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**Court** : Chennai

**Decided On :** Feb-22-1995

**Reported in** : (1995)2MLJ91

**Appellant** : A. Ramar

**Respondent** : The Chairman and Managing Director, Union Bank of India and anr.

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

**Judgement** :

**Somasundaram, J.**

1. This writ appeal is directed against the order of the learned single Judge dated 31.12.1994 dismissing W.P. No. 5585 of 1994 wherein the appellant has challenged the order of transfer.

2. The appellant, joined the respondent-Bank on 31.3.1979 as a clerk at the Madurai Office. He belongs to the Samban community, which is listed as a scheduled caste community. His wife is also working in another nationalized bank viz., Indian Bank. In the year 1992, the appellant was promoted as Personnel Officer in the Junior Management Grade (hereinafter referred to as JMGS -I). On 10.6.1992, the appellant gave a representation that, on promotion, he may be

retained at Madurai itself, because at that time, his wife was also working in Madurai. The said request of the appellant was declined and he was relieved on 22.8.1992 from Madurai branch and was asked to proceed to Calcutta for training in JMGS -I grade. The appellant accordingly reported for training at Calcutta and after the completion of training, he was asked to join duty at the Patna Regional Office and he joined duty on 28.9.1992. On 20.10.1992, the appellant made a representation for transfer to Madurai on certain personal grounds and accordingly, the appellant was transferred to Madurai, on a temporary basis, only till 30.6.1993. In the meantime, as the appellant's wife was transferred to Madras the appellant made another representation to the respondents seeking transfer to Madras. On 17.6.1993, the appellant gave a letter to the respondents stating that he may be reverted to the post of clerk, so that he could gel a posting at Madras. The respondents, accepted the request of the appellant for reversion. Even though the appellant was reverted to the post of Clerk, they posted him only at Madurai. Not satisfied with this order, the appellant gave a representation on 2.9.1993 seeking a transfer to Madras as a clerk. On 18.9.1993, he sought permission to revoke his request for reversion as clerk, as he was not able to get transfer to Madras. By the order dated 24.9.1993, the respondents rejected the request of the appellant for posting at Madras. However, by the order dated 21.1.1994, the respondents revoked the order of reversion and posted the appellant to Madras only for a period of two months ending with 31.3.1994. By the telex message dated 24.3.1994, the respondents directed the appellant that on being relieved on 31.3.1994, to join duty at Patna. Aggrieved by the said telex message dated 24.3.1994, the petitioner has filed a writ petition in W.P. No. 5585 of 1994, praying for the issue of a writ of certiorarified mandamus to quash the order dated 24.3.1994 and for a direction to the respondents to retain him at Madras. The appellant challenged the order of transfer dated 24.3.1994 on the ground that the said order of transfer is arbitrary, unreasonable and opposed to the transfer policy of the respondents.

3. The respondents filed a counter-affidavit contending that the appellant was appointed as a clerk in the respondent- bank on 31.3.1979, that in the year 1991, two vacancies in the post of personnel officer which is classified as specialists post, has arisen and they were reserved for SC/ST candidates. A notification was

issued calling for applications. The appellant applied for the said post and he was selected. Under such circumstances the appellant came to be promoted as Personnel Officer with effect from 1.6.1993. The further case of the respondents is that, to the extent possible, the appellant had been accommodated and given transfers to suit his convenience, that he was temporarily transferred to Mudurai till 30.6.1993, with a specific direction that he should report back to Patna on 30.6.1993. Again, as the appellant was periodically making representations, for his posting at Madras, as a special gesture, on 21.2.1994, the appellant was given a temporary posting as Personnel Officer in the Zonal Office, Madras for a period of two months, i.e., February and March, 1994 and he was also informed that after two months, he should report to the Regional Office, Patna and continue to work as Personnel Officer at Patna. On 21.1.1994, when the petitioner made one more representation requesting his retention at Madras for a period of two years as a special case, by a telex message dated 24.3.1994, his request for retention was rejected and he was instructed to report to the Regional Office at Patna. According to the respondents the said order dated 24.3.1994 is neither arbitrary nor unreasonable.

4. The learned single Judge who heard the writ petition took the view that the appellant had been given every accommodation at every possible stage, that the respondents acted very reasonably and that their action cannot be characterised as arbitrary or unreasonable. Consequently, the learned single Judge dismissed the writ petition. As already stated, aggrieved by the said order of the learned single Judge, the appellant has filed the present writ appeal.

5. Mr. N.G.R. Prasad, learned Counsel for the appellant submitted that the appellant belongs to scheduled caste, that as per the transfer policy of the respondent- bank, Scheduled Caste Officers like the appellant should be retained in the places of their social origin, that they should be transferred to such centers where least harassment will be caused to them on the ground of their social origin, that Patna is not a place where least harassment will be caused to the Scheduled Caste Officers on the ground of their social origin and therefore, the order dated 24.3.1994 challenged in the writ petition transferring the appellant to Patna is unreasonable, arbitrary and opposed to the transfer policy of the respondents as

well as the guidelines spelt out in para 12.7 of the Brochure on Reservations for Scheduled Castes and Scheduled Tribes in Posts/Services in Public Sector Banks/Financial Institutions under the control of the Ministry of Finance (Banking Division), (hereinafter referred to as the Brochure). The further contention of the learned Counsel for the appellant is that the respondents have not properly considered the directions of the Government as well as their transfer policy before rejecting the request of the appellant to accommodate him at some place in South India, particularly at Vellore where there is a vacancy in the post of JMGS -I grade. The learned Counsel for the appellant also submitted that there is a distinction between transfer policy in general and the policy relating to postings of SC/ST candidates which is based on the Brochure and that while the former may be directory, the latter is mandatory and is justiciable in a court of law. In support of his contention, the learned Counsel for the appellant relied on clause III (vi) of the transfer policy of the respondents and the decision of the Supreme Court in Union of India v. Rajiv Yadav (1984) 6 S.C.C. 38.

6. Per contra Mr. T. S. Gopalan contended that in the notification calling for applications for the post of personnel officers, it is clearly, mentioned that only those who are willing to be posted as Personnel Officer at any of the Bank's Branches in India need apply, that the appellant had applied for the said post and got selected, that in the letter dated 21.1.1994, the appellant had been informed that his request for temporary posting at Madras for a period of two months only had been considered as a special case and the order dated 24.3.1994 is neither unreasonable nor arbitrary and that it is also not opposed to the transfer policy of the respondent-bank.

7. In the light of the rival contentions of the learned Counsel for the parties, the following points arise for consideration in this writ appeal.

1. Whether the order dated 24.3.1994 challenged in W.P. No. 5585 of 1995 is unreasonable, arbitrary and opposed to the transfer policy spelt out in Clause - III (vi) of the transfer policy of the respondent bank and para 12.7 of the Brochure and whether the said order is liable to be quashed?

2. Whether the order in the writ petition W.P. No.5585 of 1994 is liable to be interfered with, in this writ appeal?

8. Point No. 1: Clause III (vi) of the transfer policy of the respondents runs thus:

As far as possible subject to Bank's exigencies and availability of vacancies, SC/ST Officers will be transferred to such Centres/Towns where least harassment will be caused to them on grounds of social origin.

Para 12.7 of the Brochure reads thus:

It. has been pointed out on many occasions that the Scheduled Castes and Scheduled Tribes Officers, after appointment, are subjected to harassment and discrimination on grounds of their social origin. It has been pointed out that SC/ST Officers are sometimes transferred to far-off places and also placed at insignificant positions. It has also been stated that these Officers are not accepted at their placed of postings by the concerned Superior Officers in some cases. In this connection, it is emphasised that Government Servants should desist from any act of discrimination against members of SC/ST Communities on grounds of their social origin. It is also requested that senior Officers, including Liaison Officers of the Ministry/Department, should keep a close watch to ensure that such incidents do not occur at all. However, if any such incident comes to the notice of the authorities action should be taken against the erring officials promptly.

Para. 12.10 of the Brochure is also relevant for the purpose of this case and it reads thus:

It may not be possible or desirable to lay down that officers who had all India transfer liability should be posted at their native places. It has, however, been decided that in the case of clerical and subordinate staff who have been recruited on regional basis and who belong to Scheduled Tribe may be given posting as far as possible, subject to administrative constraints near their native places within the region.

By the telex message dated 24.3.1994, the respondents rejected the prayer of the appellant for extension of his stay at Madras for two years and the appellant was

directed to report to duty at Patna. The circumstances under which the telex message dated 24.3.1994 directing the appellant to report to duty at Patna came to be issued are stated in para Nos.6, 7 and 8 of the counter affidavit filed by the respondent. Para nos.6, 7 and 8 of the counter-affidavit read thus:

6. In the year 1991 two vacancies for the post of Personnel Officer arose both reserved for SC/ST which were notified and application invited vide staff circular No. 3778, dated 5.10.1991. The posts of Personnel Officers are available only in the Regional Office, Zonal Office and the Central Office of the respondent-Bank. In Tamil Nadu, there are 3 Regional Offices and one Zonal Office at Madras controlling both Tamil Nadu and Kerala. The Central Office is at Bombay. As the petitioner who applied for the same possessed the requisite qualifications for the post of Personnel Officer, he was called for interview and was selected for the post. He was promoted as Personnel Officer with effect from 1.6. 1992 vide promotion order No. DP/SZ/305.92, dated 27th May, 1992 and was posted at Zonal Office, Calcutta for initial training of one month. In response to this order he made representation vide his letter dated 10.6.1992 requesting for retention as Personnel Officer at Regional Office, Madurai, till June, 1993 and that the initial training may also be arranged at Regional Office, Madurai, which was declined. Finally in August, 1992 the petitioner reported in Zonal Office, Calcutta for training, on completion of which he was posted to Regional Office, Patna where he joined on 28.8.1992.

7. In October, 1992 the petitioner made a request for transfer to Madurai. In response to his representation, in February, 1993 he was temporarily posted to Madurai Regional Office and he was specifically informed that he would be retained at Madurai only till 30.6.1993 and that he should report at the Regional Office, Patna after 30.6.1993. On 29.5.1993, the petitioner made a request for transfer to the Tamil Nadu and by Memorandum dated 5.6.1993 his request for transfer to Tamil Nadu was turned down.

8. On 22.6.1993, the petitioner made a request to post him at Madras as a personnel officer and that in the event the respondent being unable to consider his request for transfer to Madras as Personnel Officer, he might be reverted to

clerical cadre and posted to Ashok Nagar Branch at Madras. By memorandum dated 13.8.1992 the petitioner was reverted to the clerical cadre and was advised to report at the Regional Office at Madurai. On 18.9.1993 the petitioner made further representation stating that since he was not posted to Madras, his reversion may be reviewed and he may be accommodated temporarily as Personnel Officer at Madras. This was followed by another representation dated 22.9.1993. By letter dated 14.10.1993 the 2nd respondent expressed the respondent's liability to accede to his request for temporary posting at Madras as Personnel Officer or to cancel his reversion order. The petitioner was periodically making representation for his posting at Madras. As a special gesture, on 21.1.1994 the petitioner was given a temporary posting as Personnel Officer in the Zonal Office at Madras for a period of two months i.e. February and March, 1994 and he was also informed that after two months, he should report to the Regional Office, Patna and continue to work as Personnel Officer at Patna. On 21.2.1994 the petitioner made one more representation requesting his retention at Madras for a period of two years as a special case and if it was not possible, he might be converted as a General category officer and posted at Madras or posted at Vellore Regional office. By a telex message dated 23/24.3.1994 his request for extension was rejected and he was instructed to report to the Regional Office at Patna.

It is seen from the counter affidavit filed by the respondents that the notification calling for applications for the post of Personnel Officers which is a specialized category post, it is specifically stated that only those who are willing to be posted as personnel officer any where in India need apply. On the basis of the said notification, the appellant applied for the said post of personnel officer and got selected. On promotion as Personnel Officer in JMGS-I grade, the appellant was posted at zonal office, Calcutta for initial training of one month and on completion of the training, the appellant was posted to Regional Office at Patna where he joined on 28.8.1992. In his representation dated 21.10.1992, the appellant has specifically asked for a transfer to Madurai for a period of six months in the following terms:

I, therefore, humbly request you to look into my genuine grievance sympathetically as a very special case and kindly consider my request for a temporary transfer for

6 months to Regional Office, Madurai at an early date please.

By the order dated 3.2.1993, it was made clear that the appellant was being transferred to Madurai only till 30.6.1993. It was also made clear that the appellant was required to report back to the Regional Office at Patna on completion of the period of temporary transfer to Madurai till 30:6.1993. The General Manager (Personnel) of the respondent-bank has filed an affidavit in this writ appeal explaining the circumstances under which the order of transfer dated 21.1.1994 was passed. The relevant portion of the said affidavit filed by the General Manager (Personnel) reads thus:

I state that sometime in January, 1994, the petitioner called on me at Bombay and made a request for a temporary posting at Madras. I explained to him the difficulties of acceding to his request and told him that it is not possible to consider his representation and that he had already been shown maximum consideration to the extent possible. Then he pleaded for a lesser period and ultimately he requested for a temporary posting at Madras for two months. I agreed to his request for a temporary posting at Madras for two months i.e., February and March, 1994, as a very special case on the specific understanding that at the end of the temporary posting for two months at Madras, he should report for duty at Patna. The endorsement made to the Deputy General Manager, Zonal Office, on the order of transfer dated 21.2.1994 would also make it clear that he was to be relieved on 31.3.1994 so as to enable him to report at Regional Office, Patna, forthwith.

In this context it is also relevant to extract the order of transfer dated 21.1.1994 which reads thus:

With reference to various representations as also regarding his temporary posting in Madras to tide over his personal problems, Shri A. Ramar is informed that his request for temporary posting in Zonal Office, Madras for a period of 2 months i.e., February and March, 1994 has been considered by the management, as a very special case. Accordingly, Shri Ramar is advised to report to the Deputy General Manager, Zonal Office, Madras and work for two months and thereafter report to the Regional Manager, Patna and continue to work as Personnel Officer, Regional

Office, Patna.

Sd/-

CHIEF MANAGER (TR)

CC: Dy. Gen. Manager, Zonal Office, Madras with a request to return to Central Office all the papers of Shri A. Ramar in connection with his reversion and declining his request for temporary transfer etc., also with a request to relieve him on 31.3.1994 so as to enable him to report at Regional Office, Patna, forthwith.

The above facts clearly go to show that the appellant has been given sufficient indulgence and accommodation at every stage by the respondent and therefore, it cannot be said that the order dated 24.3.1994 challenged in the writ petition is either arbitrary or unreasonable.

9. Even assuming that Clause III (vi) of the transfer policy and the policy relating to postings of SC/ST officers which is based on the brochure is mandatory and justiciable in court of law, it cannot be said that the order of transfer dated 24.3.1994 is opposed to the transfer policy of the respondent bank. Clause III (vi) of the transfer policy says that as far as possible, subject to the exigencies and availability of vacancies, SC/ST officers will be transferred to such centres/towns where least harassment will be caused to them on grounds of social origin. The appellant has not produced any material to show that he is transferred to a place viz., Patna where there will be harassment to the SC/ST officers on the ground of social origin. If the contentions of the appellant is accepted, no SC/ST officers working in the respondent-bank, for that matter working in any nationalised bank, who have all India Transfer liability can be transferred to Patna. Further, Clause III (vi) of the transfer policy does not contain any absolute rule regarding transfer. As seen from Clause III (vi) of the transfer policy, its application is only to the extent possible and subject to the bank's exigencies and availability of vacancies. Para 12.7 of the Brochure extracted above is also not helpful to the appellant, because it does not say that SC/ST officer cannot be transferred to far off places. Para 12.7 of the Brochure contains only a warning that Government servants should desist from any act of discrimination against members of Schedules Caste/Schedule

Tribe communities on grounds of their social origin. On the other hand, para 12.10 of the Brochure clearly show that it may not be possible or desirable to lay down that officers who have all India transfer liability should be posted near their native places. According to para 12.10 of the Brochure, only in the case of clerical and subordinate staff who have been recruited on regional basis and who belong to SC/ST may be given posting as far as possible subject to administration constraints near their native places within the region. The said rule contained in para 12.10 of the Brochure has no application to the case of the appellant as he does not come under the category of clerical or subordinate staff. Therefore, the grievance of the appellant that the transfer policy' has not been followed by the respondents while issuing the telex message dated 24.3.1994 is not justified and cannot be countenanced.

10. Mr. N.G.R. Prasad contended that there is a vacancy in the post of JMGS-I in Vellore and there is no reason why the appellant should not be accommodated at Vellore. But, the specific case of the respondent is that the post of JMGS -I at Vellore is not vacant. In para 4 of the counter-affidavit filed by the respondents in C.M.P. No. 151 of 1995 in W.A. No. 11 of 1995, the respondents have stated as follows:

Regarding the allegations of possible vacancy in Vellore, it is submitted that the present incumbent, V. Varadan has no doubt given a letter opting to retire voluntarily under the proposed pension scheme. The pension scheme is awaiting approval of the Government and it is not certain when the pension scheme will be finalised. If the pension scheme does not materialise or if the proposed pension scheme does not meet his expectations, Mr. Varadhan may not press his voluntary retirement. Even if a vacancy should arise at Vellore the post is one of Deputy Manager in JMGS-II and not the post of Personnel Officer in JMGS-I which is the post the petitioner is holding. Further one P. V. Baskar Reddy who is presently working as a Personnel Officer, Regional Office, Trivandrum, for more than three years, has also made a representation for transfer to Madras or nearby station on the ground of treatment of his mentally handicapped child and that his wife and children are residing in Madras for the purpose and he needs make frequent trips for the same. Mr. P.V. Baskara Reddy become an officer in JMGS-

Gr.I as early as 1.12.1986 and he is also due for promotion as Deputy Manager in JMGS-II. Therefore, there is no scope to consider the petitioner for posting in Vellore.

There is no good reason for us, for not accepting the above stand of the respondents taken in the counter-affidavit filed in C.M.P. No. 151 of 1995 and in view of the specific stand taken by the respondents in the counter-affidavit in C.M.P. No. 151 of 1995, we are of the view that there is no vacancy in the post of JMGS-I Vellore and in these circumstances, the respondents cannot be directed to accommodate the appellant as JMGS -I grade at Vellore.

11. It is settled position of law that transfer is a necessary concomitant of every service and the courts in exercise of the powers under Article 226 of the Constitution do not exercise supervisory control over the orders of transfer passed by the departmental authorities. Transfer of public servants made on administrative grounds or in public interest should not be interfered with, unless there are strong and pressing grounds rendering the transfer order illegal on the grounds of violation of statutory rule or on the ground of malafides.. In Mr. S. Shilni Base and Ors. v. State of Bihar and Ors. : (1991)IILLJ591SC , at the request of the appellants in that case who are lady teachers in primary schools they were transferred to places where their husbands were posted by the District Educational Establishment Committee. Respondents 4 to 18 in the appeal before the Supreme Court, who were displaced by the appellants challenged the validity of the transfer orders before the High Court by means of a writ petition under Article 226 of the Constitution. The High Court set aside the transfer orders and directed the re-posting of the respondents to the places from where they had been transferred. On appeal the Supreme Court while setting aside the judgment of the High Court held as follows:

In our opinion, the court should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government Servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to

the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

12. In Union of India v. Kirtenia (1989) 4 S.L.R. 9, the Supreme Court while expressing the similar view held as follows:

After hearing learned Counsel for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest should hot be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fide. There was no good ground for interfering with the respondent's transfer.

13. In the Supdt. Engineer, South Areot Electricity System, North Villupuram v. Chakrapani 1989 T.L.N.J. 53, a Division Bench of this Court dealing with a question when an order of transfer can be interfered with in the proceedings under Article 226 of the Constitution has held as follows:

It is axiomatic that transfer is a necessary concomitance of every service and such an order of transfer need not necessarily be passed based on the balance of convenience and an order of transfer is passed purely on administrative exigencies. It is also well settled that courts do not exercise supervisory control

over orders of transfer for the very simple reason, as stated earlier, it is a necessary concomitance of every service. This is what the various High Courts in India including ours and the Supreme Court have consistently laid down. The only ground on which such an order of transfer could be interfered with is the ground of mala fides and nothing else.

14. The decision of Supreme Court in Union of India v. Rajiv Yadav : (1994)6SCC38 was strongly relied on by the learned Counsel for the appellant. In that case, the 'Roster System' was in practice during the period 1966 to 1977 for allocating the I.A.S. probationers to various cadres. From 1985 batch onwards the Central Government re-introduced the 'Roster System'. The Roster System was never notified by the Central Government. However the system has been explained in the Government of India, Ministry of Personnel letter dated 31.5.1985. The Roster system provides that while allocating the Scheduled Caste/Schedule Tribe candidates to their home states (insiders) vacancies shall be reserved for them in various cadres to the extent reservation -percentage has been provided in direct recruitment to the I.A.S. A Full Bench of the General Administrative Tribunal held that Clause (2) of the said letter dated 31.5.1985 gave an added benefit to the I.A.S. probationers belonging to Scheduled Castes and Scheduled Tribes which was not permissible under Article 16(4) of the Constitution of India, On appeal by the Union of India, the Supreme Court reversing the tribunal's decisions held as follows:

We may examine the question from another angle. A selected candidate has a right to be considered for appointment to the I.A.S., but he has no such right to be allocated to a cadre of his choice or to his home State. Allotment of cadre is an incidence of service. A member of an all India Service bears liability to serve in any part of India. The principles of allocation as contained in Clause (2) of the letter dated 31.5.1985, wherein preference is given to a Scheduled Caste/Scheduled Tribe candidate for allocation to his home state, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of Article 16(4) of the Constitution of India does not arise. It is common knowledge that the Scheduled Caste/Scheduled Tribe candidates are normally much below in the merit list and as such are not in a

position to compete with the general category candidates. The 'Roster System' ensures equitable treatment to both the general candidates and the reserved categories in compliance with the statutory requirement and in terms of Article 16(4) of the Constitution of India. 22% reserved category candidates are recruited to the I.A.S. Having done so both the categories are to be justly distributed amongst the states. But for the 'Roster System' it would be difficult, rather impossible for the Schedule Caste/Scheduled Tribe candidates to be allocated to their home thus ensure equitable distribution of reserved candidates amongst all the cadres.

In the decision referred above, the Apex Court upheld the reservation of certain percentage to the SC/ST candidates while allocating them to their home states and in the said decision, the Apex Court is not concerned with a case of transfer and therefore, the ratio of the above decision has no bearing on the issue involved in the present case.

15. In view of our finding that the order of transfer challenged in the writ petition is not opposed to the transfer policy of the respondent bank and para 12.7 of the Brochure the principles laid down by the Supreme Court in Indra Sawhney v. Union of India 1993 Lab. I.C. 129, have no application to the facts of the present case.

16. Having regard to the factual and legal position stated above, we are clearly of the view that the order dated 24.3.1994 challenged in the writ petition is neither arbitrary, nor unreasonable. It is also not opposed to the transfer policy of the respondent-bank. Therefore, we have no hesitation in holding that the order dated 24.3.1994 challenged in the writ petition is not liable to be quashed. Point No. 1 is answered accordingly.

17. Point No. 2: In view of our findings on Point No. 1, we see no infirmity in the order under appeal. The learned single Judge is quite right in dismissing the writ petition, and the order under appeal is not liable to be interfered with in this writ appeal. There is no merit in this writ appeal and it is liable to be dismissed. Accordingly, the writ appeal in dismissed, However there will be no order as to costs. The C.M.P. No. 151 of 1995 is also dismissed.

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