in the Schedule below between :- Management of Steelsworth Pvt. Ltd. Makum Road, Tinsukia, Assam – vs – Shri Bacha Babu Singh, General Secretary, Steelsworth Worker's Union, Makum Road, P.O. & Dist. Tinsukia, Assam.

And whereas it is considered expedient by the Government of Assam to refer the dispute for adjudication to Industrial Tribunal Dibrugarh constituted under Section 7 of the Industrial Disputes Act, 1947 [Act XIV of 1947].

Now, therefore, in exercise of the powers conferred by Clause [c] Sub-Section [1] of Section 10 of the Industrial Disputes Act, 1947 [Act-XIV of 1947], as amended, the Governor of Assam is pleased to refer the said dispute to the Presiding Officer, I.T. Dibrugarh appointed under the provisions of the said Act.

- SCHEDULE -

1. Whether the Management of M/s Steelsworth Pvt. Ltd. Makum Road, Tinsukia, Assam is justified in stoppage of work of Sri Bacha Babu Singh with effect from 05.01.2005 ?

2. If not, whether he is entitled to reinstatement with full back wages with effect from 05.01.2005 or any other relief in lieu thereof ?

Sd/- A.C. Borah
Deputy Secy. To the Govt. of Assam
Labour & Employment Department.

3. The case pleaded by the Workman-writ petitioner in the present writ petition is inter alia to the effect that the writ petitioner in his capacity as the General Secretary, Steelsworth Worker's Union raised a demand for payment of Bonus for the Accounting Year : 2003 – 2004 for and on behalf of the Workmen of M/s Steelworth Pvt. Ltd. As the Management of M/s Steelsworth Pvt. Ltd. refused to fulfill the demand of the Workmen Union, the dispute was referred to the Assistant Labour Commissioner, Tinsukia for conciliation. The Assistant Labour Commissioner, Tinsukia as the Conciliation Officer vide a Notice of Conciliation dated 19.10.2004, called upon the Workmen side and the Management side to hold conciliation on 26.10.2004. Several rounds of conciliation were held and as the dispute could not be settled, the Assistant

Labour Commissioner, Tinsukia scheduled the conciliation proceedings for further discussion on 15.12.2004.

4. While the conciliation proceedings on the matter of Bonus for the Accounting Year : 2003 – 2004 was in progress and pending before the Conciliation Officer, the Management of M/s Steelsworth Pvt. Ltd. issued a Transfer Order dated 27.11.2004 whereby the petitioner was transferred to the workshop of M/s Steelsworth Pvt. Ltd. at Coonoor in the State of Tamil Nadu. By the Transfer Order dated 27.11.2004, the petitioner was directed to report for joining at its Coonoor branch w.e.f. 15.12.2004. The petitioner was also instructed to vacate the quarter he was allotted and occupying and hand over the keys to the Manager [Personal & Administration].

5. The petitioner has contended that when he as the General Secretary, Steelsworth Worker's Union was espousing the causes of the Workmen and was taking active part in the then ongoing conciliation proceedings on behalf of the Workmen, he invited the wrath of the Management and the Transfer Order was an act of victimization and unfair labour practice resorted to by the Management side. It is contended that the action of the Management in transferring a Workman of his status to a far-off place with a direction to report in the place like Coonoor, Tamil Nadu was clearly mala fide and the same reflected a vindictive attitude on the part of the Management side towards the petitioner. When the petitioner submitted a Reply on 06.12.2004 before the Management seeking review of the Transfer Order stating that he, being the General Secretary of Steelsworth Worker's Union, was a Protected Workman under the Industrial Disputes Act, 1947 and thus, the Order of Transfer clearly amounted to an act of unfair labour practice, the Management side did not pay any heed

to the objection raised by the petitioner and illegally withdrew the token card of the petitioner-Workman and also restrained him from joining his duty w.e.f. 05.01.2005. The Management side had issued a Letter on 05.01.2005 addressed to the petitioner, whereby, the petitioner was informed that he stood released from the close of working hours on 27.12.2004 in order to enable him to undertake the journey to Coonoor, Tamil Nadu. As the petitioner neither collected the Railway ticket nor he had reported for duty at Coonoor, Tamil Nadu the Management side advised the petitioner to report for duty immediately at the transferred place. Stating that the petitioner had forcibly entered into the factory premises of M/s Steelsworth Pvt. Ltd. and marked his attendance and tried to do some work forcefully, the Management side informed the petitioner that his entries on those dates were unauthorized.

6. After issuance of the Letter dated 05.01.2005, the petitioner approached the Assistant Labour Commissioner, Tinsukia seeking intervention into the matter and the Assistant Labour Commissioner, Tinsukia taking cognizance on the allegations made by the petitioner issued a Letter on 05.01.2005 to the Manager of M/s Steelsworth Pvt. Ltd., Tinsukia whereby a request was made to withdraw the Transfer Order issued to the petitioner and to allow him to undergo his normal works for the time being with immediate effect till conclusion of the conciliation proceedings as the petitioner was a Protected Workman under the provisions of the Industrial Disputes Act, 1947.

7. Issuance of the Letter dated 05.01.2005 of the Assistant Labour Commissioner, Tinsukia had led the Management side to prefer a writ petition, W.P.[C] no. 1455/2005 before this Court. The Letter dated 05.01.2005 of the Assistant Labour Commissioner, Tinsukia was followed by two Show-Cause

Notices, dated 12.01.2005 & dated 24.01.2005, from the Assistant Labour Commissioner, Tinsukia whereby the Manager of M/s Steelsworth Pvt. Ltd., Tinsukia was asked to show cause as to why necessary steps for prosecution should not be taken. The petitioner was impleaded as the party-respondent no. 5 in the writ petition, W.P.[C] no. 1455/2005.

8. In the writ petition, W.P.[C] no. 1455/2005, it was contended on behalf of the Management side that the petitioner was not a Protected Workman and as such, he was not entitled to any protection during the pendency of the conciliation proceedings. It was argued from the Workman side that the petitioner being a Protected Workman, would be entitled to the protection provided to such Protected Workmen under the Industrial Disputes Act, 1947.

9. When the writ petition, W.P.[C] no. 1455/2005 was taken up for final consideration, it was observed that whether the Show-Cause Notices were founded on any legal premises would be a jurisdictional issue, which could be urged by the Management side in response to the Show Cause Notices and all such issues would be adjudicated by the Authority who had issued the Show-Cause Notices. It was observed that the Authority issuing the Show Cause Notices being a statutory functionary constituted under the Industrial Disputes Act, 1947, should be allowed to decide the matter. With such observations, the learned Single Judge had decided not to entertain the writ petition. By holding that the writ petition being premature, was not maintainable, the writ petition was dismissed by an Order dated 02.03.2005. It was further observed that the Assistant Labour Commissioner, Tinsukia should try to finalise the conciliation proceedings expeditiously.

10. Being aggrieved by and dissatisfied with certain observations made by

the learned Single Judge in Paragraph 10 of the Judgment and Order dated 02.03.2005 rendered in the writ petition, W.P.[C] no. 1455/2005, the Management Side preferred an intra-court appeal, Writ Appeal no. 287/2005. It was submitted before the writ appellate court that the Management side was not challenging the validity of the Order dismissing the writ petition. It was contended that the observations made in paragraph 10 in the Judgment and Order dated 02.03.2005 by the learned Single Judge that the petitioner being a General Secretary of Steelsworth Worker's Union, would be a Protected Workman was not based on facts. While dismissing the writ appeal by an Order dated 03.06.2005, the writ appellate court observed that the learned Single Judge had already clarified that all issues pertaining to merits had to be gone into by the Authority concerned irrespective of the observations made.

11. On receipt of the Reference forwarded to the learned Industrial Tribunal, Dibrugrah by the Notification dated 11.11.2008, the learned Industrial Tribunal registered the same as Reference Case no. 04/2008 and notices were issued on 29.12.2008 to both the sides to file their written statements with documents. The Workman submitted his written statement on 02.01.2010 while the Management side submitted its written statement on 13.08.2010. In the course of the proceedings, the Workman i.e. the petitioner submitted his evidence on 30.04.2012 on affidavit and he was duly cross-examined by the Management side on 14.05.2012. From the Management Side, one Sri Baldev Singh, Personal Manager, M/s Steelsworth Pvt. Ltd. adduced his evidence on affidavit on 10.09.2012. The Workman had exhibited 14 nos. of documents [Exhibit - 1 to Exhibit - 14]and the Management side exhibited 11 nos. of documents [Exhibit - A to Exhibit - K] in the course of the proceedings of Reference Case no. 04/2008.

12. After appreciation of the oral evidence as well as the documentary evidence, the learned Industrial Tribunal had passed the Award dated 20.10.2012 deciding the first issue of the Reference against the Workman. As the second issue of the Reference was made relatable on the outcome of the first issue, the second issue had also gone against the Workman in view of the decision rendered on the first issue in favour of the Management side. The learned Industrial Tribunal had negated the contention advanced by the Workman that he was a Protected Workman under the Industrial Disputes Act, 1947. The learned Industrial Tribunal had observed that by defying the Transfer Order, the Workman did not follow the order of the Management. It was observed by the learned Industrial Tribunal that the transfer being a condition of service, the Management side had the authority to transfer an employee from any of its factory to any other place and the Management side had the prerogative to transfer an employee. The learned Industrial Tribunal took note of the fact that the petitioner was never transferred earlier to any place since his joining in 1985 and he did not make any request after the Transfer Order dated 27.11.2004 to the Management to give him time to settle the dispute of Bonus and to move to Coonor, Tamil Nadu to join there. Instead, the petitioner was found to have started challenging the authority of the Management to transfer him whereas the Management side was found to have the authority to transfer the petitioner. It was observed that the Management side had transferred the petitioner in exigency of service he being an expert Workman. The learned Industrial Tribunal had also negated the challenge that the Management side in transferring the petitioner, had resorted to any unfair labour practice and had observed that refusal on the part of the Workman to join the duty at his transferred place would not justify his act. The learned Industrial Tribunal had

observed that there was no reason to consider the decision of the Management about stoppage of work w.e.f. 05.01.2005 as unjustified. Deciding the issues in the afore-stated manner, the impugned Award has been passed.

13. I have heard the Ms. A. Bhattacharya, learned counsel for the petitioner and Mr. S. Chamaria, learned counsel for the respondent no. 1.

14. Ms. Bhattacharya, learned counsel for the petitioner has strenuously contended that it was during the course of an ongoing conciliation proceedings, the petitioner who was the then General Secretary of Steelsworth Worker's Union, was transferred by the impugned Transfer Order dated 27.11.2004. When the Management side was informed duly that he being the General Secretary of M/s Steelsworth Worker's Union, a trade union recognized by the Management, was taking part in the then ongoing conciliation proceedings before the Assistant Labour Commissioner, Tinsukia [the Conciliation Officer] espousing the causes of the Workman for Bonus for the Accounting Year : 2003 – 2004 and, thus, was entitled to the privileges available to a Protected Workman the Management side adopting a vindictive attitude, did not pay any heed and had proceeded to adopt the unfair labour practice of stopping the petitioner from working in the factory of M/s Steelsworth Pvt. Ltd. at Tinsukia w.e.f. 05.01.2005. Ms. Bhattacharya has referred to a Letter dated 27.04.2005 – brought on record after filing only on 18.09.2023 by filing an Additional Affidavit – to urge that by the Letter dated 27.04.2005, the Management side was given a list of Protected Workmen under the signature and seal of the petitioner in his capacity as the General Secretary of M/s Steelsworth Worker's Union and the said letter was duly received by the Management side on 29.04.2005. As Steelsworth Worker's Union being a recognized trade union of M/s Steelsworth

Pvt. Ltd. and the list of Protected Workman dated 27.04.2005 had already been received by the Management side on 29.04.2005, the petitioner was clearly entitled to the privilege available to a Protected Workman under Section 33 of the Industrial Disputes Act, 1947. It is contended that by the Transfer Order dated 27.11.2004, the Management side had clearly altered the conditions of service of the petitioner and the same is clearly impermissible in law. It is submitted that the provisions of sub-section [3] of Section 33 is to be read conjointly with the provisions of sub-section [4] of Section 33 of the Industrial Disputes Act, 1947. Ms. Bhattacharya has further drawn attention to the Letter dated 05.01.2005 as well as the Show-Cause Notices, dated 12.01.2005 & dated 24.01.2005, of the Assistant Labour Commissioner, Tinsukia wherein the said Authority had clearly observed that as the petitioner was a Protected Workman under the Industrial Disputes Act, 1947, an order of transfer like the one involved with the petitioner should be withdrawn. To draw support for her submissions, reference has also been made to Rule 64 of the Assam Industrial Disputes Rules, 1958, more particularly, sub-rule [4] thereof.

15. Au contraire, Mr. Chamaria, learned counsel for the respondent no. 1 has submitted that the Division Bench in its Order dated 03.06.2005 passed in Writ Appeal no. 287/2005 had clearly clarified that all issues pertaining to merits had to be gone into by the Authority concerned irrespective of the observations made. He has submitted that the learned Industrial Tribunal had accordingly, appreciated the evidence led by both the sides before it during the proceedings of Reference Case no. 04/2008 and had rightly observed that the petitioner was not a Protected Workman. It is his submission that holding the post of the General Secretary of a recognized Workmen Union is not the sole criterion to enjoy the privilege of a Protected Workman under the Industrial Disputes Act,

1947. It is his further contention that taking part in the then ongoing conciliation proceedings would not give the petitioner the privilege of a Protected Workman in an automatic manner. Referring to the Appointment Letter dated 01.11.1986, he has contended that transfer is a condition of service for the petitioner and as per the Appointment Letter, the petitioner was liable to be transferred from one place to another or from his present place of posting to a sister concern whether in existence or which might come into existence at a later point of time. He has emphasized on the point that the dispute for which the conciliation proceedings was then going on was not connected with an order of transfer and there was no alteration of the conditions of service, applicable to the petitioner immediately before the commencement of such conciliation proceedings. As there was no recognition of the petitioner as a Protected Workman under the provisions of sub-section [3] of Section 33 read with Rule 64 of the Assam Industrial Disputes Rule, 1958, the petitioner was not a Protected Workman and the learned Industrial Tribunal had rightly arrived at a finding that there was no ground to hold that the petitioner was a Protected Workman without any recognition from the Management side. As the findings of the learned Industrial Tribunal is not perverse and have been reached on the basis of evidence adduced during the Reference proceedings before it, a certiorari jurisdiction is not available to be exercised to dislodge findings which are not perverse. In support of his submissions, Mr. Chamaria has referred to the decisions of the Hon'ble Supreme Court of India in P.H. Kalyani vs. Air France, Calcutta, reported in AIR 1963 SC 1756, 5 and Air India Corporation, Bombay vs. V.A. Rebellow and another, reported in [1972] 1 SCC 814.

16. I have given due consideration to the rival submissions advanced by the learned counsel for the parties and have also perused the materials brought on

record by the parties through their pleadings. I have also gone through the materials available in the case records of Reference Case no. 01/2012, in original, as those case records were requisitioned by an Order dated 04.03.2013.

17. At this stage, it is apposite to observe that when the writ petition was moved on 04.03.2013, this Court had, after considering the Transfer Order dated 27.11.2004 and the Award dated 20.10.2012, observed that no interference was called for at that stage as an interim measure. It was made clear that if the petitioner would carry out the direction as regards transfer in terms of the Transfer Order dated 27.11.2004, the question of regularization of the service of the petitioner from the date of transfer till his date of joining at his new place of posting would be taken up for consideration by the Court.

18. As the rival submissions have been made by referring to the provisions of Section 33 of the Industrial Disputes Act, 1947, it is apposite to quote the provisions of Section 33 of the Industrial Disputes Act, 1947 in its entirety herein below :

> 33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. —
>
> [1] During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall, —
>
> [a] in regard to any matter *connected with the dispute*, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
>
> [b] for any misconduct *connected with the dispute*, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute,
>
> save with the express permission in writing of the authority before which the

proceeding is pending.

[2] During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman —

[a] alter, in regard to any matter *not connected with the dispute*, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

[b] for any misconduct *not connected with the dispute*, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

[3] Notwithstanding anything contained in sub-section [2], no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any *protected workman* concerned in such dispute —

[a] by altering, to the prejudice of such *protected workman*, the conditions of service applicable to him immediately before the commencement of such proceedings; or

[b] by discharging or punishing, whether by dismissal or otherwise, such *protected workman*,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation. — For the purposes of this sub-section, a '*protected workman*', in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

[4] In every establishment, the number of workmen to be recognised as *protected workmen* for the purposes of sub-section [3] shall be one per cent of the total number of workmen employed therein subject to a minimum number of five *protected workmen* and a maximum number of one hundred *protected workmen* and for the aforesaid purpose,

the appropriate Government may make rules providing for the distribution of such *protected workmen* among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as *protected workmen*.

[5] Where an employer makes an application to a conciliation officer, Board, an arbitrator, a labour Court, Tribunal or National Tribunal under the proviso to sub-section [2] for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit :

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit :

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

19. By a Notice of Conciliation dated 19.10.2004 issued by the Assistant Labour Commissioner, Tinsukia, exhibited as Exhibit no. 5 by the Workman, notices were issued to both the sides – Management of M/s Steelsworth Pvt. Ltd. & the Workman represented by the General Secretary, Steelsworth Worker's Union – under Section 4 of the Industrial Disputes Act, 1947 that conciliation would be held on 26.10.2004 as an industrial dispute had existed/was apprehended between the two sides on Bonus for the Accounting Year : 2003 – 2004. The issue of Bonus for the Accounting Year : 2003 – 2004 was taken up in the conciliation proceedings held on 26.10.2004 and views expressed by both the sides were recorded in the Minutes of the Conciliation proceedings issued on 02.12.2004. As per the Minutes of the Conciliation proceedings issued on 02.12.2004, a settlement could not be arrived at on the issue of Bonus for the Accounting year : 2003 – 2004 and the Conciliation Officer scheduled another round of Conciliation on 15.12.2004 to explore possible settlement on the issue.

The Minutes of the Conciliation proceedings issued on 28.12.2004 had observed that the Conciliation proceedings had failed as the parties could not arrive at any settlement. Thus, there is no dispute to the position that a conciliation proceedings was going on from 26.10.2004 on the issue of Bonus for the Accounting Year : 2003 – 2004 and it continued till 28.12.2004 and such conciliation proceedings concluded with failure as recorded in the Minutes of the Conciliation Proceedings issued on 28.12.2004.

20. From a reading of sub-section [1] of Section 33 of the Industrial Disputes Act, 1947 it inter alia emerges that during the pendency of any conciliation proceedings before a Conciliation Officer in respect of an industrial dispute, no employer shall [a] in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or [b] for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the Authority before which the conciliation proceedings is pending. Thus, an employer during the pendency of the conciliation proceedings before a Conciliation Officer, is restrained [i] from altering the conditions of service of the Workman, or [ii] dismissing or discharging or punishing a Workman, in respect of any matter or misconduct connected with the dispute save with the express permission in writing of the authority before which the proceeding is pending. In sub-section [1] of Section 33 of the Industrial Disputes Act, 1947 the prerequisite is, in order to attract the restriction on the employer, that the industrial dispute before the Conciliation Officer has to be connected with the dispute.

21. As per sub-section [2] of Section 33, during the pendency of any conciliation proceedings in respect of an industrial dispute, as referred to in sub-section [1], the employer may, in accordance with the standing orders applicable to a Workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, existing between the employer and the workman [a] alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that Workman immediately before the commencement of such proceedings; or [b] for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that Workman. The proviso to sub-section [2] has inter alia provided that no such Workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the Authority before which the conciliation proceedings is pending for approval of the action taken by the employer.

22. At the time when the Transfer Order dated 27.11.2004 was made, the conciliation proceedings which was going on at that point of time was in respect of Bonus for the Accounting Year : 2003 – 2004. The Transfer Order dated 27.11.2004 transferring the petitioner to Coonoor, Tamil Nadu was, therefore, not connected with the dispute for which the conciliation proceedings, at that point of time, was going on. As such, the provisions of sub-section [1] of Section 33 is not found attracted or applicable in the case in hand as the matter of transfer is not connected with the dispute regarding bonus.

23. The Appointment Letter dated 01.11.1986 of the petitioner was exhibited in the course of the proceedings of Reference Case no. 04/2008. The

Appointment Letter of the petitioner dated 02.11.1985 was also exhibited. In the Appointment Letter dated 01.11.1986, reference of the earlier Appointment Letter dated 02.11.1985 was made. It was by virtue of Appointment Letter dated 02.11.1985, the petitioner was appointed as a temporary worker in M/s Steelworth Pvt. Ltd. The Appointment Letter dated 01.11.1986 had reiterated that by the Appointment Letter dated 02.11.1985, the company, M/s Steelsworth Pvt. Ltd. had appointed the petitioner as a temporary helper. By the Appointment Letter dated 01.11.1986, the petitioner's services and appointment as a Helper w.e.f. 02.11.1986 on the same pay scale/emoluments, was confirmed, subject to the conditions of services and the standing orders in force. As per Clause 3 of the Appointment Letter dated 01.11.1986, the petitioner's place of posting was, at that point of time, at Tinsukia but he was liable to be transferred to another branch, shift, post or place or to sister concern whether in existence or which might come to existence thereafter. Clause 3 had further set forth that the Management can shift the place/places of working of the petitioner anywhere in India and in that event, the petitioner had to make compliance for working at the new place of work. It was further laid down that the Management can shift the premises anywhere in India and the petitioner had to report or work at the shifted place. It further mentioned that in case the petitioner was transferred to a place which had a distance of more than 500 Km then he would be given 1 [one] week time for reporting besides travelling expenses. In various letters issued after the Transfer Order dated 27.11.2004, that is, Letter dated 07.12.2004, Letter dated 09.12.2004, etc. it had mentioned that the Standing Order of M/s Steelsworth Pvt. Ltd. then in force had the condition that refusal to accept transfer from one shift to another shift or from one section or department to another or from one place to another, whether

locally or out of station or from one establishment to any other establishments under the same Management shall be treated as a major misdemeanor for which the Workman is liable to dismissal.

24. Reference is to be made also to Section 9A as well as Fourth Schedule of the Industrial Disputes Act, 1947, which read as under :

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.

The Fourth Schedule –

Conditions of Service for change of which notice is to be given

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 of 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, alteration 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 in so far 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.

25. From the conditions included in the Appointment Letter dated 01.11.1986 and from the provision quoted from the Standing Orders of M/s Steelsworth Pvt. Ltd. then in force, it has clearly emerged that the transfer from the place [Tinsukia] where the petitioner was working either at the time of initiation of the conciliation proceedings on and from 26.10.2004 or at the time of issuance of the Transfer Order dated 27.11.2004, to a place like Cooner, Tamil Nadu was permissible under the terms of the contract of employment of the petitioner as well as as per the concerned Standing Orders applicable to the petitioner. Neither in Section 9A nor in Fourth Schedule of the Industrial Disputes Act, 1947, the matter of transfer has been included as a condition of service for change of which prior notice of twenty one days is to be given in terms thereof. In such view of the matter, this Court is of the considered view that the provision of sub-section [2] of Section 33 is not attracted or applicable in the case in hand as transfer from the place the petitioner was working either on 26.10.2004 or on 27.11.2004, to Coonor, Tamil Nadu did not result in any alteration of any condition of service of the petitioner. Such transfer is clearly

not connected with the then ongoing conciliation proceedings as regards Bonus for the Accounting Year : 2003 - 2004.

26. The matter which, thus, arises for consideration now is whether the petitioner is a Protected Workman under the provisions of sub-section [3] of Section 33 of the Industrial Disputes Act, 1947. Sub-section [3] of Section 33 starts with a non-obstante clause in reference to sub-section [2]. As has already been observed above, the provisions of sub-section [2] of Section 33 are not attracted or applicable in the case in hand. According to sub-section [3] of Section 33, no employer shall, during the pendency of any such proceedings in respect of an industrial dispute, take any action against any Protected Workman concerned in such dispute — [a] by altering, to the prejudice of such Protected Workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or [b] by discharging or punishing, whether by dismissal or otherwise, such Protected Workman, save with the express permission in writing of the authority before which the conciliation proceedings is pending. The words, 'any such proceedings' is referrable to the conciliation proceedings referred to in Section 33[1]. Explanation to sub-section [3] has explained the definition of 'Protected Workman' in relation to an establishment. As per the Explanation, Protected Workman means a Workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognised as such in accordance with the rules made in this behalf. As per Section 2[lll] of the Industrial Disputes Act, 1947, 'office bearer', in relation to a trade union, includes any member of the executive thereof, but does not include an auditor. It is not in dispute that Steelsworth Worker's Union is a trade union recognized by the Management of M/s Steelsworth Pvt. Ltd. From the Minutes of the

conciliation proceedings, exhibited before the learned Industrial Tribunal, it is noticed that the petitioner as the General Secretary of Steelsworth Worker's Union was taking part in the conciliation proceedings for espousing the cause of the workman with regard to the dispute relating to Bonus for the Accounting Year : 2003 – 2004. Steelsworth Worker's Union is also the registered trade union connected with the establishment of M/s Steelsworth Pvt. Ltd.

27. In addition to fulfillment of the above requirements that is, a member of the executive or an office bearer of a registered trade union connected with establishment, the statute has provided that to be recognized as a Protected Workman, such a Workman-Office-bearer has to be recognized as such in accordance with rules made in that behalf. There is no dispute at the Bar that in so far as the establishment involved in the case in hand is concerned, that is, M/s Steelworth Pvt. Ltd., the appropriate Government, as per Section 2[a] of the Industrial Disputes Act, 1947, is the State Government. In such view of the matter, the provisions contained in rules, 'the Assam Industrial Disputes Rules, 1958', framed in exercise of the powers conferred by the provisions of the Industrial Disputes Act, 1947, are applicable. Rule 64 of the Assam Industrial Disputes Rules, 1958 has provided for the matter of Protected Workmen and it reads as under :-

64. Protected workmen–

[1] Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer before the 30th September every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union, should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

[2] The employer shall subject to Section 33, sub-section [4] recognise such workmen to be

"protected workmen" for the purposes of sub-section [3] of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and the addresses under sub-rule [1], the list of workmen recognised as protected workmen.

[3] Where the total number of names received by the employer under sub-rule [1] exceeds the maximum number of protected workmen, admissible for the establishment, under Section 33, sub-section [4], the employer shall recognise as protected workmen only such maximum number of workmen :

Provided that, where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the members of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen allotted to it :

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

[4] When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of 'protected workmen' under this rule, the dispute shall be referred to the Labour Commissioner, Assam, whose decision thereon shall be final.

28. Sub-rule [1] of Rule 64 of the Assam Industrial Disputes Rules, 1958 has provided that every registered trade union connected with an industrial establishment, to which the Industrial Dispute Act, 1947 applies, shall communicate to the employer before the 30th September every year, the names and addresses of such of the officers of the union, firstly, who are employed in that establishment and secondly, who, in the opinion of the union, should be recognised as 'Protected Workmen'. In the case in hand, the petitioner has claimed that by the Letter dated 27.04.2005, which was issued under his hand in the capacity of General Secretary, Steelsworth Worker's Union, the names of those office bearers of Steelsworth Worker's Union were mentioned to the

Management to recognize them as Protected Workman. Amongst those office bearers of Steelsworth Worker's Union, the name of the petitioner was also included as the General Secretary of Steelsworth Worker's Union Association. The said Letter dated 27.04.2005 was received by the Management on 29.04.2005. From sub-rule [2] of Rule 64 of the Assam Industrial Disputes Rules, 1958, it is evident that mere communication of the names and addresses of the office bearers of the registered trade union connected with the establishment as to recognize them as Protected Workmen would not make the listed persons as Protected Workmen. Sub-rule [2] of Rule 64 has specifically prescribed that the employer has to recognize such Workmen to be the 'Protected Workmen' for the purposes of sub-section [3] of Section 33 and communicate the said decision to the union, in writing, within 15 [fifteen] days of the receipt of the names and the addresses under sub-rule [1], the list of Workmen, who have been recognised by the employer as Protected Workmen. A question would definitely arise in such situation, whether in the absence of any communication from the Management side in writing within 15 [fifteen] days from the date of receipt of the names and address of the office bearers of the trade union whom the trade union seeks to be recognized as Workmen would give those Workmen the recognition as Protected Workman. There is not deeming provision in Rule 64 of the Assam Industrial Disputes Rules, 1958 to the effect that in the event the employer does not communicate to the trade union in writing, within the stipulated period of 15 [fifteen] days, that the workmen the names of which were forwarded to it, have been recognized as Protected Workmen they would be deemed as Protected Workmen on expiry of 15 [fifteen] days from the date of such communication. In the event the Management/employer does not recognize such Workmen as Protected

Workmen then the recourse that is available for the trade union is to raise a dispute before the Appropriate Authority, that is, the Labour Commissioner, Assam in terms of sub-Rule [4] of Rule 64, Assam Industrial Disputes Rules, 1958. Sub-rule [4] of Rule 64, Assam Industrial Disputes Rules, 1958 has prescribed that when a dispute arises between an employer and any registered trade union in any matter connected with the recognition of 'Protected Workmen' under the Assam Industrial Disputes Rules, 1958, the dispute shall be referred to the Labour Commissioner, Assam, whose decision thereon shall be final. Before the learned Industrial Tribunal, it was canvassed on behalf of the Management side that in the absence of recognition to the petitioner as a Protected Workman from the Management side, the petitioner would not be regarded as a Protected Workman. In the absence of any such recognition to the petitioner as a Protected Workman, there was no question of permission from the Appropriate Authority in writing before transferring a Workman who is not a Protected Workman. The learned Industrial Tribunal had observed that no letter was proved from Steelsworth Worker's Union to show that the petitioner was recognized as a Protected Workman and as such, there is no reason to hold that the petitioner was a Protected Workman, at the time of issuing the Transfer Order dated 27.11.2004, in the absence of any declaration from the Management side. In any view of the matter, the Letter dated 27.04.2005 submitted by Steelsworth Worker's Union could not have been given retrospective effect so as to bring the petitioner within the ambit of Protected Workman w.e.f. 26.10.2004/27.11.2004. Thus, the finding of the learned Industrial Tribunal that the petitioner was not a Protected Workman is not to be interfered with, in the absence of any cogent material showing recognition of the petitioner as a Protected Workman.

29. The Hon'ble Supreme Court of India in P.H. Kalyani vs. Air France, Calcutta, reported in AIR 1963 SC 1756, has observed as under :-

> 5. Learned counsel for the appellant has further raised some points which were raised on behalf of the appellant before the Labour Court. In the first place, he contends that the appellant was a protected workman and the Labour Court was not right when it held that the appellant was not a protected workman. We are of opinion that the question whether a particular workman is a protected workman or not is a question of fact, and the finding of the Labour Court on such a question will generally be accepted by this Court as conclusive. Besides, the Labour Court has pointed out that the mere fact that a letter was written to the Manager of the respondent company by the Vice-President of the union in which the name of the appellant was mentioned as a Joint Secretary of the union and the Manager had been requested to recognise him along with others mentioned in the letter as protected workmen would not be enough. The company had replied to that letter pointing out certain legal defects therein and there was no evidence to show what happened thereafter. The Labour Court has held that according to the rules framed by the Government of West Bengal as to the recognition of protected workmen, there must be some positive action on the part of the employer in regard to the recognition of an employee as a protected workman before he could claim to be a protected workman for the purpose of Section 33. Nothing has been shown to us against this view. In the absence therefore of any evidence as to recognition, the Labour Court rightly held that the appellant was not a protected workman and therefore previous permission under Section 33 [3] of the Act would not be necessary before his dismissal.

30. The Hon'ble Supreme Court of India in Air India Corporation, Bombay vs. V.A. Rebellow and another, reported in [1972] 1 SCC 814, after referring to the provisions of Section 33 of the Industrial Disputes Act, 1947 has observed as under :-

> The basic object of these two sections broadly speaking appears to be to protect the workmen concerned in the dispute, which form the subject-matter of pending conciliation proceedings or proceedings by way of reference under Section 10 of the Act,

against victimisation by the employer on account of raising or continuing such pending disputes and to ensure that those pending proceedings are brought to expeditious termination in a peaceful atmosphere, undisturbed by any subsequent cause tending to further exacerbate the already strained relations between the employer and the workmen. To achieve this objective a ban, subject to certain conditions, has been imposed by Section 33 on the ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services under the general law governing contract of employment and Section 33A provides for relief against contravention of Section 33, by way of adjudication of the complaints by aggrieved workmen considering them to be disputes referred or pending in accordance with the provisions of the Act. This ban, however, is designed to restrict interference with the general rights and liabilities of the parties under the ordinary law within the limits truly necessary for accomplishing the above object. The employer is accordingly left free to deal with the employees when the action concerned is not punitive or mala fide or does not amount to victimisation or unfair labour practice. The anxiety of the legislature to effectively achieve the object of duly protecting the workmen against victimisation or unfair labour practices consistently with the preservation of the employer's bona fide right to maintain discipline and efficiency in the industry for securing the maximum production in a peaceful harmonious atmosphere is obvious from the overall scheme of these sections. Turning first to Section 33, sub-section [1] of this section deals with the case of a workman concerned in a pending dispute who has been prejudicially affected by an action in regard to a matter connected with such pending dispute and sub-section [2] similarly deals with workmen concerned in regard to matters unconnected with such pending disputes. Sub-section [1] bans alteration to the prejudice of the workman concerned in the conditions of service applicable to him immediately before the commencement of the proceedings and discharge or punishment whether by dismissal or otherwise of the workman concerned for misconduct connected with the dispute without the express Permission in writing of the authority dealing with the pending proceeding. Sub-section [2] places a similar ban in regard to matters not connected with the pending dispute but the employer is free to discharge or dismiss the workman by paying wages for one month provided he applies to the authority dealing with the pending proceeding for approval of the action taken. In the case before use we are concerned only with the ban imposed against orders of discharge or punishment as

contemplated by clause [b] of the two sub-sections. There are no allegations of alteration of the complainant's terms of service. It is not necessary for us to decide whether the present case is governed by sub-section [1] or sub-section [2] because the relevant clause in both the sub-sections is couched in similar language and we do not find any difference in the essential scope and purpose of these two subsections as far as the controversy before us is concerned. It is noteworthy that the ban is imposed only in regard to action taken for misconduct whether connected or unconnected with the dispute. The employer is, therefore, free to take action against his workmen if it is not based on any misconduct on their part. In this connection reference by way of contrast may be made to sub-section [3] of Section 33 which imposes an unqualified ban on the employer in regard to action by discharging or punishing the workman whether by dismissal or otherwise. In this sub-section we do not find any restriction such as is contained in clause [b] of sub-section [1] and [2]. Sub-section [3] protects 'protected workman' and the reason is obvious for the blanket protection of such a workman. The Legislature in his case appears to be anxious for the interest of healthy growth and development of trade union movement to ensure for him complete protection against every kind of order of discharge or punishment because of his special position as an officer of a registered trade union recognised as such in accordance with the rules made in that behalf. This explains the restricted protection in sub-section [1] and [2].

31. In the backdrop of the above fact situation, more particularly, in the absence of any recognition to the petitioner as a Protected Workman it is to be seen how the Industrial Tribunal had decided the first issue in reference. The learned Industrial Tribunal had discussed the oral evidence as well as the documentary evidence led before it by both the sides. It had referred to the documentary evidence led by the Workman viz. Exhibit – 1 : Appointment Letter dated 02.11.1985; Exhibit – 2 : Certificate of Management; Exhibit – 3 : Conciliation proceedings for Bonus for the Accounting Year : 2003 – 2004; Exhibit – 4 : Award dated 24.06.2004 passed by the Tribunal; Exhibit - 5 : Notice of Conciliation for bonus dated 19.10.2004; Exhibit – 6 : Letter of the

Management dated 27.11.2004, Exhibit – 7 : Conciliation proceedings dated 02.12.2004; Exhibit – 8 : Minutes of the Conciliation dated 28.12.2004; Exhibit – 9 : Letter of the Assistant Labour Commissioner to the Management dated 05.01.2005; Exhibit – 10 : Letter of Worker's Union dated 18.08.2007; Exhibit – 11 : Letter by the Assistant Labour Commissioner to the Management dated 18.08.2007; Exhibit – 12 : Letter by the Assistant Labour Commissioner to the Management dated 21.01.2008; Exhibit – 13 : Certified copy of the Judgment dated 02.03.2005 passed in W.P.[C] no. 1455/2005; Exhibit – 14 : Certified copy of the Order dated 03.06.2005 passed in W.A. no. 287/2005 and the documentary evidence led by the Management side are : Exhibit – A : Transfer Order dated 27.11.2004; Exhibit – B : Letter of the petitioner dated 06.12.2004; Exhibit – C : Letter of the Management on extension of time dated 07.12.2004; Exhibit – D : Letter of the Management to the petitioner dated 06.12.2004; Exhibit – E : Letter No. 214 & 215 with refused envelope; Exhibit – F : Letter dated 20.12.2004 for extension of time on joining of the petitioner; Exhibit – G : Letter of the Management dated 20.12.2004 with refused envelope; Exhibit – H : Paper cutting of Purvanchal Prahary dated 07.01.2005, Exhibit – I : Xerox copy of the cancelled Railway ticket, Exhibit – J : Letter of Coonoor Branch informing non-arrival of the petitioner; Exhibit – K : Standing Orders of the company.

32. The learned Tribunal had noted the fact that the petitioner joined the employer in the year 1985. The fact of pendency of the Conciliation proceedings at a time of issuance of the Transfer Order dated 27.11.2004 of the petitioner to Coonoor, Tamil Nadu wherein another factory of the employer was in existence was also taken note of. By the Transfer Order, the petitioner was requested to join in his transferred place of posting at Coonoor, Tamil Nadu w.e.f. 15.12.2004.

The learned Industrial Tribunal had also noted that as the petitioner did not join his transferred place of posting pursuant to the Transfer Order, the Management side extended the period of joining at the new assignment. In support of the fact of extension of the period to join the transferred place of posting, the learned Industrial Tribunal has observed that the Management side had proved the same by documentary evidence. The exhibited documents, available in the case records of Reference Case no. 01/2012, go to indicate that after issuance of the Order of Transfer dated 27.11.2004, the petitioner submitted a letter on 06.12.2004 claiming that his job was not a transferable one as per the terms and conditions and the employer could not enforce him to go and join the new place of posting. But the said claim of the petitioner is belied by the terms and conditions of the Appointment Letter dated 01.11.1986, which is a part of the case records and which bears the signature with a declaration of the petitioner that he had read and understood the terms and conditions which include the clause of transfer which permitted the employer to transfer him from his place of posting at Tinsukia to another branch or to another place or to sister concern or any place/places of working anywhere in India. Though in the said Letter dated 06.12.2004, the petitioner had claimed that he being the General Secretary of Steelsworth Worker's Union, was a Protected Workman, the said claim, in view of the observations made by the learned Industrial Tribunal and also in view of the discussion made above, is found to be misplaced. By Letter dated 07.12.2004 and Letter dated 09.12.2004, the petitioner was informed by the Management that his refusal to join at Coonoor, Tamil Nadu would tantamount to major misdemeanor as defined in standing orders then in force in M/s Steelsworth Pvt. Ltd. as the standing order had stipulated that refusal to accept transfer from one shift to another shift or from one section or

department to another or from one place to another, whether locally or out of station or from one establishment to any other establishments under the same Management would be treated as a major misdemeanor for which the Workman would be liable to be dismissed. The said Letters, dated 07.12.2004 & dated 09.12.2004, had further mentioned that the reserved railway ticket from Tinsukia to Coimbatore had already been booked and the same had to be collected by the petitioner from the concerned section well in advance. By Letters, dated 07.12.2004 & dated 09.12.2004, the Management had extended the time period for the petitioner in joining the duty at Coonoor to 01.01.2005. The endorsement in those Letters with signatures of a number of persons had indicated that the petitioner refused to accept those Letters when those were tendered to him. The materials on record further indicate that those two Letters were also sent to him by registered post to the petitioner at his address at Token no. 107/38, Quarter no. C-9 & C-10, Steelsworth Pvt. Ltd. The materials on record also include copies of reserved railway tickets to Coonoor and their cancellation. The materials on record also include the registered postal articles/envelopes, which were sent to address of the petitioner, bearing endorsements of the Postal Department that those were refused when tendered on a number of times. By the Letter dated 05.01.2005, the Management informed the petitioner to the effect that when the petitioner was advised to collect the railway ticket on 07.12.2004 in order to enable him to report for duty on 15.12.2004, the petitioner refused to collect the railway ticket. When as per the request of the petitioner, the date of joining was extended to 01.01.2005, the petitioner did not carry out the instruction. When the petitioner was again advised to collect the railway ticket dated 09.12.2004 to enable him to undertake the journey on 28.12.2004, the petitioner refused to accept the

Letter. The Letter dated 05.01.2005 mentioned that it was under those circumstances, the petitioner was released from the close of the working hours on 27.12.2004 in order to enable him to undertaken the journey on 28.12.2004. But the petitioner neither collected the ticket nor he had reported for duty at Coonoor, Tamil Nadu. The Letter had further mentioned that in spite of being released on 27.12.2004 the petitioner forcefully entered into the factory premises of M/s Steelsworth Pvt. Ltd. and marked his attendance and tried to do some works forcefully on 28.12.2004, 29.12.2004, 30.12.2004, 31.12.2004, 01.01.2005, 02.01.2005, 03.01.2005 and 04.01.2005. The Management by its Letter dated 05.01.2005, termed such actions on the part of the petitioner as unauthorized and illegal.

33. Having regard to such materials available on record, the findings recorded by the learned Industrial Tribunal that there was persistent refusal on the part of the workman to join duty notwithstanding the fact that the Management had done everything possible to persuade him and given him the opportunities to come back to the work cannot be said to be a perverse findings. In view of such refusal on the part of the petitioner to join at the new place of posting despite requesting him through a number of letters by the Management, it cannot be said that the action on the part of the Management to release the petitioner from the close of working hours on 27.12.2004 and declaring his acts of forcibly entering into the factory premises of M/s Steelsworth Pvt. Ltd. in the subsequent period and marking his attendance as unauthorized, by the Letter dated 05.01.2005, as unjustified. Thus, the finding arrived at by the learned Industrial Tribunal on the first issue in the Reference that the Management of M/s Steelsworth Pvt. Ltd. was justified in stoppage of work of the petitioner w.e.f. 05.01.2005 does not call for any interference in

certiorari jurisdiction of this Court. It is settled that ordinarily, an employee who has been transferred should join at his transferred place and in an industry, indiscipline should not be encouraged. As the decision of the Management in stopping the petitioner from working in the factory of M/s Steelsworth Pvt. Ltd. at Tinsukia from 05.01.2005 was found to be justified, the decision of the learned Industrial Tribunal that the petitioner was not entitled to any back wages w.e.f. 05.01.2005 unless he had carried out the order of the Management considering the matter of internal discipline at the work place, does not also call for any interference.

34. A query made to the learned counsel for the petitioner as to whether the petitioner had joined at his transferred place of posting to carry out the Transfer Order dated 27.11.2004, as had been observed in the Order dated 04.03.2013 of this Court, it has been conveyed that the petitioner did not join at his transferred place of posting, that is, Coonoor, Tamil Nadu subsequent to 04.03.2013.

35. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The High Court in exercise of certiorari jurisdiction does not convert itself into a Court of appeal and should re-appreciate or evaluate the evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. It is settled that a writ in the nature of certiorari under Article 226 of the Constitution of India is issued for correcting gross errors of jurisdiction, that is, when a subordinate court or tribunal is found to have acted [i] without jurisdiction – by assuming jurisdiction where there exist none, or [ii] in excess of its jurisdiction – by overstating or crossing the limits of jurisdiction, or [iii] acting in flagrant

disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice [Ref : Surjya Dev Rai vs. Ram Chander Rai and others, [2003] 6 SCC 675]. In regard to a finding of fact recorded by a subordinate court or a tribunal, a writ of certiorari can be issued only if in recording such a finding, the subordinate court or tribunal has acted on evidence which is legally impermissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. At the same time, it has to be kept in view that a pure error of fact, however grave, cannot be corrected by a writ of certiorari. Where two inferences are reasonably possible and the subordinate court or tribunal has chosen to take one view, such an error cannot be termed as gross or patent.

36. In view of the discussion made above and the reasons mentioned therein and having regard to the limits of certiorari jurisdiction, this Court does not find any good and sufficient reason to depart from the findings and the views that have been recorded by the learned Industrial Tribunal in respect of the issues referred to it by the Notification dated 11.11.2008. As a result, the writ petition is found to be bereft of any merit and is liable to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant