

P. Madhavan Vs. Binny Limited Represented by Its General Manager

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SooperKanoon Citation : sooperkanoon.com/812913

Court : Chennai

Decided On : Jan-21-1992

Reported in : (1992)2MLJ1

Appellant : P. Madhavan

Respondent : Binny Limited Represented by Its General Manager

Advocate for Pet/Ap. : Mr. N.G.R. Prasad, Mr. N.G. Prasad

Judgement :

S. Nainar Sundaram, Actg. C.J.

1. The Petitioner in W.P. No. 14193 of 1991 is the appellant in this writ appeal. The respondent in the writ petition is the respondent in this writ appeal. It will be convenient for us if we refer to the parties as per their nomenclature in the writ petition in the course of this judgment of ours.

2. Before we come to the points urged in this writ appeal on behalf of the petitioner, it is better that we delineate certain factual features which are not in dispute. The petitioner entered the service of the respondent as a clerk on 7.11.1969. In 1985, an occasion arose for the appointment of Labour Welfare Officers in the service of the respondent. Suffice it to point out at this juncture that the statutory formalities with reference to the filling up of the posts were gone through and the petitioner was one of the appointees as a Labour Welfare Officer. Since much has been said both ways on the terms and conditions of appointment,

we deem it necessary to extract the letter of appointment, dated 29.4.1985, as follows:

Telex : 41.302 BINNY - IN 41-7263-BCML-IN
Telegrams : Binny Madras Bucarnico Madras. Personnel Department; Registered Office : 65, Armenian Street, P.O. Box No. 66, Binny Limited, Madras-1. Telephone : 29361. Mr. P. Madhavan,

B & C Mills.

Your ref.

Our ref. Pers/F/PM

Date 29th April, 1985

Dear Sir,

As we have received a satisfactory report on your work, we are pleased to promote you as a Labour Welfare Officer in our management staff group For Probation for one year, which may be curtailed or extended, with effect from 1st May, 1985 on a basic salary of Rs. 455 per mensem. Your basic salary for subsequent years will be decided having regard to your performance each year and other relevant factors. You will be paid a dearness allowance of Rs. 560 p.m. in addition to your basic salary, calculated, on the basis of a graduated scale applicable to your group.

The minimum and the maximum basic salary applicable to Group F is shown below:

Minimum Rs. 250

Maximum Rs. 550

In addition to your basic salary and dearness allowance you will be entitled to the following benefits:

1. House Rent Allowance: You will be eligible for a House Rent Allowance of Rs. 175 p.m. i.e. at the rate of 20% of Basic + D.A. subject to a maximum of Rs. 175

p.m.

2. Leave : You will be entitled to 28 days privilege leave per annum, (proprate for 1985) on confirmation and upto 28 days sick leave per annum on full pay.

3. Provident Fund: You will continue to be a member of the B. & C. Company Limited Work People's Provident Fund.

You will be covered by the Employees State Insurance Scheme and you will be eligible for sick leave and other medical benefits in accordance with the provisions of that scheme. The age of retirement has been fixed at 58 years. The Company nevertheless, reserves the right to retire an employee before he reaches the age of 58 years.

Please note that during your probation and subsequently, you are liable to be posted at any of our establishments in India.

Other terms and conditions of service applicable to Management Staff in general and Group F in particular will be applicable to you.

Your faithfully,

Binny Limited,

sd/. xxx

Mill Director.

We will presently refer to the necessary features of the letter of appointment while we deal with the concerned aspect urged by the respondent in answer to the claims of the petitioner. On 21.10.1986, the appointment of the petitioner as Labour Welfare Officer got confirmed and the letter of confirmation also stands extracted as follows:

Telex : 41-302-BINNY-IN
Telegrams : Binny Madras
Telephone : 30181.
Personnel Departments
Registered Office : 65, Armenian Street,
P.O. Box : No. 66, Madras-600 001.
BINNY LIMITED

Mr. P. Madhavan.

B & C Mills.

Your ref.

Our ref.

Pers/F/PM

Dear Sir,

We refer to our letter Petrs/F/PM, dated 22nd April, 1986. Your extended probationary period expires on 31st October, 1986. Taking into account your performance during your extended period of probation, we have pleasure in confirming you as a Labour Welfare Officer in Management Staff Group F on a basic salary of Rs. 505 p.m. from 1st November, 1986. Your basic salary for subsequent years will be decided having regard to your performance each year and other relevant factors. You will be paid a Dearness Allowance of Rs. 580 p.m. applicable to your Group and a House Rent Allowance of Rs. 175 p.m. Le. at the rate of 20% of Basic + D.A. subject to a maximum of Rs. 175 p.m. These allowances are subject to alteration with or without notice at the discretion of the Management.

You will be required to execute a Service Agreement and if you are accepting the terms set out above, please return the annexed memorandum of agreement duly executed.

All other terms and conditions of service applicable to management staff in general and Group F in particular will be applicable to you.

Your faithfully,

BINNY LIMITED,

sd/-Staff Manager.

On 29.3.1991 an order has come to be made transferring the petitioner to Materials Department, and this order was put in issue in the present writ petition, and the body of the said order stands extracted as follows:

Secy/25/91, March 29, 1991

The Industrial Relations Manager

The materials Manager.

Mr. P. Madhavan, Management

Staff Group 'F', J.R. Office

The above-mentioned Management Staff is transferred to Materials Department forthwith. He has to report to the Materials Manager.

sd./- Production Manager.

C.C. General Manager (Pers. & Admn.)

C.C. Mill Manager.

C.C. Manager (Admn.Accouts)/Mr. R. Sivakumar.

3. It must be noted that the petitioner came to this Court earlier by way of W.P. No. 5133 of 1991 seeking for a writ of mandamus to direct the respondents to assign the petitioner only the duties prescribed by the Factories Act 63 of 1948, hereinafter referred to as the Act. It must also be noted here that the statutory nomenclature for the post is Welfare Officer, though the parties preferred to describe the post as Labour Welfare Officer. The learned single Judge, who dealt with the writ petition, found that the controversy has been raised in a doubtful sphere even with reference to the factum of the order of transfer and the learned single Judge did not countenance the prayer as put forth by the petitioner, but ordered the writ petition in the following terms:

In view of the conflicting claims with reference to the order of transfer and the receipt of the orders of transfer, it may be said that so long as the order of transfer

is not served the petitioner holds the post of the Labour Welfare Officer. If there is any transfer, it is always open to the petitioner to get remedy under law. Having regard to the subject matter of the writ petition and to the relief that is asked for, it has to be said that the person who holds the office of the Labour Welfare Officer is entitled to have the duties to be assigned as prescribed under the Tamil Nadu Factories Act as well as Rules framed therein. It is always open to the respondents to exercise the power available to the respondent so as to effect transfer of the staff working in the respondent's concern. With these observations, the writ petition is ordered accordingly. No costs.

The petitioner obviously on getting served with the order, dated 29.3.1991, came to this Court by way of the present writ petition seeking for a writ of certiorarified mandamus to quash the order dated 29.3.1991 and to direct the respondent to allow the petitioner to continue as Labour Welfare Officer with all attendant benefits. The learned single Judge, who dealt with the present writ petition, adverted to the provisions of the Tamil Nadu Factories (Welfare Officers) Rules, 1953, hereinafter referred to as the Rules, and opining that the terms and conditions of service applicable to Management Staff in general and Group 'F' in particular, being applicable to the petitioner as per the very order of appointment, the petitioner cannot demur over the impugned order dated 29.3.1991 and dismissed the writ petition. The learned single Judge declined to draw any inspiration to support the cause of the petitioner from the respondents cited before him. This writ appeal is directed against the order of the learned single Judge.

4. Before us, Mr. N.G.R. Prasad, learned Counsel for the petitioner, would draw our attention to Section 49 of the Act and the relevant provisions of the Rules to say that the post of a Labour Welfare Officer is one contemplated to be created under the Act; and the Rules, which are statutory, have set down the qualifications, method of recruitment, conditions of service, and the duties of a Welfare Officer and hence it must be held that the post of a Labour Welfare Officer is one charged with statutory rights, privileges and duties of significance of public nature, and hence the management cannot by transferring a Labour Welfare Officer from that post, abrogate the said rights, privileges and duties of significance of public nature, conferred by the statutory rules. Mr. M.R.

Narayanaswami, learned senior counsel appearing for the respondent, would, however, submit that though the post of a Labour Welfare Officer could be stated to be one contemplated to be created under Section 49 of the Act yet Rule 6(1) and (2) make it clear that a Labour Welfare Officer would have the appropriate status corresponding to the status of a member of the factory executive staff and his conditions of service shall be the same as those of other members of the staff of the corresponding status in the factory, and in the instant case the conditions of service, permit the transfer of a Labour Welfare Officer from that post to any other post of equal cadre.

5. To appreciate and assess the submissions made by both the sides, which are built, apart from the relevant documents, on the provisions of the Act and the Rules, we deem it necessary to extract the relevant statutory provisions. Section 49 of the Act reads as follows:

49. Welfare Officers: (1) In every factory wherein live hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

2. The State Government may prescribe the duties, qualifications and conditions of service of officers employed under Sub-section (1).

The rules are obviously those formulated pursuant to Sub-section (2) of Section 49. Rule 4 speaks about the qualifications and reads as follows:

4. Qualifications: No person shall be eligible for appointment as Welfare Officer unless he possesses the following qualifications, namely; -

(a) A degree of any University or Institution recognised by the University Grants Commission for the purpose of its grant;

(b) A degree or diploma in Social Work or Social Science or Labour Relations or Social Welfare with Labour Laws or Industrial Relation as a principal subject, from any University or Institution recognised by the University Grants Commission for the purpose of its grant or a diploma in Labour Laws awarded by the Indian Law Institute, New-Delhi or Post Graduate diploma in Labour Laws and Administrative

Laws conducted by the Madras Law College or a degree in Law of any University or a post graduate diploma in Labour Administration awarded by the Tamil Nadu Institute of Labour Studies or a post graduate diploma in Personnel Management, Industrial Relations and Labour Welfare awarded by the Madras and Coimbatore Productivity Councils or any other Institutions recognised by the State Government; and

(c) Adequate knowledge of the language spoken by the majority of the workers in the factory to which he is to be attached;

Provided that these qualifications shall not apply to any person who is a Government servant and is deputed to a factory to work as Welfare Officer;

Provided further that in the case of a person who is acting as a Welfare Officer at the time of coming into force of the rules prescribing the qualifications, the State Government may, subject to such conditions as it may specify, relax all or any of the aforesaid qualifications.

There is no dispute that the petitioner satisfied the qualification and then only his entitlement came for being appointed as a Welfare Officer. Rule 5 speaks about the method of recruitment and it needs extraction as follows:

5. Recruitment of Welfare Officers, (1) Vacancies in the post of Welfare Officers shall be advertised in two newspapers having wide circulation in the State, one of which shall be in Tamil and the other in English;

Provided that the vacancies in the Government establishments, quasi-Government establishments, Public Undertakings and Private establishments financially assisted by the Government shall be filled up through the Employment Exchange. Vacancies in the said establishments shall be advertised in the Newspapers only after obtaining non-availability certificate from the Employment Exchange.

(2) Selection for appointment to the post of Welfare Officer shall be made from among the candidates applying for the post by a committee appointed by the occupier of a factory.

(3) The appointment when made shall be notified by the Occupier to the State Government or such other authority as the State Government may specify for the purpose, giving the details of the qualifications age, pay, previous experience and other relevant particulars of the officer appointed and the terms and conditions of his service.

Here again, there is no dispute that this rule was satisfied when the recruitment of the petitioner did happen. Then we come to Rule 6 and that rule needs extraction as follows:

6. Conditions of service of Welfare Officers:

(1) A Welfare Officer shall be given appropriate status corresponding to the status of a member of the factory executive staff.

(2) The conditions of service of a Welfare Officer shall be the same as those of other members of the staff of corresponding status in the factory, provided that in the case of discharge or dismissal, the Welfare Officer shall have a right of appeal to the Commissioner of Labour, whose decision thereon shall be final and binding upon the Occupier of the factory. The appeal shall be preferred within thirty days from the date of receipt of the Welfare Officer of the order of discharge or dismissal. (2-A) The Welfare Officer shall be started on a suitable scale of pay minimum of which shall not be less than Rs. 800 per mensem for the Welfare Officer and Rs. 600 per mensem for the Assistant Welfare Officer, inclusive of the Dearness Allowance.

(3) No penalty shall be imposed upon a Welfare Officer by the management unless he has been first informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself.

Rule 7 deals with the duties of a Welfare Officer and we deem it necessary to extract the said rule also as follows:

7. Duties of Welfare Officers: The duties of the Welfare Officer shall be-

- (a) to establish contacts and hold consultations with a view to maintaining harmonious relations between the factory management and workers;
- (b) to bring to the notice of the factory management the grievances of workers, individual as well as collective, with a view to securing their expeditious redress and to act as a liaison officer between the management and labour;
- (c) to study and understand the point of view of labour in order to help the factory management to shape and formulate labour policies and to interpret these policies to the workers in a languages they can understand;
- (d) to watch industrial relations with a view to using his influence in the event of a dispute between the factory management and workers and to help to bring about a settlement by persuasive effect;
- (e) to advise on fulfilment by the management and the concerned departments of the factory of obligations, statutory or otherwise, concerning regulation of working maternity benefit, medical care, compensation for injuries and sickness and other welfare and social benefit measures;
- (f) to advise and assist the management in the fulfilment of its obligations, statutory or otherwise, concerning prevention of personal injuries and maintaining a safe work environment, in such factories where a Safety Officer is not required to be appointed under the enabling provisions under Section 40-B of the Act;
- (g) to promote relations between the concerned departments of the factory and workers which will bring about productive efficiency as well as amelioration in the working conditions and to help workers to adjust and adapt themselves to their working environment;
- (h) to encourage the formation of Works and Joint Production Committee, Co-operative Societies and Welfare Committees and to supervise their work;
- (i) to encourage provision of amenities such as canteens, shelters for rest, creches, adequate latrine facilities, drinking water, sickness and benevolent scheme payment, pension and superannuation funds, gratuity payment, granting

of loans and legal advice to workers;

(j) to help the factory management in regulating the grant of leave with wages and explain to the workers the provisions relating to leave with wages and other leave privileges and to guide the workers in the matter of submission of application for grant of leave for regulating authorised absence;

(k) to advise on provision of welfare facilities, such as housing facilities, foodstuffs, social and recreational facilities, sanitation, advice on individual personnel problems and education of children;

(l) to advise the factory management on questions relating to training of new starters, apprentices, workers on transfer and promotion, instructors and supervisors, supervision and control of notice board and information bulletins to further education of workers and to encourage their attendance at technical institutes;

(m) to suggest measures which will serve to raise the standard of living of workers and in general promote their well being;

(n) to work for the improvement of educational facilities and to promote adoption of the family welfare measures amongst the workers.

6. Placing reliance mainly on the rules, learned Counsel for the petitioner, would submit that there could not be any ambiguity that rights, privileges and duties of significance and public importance got accrued and settled by statutory rules and correspondingly the management has got an obligation to preserve them and not abrogate them, by transferring the incumbent in that post to any other post. Analytically, when we look into the rules, we are obliged to agree with the submissions of the learned Counsel for the petitioner that rights, privileges and duties of significance of public nature, get conferred on a welfare Officer. Sub-rule (2) of Rule 6 speaks about the right of appeal available to the Welfare Officer in the case of discharge or dismissal of the Welfare Officer and it further says that the decision of the Commissioner of Labour thereon shall be final and binding upon the occupier of the factory. Sub-rule (3) contemplates that no penalty shall

be imposed upon a Welfare Officer by the Management unless he has been first informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. Coming to Rule 7, it has assigned a very significant role of public nature for the Welfare Officer. Learned Counsel for the respondent would submit that these rights, privileges and duties could be claimed, so long the person is an incumbent in the post and not otherwise. That is not the question that should engage our attention; but the question is as to whether a legal sanction could be found to do away with those rights, privileges and duties, by transferring the person from the post.

7. With regard to the nature of the post, certain pronouncements were cited before us by the learned Counsel for the petitioner and in our view, it would be worthwhile to refer to them. In *Pratap Chandra Sen v. Commissioner of Labour* : (1957) IILLJ221SC , the Supreme Court had occasion to advert to the Bihar Factories Welfare Officers Rules, 1952, the said rules also being those formulated under Section 49(2) of the Act and the significance of the safeguards for the holder of the post of a Welfare Officer was summed up in the following terms:

The permanence of tenure and the safeguards against arbitrary punishment provided by the above rules are in order to safeguard him against victimisation by the employer having regard to the nature of his duties in the discharge of which there are chances of his incurring the employer's displeasure.

In *Synthetics and Chemicals Ltd. v. G.C. Kumar* (1972) 25 F.L.R. 146, a Bench of the High Court of Allahabad dealt with a case where a person appointed to the post of a Welfare Officer was sent out of service on the ground of not fulfilling the qualifications under the U.P. Factories Welfare Officers' Rules, 1955. The question arose as to whether a writ in the nature of mandamus could issue to the State Government to set aside the order of the management terminating the services of a Welfare Officer and to command the management to reinstate him to the post. The learned Judges of the Bench of the High Court of Allahabad reviewed the English and Indian authorities and summed up the principles with regard to issuance of a writ of mandamus by the High Court, in the following terms:

(1) Mandamus may issue to a trading corporation to compel it to do its duty which is of a public nature.

(2) A duty is of a public nature if it is imposed by charter, common law or statute.

(3) Mandamus may issue to restore a person to a corporate office if the office is of a public nature.

(4) The office is of a public nature if it is created by a statute and the duties of the office affect the general public or a section thereof.

(5) Article 226 empowers the High Court to issue a writ in the nature of mandamus. The power may be exercised, keeping in regard the broad and fundamental principles which guide the issue of mandamus.

The further question as to whether the office of a Welfare Officer is a public one was also discussed in the light of the U.P. Factories Welfare Officers' Rules, 1955 and the answer was given in the following terms:

These provisions show that the post of the Labour Welfare Officer is an office created by the Act. The office is of a permanent character. It is a substantive office. It is not an office held at mere will. The officer can be discharged only for some cause and with the written concurrence of the Labour Commissioner and after hearing. His duties are of a public nature because they affect the interest of a large number of workers employed in the factory. In the discharge of his duties he has to deal with persons not concerned with the factory. Accordingly, the office of the Labour Welfare Officer is a public office, and a writ of the nature of mandamus can issue to the appellant to restore G.C. Kumar to his office. It necessarily follows that the appellant owes a duty of a public nature to restore him to his office. The duty arises from Section 49 of the Act and the Factories Welfare Officers,' Rules.

In *Prem Narain v. Gawnpore Chemical Works* 1974 Lab. I.C. 479, a single Judge of the High Court of Allahabad had to deal with a case of the termination of the service of a Welfare Officer appointed under the Act and the U.P. Factories Welfare Officers, Rules, 1955, and the significance of the post of Welfare Officer was recapitulated by the learned single Judge of the High Court of Allahabad in

the following terms:

The above catalogue of the duties of a Welfare Officer leaves no room for doubt that not only he holds an office but that it is a public office and his functions are replete with all the elements of a public employment. In fact, his duties embody a high concept of social justice, He has to act as Liaison Officer between the workers and the management. He has to endeavour to secure real welfare and amenities to the workers in the modern industrial set up and in so discharging his functions has certainly in a measure to act as a curb on the management which has to be kept within bounds. In these circumstances, it cannot be contended that with force that a Labour Welfare Officer functions on the will of the employer. On the contrary his office is created by the Act. It is of a permanent nature and it is a public office. If, therefore, a Labour Welfare Officer has a right to continue in his post until he attains the age of superannuation and the management or the private company chooses to terminate his service prior to that contingency or without complying with the statutory procedure, the officer is entitled to ask for a writ of mandamus. He has a legal right to the office and the management is under a statutory obligation to retain him in office.

It could be said that the amplitude of the concerned rules dealt with in the above pronouncement are larger than that of the Rules here. But, we do not find much difference in the implications of them. Hence, what all have been expressed in the above pronouncements can certainly form a guidance to decide the present issue.

8. The post is not one created in ordinary service parlance. The post is one required to be created by Section 49(1) of the Act. In that sense, it could be characterised as a statutory post. Section 49(2) enjoins upon the State Government to prescribe the duties, qualifications and conditions of service for the incumbent in the post. The Rules got formulated towards that end. As already seen, Rule 4 prescribes the qualifications and Rule 5 sets down the method of recruitment. There is no escape from these statutory prescriptions. The implications of Rules 6 and 7 have already been noticed. Thus, the post is a substantive one created under and pursuant to statute. We have no ambiguity in our mind that the post is of a public nature and it carries with it the duties of

significance of an office, which affects a section of the general public. The duties annexed to the post enjoins upon the incumbent to maintain harmonious relationship between the management and the workers; to bring to the notice of the management the grievances of the workers, individual as well as collective, with a view to secure expeditious redressal. The incumbent should act as Liaison Officer between the management and the workers. He should encourage provision of very many amenities for the workers. He has got a role to play with reference to the provision of welfare facilities and to suggest measures to raise the standard of living of the workers. We have only broadly recapitulated the duties of a Welfare Officer, but they are exhaustively set down in Rule 7. Viewed from the above angles, the office of a Welfare Officer can certainly be characterised as an office of a public and substantive nature. The respondent cannot without any legal sanction there for dislodge the petitioner from the post. The rules by themselves do not envisage the disturbance of the incumbent from the post of a Welfare Officer so as to be transferred to any other post, may be of equal cadre. If we go by the express verbalism of the rules, disturbance of the petitioner from the post of a Welfare Officer by way of transfer, as happened in the present case, cannot be sustained. But, the endeavor on the part of the learned Counsel for the respondent is to say that the conditions of service of a Welfare Officer being same as those of other members of the executive staff, the petitioner could be transferred from the post of Welfare Officer to any post of equal cadre.

9. It is true that Rule 6(1) speaks about the Welfare Officer having appropriate status corresponding to the status of a member of the factory executive staff and Rule 6(2) says that the conditions of service of a Welfare Officer shall be that same as those of other members of the staff of corresponding status in the factory. It is possible to argue that if the conditions of service have contemplated and set down the transfer of a Welfare Officer from that post to any other post of equal status or cadre, that has got to be implemented. However, we must record here that Mr. N.G. Prasad, learned Counsel for the petitioner, would submit that even if there is such a term or condition of service, that must stand ignored as abrogating the statutory rights and privileges annexed to the post of a Welfare Officer. This contention may require examination only if a term or condition of service which has contemplated and settled the question of a transfer of a Welfare Officer from that

post to any other post of equal cadre, has been expressed in the service parlance of the respondent. Hence, we are first obliged to find out as to whether any material throwing light on this aspect has been made available to the Court by the respondent.

10. The letter of appointment dated 29.4.1985, of course speaks that 'other terms and conditions of service applicable to management staff in general and Group F in particular will be applicable to you'. But, what are those terms and conditions of service and whether they take in any term or condition relating to transfer, and in particular, transfer of Welfare Officer to any other post, may be of equal cadre, is not exposed before us. The order of confirmation dated 21.10.1986 also says, 'All other terms and conditions of service applicable to management staff in general and Group 'F' in particular will be applicable to you.' This statement has also not improved the position in the absence of disclosure of the relevant terms and conditions of service contemplating transfer, as has happened in the present case. The order of confirmation refers to a memorandum of agreement to be signed by the petitioner and returned. The admitted position is there is no such memorandum of agreement available in records. This is what has been declared in the counter-affidavit filed on behalf of the respondent before us in the writ appeal. The learned single Judge has dealt with this aspect saying that there is no dispute or denial that under the other terms and conditions, there is no prohibition against a transfer of an employee from one department to another department and hence such a transfer could happen. It must be remembered that we are not dealing with a case of a transfer of a Welfare Officer from one Unit to another Unit as a Welfare Officer. Here, we are asked to look at the grievance of the petitioner with reference to total disturbance and dislodgement from the post of a Welfare Officer. The lack of express prohibition certainly cannot be construed as permission for such a transfer. Mr. M.R. Narayanaswami, learned senior counsel appearing for the respondent, for the proposition that when transfer is effected pursuant to the terms, and conditions of employment that will be permissible, placed reliance on the pronouncement of the Supreme Court in *Associated Cement Companies v. P.N. Sharma* : (1965)ILLJ433SC . Any dispute over this proposition, as done by the learned Counsel for the petitioner, does not require consideration, because here we are confronted with total lack of materials on the

question of any term or condition explicitly providing for the transfer of a Welfare Officer from that post to the post of any other post, may be of equal cadre. When we take note of the significance annexable to the post of a Welfare Officer as per the statutory provisions, in the absence of exposure before us of any term of condition of service, contemplating his disturbance from that post to any other post, may be of equal cadre, we do not think we should indulge in investigation into this question and give an answer to it. We are not able to fall in line with the thinking of the learned single Judge when he proceeded that the terms and conditions of service will enable the respondent to pass the impugned order of transfer.

11. However, Mr. M.R. Narayanaswami, learned senior counsel appearing for the respondent, would raise a contention with regard to the maintainability of a writ petition for the issue of a writ of mandamus as asked for in the present case and against his client. The basic rule has been settled without any ambiguity that the condition precedent for the issue of a mandamus is that there is, in one claiming it, a legal right to the performance of a legal duty by one against whom it is sought. The rights privileges and the significance of the post are those discernible from the statutory provisions and the petitioner, the incumbent in the post of a Welfare Officer is certainly entitled to those statutory rights, privileges and significance; and correspondingly there is a duty cast upon the respondent, the management to preserve them without abrogating them except in the manner known to law. When there is a breach of them, certainly this Court can issue the writ of mandamus to restore those rights and privileges and repair the damages done to them. The petitioner can be said to be aggrieved when he has been denuded of the statutory rights and privileges by the respondent, who has a legal duty to preserve them or to abstain from doing away with them. In this behalf, the principles noted by the Bench of the High Court of Allahabad in *Synthetics and Chemicals Ltd. v. G.C. Kumar* (1972) 25 F.L.R. 146, regarding issue of a writ of mandamus which we have extracted as above, do form a succulent guidance. On the question of issuance of mandamus, the concept is getting very much enlarged and in this behalf our attention was drawn to the pronouncement of the Supreme Court in *Andi Mukta Satguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rodhani and Ors.* : (1989)IILLJ324SC . The

following passage occurring in the said pronouncement requires extraction as follows:

The term 'authority' used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities, and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied. In *Praga Tools Corporation v. C.A. Immanual* : (1969) IILLJ479SC short notes, this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory, body. It was observed.

It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (Of. Halsbury's Laws of England, 3rd Edition, Volume II, Page 52 and onwards).' Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states; 'To be enforceable by mandamus a public duty does not necessarily have to be one imposed by charter, common law, custom or even contract.' We share this view. The judicial control over the fact expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the

requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice where-ever it is found.' Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

In view of the propositions noted above, we do not think that we should deny the writ of mandamus as asked for by the petitioner.

12. This being our assessment of the question, we are obliged to countenance the grievance of the petitioner. Accordingly, we allow this writ appeal; set aside the order of the learned single Judge in W.P. No. 14193 of 1991 and the said writ petition will stand allowed as prayed for. We make no order as to costs.

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