

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3293 OF 2025

TMI Staffing Services Private Limited,
ASV Adarsh Towers, No.719, 3rd Floor,
Pathari Road, Chennai 600 002
through its authorized representative
Mr. Ashwin Sundar, Age 36 years,
Occupation : Driver
Office at ASV Adarsh Towers, No.719,
3rd Floor, Pathari Road,
Chennai 600 002

... Petitioners

ATUL
GANESH
KULKARNI

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Vs.

- 1. Sharad Ashok Dhangar,**
Age 32 years, Occupation Service,
R/at A/p. Sukwat, Tal. Shindkheda,
District Dhule
- 2. Patil Pankaj Walaji,**
Age 31 years, Occupation service,
R/at Sumatahane, Tal. Parola
Vikasnagari-2, District Jalgaon
- 3. Rahul Rajendra Khairnar,**
Age 32 years, Occupation Service,
Rat A/P Samathane, Taluka Parola,
District Jalgaon
- 4. Avinash Shivaji Jadhav,**
Age 32 years, Occupation Service,
R/at Hanuman Mandhir Gauthan,
Pohregaon, Latur
- 5. Santosh Minde Nathu,**
Age 43 years, Occupation Service,

R/at At Shinde, Post Vasuli,
Taluka Khed, District Pune

6. **Sainath Watekar Genbhau**,
Age 37 years, Occupation Service,
R/at Watekarwadi, Post Kalus,
Taluka Khed, District Pune
7. **Santosh Vitthal Yergude**,
Age 34 years, Occupation Service,
R/at Khalumbre, Taluka Khed,
District Pune
8. **Balasaheb Dhondiram Adhangale**,
Age 44 years, Occupation Service,
R/at post Khalumbre, Taluka Khed,
District Pune
9. **Amol Uddhav Mali**,
Age 30 years, Occupation Service,
R/at Bhaolegon, Post Shirur,
Anandpal, Taluka Shirur, Dist. Pune
10. **Dipeen Jalilndar Morve**,
Age 37 years, Occupation Service,
R/at A/P Walgaon, Taluka Khed,
District Pune 410 505

... Respondent

Mr. J.P. Cama, Senior Advocate with Mr. Chetan A. Alai,
Mr. Varun Joshi, Ms. Rama Somani and Mr. Rishabh
Chaurasia i/by Mr. Chetan A. Alai for the petitioner.

Mr. G.S. Telangre for respondent Nos.1 to 10.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 2, 2026.

PRONOUNCED ON : APRIL 9, 2026

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner assails the order dated 23 September 2024 passed by the Industrial Court at Pune in Complaint (ULP) No. 7 of 2024, whereby the application seeking interim relief came to be allowed and the operation of the transfer order dated 23 January 2024 has been stayed pending final adjudication of the complaint.

2. The factual matrix giving rise to the present writ petition, as set out by the petitioner, is as follows. The petitioner is a company duly incorporated under the provisions of the Companies Act, 1956, and is an existing company within the meaning of Section 2 of the Companies Act, 2013, having its registered office at Chennai. The petitioner is, inter alia, engaged in the business of providing manpower supply services to various establishments. The respondents are stated to fall within the definition of “workman” under Section 2(s) of the Industrial Disputes Act, 1947, and “employee” within the meaning of Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The respondents were appointed in the capacities of operator, picker packer, and assembly operator. Their appointments were co-terminus with the subsistence of the contractual arrangement entered into between the petitioner and Kubota Agricultural Machinery India Private Limited.

3. The petitioner had been engaged in supplying manpower to Kubota for its manufacturing facility situated at Pune, pursuant to

a service agreement which came into effect from 1 April 2014. It is the case of the petitioner that, on account of its inability to continue business operations with Kubota, the client service agreement dated 11 March 2014 came to be terminated in accordance with the governing commercial terms. In that regard, a notice of 60 days was duly issued to Kubota.

4. During the interregnum, the respondents approached the Industrial Court by instituting Complaint (ULP) No. 129 of 2023 alleging unfair labour practices. In the said proceedings, the Industrial Court passed a direction restraining the petitioner from terminating the services of the respondents. It is the case of the petitioner that, in view of the absence of any other clients at Pune with whom the respondents could be deployed, the petitioner issued transfer orders dated 23 January 2024 transferring the services of the respondents. Being aggrieved by the said transfer orders, the respondents once again approached the Industrial Court at Pune by filing Complaint (ULP) No. 7 of 2024, impugning the said action of transfer.

5. The Industrial Court, Pune, by an ad-interim ex parte order dated 29 January 2024, stayed the operation and implementation of the transfer orders. The petitioner thereafter filed its detailed written statement opposing the grant of interim relief and contending that the transfer orders were legal, valid, and in consonance with the applicable provisions of law. Upon hearing the parties, the Industrial Court proceeded to pass the impugned order dated 23 September 2024 confirming the interim relief. Aggrieved thereby, the petitioner has invoked the writ jurisdiction

of this Court. It is further stated that the respondents have subsequently initiated reference proceedings before the Industrial Court seeking a declaration of permanency with Kubota Agricultural Machinery India Private Limited, contending that the contractual arrangement between the petitioner and Kubota is sham, bogus, and merely a paper arrangement devised to deprive the respondents of their legitimate claim to permanency.

6. Mr. Cama, learned Senior Advocate appearing on behalf of the petitioner, submitted that there has been no alteration in the service conditions of the respondents. It was contended that the petitioner is willing to provide employment to the respondents at Chennai and that their services shall not be terminated without following due process of law. He further submitted that the complaint does not contain any specific pleadings alleging mala fides, nor has any individual been impleaded in a personal capacity to substantiate such allegations. Inviting attention to the appointment orders, it was submitted that the terms clearly stipulate that the respondents were engaged pursuant to the agreement with Kubota, and that their appointments were co-terminus with the subsisting agreement with Kubota, unless terminated earlier or upon cessation of the petitioner's project with the said client.

7. Inviting attention to clause (c) of the appointment orders, learned Senior Counsel submitted that although the clause is captioned as deputation or transfer, sub-clause (1) expressly provides that the respondents may be deputed to the petitioner's client as per the terms of the deputation letter or to any of the

client's locations from time to time. He further submitted that sub-clause (2) clarifies that during the period of deputation, the respondents shall continue to remain in the employment of the petitioner. It was also pointed out that, by communication dated 29 November 2023, the petitioner terminated its contract with Kubota with effect from 31 January 2024.

8. It was further submitted that the respondents had earlier approached the Industrial Court by filing Complaint (ULP) No. 129 of 2023, wherein an ad-interim order was passed restraining the petitioner from terminating their services without following due process of law. Referring to the pleadings in the said complaint, learned Senior Counsel submitted that paragraph 3 thereof makes reference to clause (c) of the appointment orders, wherein the respondents have themselves averred that the petitioner does not have the right to transfer employees to its own establishment and that the employment is client-based. On that basis, it was contended that the respondents have, by necessary implication, acknowledged the existence of a power of transfer. It was further submitted that there was no material before the Industrial Court to conclude that work was available in Maharashtra. According to the petitioner, once the respondents report to the head office at Chennai, they would be deployed as and when work becomes available, and until such time, their services would not be terminated without due process and wages would continue to be paid.

9. Inviting attention to the transfer orders, it was submitted that the same disclose specific reasons, namely that the contract

with Kubota was coming to an end on 31 January 2024 and that, in view of the restraint order passed by the Industrial Court against termination without due process, coupled with the absence of further operations at Pune, the respondents were transferred to the petitioner's office at Chennai in terms of clause (C1) of the appointment orders.

10. In support of the aforesaid submissions, learned Senior Counsel for the petitioner placed reliance upon the decisions in *Rajendra Roy vs. Union of India & Another*, AIR 1993 SC 1236; *Management of Addisons Paints and Chemicals Ltd. vs. Workmen, represented by the Secretary (A, P and C) Assistants' Association & Another*, 2001 I CLR 587; *State of U.P. & Others vs. Gobardhan Lal*, (2004) 11 SCC 402; *Pearlite Liners (P) Limited vs. Manorama Sirsi*, (2004) 3 SCC 172; and *Rajneesh Khajuria vs. Wockhardt Limited & Another*, (2020) 3 SCC 86.

11. Per contra, learned Advocate appearing for the respondents supported the impugned order and submitted that the same is well reasoned and based on a detailed consideration of the entire material on record. It was contended that the Industrial Court has rightly recorded a finding that the transfer order dated 23 January 2024 is vitiated by mala fides and has been issued for a collateral purpose with an oblique motive. It was submitted that the petitioner was fully aware that no work suitable to the respondents was available at its head office at Chennai, particularly when the respondents are skilled workers engaged in operational duties and the said location does not have any manufacturing facility. It was further contended that the conditions of service do not

contemplate transfer to a place where no work is available. Emphasis was laid on the fact that the transfer orders were issued within a short span of approximately 40 days from the passing of the ad-interim order restraining termination. It was also submitted that the respondents are conversant only with the Marathi language and that their children are pursuing education in Maharashtra, where Marathi is the medium of instruction, which is not available in Tamil Nadu. It was further contended that the petitioner, being engaged in providing services to the engineering industry, could have secured alternative contracts within Maharashtra, thereby enabling the respondents to continue their employment within the State, instead of effecting their transfer to Chennai. In support of the aforesaid submissions, learned Advocate for the respondents placed reliance upon the judgment of this Court in *Hindoostan Spinning & Weaving Mills Limited, Mumbai vs. Sharad G. Shanolkar & Others, 2002 (1) Mh LJ 559*.

REASONS AND ANALYSIS:

12. The case of the petitioner is that there is no removal of the respondents from service at all. The petitioner is repeatedly saying that the employment relationship is continuing and only the place of work is changed. According to the petitioner the situation arose because the contract with Kubota at Pune came to an end. Because of this the work which earlier existed at Pune was no longer available. The petitioner contends that in such a situation it cannot be forced to keep the respondents idle at Pune when there is no client and no assignment. It is further pointed out that the appointment letters themselves clearly mention that the

employment was connected with the client project. The condition is that the employment will run along with that project, and when the project stops, naturally the work at that place also stops. The petitioner is relying strongly on clause (c) of the appointment terms. It says that this clause allows deputation or transfer to any client location from time to time. According to the petitioner, this clause is not a small or casual term, but a main condition of employment. The respondents accepted this condition at the time of joining. Therefore, when the petitioner says that it has shifted them to Chennai, it is only acting within that agreed condition. The petitioner also explains that since there was no work left at Pune after the Kubota contract ended, the only practical step available was to call the respondents to its head office at Chennai, from where further deployment could be arranged.

13. On the question of intention, the petitioner strongly denies any wrongdoing. It says that there is no bad faith or hidden motive behind the transfer. It is also pointed out that in the complaint filed by the respondents, there is no clear and specific allegation of mala fide. No particular officer is named, and no details are given as to who acted wrongly and how. According to the petitioner, such vague allegations cannot be accepted to doubt a management decision. The petitioner further gives an assurance that the respondents will not be thrown out of employment. It says that their services will continue, wages will be paid, and as and when work becomes available, they will be assigned duties. In this way, the petitioner is trying to show that the action is protective of employment, not destructive of it.

14. It cannot be said that an employer has no control at all over where its employees should work. Especially in a business of manpower supply, the very nature of work is that employees are placed at different sites depending on client needs. If the appointment terms themselves say that the work is client based and that transfer or deputation can take place, then such a condition cannot be ignored later. The respondents at the time of joining agreed to such a structure of employment. So it is not possible to say that any movement from one place to another is automatically illegal. The appointment terms also indicate that the employment was not of a permanent and fixed location kind. It was tied to a particular project. This means that when the project comes to an end, the employer has to take some decision. Either the employee is shifted somewhere else, or the employment itself may come to an end, subject to law. Here the petitioner has chosen not to terminate but to continue the employment by shifting the place. This aspect cannot be lightly ignored. Once the Kubota contract ended the petitioner was justified in saying that there was no work left at Pune under that arrangement.

15. In normal understanding also a transfer cannot be treated as punishment by itself. It does not reduce salary. It does not break service. It only changes the place where the work is to be done. Similarly it is also not a termination. The employee continues in service. Therefore, merely because the respondents do not want to go to Chennai that by itself may not make the transfer illegal. In industries where work depends on projects and clients some amount of flexibility must be given to the employer. Otherwise, the

business itself cannot function. Thus, from this angle the petitioner is showing that its action is within the contract, within business need, and without any wrongful intention. This part of the case cannot be rejected outright. It needs careful balancing with the other side before reaching any final conclusion.

16. Even so the matter does not end at that stage. The Court cannot stop only by reading one clause of the appointment letter and deciding the issue. The Court has to see the full situation as it actually happened. Here an important fact is that the respondents had already gone before the Industrial Court earlier by filing Complaint (ULP) No. 129 of 2023. In that complaint the Industrial Court had passed an ad-interim order. By that order the petitioner was restrained from terminating the services of the respondents without following due process of law.

17. Now what is to be seen is what happened next. Within a short time, roughly about fifty days from that order, the petitioner issued the transfer order. This timing becomes very important. When an employer is stopped from doing one thing by a Court and immediately after that takes another step affecting the same employees the Court is required to look at such conduct more carefully. In many cases intention is gathered from circumstances. The sequence of events, the timing, and the surrounding situation together help the Court to understand the real nature of the action. Here the Industrial Court has done exactly that. It has looked at the earlier restraint order, then the quick issuance of the transfer order and then formed a view that the transfer may not be a simple administrative decision. It has taken a view that the

transfer could be connected with the earlier order of protection and may have been issued when the petitioner was not able to terminate the services directly. This is a matter of inference drawn from facts. Such an inference when based on record and sequence cannot be said to be without basis. The Court must give due weight to such reasoning especially at the interim stage.

18. The respondents have also raised another aspect. They say that even at Chennai there was no real work available for them. According to them, they are skilled workers doing operational duties like operator, picker packer, and assembly work. Such work usually requires a production unit. It is their case that the Chennai location is only a head office and not a place where such operational work is actually carried out. If that is so then sending them to such a place becomes questionable. On this point the material placed by the petitioner is also important. The petitioner has not shown before the Industrial Court any clear document or record to establish that work was actually available at Chennai for these respondents at the time of transfer. There is no specific posting, no identified assignment, no clear requirement shown. The stand of the petitioner is only that if and when work becomes available the respondents will be given work. This statement though sounding reasonable at first does not fully answer the issue. There is a difference between saying that work may arise in future and showing that work was available at the time when the transfer order was issued.

19. When a transfer is made normally it is expected that the employee is being shifted to a place where there is existing work

or immediate requirement. If a worker is sent to a place where there is no present work and only a possibility of future work is spoken of then such transfer can appear doubtful. It may look less like a genuine deployment and more like an arrangement to deal with the situation created by the earlier Court order. That is why the Industrial Court has considered this aspect seriously.

20. Thus, when these facts are put together the earlier protection order, the short gap of time, the absence of clear work at the transferred place, a reasonable doubt arises about the real purpose of the transfer. At this stage the Court is not finally deciding the rights, but it must see whether the respondents have shown enough to justify interim protection. The Industrial Court has found that they have and such a view based on these circumstances cannot be said to be without support from the record.

21. The respondents have also placed before the Court the question of hardship and this part also needs careful attention. They say that they are Marathi-speaking workers. Their families are living in Maharashtra. Their children are studying here. Their day-to-day life, their social connections, their language, all are connected with this State. According to them shifting to Chennai is not a small change. It affects their family life, education of children, and their ability to adjust in a different language and environment. They say that they are not in a position to suddenly move and settle in another State where the language and conditions are different.

22. Now, it is true that in service matters hardship alone cannot stop every transfer. Many employees are transferred from one place to another and some inconvenience is always there. Law does not say that a transfer becomes illegal only because it causes difficulty. So this argument of hardship, by itself, may not be enough to set aside the transfer. But the position changes when the Court is already examining whether the transfer is genuine or not. In such a situation hardship becomes an important supporting factor. It helps the Court to see whether the action is reasonable or whether it is being used to pressurize the employees. Here, the Industrial Court has not treated hardship as the only ground. It has looked at it along with other facts. It has considered that these respondents are not ordinary transferable staff in a large national setup with regular postings everywhere. They are workers doing specific operational jobs and their placement depends on availability of work at particular sites. In such a case shifting them to a place where not only work is doubtful but also where they will face serious personal difficulty becomes a relevant circumstance. It adds weight to the doubt already arising from the timing and nature of the transfer.

23. Thus, when hardship is seen together with the other circumstances, the earlier restraint order, the quick timing of transfer, and the lack of clear work at Chennai, the overall picture becomes more doubtful. The hardship does not stand alone but it strengthens the inference. It gives support to the view that the transfer may not be purely for business need but could be carrying some collateral purpose. That is why the Industrial Court has

considered this aspect and such consideration cannot be said to be misplaced.

24. The petitioner has argued that the complaint should be rejected at the threshold because the respondents have not named any particular officer as the person who acted with mala fide intention. This submission is mainly based on the law explained in *Rajneesh Khajuria*. Therefore, it becomes necessary to see what exactly that judgment lays down and how far it applies to the present facts. In that judgment, the Supreme Court has clearly said that allegation of mala fides is a serious matter. It cannot be made in a casual way. It must be supported by proper facts and material. The Court has also said that when such allegation is made against a person, that person should be made a party, so that he can answer the charge. Otherwise, it would not be fair to hold that such person acted with bad intention. At the same time, the Supreme Court has also explained that mala fides is not always proved by direct evidence. It can be gathered from surrounding circumstances. The Court can look at the sequence of events, the timing, and the effect of the action, and then see whether there is something improper in it. But such conclusion must come from clear facts, not from vague or empty allegations.

25. Now applying this to the present case, the submission of the petitioner cannot be accepted in an absolute manner. Here the respondents are not making a case that a particular named officer had personal enmity or grudge against them. They are not pointing to any one individual and saying that he acted with bias. They are saying that the action of transfer itself is not genuine

because it came immediately after a protection order, because there was no clear work at Chennai, and because it causes serious difficulty to them. So the allegation here is not of personal mala fide against an individual but of improper exercise of power by the employer. In such a situation it is not always necessary that a particular officer must be named. The Court is required to see whether the action appears to be bona fide or not. This can be examined from the surrounding facts. Further in the present matter the Industrial Court has not given any final finding that any particular person acted with mala fide. It has only formed a prima facie view at the interim stage. It has looked at the timing of the transfer, the earlier restraint order and the absence of clear material showing work at Chennai. Based on these factors it has found that the respondents have made out a case for interim protection. This is a limited finding not a final conclusion of guilt against any officer.

26. The judgment in *Rajneesh Khajuria* will apply fully when the Court is recording a final finding of mala fides against a specific person. In such a case that person must be before the Court. But at the stage of examining whether the action appears doubtful or requires interim protection the Court can look at the overall facts even without naming an individual. Therefore, the submission of the petitioner that the complaint must be rejected only because no officer is named cannot be accepted. The complaint does contain factual basis. It refers to the sequence of events and the surrounding circumstances. That is sufficient at least at this stage to allow the Court to examine the issue. The objection raised by

the petitioner does not defeat the complaint.

27. The petitioner has placed strong reliance on the appointment clause and also on various judgments which say that transfer is part of managerial power. According to the petitioner once the appointment letter allows transfer the Court should not interfere. This argument on first look appears correct because in service law it is well accepted that the employer has the right to decide where an employee should work. Especially in a setup where work depends on clients and projects such power becomes necessary. If such power is completely taken away then the employer will not be able to manage its business properly. So this part of the submission of the petitioner cannot be ignored. It has some legal basis.

28. At the same time the position in law is not so simple that once there is a transfer clause the Court has no role at all. The law always puts some limits on the exercise of power. Even if a power exists it must be used in a proper way and for a proper purpose. If the power is used in a wrong manner then the Court can step in. So it is not correct to say that the existence of a transfer clause ends the matter completely. The Court still has to see how that power is used in the facts of the case. It is true that generally Courts do not interfere in transfer matters. Courts do not act like an appellate authority to check whether one place is better than another or whether the employer could have taken a different decision. That is not the function of the Court. The Court does not sit to re-arrange postings. It only checks whether the action is legal and fair. So in normal situations transfer orders are allowed to

operate, and the employee is expected to comply.

29. But this general rule has clear exceptions. If the transfer is in the nature of punishment, meaning it is done to harm or penalize the employee without following proper procedure then the Court can interfere. Similarly, if the transfer is not really for work but for some indirect reason like to force the employee, to harass him, or to defeat some legal protection already granted, then also the Court can step in. Another important situation is where the transfer is used to frustrate pending proceedings. If an employee has already gone to Court and obtained some protection, and then a step is taken which practically defeats that protection, the Court cannot remain silent.

30. The judgments relied upon by the petitioner also say that transfer should not be examined like an appeal on facts. That means the Court should not go into minute details to decide whether the employer's decision was the best possible one. But at the same time, those very judgments do not say that a transfer passed for an improper purpose must be protected. They do not give a free hand to the employer to act in any manner. The protection given to the employer is only when the action is bona fide and within legal limits.

31. In the present case, the Industrial Court has not taken an extreme view. It has not said that every transfer is bad or that the petitioner has no power to transfer. It has only looked at the specific facts of this case. It has seen the earlier order protecting the respondents, the quick timing of the transfer, the absence of

clear work at Chennai, and the hardship caused. After considering all this, it has formed a view that this particular transfer appears doubtful at this stage. The Industrial Court has only granted interim protection. It has not finally decided the issue. It has only said that till the complaint is fully heard and decided, the transfer should not be given effect. If later it is found that the transfer was proper the employer can still act. But if the transfer is allowed now and later found to be improper the damage may not be easy to undo. Thus, when the matter is seen in this way the reliance placed by the petitioner on the general principle of transfer does not completely answer the case. That principle applies in normal situations. But where there are surrounding circumstances creating doubt about the purpose of the transfer, the Court is justified in taking a closer look. The Industrial Court has done exactly that and therefore its approach cannot be said to be incorrect.

32. This Court while using its writ powers is not sitting like an appeal court over every interim order passed by the Industrial Court. It is not the duty of this Court to re-check each fact and come to a fresh conclusion just because another view is possible. Interference is only done in limited situations. For example, if the order is completely unreasonable, or if it is passed without giving any reasons, or if important facts are ignored, then only this Court can step in. Otherwise, normally the order is allowed to stand.

33. In the present case, the Industrial Court has looked into all the necessary aspects. It has considered the appointment conditions, the earlier complaint filed by the respondents, the order which had already protected them from termination, the

short timing within which the transfer was issued, the contention that there was no proper work at Chennai, and also the hardship which may be caused to the respondents. The reasons given by the Industrial Court may not be very long or detailed, but they are not without basis. They show that the Court has applied its mind to the facts placed before it. Once such a reasonable view is taken on the material available, this Court cannot replace it with another possible view just because it may think differently.

34. Looking at the matter as a whole, I am satisfied that the respondents have shown a prima facie case for grant of interim protection. At this stage the Court is not deciding finally who is right or wrong. It is only seeing whether protection is needed till the case is fully heard. In this situation the balance of convenience also supports the respondents. If the transfer is allowed to take effect now, and later it is found to be improper, the harm caused to the respondents will be difficult to correct. They may suffer loss which cannot be easily reversed. On the other hand the petitioner is not facing any serious harm because of this interim order. The petitioner can still continue its business. It can engage workers, pay wages, and take all steps as permitted by law. It is also free to present its full case before the Industrial Court when the complaint is finally heard. So, it cannot be said that the petitioner is suffering any irreparable loss due to continuation of the interim relief.

35. For all these reasons, I do not find any ground to interfere with the order dated 23 September 2024. The Industrial Court has taken a reasonable and possible view based on the material before it.

36. Therefore, the writ petition is dismissed. There shall be no order as to costs.

37. At this stage, learned Advocate for the petitioner prayed for continuation of ad-interim relief. However, in view of the reasons recorded in the judgment, the request for continuation of ad-interim relief stands rejected.

(AMIT BORKAR, J.)