IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2009

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THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.39866,34651 AND 35679 OF 2006
(O.A.NO.1599,2766 AND 3794 OF 1998)

W.P.NO.39866 OF 2006:

K.Pandi .. Petitioner

Vs.

1.State
rep. by the Secretary to Government,
Finance Department,
Fort St. George,
Madras-9.
2.Deputy Secretary,
Finance,
Government of Tamil Nadu,
Madras-9.
3.Chief Internal Auditor and Chief
Auditor of Statutory Boards,
124, Thiagaraya Salai,
Madras-18. .. Respondents

W.P.NO.34651 OF 2006 :

M.Natarajan .. Petitioner

Vs.

1.The Registrar,
O/o The Registrar of Co-operative
Societies,
N.V.Natarajan Maligai,
Kilpauk,
Chennai-10.
2.The Joint Registrar of Co-operative
Societies,
Madurai Region,
Chinnachockikulam,
Madurai-2.

3.The Deputy Registrar of Co-operative
Societies,
Madurai Circle,
Plot No.44, K.K.Nagar, Madurai-2.

4.The Regional Deputy Director for
Milk Co-operative Audit,
No.1, Main Road,
S.S.Colony,
Madurai-16.
5.The Deputy Registrar/Dairying,
No.3, Sarojini Street,
Chinnachockikulam,
Madurai-2. .. Respondents

W.P.NO.35679 OF 2006:

A.Megarunniza .. Petitioner

Vs.

1.The Collector,
Panagal Building,
Thanjavur District,
Thanjavur.
2.The Commissioner,
Panchayat Union,
Peravurani. .. Respondents

W.P.No.39866 of 2006 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records made in the impugned order dated 17.4.1995 made in Lr.No.82102/L.F./94 passed by the first respondent, communicated by the third respondent by letter dated 18.12.1997 to the applicant, quash the same and to further direct the respondents to treat the period from 1.1.1994 to 2.8.1994 (214 days) as period in service of the applicant, pay necessary emoluments with all other monetary benefits as per the service rules.

W.P.No.34651 of 2006 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records on the file of the first respondent in his proceedings Rc.No.167633/95/OE3 dated 10.1.1997 (served on 8.8.97) and to quash the same so far as para (4) of the proceedings of the first respondent RC No.167633/95/OE3 dated 10.1.1997 and consequently direct the respondents to treat the period from 11.10.1994 to 1.8.1995 as compulsory wait and to disburse pay and allowances for the period.

W.P.NO.35679 OF 2006 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records relating to the proceedings of the Collector, Thanjavur District, Thanjavur in Na.Ka.No.10817/97 K3 dated 10.11.1997, quash the same and consequently, to direct the respondents to regularise the period from 7.9.1996 to 16.10.1996 as medical leave, 17.10.1996 to 25.10.1996 as compulsory wait and 25.10.1996 to 1.6.1997 as duty

and consequently to direct the respondents herein to disburse all the service benefits which has been withheld on account of the above nonregularisation and to pay all the arrears due to the applicant on the above heads within short date.

For Petitioner : Mr.M.V.Venkataseshan
in W.P.No.39866 of 2006
Mr.V.Ravikumar in W.P.No.34651/2006
Mr.K.Rajkumar in W.P.No.35679/2006

For Respondents : Mr.R.Neelakantan, GA
for R1 in W.P.35679/06
for RR1 to 5 in W.P.34651/2006
for respondents in WP.39866/2006
Mr.M.Devadoss for R2 in WP.35679/06

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COMMON ORDER

Heard Mr.M.V.Venkataseshan, Mr.V.Ravikumar and MR.K.Rajkumar counsel for respective petitioners and MR.R.Neelakantan, learned Government Advocate for respondent State and Mr.M.Davadoss for R2 in W.P.No.35679 of 2006.

2.These writ petitions arose out of O.A.No.1599, 2766 and 3794 of 1998 filed by the petitioners before the Tamil Nadu Administrative Tribunal. In view of the abolition of the Tribunal, they were transferred to this court and were renumbered as W.P.Nos.39866, 34651 and 35679 of 2006.

3.The petitioner in W.P.No.39866 of 2006 sought for the issuance of a writ of certiorarified mandamus to call for the records made in the impugned order dated 17.4.1995 made in Lr.No.82102/L.F./94 passed by the first respondent, communicated by the third respondent by letter dated 18.12.1997 to the applicant, quash the same and to further direct the respondents to treat the period from 1.1.1994 to 2.8.1994 (214 days) as period in service of the applicant, pay necessary emoluments with all other monetary 7benefits as per the service rules.

4.The petitioner in W.P.No.34651 of 2006 sought for the issue of a writ of certiorarified mandamus to call for the records on the file of the first respondent in his proceedings Rc.No.167633/95/OE3 dated 10.1.1997 (served on 8.8.97) and to quash the same so far as para (4) of the proceedings of the first respondent RC No.167633/95/OE3 dated 10.1.1997 and consequently direct the

respondents to treat the period from 11.10.1994 to 1.8.1995 as compulsory wait and to disburse pay and allowances for the period.

5.The petitioner in W.P.No.35679 of 2006 sought for the issuance of the writ of certiorarified mandamus to call for the

records relating to the proceedings of the Collector, Thanjavur District, Thanjavur in Na.Ka.No.10817/97 K3 dated 10.11.1997, quash the same and consequently, to direct the respondents to regularise the period from 7.9.1996 to 16.10.1996 as medical leave, 17.10.1996 to 25.10.1996 as compulsory wait and 25.10.1996 to 1.6.1997 as duty and consequently to direct the respondents herein to disburse all the service benefits which has been withheld on account of the above nonregularisation and to pay all the arrears due to the applicant on the above heads within short date.

6.In the first writ petition, the petitioner K.Pandy filed OA No.6576 of 1993 before the Tribunal seeking to challenge his curtailment of his deputation to the third respondent Corporation of Madurai. An interim order was granted on 9.12.93 staying the reversion. Subsequently, the OA was allowed by a final order, dated 15.4.1994. The operative portion of the order reads as follows:

> "This direction will be final direction in the Original Application considering that it is only fair that the applicant should be enabled to continue at Madurai for the normal term of 3 years and should not be deprived of that opportunity consequent on deputation to the Madurai Corporation contrary to the departmental regulations."

Pursuant to the final order passed by the Tribunal, the Government issued G.O.Ms.No.639, Finance Dept., dt.27.7.94 to implement the orders of the Tribunal. Thereafter, he was given a posting order to work in the Corporation. The petitioner wanted the period from 1.1.94 to 2.8.94 (214 days) as period in service and pay the necessary emoluments for the said period. When that was not forthcoming, he filed OA No.1599 of 1998 for the said purpose.

7.In response to the said OA, the first respondent has filed a reply affidavit, dated 30.11.98. In para 17 of the reply, it was averred as follows:

> "17.It is submitted that after the issue of orders of reversion to parent department and immediately after relief from Madurai Corporation, the applicant proceeded on Unearned Leave on Medical Certificate from 1.9.93. The applicant was posted at Madras in the Internal Audit Department in Chennai in this office memo No.6933/A3/93, dated 29.11.93 on expiry of his medical leave applied for by him. But he had not joined duty and continued to extend his leave. Meanwhile he filed this case in the Tamil Nadu Administrative Tribunal and after passing final orders of the Tribunal, permitting him to continue in the Madurai Corporation on Foreign Service in case he has not completed 3 years of service. Accordingly orders were passed and the applicant permitted to join Madurai Corporation again on 3.8.94. The above

happenings were due to the action of the individual and not because of the administrative lapses. The applicant was allowed to continue in Foreign Service at Madurai Corporation beyond the period of 3 years (i.e. for a period of 3 years 2 months and 29 days) to be precise as detailed below:

	Y	M	D
1.10.92 to 31.8.93	0	11	0
3.8.94 to 30.11.96	2	3	29
	or		
	3	2	29

As per rule 110-114 of F.R. no Government Servant is allowed to continue in Foreign Service beyond the period of 3 years. Accordingly he was transferred to Virudhunagar after completion of 3 years period. Here also the statement of the applicant that he was transferred to Virudhunagar from Madurai Corporation was due to vindictive attitude of the respondent is not correct. In the circumstances explained the prayer of the applicant to treat the period from 1.1.94 to 2.8.94 as a period of service merits no consideration and the Honourable Tribunal is requested to reject his prayer and render justice."

8.In the second writ petition, the petitioner challenged the order of Registrar of Co-operative Societies, dated 10.1.97 in refusing to consider his request to treat the period from 11.10.94 to 1.8.95 as compulsory wait. The said order came to be passed pursuant to the direction issued by the Tribunal in OA No.3106 of 1996, dated 1.11.96. The petitioner while working as a Co-operative Sub Registrar was sought to be transferred to another society as a Special Officer. He filed OA No.3369/94. The Tribunal granted an interim stay on 5.7.94. He was allowed to continue in the said society and subsequently, posted to work in an another society as a Special Officer on 19.7.94. He did not join in the said post. But, again filed Original Application No.2204/94. It is stated that the said OA was dismissed by the /Tribunal on 5.8.94 and the petitioner filed an appeal to the State Government. He was given another posting order on 23.12.94 to work under the control of Deputy Registrar (Dairy), Madurai. The petitioner gave letter on 27.1.95 expressing his willingness to join duty. But, he did not join duty. But filed OA No.2328 of 95 and obtained an interim stay on 13.5.95. The said stay order continued. When the matter came up on 24.2.97, the Tribunal in OA No.2328/95 gave a direction to consider the request of the petitioner to get a posting at Madurai and pass a suitable order during the general transfer to be effected in 1997. Thus, his OA was not disposed of on merits and till date, there is no order of the Tribunal going into the merits of the transfer order and no court has considered any of the transfer order either illegal or non-est in law. Therefore, in the impugned order, the petitioner's claim for treating the period of absence as service with wages was declined and the order stated as follows:

"In view of above circumstances it is clear that eventhough three postings were given to Thiru M.Natarajan, Cooperative Sub Registrar by the Joint Registrar of Cooperative Societies, Madurai Region then and there, he has failed to join duty and approached the Tamil Nadu Administrative Tribunal each and every time challenging the posting orders issued to him. As the entire fault lies with the individual in not joining the posts issued to him and that no administrative reasons could be attributed for claiming compulsory wait, his request for treating the period of absence from 11.10.94 to 1.8.95 cannot be complied with."

9.The respondents have also filed a reply affidavit, dated 26.9.2000 justifying the denial of treating the period as duty with wages.

10.In the third writ petition, the petitioner Mrs.A.Meharunniza has prayed for setting aside the order dated 10.11.97 in refusing to treat the period from 17.10.96 to 31.5.97 as duty period with wages. This was on the ground that the Tribunal order did not give any direction for payment of wages. In that case, the petitioner was transferred by an order, dated 25.10.96 from Peravurani to Thiruvonam. She filed OA No.6439/96, challenging the said order of transfer. The Tribunal by a final order, dated 19.2.97 allowed the OA. In the opearative portion, it was stated that the transfer order was passed by way of punishment and instead of proceeding against the allegations made against her, the transfer order was resorted to as a punitive measure, which cannot be accepted in law. Therefore, the order of transfer dated 23.10.96 was set aside by a final order dated 19.2.97. The said order was not appealed. But on the contrary it was implemented by an order dated 23.5.97.

11.When the petitioner sent a representation to treat the period as duty period, the same was refused. Therefore she filed OA No.3794/98 for getting the relief. In the reply affidavit filed by the respondent, dated 23.4.99, in paragraph No.8(a), it was averred as follows:

"(a)In pursuance of the orders of the above Judgment, she was reposted to Peravurani Block and she joined duty on 2.6.1997. Since no mention was made in the judgment about the regularisation of the period, and there is no provision in Tamil Nadu leave rules, orders were passed rejecting her appeal, with regard to her claim of treating the periods as requested by her as per this office letter Rc.10817/97/K-3 dated 10.11.1997. The above action is in accordance with the procedure in vague."

12.In view of the similar contentions raised in all these three writ petitions, the matters were heard together and a common

order is passed. The only question that arises for consideration in all these three writ petitons is under what circumstances, when the orders of transfer when intradicted by the tribunal/court either by an interim order or by a final order, the concerned Government servant was eligible to treat the period either as a compulsory wait or as duty period with wages. In ths context, it is necessary to refer to certain decision of the supreme Court which may have a bearing on the issues raised herein.

13.The Supreme Court in Ramesh Chandra Tyagi (Dr) v. Union of India reported in (1994) 2 SCC 416 has held that when a transfer order is held to be illegal the consequent dismissal order will also become non-est in law and an employee is entitled for benefits under law. It is therefore necessary to extract the following passage found in para 7 of the said order, which is as follows:

> 7. As regards the dismissal of the appellant it is unfortunate that he did not join. The service discipline does not permit such adamant attitude. We do not approve of the conduct of the appellant. At the same time the authorities too did not adopt any reasonable or rational attitude. They were out to squeeze the appellant and were not willing to budge and consider even when the Director of the Pune Institute requested them not to post him there as sending such a person was waste for a man of such high calibre. True, the terms and conditions of appointment provide that he could be transferred anywhere in the country. Yet the action must be fair and order legal. We have avoided entering into fairness but on legality there is no doubt. Such attitude of the administrative set-up is neither healthy nor conducive. In service culture devotion to work and duty is more important than clash of false ego. We are pained to observe that entire proceedings do not leave very happy and satisfactory impression. It was vehemently argued that there was no procedural irregularity. But that is writ large on the face of it. No charge-sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with endorsement "left without address" and on other occasion, "on repeated visits people in the house that he has gone out and they do not disclose where he has gone. Therefore, it is being returned". May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the postman or any other material to show that it was refusal by the

appellant who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under Postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to. And from the endorsement it is clear that the envelope containing charge-sheet was returned. In absence of any charge-sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer from any procedural infirmity. No further need be said as the appellant having been removed for not complying with the transfer order and it having been held that it was invalid and non est the order of dismissal falls automatically.

14.Similar view was taken in a recent judgment of the Supreme Court which arose under the Labour Law vide judgment in Novartis India Ltd. v. State of W.B. reported in (2009) 3 SCC 124. In the following passages found in paragraphs 34 and 38, it has been observed as follows:

34. There cannot be any doubt whatsoever that ordinarily an employee who has been transferred should, subject to just exceptions, join at his transferred place. Ordinarily in an industrial undertaking indiscipline should not be encouraged. This Court in SBI v. Anjan Sanyal[24] observed that the conduct of an employee in a transfer case is material as he cannot get a premium for his disobedience. There are, however, certain exceptional situations in this case. Admittedly the respondents were challenging the right of the employer to order transfer of the employee particularly when they hold some posts in the association. The dispute was sub judice. They were in their late fiftees. They had served the company for a period of more than 25 years. It is true that they did not join at their transferred posts within a reasonable time. It may also in an ordinary situation be held that seven months is too long a period to join at the transferred place. There cannot furthermore be any doubt that the transfer is an incidence of service. Unless an order of transfer is passed contrary to the provisions of the statutory rule or settlement, the same should not be interfered with.

.....

38. The respondents were in private employment and not in public employment. Their services were permanent in nature. The termination of their services was held to be illegal as prior to issuance of the orders, no enquiry had been

conducted. The order of discharge was, thus, void ab initio. Back wages, therefore, could have been granted from the date of termination of service."

15.In a particular case where the employee did not join at the transferred place and his action was found to be justified. The Supreme Court granted 50% of the wages for the period that he did not work at the transferred place vide its decision in Raj Bahadur Sharma v. Union of India reported in (1998) 9 SCC 458. Paragraphs 10 to 13 of the said judgment will be usefully extracted below:

10. Learned counsel appearing for the appellant submitted that though it was brought to the notice of the Tribunal that the appellant was not at fault in not joining at the transferred place, without giving any finding on that, the Tribunal has deprived the appellant of the salary for the period in question. He also brought to our notice that there was a specific plea, namely, that the appellant could not join at the transferred place in the absence of relieving order and necessary passes. The respondents never came forward to deny that assertion of the appellant. In other words, while the appellant was prepared to join the duty it was the administration which disabled the appellant to join the duty and, therefore, the appellant cannot be blamed.

11. Learned counsel appearing for the respondents could not deny the position and as a matter of fact, in the counter-affidavit filed instead of directly replying the point it is stated as follows:

"That in reply to para 2(ix) it is submitted that there is no material on record to show that the pass etc. were not issued to the petitioner."

There is no plea positively denying the averments of the appellant in para 2(ix) in the appeal.

12. In the circumstances, we hold that the appellant was not at fault in not joining at the transferred place. Therefore, when he was not at fault he cannot be blamed for the consequences entirely. It is also a fact that he did not work factually for the period in question.

13. Taking all these factors into consideration, we are of the view that the ends of justice would be met by directing the respondents to pay 50% of the salary and allowances for the period in question to the legal representatives of the deceased appellant within six months. The appeal

is accordingly allowed in part with no order as to costs.

16.While coming down heavily upon the High Court in interfering with the orders of transfer, the Supreme Court not only criticized the order of the High Court, but also held that payment of wages for the period in which an employee had disobeyed the order of transfer will depend upon the relevant rules and cannot be decided by the courts vide judgment in State Bank of India v. Anjan Sanyal reported in (2001) 5 SCC 508. Paragraphs 3 to 6 of the said judgment may be usefully extracted below:

> 3. On appeal being filed before the Division Bench, the performance of the Division Bench was no better. The learned Judges of the Division Bench reaffirmed the conclusion of the learned Single Judge that no formal order of transfer had been issued and served upon the respondent, transferring him from Narkeldanga Branch to the Central Office at Mumbai. The perversity of the approach of the Division Bench is apparent from the fact that the learned Judges did refer to the letter of the respondent dated 19-10-1986 and held that even though the respondent did not deny the existence of the order of transfer, but nowhere he had stated that he had seen or had been served with the order of transfer and there was no admission on the part of the respondent about the existence of the order of transfer. The High Court has totally lost sight of the fact that it was dealing with the legality of an order of transfer of an employee and not dealing with a criminal case, where the conviction had been maintained on the basis of a confessional statement. The further perversity of the Division Bench was that it came to hold that if in fact the respondent had been transferred from Calcutta to Mumbai, in that event, Calcutta office must have lost all control or jurisdiction over the service of the respondent and the respondent should be treated to be an officer under the administrative control of the Central Office, Mumbai, and therefore, the respondent could not have been posted by the Calcutta office temporarily at Muktaram Babu Street Branch of State Bank of India. To say the least, when the employer takes a sympathetic attitude and taking into account the fact that the employee was not going out of Calcutta for the last so many years, even if transferred and a posting is given to the employee, somewhere in Calcutta, that has been considered by the Court to hold that the earlier order of transfer to Mumbai never existed. We also do not find any justification for the Division Bench of the

Calcutta High Court to go into the question about the admissibility of drawing travelling allowance and daily allowance and then come to a conclusion that things have been dealt with in a cavalier fashion and there was no order of transfer to Mumbai. The Court ultimately came to hold that there is no question of going into the validity of the transfer, which was neither issued nor conveyed to the person concerned and which had no actual or factual existence at all but was only a myth. This conclusion of the Division Bench with utmost respect must be held to be a conclusion on surmises and conjectures and we really fail to understand how the Division Bench of the High Court has come to the aforesaid conclusion, in view of the series of correspondence, which we will refer to later. It is also further surprising that the fact that while posting the respondent at Muktaram Babu Street Branch, the order had not indicated about the cancellation of the earlier order of posting at Mumbai and it would be possible for any court of law to come to a conclusion that there had been no order of transfer as such. The Court then holds the employer liable and guilty of lapses and on that score, allows the salary and emoluments as well as other service benefits from 17-12-1986. The Court also records a conclusion that the employee should not suffer because of deliberate lapses and negligence on the part of the Bank and the Bank cannot take advantage of its own wrong done to the employee for so many years. It is curious to note that an employee serving in an all-India organisation, where the service is transferable, could be allowed to flout the orders of transfer on the so-called pretext that the order of transfer had not been served upon him and then would be allowed to draw his emoluments on an erroneous finding that the Bank was negligent in not serving the orders of transfer. This case is a glaring instance where the Court in its anxiety to help an employee, recorded the conclusions contrary to the relevant materials and arrived at findings on surmises and conjectures, even in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds

that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order. The Central Board of State Bank of India in exercise of powers conferred under sub-section (1) of Section 43 of the State Bank of India Act, 1955, has framed a set of Rules called the State Bank of India Officers' Service Rules. Rule 47 thereof, unequivocally provides that every officer is liable for transfer to any office or branch of the Bank or to any place or deputation to any other organisation in India. Rule 49 of the said Rules, stipulates the joining time, which an employee is entitled to when he is transferred to a new place from his old post. Rule 50 casts an obligation on the employee to comply with and obey all lawful and reasonable orders and directions, which may from time to time be given to him. Rule 50(1) may be quoted hereinbelow in extenso:

"50. (1) Every officer shall conform to and abide by these Rules and shall observe, comply with and obey all lawful and reasonable orders and directions which may from time to time be given to him by any person under whose jurisdiction, superintendence or control he may for the time being be placed."

Any violation of the aforesaid Rules, constitutes a misconduct under Rule 66 and becomes punishable under Rule 67. With this background, when we consider the legality of an order of transfer, alleged to have been passed on 14-6-1986, after the employee had continued in Calcutta for more than a decade and the said order has not been held by the High Court either to be mala fide or that the competent authority had not passed the order, it is indeed difficult to come to a conclusion that the said order had not been passed nor had been communicated to the employee concerned. Mr H.N. Salve, the learned Solicitor General appearing for State Bank of India, invited our attention to the letter of the respondent addressed to the General Manager (Operations), State Bank of India, Calcutta Local Head Office, whereunder the respondent had requested to defer his transfer up to June 1987 and in that letter in the very first para, the respondent in no uncertain terms had indicated that the Branch Manager of State Bank of India, Narkeldanga Branch, had addressed him by his letter dated 9-10-1986, which he is alleged to have received on 16-10-1986, informing him about his transfer to the Central Office at Mumbai.In the teeth of the

aforesaid letter of the respondent, we are little surprised to find the conclusion of the learned Judges of the Calcutta High Court, both the Single Judge as well as the Division Bench in entering into an arena of conjecture and coming to a conclusion that there had been no existence of an order of transfer nor had the same been communicated to the respondent. The Branch Manager of Narkeldanga Branch had addressed a letter to the respondent on 8-1-1987, intimating him that he had been relieved of his duties from the said Branch. The respondent again in his letter dated 5-12-1987 addressed to the Chief General Manager, State Bank of India, categorically stated that he had been informed by the Branch Manager, State Bank of India, Narkeldanga Branch, about his transfer to Central Office at Mumbai and he prayed for cancellation of the said posting and considering the desirability of posting him at a suitable place in Calcutta. State Bank of India, Calcutta Branch, immediately replied to the aforesaid letter of the respondent, informing him that as per the records, he had been relieved from Narkeldanga Branch at the close of business on 6-12-1986, with instructions to report to the Chief Officer, Central Office, Mumbai by their letter dated 14-12-1987, to which the respondent replied by his letter dated 12-1-1988. Even in that letter, the respondent stated that even though he has been relieved from the Narkeldanga Branch w.e.f. 6-12-1986, but he had not been instructed to report to the Chief Officer (Personnel Administration), Central Office, Mumbai, would itself indicate the frivolous pretext of the employee, as in all earlier letters he had been candid enough to state that he had been transferred to the Central Office at Mumbai. In view of the aforesaid correspondence between the employee and the employer, we are indeed surprised, how the High Court could rely upon a sentence in the letter of 30-4-1991, wherein a mention had been made that the officer concerned was not advised in writing by the Branch at the material time and it is on the basis of this sentence, the High Court jumped to the conclusion that neither there existed an order of transfer nor had it been communicated to the respondent. The bank authorities, on the other hand, have been repeatedly intimating the respondent that he is remaining absent without joining at the place to which he was transferred but yet the employee concerned did not comply with the order in question. Having been desperate in their attempt to give effect to a lawful order of transfer, when

the authorities took a sympathetic attitude and posted the respondent temporarily to M.B. Street, Calcutta on 19-7-1991 and then transferred him to Siliguri on 8-8-1991, the High Court finds fault with the same, on the ground that he having been already transferred to Mumbai, could not have been posted to M.B. Street, Calcutta without cancellation of the earlier order and further could not have been transferred to Siliguri. This, in our view, is an entirely erroneous approach of the High Court in dealing with the legality of an order of transfer. The entire fact situation unerringly points out to one fact, namely, that the respondent flouted the orders of transfer, did not join the place of posting, did not apply for or take leave for his absence, did not discharge his duties, and yet the High Court in exercise of its discretionary jurisdiction, not only set aside the order of transfer on a pretext which does not appeal to us with regard to the non-communication of the orders of transfer and even directed that the respondent would be entitled to his salary, increment, promotion and then only could be considered for further transfer to anywhere else. To us, it appears that the High Court has granted premium to an errant officer, who did not obey the orders of transfer and did not discharge any duty for which conduct of his, he could have been proceeded with, in a departmental proceeding on the charge of gross misconduct and could have been punished.

5. Mr S.S. Ray, the learned Senior Counsel appearing for the respondent, strongly argued that an officer of a bank could not be orally transferred and, therefore if there does not exist an order of transfer or if the said order had not been communicated to the employee concerned, the court would be justified in holding that the so-called transfer is illegal and invalid. From the series of correspondence, referred to by us earlier and in view of the unequivocal statement of the respondent therein, it is difficult for us to hold that there did not exist any order of transfer and that the respondent did not know of the same. On the other hand, we are persuaded to come to the conclusion that the respondent was fully aware of the orders of transfer and tried to evade the same by adopting all possible pretexts and continued to remain absent without discharging any duties. Mr Ray, then contended that the guidelines contained in the Handbook of Staff Matters, Vol. I, para 8.34(a) of Chapter VIII deal with a situation where an officer remains absent

in an unauthorised manner. The very fact that the said procedure had not been adhered to in the case in hand, justifies the ultimate conclusion of the learned Single Judge of the High Court that the order of transfer had not been served nor had the employee been directed to join the office at Mumbai. We are unable to accept this contention inasmuch as merely because the bank authorities did not proceed against the respondent, as provided in para 8.34(a), it cannot be held that the respondent did not absent himself from the duties without any authority. To us, it appears that even higher authorities of the Bank at Calcutta were quite soft towards the respondent and it is possibly for that purpose, they had not taken any action against him for all the lapses committed by him. On the materials on record, we are not in a position to agree with the conclusion of the learned Single Judge as well as the Division Bench of the Calcutta High Court that the order of transfer dated 14-6-1986, transferring the respondent to the Central Office at Mumbai was in any way illegal and invalid and can be held to be null and void. On the other hand, a valid order of transfer had been issued and the employee concerned had been relieved of his duties but instead of joining the place of posting, the employee concerned went on representing the authorities and openly disobeyed the orders of transfer. We are also of the opinion that there was no infirmity with the order dated 8-8-1991, transferring the respondent to Siliguri and the High Court was totally in error in interfering with the said order on the hypothesis that until and unless the respondent gets his emoluments for the entire period as well as promotion, question of transferring him out of Narkeldanga Branch does not arise. Such a conclusion is not permissible to be drawn on the fact situation and we, therefore, unhesitatingly set aside the same. We further hold that the order of transfer to Siliguri was also valid and the respondent did flout the same.

6. So far as the direction of the High Court regarding the salary and other pecuniary benefits is concerned, Mr Ray contended that for an employee of the bank in the absence of any rules, the principle of "no work no pay" can be made applicable and so long as the relationship of master and servant continues and the service has not come to an end, the employee is entitled to his salary. It is in this context, Mr Ray relied upon two decisions of this Court, the case of Bank of India v. T.S. Kelawala[1] and Syndicate Bank v. K.

Umesh Nayak[2]. The latter one is a Constitution Bench decision. In the first case, referred to by Mr Ray, the question for consideration was if an employee takes recourse to strike or "go slow" or any other method, resulting in no work for the whole day or days, then whether the management will be entitled to deduct, pro rata or otherwise, wages of the participating workmen notwithstanding absence of any stipulation in the contract of employment or any provision in the service rules, regulations or standing orders. Mr Ray relied upon the observations made in the aforesaid judgment in para 22, to the effect: (SCC p. 760)

"Where the contract, standing orders or the service rules/regulations are silent on the subject, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed."

In the latter Constitution Bench decision also, the Court was considering whether workers having been on strike, wages could be paid or the theory of "no work no pay" would apply. Mr Ray contended that the ratio in the aforesaid case is that unless the Rules permit, the respondent would be entitled to the salary. In the Constitution Bench decision, the Court has observed that to entitle the workmen to the wages for the strike period, the strike has to be held both legal and justified and whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Applying the same to the facts of the present case, the order of transfer having been held by us to be valid and the employee having not obeyed the same, and not having discharged the duties, but yet continuing in service, how the period should be dealt with, will depend upon the relevant Rules and Regulations of the Bank. We are told that the State Bank of India Officers' Service Rules deal with the said situation, and, therefore, the competent authority of the Bank would deal with the same. But we have no hesitation in setting aside the directions of the High Court, directing the Bank to pay the salary and other benefits to the respondent in the case in hand. In the aforesaid premises, we set aside the judgment of the learned Single Judge as well as that of the Division Bench of the Calcutta High Court and allow this appeal. The writ petition filed by the respondent in the High Court stands dismissed.

17.Even in cases where there was no interim order granting stay of the transfer when in the final order if their transfer was found to be illegal, then the employee has to be paid wages for the interregnum period and it cannot be treated on the principle of no work no pay. This was held so by the Supreme Court vide its decision in Somesh Tiwari v. Union of India reported in (2009) 2 SCC 592, at page 598. In paragraphs 20 and 22 to 24, it was held as follows:

> 20. The respondents knew that the matter was pending before the Tribunal. They did not approach the Tribunal to obtain leave for passing the second order of transfer. They passed an order of transfer while considering the cases of promotion and transfer of a large number of officers. The order of transfer suffered from a total non-application of mind insofar as it proceeded on the premise that the appellant had already joined his post at Shillong. Even it was not stated that the said order of transfer was being passed in modification of the earlier order of transfer or upon reconsideration of the matter afresh on humanitarian ground or otherwise. We may place on record an extract from the note-sheet of Member (P&V) dated 31-10-2005 which reads as under:
>
> "AC(P) (i.e. petitioner) has tried to fix responsibility on some superintendents for loss/closure of some files about investigations against assessees, those superintendents, who happened to belong to SC/ST category on being thus pressured, had complained to the police and other agencies alleging harassment of backward classes by Shri Somesh Tiwari, a Brahmin, these complaints were found to be baseless and the police had not pursued the matter. Having failed at the local level, it is possible that these officers had lodged the complaint at Delhi which resulted in Shri Tiwari's transfer. Shri Tiwari is an honest and well- intentioned officer. … It is proposed to give him less harsh posting." (emphasis supplied)
>
> Removal of the appellant from Bhopal to a place which is "less harsh" was thus recommended, which had evidently been acted upon. It is thus demonstrable that "Shillong" was considered to be a harsh posting.
>
> 22. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India must consider the facts of each case. Mechanical application of the normal rule "no work no pay" may in a case of this nature, be found to be wholly unjust. No absolute proposition of law in this behalf can be laid down.
>
> 23. This Court in Karnataka Housing Board v. C.

Muddaiah[1] laid down the law, thus: (SCC pp. 700-01, paras 33-34)

"33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

34. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected." (emphasis in original)

24. We, keeping in view the fact, that on the one

> hand the appellant did not join his posting at Ahmedabad, although no order of stay was passed and on the other wholly unwarranted and reprehensible conduct on the part of the authorities of the respondents, are of the opinion that interest of justice would be subserved if during the period from 28-12-2005 till his joining his post at Bhopal, the appellant is treated to be on leave and the respondents are directed to pass an appropriate order invoking the leave rules applicable in this behalf. It is ordered accordingly.

18.Mr.K.Rajkumar, learned counsel for the petitioner stated that inasmuch as his client has succeeded in setting aside the order of transfer as illegal, the period will have to be regulated not in terms of the rules and the official respondents cannot go behind the order passed by this Court. In this context, he relied upon the judgment of the Supreme Court in Devendra Pratap Narain Rai Sharma Vs. State of U.P. and others reported in AIR 1962 SC 1334, wherein in paragraph 11, it has been observed as follows:

> "11...This rule has no application to cases like the present in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated. This rule, undoubtedly enables the State Government to fix the pay of a public servant whose dismissal is set aside in a departmental appeal. But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous, The effect of the adjudication of the civil court is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work.

19.In view of the settled legal positions, in cases where transfer orders are finally set aside by the court, there will be no difficulty in ordering the official respondents to regularise their period as spent on duty with wages. Since in those cases once the order of transfer is set aside, it is as if there is no order in the eye of law and consequently, the employee may stake his claim for wages. Therefore, W.P.No.39866 of 2006 (OA No.1599 of 1998) and W.P.No.35679 of 2006 (OA No.3794 of 1998) will stand allowed. The respondents are directed to pass appropriate orders on the claim made by the petitioner therein within a period of two months from the date of receipt of this order.

20.However, Mr.V.Ravikumar, learned counsel for the petitioner in W.P.No.34651 of 2006 contended that even in cases where there are interim orders granting stay which finally did not result in a final order being passed by the tribunal or court, the employees are entitled for wages for the period for which the interim stay in force. In this context, he pressed into service the order of the Supreme Court in Electronics Corpn. of India Ltd. v. Sateesh S. Rao Sonawalkar reported in (2004) 11 SCC 550 and he relied on the following passages found in paragraphs 8 and 9, which may be usefully extracted below:

> "8.... It is further submitted that the period with effect from 17-7-1995 to 8-11-1995 can be adjusted against earned leave on full salary. Thereafter, the respondent was granted three months' extraordinary leave without pay w.e.f. 9-11-1995 to 7-2-1996 during which period he went abroad, namely, USA. The rest of the period may be allowed to be treated as the period on extraordinary leave without pay. We, however, find that the respondent had on 19-7-1995 obtained the stay order of his transfer. The respondent reported on duty with that order on the next day. The appellants sat tight over the matter for a period of five months, without bringing to the notice of the Court that the respondent stood relieved on 17-7-1995 and moved for vacation of the stay order only on 19-12-1995 and the stay order was vacated only on 8-4-1996, that is to say, the stay order remained operative w.e.f. 19-7-1995 till the date of its vacation i.e. on 8-4-1996. The respondent had made himself available and had reported on duty on 20-7-1995. This kind of relieving order, if passed on 17-7-1995, should have been brought to the notice of the Court at the earliest, rather than to allow it to continue for such a long time even though appearance on behalf of the appellants was put in before the Court much earlier. In the circumstances, the case of relieving of the respondent in the manner as indicated by the appellants is not liable to be accepted.
>
> 9. Therefore, we provide that the period from 17-7-1995 to 8-4-1996 shall be treated as the period spent on duty and the appellants shall pay full salary for the said period, excluding the period of three months w.e.f. 9-11-1995 to 7-2-1996 for which extraordinary leave was granted to the respondent to visit USA. The period after 8-4-1996 shall be adjusted against earned leave or any other such leave which according to the appellants have been made admissible to the respondent for the period from 17-7-1995 to 8-11-1995. The rest of the period has only to be regularised as

against extraordinary leave without pay. In this manner the continuity of service of the respondent is also maintained and all the period of service would also stand regularised in the spirit of the order passed by the High Court. The arrears of salary to be calculated in the manner indicated above shall be worked out and paid within six weeks from today.

21.He also stated that the said decision had been followed by the learned judges of this Court and the matter was considered along with Rule 9(3)(3) of the Fundamental Rules. This court is unable to agree with the submission that the said decision of the Supreme Court had laid down law on the question of wages to be paid even in cases where the order of transfer was not finally decided by the courts. It must be stated that directions given by the Supreme Court by virtue of power under Article 142 of the Constitution cannot be a binding precedent for the High Courts to follow the same. The Supreme Court has emphasized that the power given to the Supreme Court under Article 142 is not available to the High Court exercising power under Article 226 of the constitution.

22.In this context, the following two decisions of the Supreme Court may be usefully referred to.

23.The Supreme Court in Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta reported in (1998) 8 SCC 245 in paragraph 8 observed as follows:

"8.Learned counsel for Respondent 1 relying upon the decision of this Court in Bhagat Ram v. State of H.P.[2] submitted that penalty not commensurate with the gravity of the misconduct has to be considered as violative of Article 14. He further submitted that dismissal from service being an economic death, such a severe punishment ought not to have been imposed upon Respondent 1 when by his said acts, he was not to gain any additional financial benefit. Whether he was likely to gain anything or not thereby did not have much bearing on the gravity of the misconduct. The acts committed by him constituted not only a serious misconduct but also a serious criminal offence. Learned counsel also relied upon the earlier-quoted observations made by Hansaria, J. in B.C. Chaturvedi case[1]. Really, they have no relevance to the facts of this case. This is not a case where the High Court/Tribunal found any difficulty in granting an appropriate relief to Respondent 1 because of some technicality of rules or procedure even though justice demanded it. Moreover, the said observations are no more than an expression of a personal view. What is to be noted is that Hansaria, J. agreed with what the other two learned Judges held as regards

the powers of the High Court/Tribunal to interfere with the order of penalty passed by the disciplinary authority. Therefore, it would not be correct to say that this Court in B.C. Chaturvedi case[1] has accepted the view that the High Courts/Tribunals possess the same power which this Court has under Article 142 of the Constitution for doing complete justice, even in the absence of such a provision.

24.The Supreme Court in C.M. Singh v. H.P. Krishi Vishva Vidyalaya reported in (1999) 9 SCC 40 in paragraph 5 observed as follows:

"5. The High Court quoted in its judgment from the decision of this Court in the case of Rekha Chaturvedi[1] but it would appear that it did not realise the import of these sentences:

"There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, it would result in injustice to those who have been selected."

These sentences show that the Selection Committee there had discretionary powers vested in it under the University Ordinance to relax the requisite qualifications. There is nothing on record before us to show that the Selection Committee in the instant case had discretionary powers to relax the qualifications of the candidates, or that it had exercised them. Apart therefrom, the language employed by this Court in Rekha Chaturvedi case[1] would suggest that this Court was employing the powers conferred on it under Article 142 to do complete justice. The High Court does not have such powers. Having found on merits in favour of the writ petitioners we do not think that the High Court was justified in declining any relief to them.

25.Further, it must also be stated that an order of interim stay will operate only till the disposal of the main case and it will have no value once the main case is disposed of by the court. In this context, it is necessary to refer to the following decisions of this Court and the Bombay High Court, which are as follows.

26.The Division bench judgment of this court in C.Kamatchi Ammal Vs. Kattabomman Transport Corporation Ltd. and others reported in AIR 1987 MADRAS 173 held that interlocutory orders

made in the course of proceedings will necessarily lapse with the decision of the suit unless the suit is one for permanent injunction and the interim injunction is made permanent as a part of the decretal order made by the court.

27.The judgment of the Bombay High Court reported in Ramesh Akre and others Vs. Smt.Mangalabai Pralhad Akre and others reported in AIR 2002 Bombay 487 held as follows:

> "21.Similarly, it is also not necessary that suit should be disposed of only on merits in order to bring an end to interim order. What is contemplated in law is that such interim order would continue to operate till suit is disposed of one way or the other and would come to an end on the day suit is disposed of. Whether suit is disposed of for want of prosecution or on merits is not the criteria to decide existence of interim orders. These orders by their very nature are temporary and remain in force only during the pendency of the suit and come to an end when the suit is disposed of one way or the other."

28.In W.P.No.34651 of 2006 in OA No.2766 of 1998, the petitioner filed case after case against transfer orders and no case, he finally succeeded in setting aside the transfer. Therefore, on the strength of the interim order, he cannot get the period treated as duty with wages which period he never worked. Also, invocation of the fundamental rule for treating the period as compulsory wait may not arise since there was no occasion of the petitioner being kept waiting for want of posting orders. The authorities have treated the period of absence in a manner known to law. The said order does not call for any interference from this court. Hence, W.P.No.34651 of 2006 (OA No.2766 of 1998) lacks in merits and accordingly, stands dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vvk

To

1.The Secretary to Government,
State of Tamil Nadu,
Finance Department,
Fort St. George, Madras-9

2.The Deputy Secretary,
Finance,
Government of Tamil Nadu,
Madras-9.

3.The Chief Internal Auditor and Chief
Auditor of Statutory Boards,
124, Thiagaraya Salai,
Madras-18.

4.The Registrar,
O/o The Registrar of Co-operative
Societies,
N.V.Natarajan Maligai,
Kilpauk, Chennai-10.

5.The Joint Registrar of Co-operative
Societies,
Madurai Region,
Chinnachockikulam,
Madurai-2.

6.The Deputy Registrar of Co-operative
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7.The Regional Deputy Director for
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8.The Deputy Registrar/Dairying,
No.3, Sarojini Street,
Chinnachockikulam, Madurai-2.

9.The Collector,
Panagal Building,
Thanjavur District, Thanjavur.

10.The Commissioner,
Panchayat Union, Peravurani.

1 cc To Mr.V.Ravikumar, Advocate, SR.49412
2 ccs To The Government Pleader, SR.50120, 50143
1 cc To Mr.M.V.Venkataseshan, Advocate, SR.49524
1 cc To Mr.K.Rajkumar, Advocate, SR.50212

PKB(CO)
SRA(8/10/2009)