

**Koshi Project Workers Association and ors. Vs. State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Aug-02-1996

**Judge :** N.K. Sinha, J.

**Acts :** Industrial Disputes Act - Sections 14 and 18

**Appeal No. :** C.W.J.C. No. 1126/1995

**Appellant :** Koshi Project Workers Association and ors.

**Respondent :** State of Bihar and ors.

**Advocate for Def. :** Ganga Prasad Rai, A.A.G.3

**Advocate for Pet/Ap. :** B.K. Sinha, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**N.K. Sinha, J.**

1. In this writ petition the petitioner Nos. 4 to 37 who are workmen of Water Resources Department of the State Government seek quashing of their transfer orders (Annexures 19, 20, 21, 22, 23, 24, 36, 37, 38, 39, 41 and 42) issued by the respondents-employer in between June 28, 1993 and September 9, 1994. The quashing is sought on the ground that they are office bearers of one or the other of

the three Associations (Petitioner Nos. 1, 2 and 3) and the impugned orders are in violation of the tripartite agreement dated November 28, 1994 (Annexure 1) having statutory force and ultra vires the provisions of the Industrial Disputes Act, 1947 (hereinafter 'the Act'). The petitioners also pray for issue of mandamus for payment of their salary and direction to the respondents to discharge their duties and obligations under the Act.

2. Only such of the facts as are necessary to resolve the controversy need be noticed. Petitioner Nos. 4 to 37 are holding non-gazetted posts, such as, Accounts Clerk, Correspondence Clerk, Store Keeper, Typist, Steno Typist, Moharrir and Clerks in the field offices of the Water Resources Department (previously Irrigation Department) of the Government of Bihar (hereinafter referred to as the 'Department'). The Secretary to the Government and the Chief Engineer and other officials of the Department are Respondent Nos. 2 to 8. The Petitioner Nos. 4 to 16 claimed to be the office bearers of Gandak Yojna Karamchari Kalyan Sangh (Petitioner No. 2) with Petitioner Nos. 4, 5, 6 and 7 being the Vice President, General Secretary, Joint Secretary and Treasurer respectively and the rest being members of the Central Executive Committee. Petitioner Nos. 17

to 29 are said to be office bearers of Koshi Project Workers Association (Petitioner No. 1) with Petitioner Nos. 17, 18 and 19 being its Vice President, Secretary and Treasurer, respectively and likewise Petitioner Nos. 30 to 37 are office bearers of the Bihar Rajya Nadi Ghati Pariyojna Karamchari Sangh (Petitioner No. 3) with Petitioner Nos. 30 and 31 as its Vice President and Petitioner No. 32 its Central Executive Committee. All the three petitioners, Association are registered under the Indian Trade Unions Act, 1926 and under Section 2B of the said Act office bearer includes any member of the Executive Committee thereof. The petitioner-Association Nos. 1 and 2 are also recognised unions by the respondent-employer. All the three Associations are members of the Bihar Rajya Ja! Sansadhan Karamchari Federation, Patna, (hereinafter the 'Federation') with effect from November 7, 1993.

3. Some of the petitioners who were office bearers of the three unions who were transferred by the respondent employer in violation of the State Government policy

not to transfer the office bearers of the unions raised a dispute on the issue of their transfers through their respective unions. Thereafter Respondent Nos. 2 and 3 employer stopped payment of monthly salary of all the concerned petitioners (Nos. 6, 7, 10, 11, 15, 18, 19, 23, 24, 25, 26, 27, 28, 29, 30 and 32) after their transfer in 1993. The three unions (Petitioner Nos. 1, 2 and 3) and the Federation raised an industrial dispute for stoppage of transfer of the office bearers and for cancellation of the transfers already made. They served notice that in case of non-fulfilment of demand of the workmen of the department, they will resort to strike with effect from February 15, 1994 through four separate demand-cum-strike notices all dated January 7, 1994. (Annexures 30, 31, 32 and 33). The Commissioner of Labour, Government of Bihar (Respondent No. 10) who is Conciliation Officer under the provisions of the Industrial Disputes Act, 1947, initiated conciliation proceedings in respect of the industrial dispute. In view of the on going discussion in between the employer and the Trade Unions representatives, the Unions on the request of the Labour Commissioner postponed their proposed strike with effect from February 15, 1994. While the conciliation proceedings were pending the respondent-employer (Respondent Nos. 4, 5 and 7) transferred petitioner Nos. 4, 5, 8, 9, 12, 13, 14 and 16, the office bearers of petitioner-Association No. 2 and petitioner No. 31 office bearer of petitioner-Association No. 3. The three unions submitted complaint against respondents-employer 2 and 3 before the Labour Commissioner cum-Conciliation Officer that the transfer of the office bearers during the pendency of the conciliation proceedings was violative of the provisions of Section 33 of the Act and demanded their cancellation. The Labour Commissioner requested the Respondent Nos. 4 and 7 to show cause by his notice (Annexure 40) as to why legal action be not taken against them for violating the above provisions of the Act. Ignoring the show cause as also the fact that the transfer of office bearers of the Union was a subject matter of Industrial Disputes, the Special Officer-cum-Deputy Secretary of the department (Respondent No. 7) transferred Petitioner No. 17 office bearer of petitioner--Association No. 1 and Petitioner Nos. 33, 34, 35, 36 and 37 office bearers of petitioner-Association No. 3 by orders dated May 4, 1994 and September 9, 1994 (Annexures 41 and 42). Petitioner-Association No. 1 submitted complaint to the Labour Commissioner against the transfer of office bearers of the Union made in September 1994 by

letter dated September 22, 1994 (Annexure 43). Meanwhile the conciliation proceeding continued and in the proceedings held on November 29, 1994 by the Labour Commissioner-cum-Conciliation Officer a tripartite settlement (Annexure 1) was arrived at under Section 18(3) of the Act in between the management of the Water Resources Department, Government of Bihar (Respondent Nos. 2, 4, & 5) and all the

Trade Unions (Petitioner Nos. 1, 2 and 3) and the Federation. The petitioners contend that as per Clauses 1 and 2 of the Tripartite agreement (Annexure 1) the transfer order of the petitioners (serial Nos. 4 to 37) are required to be cancelled by Respondent Nos. 3, 5, 6 and 7 -- employer. On the failure of the respondents to do so the Federation made a complaint to the Labour Commissioner who requested the Respondent No. 2 --employer to implement the agreement without any further delay saying that the failure to implement the agreement is punishable as an offence under Section 29 of the Act. A copy of the letter dated May 2, 1995 of the Labour Commissioner is Annexure 47. Respondent No. 7 despite all this issued a press note dated July 4, 1995 (Annexure 48) directing some of the petitioners to report to their place of postings threatening to terminate their services if they did not do so. Petitioner Nos. 7, 20, 22 and 33 subsequently joined their new place of postings out of fear of termination of their services.

4. Since the respondents do not dispute the conclusion of the Tripartite agreement (Annexure-1) and the controversy in between the parties is only in respect of its interpretation for the purposes of implementation, the English translation of the agreement (Annexure-1) which is in Hindi is reproduced below :--

' Annexure-1

'Memorandum of the agreement reached on November 29, 1994 in the office chamber of the Minister, Water Resources Department in presence of the Minister, Water Resources Department, the Labour Commissioner and Conciliation Officer, Bihar, on the charter of demands given by Bihar State Water Resources Employees Federation before the Water Resources Department, Bihar, Patna

Present

## Representatives of Water Resources Deptt-

1. Sri Vijoy Shankar Dubey, Commissioner and Secretary, Water Resources Department, Bihar, Patna ; 2. Sri Rana Awadhesh Kumar, Deputy Secretary, Water Resources Department, Bihar, Patna. 3. Sri Ram Bahadur Singh, Deputy Secretary, Water Resources Department, Bihar, Patna.

## Representatives of Bihar State Water Resources Employees Federation.

1. Sri Surendra Prasad Raj, M.L.A., Chairman, Gandak Project Employees Welfare Association. 2. Sri Lakshmi Narain Singh, General Secretary, Bihar State Water Resources Employees' Federation, 7. Virchand Patel Path, Patna ; 3. Sri Maheshwar Nath Pandey, General Secretary, Gandak Project Employees' Welfare Association, 7. Virchand Patel Path, Patna (Registered); 4. Sri Ram Prasad Tiwary, State President, Bihar State Water Resources Employees' Federation and State President, Bihar State River Valley Project Employees' Association, Virchand Patel Path, Patna. 5. Sri Punya Deo Thakur, General Secretary, Kosi Project Workers Association, Virpur ; 6. Sri Amar Nath Jha, Joint Secretary, Bihar State Water Resources Employees Federation ; 7. Virchand Patel Path, Patna; 8. Sri Ram Vilash Prasad Shahi Employee Chairman, Gandak Project Employees Welfare Association.'

The following decisions were taken after the talks held on November 29, 1994 in presence of the Labour Commissioner and Conciliation Officer in connection with the charter of demands given by the Bihar State Water Resources Employees' Federation in the office chamber of Water Resources Minister, Bihar Patna:

1. As per the registered constitution of the unions, the transfer of the office-bearers of the Central Executive Committee working in recognised Trade Unions of the Water Resources Department shall not be made

without their consent during the period of holding post by them. The transfer of the office-bearers under reference, which is contained in this dispute, shall be cancelled.

2. The Bihar State River Valley Project Employees Union is also a party in the talk which is unit of the Federation, but this union is not recognised. Therefore, for the cordial solution of the problems, it has been decided that the transfer of those office bearers of the Central Executive Committee of this Union, which is a matter of Industrial Dispute, as per the registered constitution of the Union, shall be treated as cancelled. Since this Union is a registered one, but not recognised, the facilities to be given to the office-bearers of Central Executive Committee, as per decision taken in serial No. 1, shall not automatically be given to this Union.

3. It has also been decided that the officebearers, who are not included in the decision taken in the aforesaid serial No. 1 and 2 and their transfer is a matter of dispute in the talk for conciliation, shall not be victimised in any way for non-compliance of the previous transfer order.

4. The Federation and Management (Department) shall try to solve the problems at their own level entering into the bipartite talks on other points raised in the talk for conciliation. The copy of the agreement of such talks shall be forwarded to the Labour Commissioner-cum-Conciliation Officer, Bihar.

5. It has also been decided that the Federation shall withdraw its notice for strike agitation from today.

6. The Bihar Rajya Jal Sansdhan Karamchari Federation is not registered with the Labour Department. The Water Resources Department also has not given recognition to this Federation. The above stated facilities shall be given

by the Water Resources Deptt. only to the office bearers of Central Executive Committee of recognised trade unions.

Sd/- Illegible

1. (Vijay Shankar Dubey)

Sd/- Illegible

1. (Surendra Pd. Rai)

M.L.A.

Sd/- Illegible

2. (Rana Awadnesh Kumar)

- Illegible

2. (Lakshmi Narain Singh)

Sd/- Illegible

3.(Bam Bahadur Singh)

Sd/- Illegible

4. (Ram Pramod Tiwari)

Sd/- Illegible 29.11.94

5. (Purnya Deo Thakur)

Sd/- Illegible 21.11.94

Amarnath Jha)

Sd/- Illegible

(Ram Villas Prasad Shahi)

Sd/- Illegible November 29, 1994

Vyasji Ji,

Labour Commissioner-cum-Conciliation Officer, Bihar, Patna.'

5. Before dealing with the tripartite agreement dated November 29, 1994 (Annexure-1), an order dated February 18, 1993 passed by a Division Bench of this Court dismissing C.W.J.C. No. 507/93 may be referred to. The copy of the order is Annexure-B to the counter affidavit filed by the respondents. The writ

petition was filed by Koshi Project Workers Association, one of the petitioners in the present writ petition. It had been filed by the Association through its Secretary challenging certain orders (Annexure-1 series)

transferring different employees of the Water Resources Department from one place to another. It appears that the writ petition was pressed mainly on the ground that the office bearers of the Association cannot be transferred from one place to another in view of different letters and instructions issued by the State Government from time to time as also in view of Section 9A of the Industrial Disputes Act. The writ petition was dismissed as no statutory rule had been produced that office bearers of the Association cannot be transferred from one station to another and in view of the well-known principle that Government employees have got no right to stay over a particular station for an indefinite period in absence of any statutory rule. The present writ petition also refers to a number of State Government orders and circulars to the effect that office bearers of Unions should not be transferred without their consent. A copy of general circular No. 93 dated January 18, 1995 of the State Government in the Cabinet Secretariat and Coordination Department, addressed to all the departments of the Government, their Heads of Department, Divisional Commissioners and district officers on the subject of transfer of office bearers of Federation / Association has been filed as Annexure-51 to the writ petition. The circular refers to previous circulars and orders on the subject and reiterates the resolve of the State Government that the instructions regarding such transfers should be strictly followed. It is well settled that such circulars and orders have no statutory force and do not confer any right on the office bearers of the Association to challenge transfers made in contravention of such circulars and orders as violative of their rights under the law. Sri B.K. Sinha learned Counsel for the petitioners contended that the present writ petition has not been filed for challenging the impugned orders of transfers on the ground of contravention or violation of any Government order or circular prohibiting such transfers of office bearers of the Association. The petitioners have

moved this Court for quashing the transfer orders as violative of the tripartite agreement which is a settlement and has under the provisions of the Industrial

Disputes Act. To be fair to Sri Ganga Prasad Roy, A.A.G., appearing for the respondent State, it must be placed on record that no argument was advanced that the present writ petition was barred by the principles of res judicata on account of the order (Annexure-B) passed in C.W.J.C. 507/93. At this very place it would be convenient to refer to paras 5 and 6 of the counter-affidavit stating that the impugned order transferring the petitioners were passed on different dates in the year 1993 & 1994 and the writ-petition was, therefore, fit to be dismissed for misjoinder of different causes of action. In view of what has been stated above such a ground is not available to the respondent and it does not merit any serious consideration.

6. The conclusion of the tripartite agreement (Annexure-I) is not disputed by the parties. It is also not disputed that the settlement was arrived at in course of a conciliation proceeding. Annexure-I the English copy of which has been reproduced in para 4 of the order itself mentions that the agreement was reached on November 29, 1994 in presence of the Minister, Water Resources Department in his official chambers and in the presence of Labour Commissioner and Conciliation Officer, Bihar, in respect of the charter of demands given by the Bihar State Water Resources Employees Federation before the Water Resources Department. The Commissioner and Secretary and two Deputy Secretaries of the department were present as representatives of the department with the representatives of the Bihar State Water Resources Employees Federation including the representatives of the three Unions (Petitioner Nos. 1, 2 and 3). The decisions arrived at are mentioned in Clauses 1 to 6 of the agreement and it was signed by the representatives of the department and the representatives of the Federation and Associations in the presence of the Labour Commissioner-cum-Conciliation Officer on the date of agreement, i.e. on November 29, 1994. Sri B.K. Sinha argued that the settlement was arrived at (sic) in course of a conciliation proceeding and it was, therefore, binding under Section 18(3) of the Act on all the parties including the respondent-employer. Section 18 of the Industrial Disputes Act, 1947 reads as follows :--

'18. Persons on whom settlements and awards are binding.-- (1) A settlement arrived at by agreement between the employer and workman otherwise than in the

course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of Sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Sub-section (3-A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal, which has become enforceable shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal as the case may be, records the opinion that they were so summoned without proper cause ;

(c) Where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates ;

(d) Where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.'

In view of the averments made in the writ-petition and not denied by the respondent-State in their counter affidavit or in course of the argument there is no doubt whatsoever that Annexure-1 was a settlement arrived at in course of the conciliation proceedings as it (Annexure-1) purports to be and thus the settlement arrived at was one covered by Sub-section (3) of Section 18 of the Act.

7. Section 18(3) also provides that the settlement shall be binding on all the parties to the Industrial Disputes if it has become enforceable. Section 19 of the Act deals with period of operation of settlement and awards and Sub-section (1) provides

that a settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute. Sub-section (2) of Section 19 provides that such settlement shall be binding for such period as is agreed upon by the parties and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties (o the settlement. As is evident from Annexure-1 no date was agreed upon by the parties to the dispute for coming into operation of the settlement and hence it will be deemed to have come into force on November 29, 1994 the day it was signed. The settlement is still in force for it is no-body's case that any one of the parties had given any notice in

writing to the other of its intention to terminate the settlement within the meaning of Section 19(2) of the Act. Thus the settlement Annexure-1 had come into operation on November 29, 1994 and continued to be binding till today.

8. The petitioners' averment is that the management of the Water Resources Department (Respondent Nos. 2 to 8) which is party to the settlement continued to violate its terms by not cancelling the transfer orders of the petitioners and the Labour Department had therefore sent several letters to the respondent-employer to implement the settlement. It is alleged that though the Labour Department had drawn the attention of the respondent that non-implementation of the settlement is a punishable offence under Section 29 of the Industrial Disputes Act, it has not yet prosecuted them for such violation. Section 29 of the Act provides, to quote :

'29. Penalty for breach of settlement or award.-- Any person who commits a breach of any term of any settlement or award which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine or with both and where the breach is a continuing one, with a further fine, which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first, and the Court trying the

offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid by way of compensation to any person who, in its opinion, has been, injured by such breach.'

It was argued on behalf of the petitioners that since the settlement (Annexure-1) was binding on the respondent-employer they were liable for prosecution and punishment for an offence under Section 29 of the Act. The respondents in their counter affidavit deny that they have violated the agreement and have instead accused the petitioners for

such violation by going on fast unto death. It is stated that the petitioners do not fulfil the conditions of the agreement and in that connection certain information had been called for from the Labour Department which had not yet been received. There is a clear assertion on the part of the respondents in para 36 of their counter affidavit that 'the final decision regarding the implementation of the agreement dated November 29, 1994 has not been taken by the department.' It has also been averred that after receiving the information from the Labour Department called for vide letter No. 2453 dated December 8, 1995, a 'decision regarding the implementation of agreement can be taken by the department.' The respondents have also alleged that the petitioners are not the real office bearers of the original registered trade unions and all this needed to be clarified before implementation of the agreement. In short, the respondents do not deny their liability to implement the agreement and have sought to explain circumstance in which they have not yet done so. The ascertions of the respondents referred to above have been denied by the petitioners in their reply to the counter-affidavit. Their contention is that there was no ambiguity or confusion that the petitioners were office bearers who were fully covered by the terms of the settlement and the Labour Department of the State Government had acknowledged the same. It is claimed that the controversy is being deliberately raised by the respondents to wriggle out of their liability under the settlement. It is categorically asserted by the petitioners that the copy of the constitution of the Unions duly certified by the Registrar, Trade Union, had been sent to the respondent-employer by the petitioners-Associations Nos. 1, 2 and 3. It has also been mentioned that the registered constitutions of the Union do not contain the names of office bearers. However, details of composition of the

Executive Committee is mentioned in the constitution, such as, the name of the post and their numbers.

9. Before dealing with the rival contentions of the parties, namely that a writ of mandamus can issue for enforcing the terms of the settlement (Annexure-1) as claimed by the petitioners and that no such writ can issue as argued on behalf of the respondents, it is necessary to refer to the argument advanced on behalf of the petitioners that the decision of the State Government that office bearers of registered Unions cannot be transferred without their consent had laid down conditions of service which could not be changed by the employer without notice of change as required under Section 9A of the Act. Section 9A of the Act reads as follows :--

'9-A. 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 (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 Service (Classification Control and Appeal) Rules, Civil Service (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.'

Learned Add. Advocate General argued that transfer of a workman is not a condition of service for the change of which a notice is required to be given within

the meaning of the Fourth Schedule of the Act. There are 11 items in the Fourth Schedule. It was argued on behalf of the petitioners that the respondent-employer had given a customary concession or privilege that the office bearers of the Unions shall not be transferred and the decision of the respondent not to extend the privilege or customary concession in respect of the petitioners who are all office bearers of the Union amounts to withdrawal of customary concession or privilege or change in usage which is covered by entry No. 8 of the Fourth Schedule. Section 9A refers to the conditions of service applicable to any workman. It does not refer to the privileges or concession given to workmen who were office bearers of the Unions. In my opinion it is not necessary to enter into the merits of this controversy for the simple reason that the writ-petition seeks quashing of the impugned order of transfer in terms of the settlement. Moreover, the ground that the impugned orders of transfer of some of the petitioners affected change in condition of service which could not have been done by the respondents without notice under Section 9A of the Act had been taken in the earlier writ-petition (C.W.J.C. No. 507/93) filed by Koshi Project Workers Association (Petitioner No. 1) for quashing of some of the impugned orders or transfer. The order of the Division Bench dated February 18, 1993 dismissing the said writ petition referred to such a submission made on behalf of the petitioner before dismissing it.

10. The question is -- Can a writ of mandamus issue for enforcing the terms of a settlement arrived at in course of a conciliation proceeding? It was argued on behalf of the petitioner that such a writ can issue as the Act makes no provision for its enforcement and the prosecution under Section 29 of the Act for breach of any terms of

settlement cannot be treated as an alternative remedy to bar the jurisdiction of this Court to issue a writ. No decision of this Court or of the Apex Court has been cited in support of the above contention. On behalf of the respondents reliance is placed on a Division Bench decision of this Court in *Jyotish v. Union of India*, (1994-II-LLJ-804) wherein it was held that for enforcement of a writ application does not lie under Article 226 rights under a 'settlement' within the meaning of Section 2(p) of the Act and that such a right can be enforced only by raising an industrial dispute.

The Division Bench referred to the decision of the Apex Court in *Basant Kumar Sarkar and Others v. Eagle Rolling Mills Ltd. and Ors.* reported in (1964-II-LLJ-105) and observed that 'it is now well known that the writ Court cannot convert itself as Industrial Court for the purpose of determining industrial dispute.' A Division Bench of the Madras High Court in *Workmen of Buckingham & Carnatic Mills and Ors. v. State of Tamil Nadu and Ors.*, (1982- II- LLJ- 90), had occasion to consider the question in somewhat greater detail and had held that if any of the parties to the settlement is aggrieved by the non-implementation of the terms of the settlement by another party, then the remedy of the aggrieved party would be to move the Government for sanction to prosecute the party in breach under Section 29 of the Act. It was also held that the obligation under the settlement is purely contractual and writ of mandamus cannot issue for the enforcement of a contractual right. There can be no doubt whatsoever that a settlement under Section 18 of the Act is not an instrument creating statutory right and obligations. A writ of mandamus would not lie for enforcing the terms of the settlement for such a writ, order or direction can be issued only in cases where there is a statutory duty imposed upon an authority and there is a failure on the part of that authority to discharge that statutory obligation. In other words there is no public duty cast on the employer to fulfil the terms of

the settlement entered into by it with the workmen in a settlement arrived at in course of a conciliation proceeding. If the implementation of such a settlement cannot be called a duty which is in the nature of a public duty, the petitioners cannot persuade the Court to issue writ of mandamus directing the respondent-employer to implement the settlement. A Full Bench decision of this Court in *Dinesh Prasad v. State of Bihar* 1985 Lab. IC 287 was also referred to by the respondents. The Full Bench was considering the question whether the statutory reference of a dispute under Section 10 of the Industrial Disputes Act, 1947 is an adequate and efficacious legal remedy for the enforcement of rights created under the said Act and if so whether such an alternative remedy and similar remedy under the Act should be exhausted before seeking the relief in the writ jurisdiction under Article 226 of the Constitution. It was held therein after referring to certain decisions of the Apex Court that a statutory reference under Section 10 of the Act is an adequate efficacious and alternative remedy. In the present case it is not

necessary to decide the controversy whether the prosecution under Section 29 of the Act is an adequate and alternative legal remedy for enforcing the terms of the settlement as for reasons already mentioned earlier the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution cannot be invoked for enforcing the terms of the settlement.

11. It may be mentioned that after the close of argument a supplementary affidavit had been filed on behalf of the petitioners bringing on record certain facts that the respondents have in similar circumstances either cancelled or stayed the transfer orders of the office bearers of the non-gazetted employees Federation. The refusal of the respondents to treat the petitioners similarly is described as violative of Article 14 of the Constitution. The respondents had no opportunity of being heard in the matter after filing of the supplementary affidavit. The ground of violation of Article 14 does

not appear to be otherwise relevant also. As already noticed earlier the Government orders and circulars providing that office bearers of registered Unions cannot be transferred without their consent have no statutory force and a writ of mandamus does not lie for enforcing the terms of settlement. Before parting with this order all I wish to observe is that the management-respondent employer in the present case is a State and it has a vital stake in the maintenance of industrial peace. If the respondent-employer had concluded a settlement with the workmen which they have not yet repudiated and have affirmed their intention and resolve to abide by its terms there was no good reason why the matter should have been kept hanging for so long. If certain information had

been asked for by the respondent-employer from the Unions or other Government departments such as, the Labour Commissioner, it was not understandable why there should be unnecessary delay in obtaining it. We take pride in the fact that ours is a Welfare State Government by the rule of law and it is, therefore, necessary that all Government departments and agencies in their dealings with the workmen must act in a manner which inspires and reinforces such a belief.

12. The writ application is thus found not maintainable and is dismissed but in the circumstances of the case without costs. Since the Court had no occasion to

express its opinion on the merits of the case, the petitioners are free to take recourse to any other remedy available in law.

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