

GJVD020019242015



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Received on : 15- 10- 1993
Registered on : 15- 10- 1993
Decided on : 28- 10- 2025
Duration : Year- Month-Days
32 – 00-- 13

In the Court of 5th Additional Senior Civil Judge
At : Vadodara.

Regular Civil Suit No. 1653 of 2015

(Old Spl. Civil Suit No.882/1993)

With

Special Civil Suit No.242 of 2009

Plaintiff :

Jagdishchandra Kunjbihari Sharma.
Aged – Adult, Occupation – Service.

Residing at : 17, Ganesh Society,
R. V. Desai Road,
Vadodara- 390001.

V/s.

- Defendants :** (1) **The Transport Corporation of India Ltd.**
(A company registered under the Companies Act, 1956.
Having its head office at :
M.G.Road, Secunderabad-500003.A.P.
- (2) **The Regional Manager,**
Transport Corporation of India Ltd.
TCI House, First Floor,
Outside Astodia Gates.
Ahemedabad -380002.
- (3) **The Zonal Manager,**
Transport Corporation of India Ltd.
Transport House, Bh. Vihar Cinema.
Opp. Good Luck Oil Paints,
Pratapnagar, Borada – 390004.

Suit :	For recovery of amount of Rs.3,15,702.62, declaration and injunction in R.C.S. No. 1653/2015 and
	Recovery of damages of Rs.35,00,000 and amount of PF and Gratuity in Sp.C.S. No. 242/2009.

Appearance :-

Learned Advocate Mr. P. R.Thakkar for the plaintiff.

Learned Advocate Mr. C. M. Patel for the defendant.

:- COMMON JUDGMENT :-

- 1] The plaintiff had initially filed Special Civil Suit No.882/1993 challenging the validity of transfer Order dated 13/10/1993, by which the plaintiff was transferred from Baroda to Calcutta on a post of Sr. booking Supervisor and also prayed for recovery of Rs. 3,15,702.62 ps as an arrears of Salary, and consequential permanent injunction.
 - 1.1] During the pendency of the aforesaid suit, the defendant Company has taken an action of terminating the service of the plaintiff and the same was declared by the pursis in the aforesaid suit. therefore plaintiff was inclined to file Spl. Civil Suit No.242/2009, for recovery of damage/compensation of Rs. 35,00,000/- and also challenged the validity of action of defendant Company terminating the plaintiff from the service, on the ground that plaintiff has failed to comply the impugned transfer Order by not resuming at Calcutta the transferee place and also prayed for P.F. and permissible gratuity, which would have been paid on the day of Superannuation, if plaintiff would not have removed from service.
 - 1.2] It is pertinent to note that both the suits have been consolidate for the purpose of common trial and after framing issue, the parties have lead the common documentary and oral evidences.
- 2] It is the case of the plaintiff in both the suits that the plaintiff has filed the Reg. Civil Suit No.1653/2015 (Old Spl.Civil Suit No.882/1993), challenging

the validity of transfer Order dated 13/10/1993, by which the plaintiff was transferred from Baroda to Calcutta, at reverted post as Sr. Booking Supervisor and also prayed for recovery of arrears of Salary to the tune of Rs. 3,15,702.62 ps, which becomes accrued due to the reversion given to the plaintiff from the post of Branch Manager to the post of Sr. Booking supervisor and also prayed for injunction against the impugned transfer order.

2.1] It is the case of the plaintiff that he had joined the service in the defendant's company in the year 1980 as trainee assistant and initially posted at Udaipur (Rajasthan) and as the service of the plaintiff was found satisfactorily, the plaintiff was confirmed in the service in November 1981 and then time to time promoted to the different promote post and ultimately in the year 1993, the plaintiff was discharging the duty as Sr. Booking Supervisor in the Office of Zonal Manager of defendant's company. Considering the satisfactorily service and performance of the plaintiff, the plaintiff was promoted to the post of Assistant Branch Manager in the year 1983 and posted at Udaipur and thereafter, the plaintiff was further promoted to the post of Branch Manager on date 21/05/1985 and thereafter with promotion to the post of Branch Manager the plaintiff was transferred to Bharuch Branch of the defendant's company. Further the plaintiff has served as Branch Manager for period of about one year and discharged the duties successfully, still however the Salary grade of Branch Manager was not paid, but lower post salary was paid and therefore, different representations were submitted to the defendant company authority, as a result of which the plaintiff was transferred from Bharuch to Vadodara by Order dated 26/04/1986. The posting of Branch Manager was not given by

the defendant company and chosen to take the work of Clerk from the plaintiff and the plaintiff was kept in the hanging position, therefore, with the objection the plaintiff was continued to discharged the duty at Vadodara but it was illegal action of the reversion on the part of the defendant company, lower down the plaintiff from the post of managerial cadre to the clerical cadre. The defendant company has not considered the representation hence, the plaintiff has issued the legal notice through the lawyer on date 20/08/1993 and called upon the defendant company to pay the difference of salary. The said notice was not replied by the defendant company. Ultimately, the plaintiff was inclined to file complaint before the Labour Commissioner, Vadodara, pursuance to which the Labour Commissioner has issued the notice dated 28/09/1993, calling upon the defendant company to appear before the Labour Authority on date 12/10/1993 and the said notice was served to the defendant company on date 09/10/1993. On service of such notice to the defendant company, the officers of the company become bias and vindictive therefore, immediately on a next day i.e on 13/10/1993, the impugned transferred Order was passed by the defendant's company, transferring the plaintiff from Baroda to Calcutta, with deceptive statement that plaintiff is transferred to Calcutta on promotion to the post of Sr. Booking Supervisor. The plaintiff was already promoted long back to the post of Sr. Booking Supervisor therefore, the question does not arise to give the promotion to the plaintiff on the post of Sr. Booking Supervisor and to transfer by impugned transfer Order at Calcutta from Vadodara. Thus, the transfer order itself is illegal, deceptive and malafide one, which was issued with a view to harass the plaintiff so that the plaintiff would compel to resign from service and thereby the said impugned transfer Order is penal transfer order and the same is malafide exercise of power on the part of the

defendant company. With the circumstances, the plaintiff was inclined to file Spl. Civil Suit No.882/1995 (New No. RCS No.1653/2015) with following prayer :

- A) A decree for Rs.3,15,702.62 paise (Rs. Three lacs fifteen thousand seven hundred two and paise sixty two only) be passed in favour of the Plaintiff as against the Defendants.
- B) It may be declared that the Defendant's action of demoting the Plaintiff from the post of Branch Manager to the post of Sr. Booking Super-visor is illegal, ultravires, unauthorized, and malafide, against the principles of natural justice.
- C) It may be declared that the Defendants have no right to demote the Plaintiff without hearing the Plaintiff and demotion was affected by the Defendants as penal and involving civil consequences.
- D) It may be further declared that the Plaintiff has a right to hold post of Branch Manager and the Defendants cannot demote the Plaintiff from the post of Branch Manager to that of Senior Booking Supervisor or any other post lower in rank.
- E) It may be declared that the service contract of the Plaintiff with the Defendants is subsisting as Branch Manager.
- F) It may be declared that Def. No.2 has vide his letter dated 13.10.93 ordered transfer with malafide intention of compelling the Plaintiff to tender his resignation and transfer so ordered is not bonafide.
- G) It may be declared that the transfer ordered by the Defendants vide letter dated 13.10.1993 is not implementable and the Plaintiff has a right to continue at Baroda office and the Plaintiff has a right to work as Branch Manager at Baroda office.

- H) It may be declared that the Defendants have no right to with-hold the said amount and monetry benefits for which the Plaintiff is entitled.
 - I) The Defendants, their agents, servants,etc. be restrained permanently from affecting transfer ordered by the Defendant since 13.10.1993 and be further restrained from taking charge from the Plaintiff as Sr. Booking Supervisor, Baroda and they be further restrained from relieving the Plaintiff from Baroda.
 - J) The Dependents, their agents, servants,etc. be restrained permanently from victimizing the Plaintiff and harassing the Plaintiff by with-holding money due to the Plaintiff by way of increments, perquisites, salary. and such other monetary benefits.
 - K) The Defendants, their agents, servants. etc. be restrained permanently from preventing the Plaintiff from performing his usual duties at Baroda and from receiving salary that may be due from time to time.
 - L) It may be declared that the Defendants have no right to transfer the Plaintiff by way of penalty and the action of the Defendants of demoting the Plaintiff is illegal, ultravires, and against the principles of natural justice and the Defendants have no right to take any action except this in accordance with the principles of natural justice.
 - M) Any other, just and proper relief in the interest of justice be also passed in favour of Plaintiff.
 - N) Cost of the Suit be awarded to the Plaintiff.
- 3] Subsequently, the aforesaid dispute was pending before the Civil Court the plaintiff filed another suit Sp. C.Suit no. 242/2009 contending that the propriety and validity of the transfer order was to be examined by the Court and the defendants were deliberately killing the time in hearing Exh. 5 of the

said suit, had issued show cause notice on dt 15.02.1994 for showing the cause as to why the action should not be taken against the plaintiff for non reporting the duty at Calcutta. The plaintiff has submitted the reply to the said show cause notice on dt. 05.02.1994 and given the detailed reasons pointing out the facts that the alleged order of transfer cum promotion was a deceptive order as the promotion to the post of Sr. Booking Supervisor was given to the plaintiff long back in the year 1987 at Baroda and there could not have been any further promotion to the same post. It was also pointed out that the plaintiff was promoted to the post of Branch Manager while transferring from Udaipur to Bharuch and, therefore, to transfer at some lower cadre post amounts to a reversion and the said dispute becomes a sub-judice dispute before the Civil Court. Still however it appears by letter dated 22.02.1994 the defendant authority conveyed to the plaintiff that by considering the reply submitted to the show cause notice the defendant authority had decided to hold the domestic inquiry in respect of the subject matter of the show cause notice dated 15.02.1994 and it was also informed that the defendants are taking the steps for the appointment of Inquiry Officer and other relevant matter in connection with the proposed domestic inquiry and it was stated that the plaintiff would be accordingly informed and will be notified for the further action to be taken. The said letter was also replied by the plaintiff vide letter dated 04.03.1994 and again pointed out the facts and the circumstances under which the plaintiff was not in a position to go to Calcutta. In spite of the said facts one another letter was wrote by the defendants dated 28.03.1994 and it was again conveyed to the plaintiff that the defendants are going to held the domestic inquiry and the plaintiff would be accordingly informed regarding the appointment of Inquiry Officer and other things of the domestic inquiry. The plaintiff states

that thereafter the defendants have chosen not to issue any letter till today and nothing was informed as to whether the defendants had continued with the said decision to hold the said inquiry or not or they have chosen to drop their idea/proposal to hold the inquiry. But the fact remains that till today nothing was communicated with regard to the show cause notice dated 15.01.1994 and with regard to their decision to hold the inquiry dated 22.02.1994.

3.1] The plaintiff further states that the defendant authority had then chosen to pass one pursis vide Exh. 35 in Spl. Civil Suit no. 882/1993, on dated 11.12.2006, which was pending for trial and by passing such pursis the defendants have declared that the plaintiff is no more in service of the defendants. In the circumstances the plaintiff was shocked to know as to how the defendants would have passed such a statement vide Exh. 35 that the plaintiff is no more in service of the defendants and ultimately the plaintiff had chosen to file an application vide Exh. 36 in the said suit on 04.01.2007 and requested the Hon'ble Court to issue a direction to the defendants to produce any order, if any, passed by the defendants, terminating the service of the plaintiff or a copy of the proceeding if any initiated for the purpose of passing such an order of termination against the plaintiff. The said application was opposed by the defendants by filing the reply by taking the technical contention that the said suit is pertaining to the transfer and for recovery of difference of salary and it has nothing to do with the termination of plaintiff from service. Ultimately the Hon'ble Court was pleased to reject the application of the plaintiff by order dated 02.04.2007 and as the plaintiff was never known to the facts of termination of service and as the plaintiff was never served with any such order till today the

plaintiff had chosen to issue a legal notice through an Advocate by RPAD to the defendants calling upon them to give the copy of the termination order, if any, passed by them and to provide the copy of any proceeding if they have initiated against the plaintiff. It was also conveyed in the said notice to the defendants that if the copy of such order or proceeding would not be served upon to the plaintiff within 15 days from the date of the said notice, then it would be construed that the plaintiff is still in service or further appropriate action would be taken after receiving the copy of the said order. The said notice was issued on 9th July, 2007. Still however the defendants have chosen to adopt the hiding practice and tactics and not conveyed anything in pursuance to the said notice till today. Ultimately the plaintiff has been left with no option but to file the subsequent suit challenging the action of the defendants by which the defendants are treating the plaintiff as no more in service or in employment by way of filing the present suit. The plaintiff craves leave and reserves the right to amend the present plaint as and when the defendants would serve the copy of termination order and/or removal order and/or dismissal order, if any, passed by the defendants or as and when the defendants would produce the same before this Hon'ble Court, to amend the present plaint after reading the ground of such termination/removal/dismissal, and to challenge the said ground by incorporating the same in the plaint in future.

3.2] The plaintiff states that any action taken by the defendants to put to an end to the service of the plaintiff is patently illegal, null and void and bad at law inasmuch as the said action appears to have been taken in flagrant violation of principles of natural justice. The defendants have not issued any chargesheet till today nor any chargesheet has been served upon the plaintiff

leveling the charge against the plaintiff nor any departmental inquiry/domestic inquiry has been held by the defendants. No charges have been proved against the plaintiff nor any opportunity has been afforded to disprove the charges against the plaintiff, if any, in the departmental inquiry if it would have been held against the plaintiff. Thus, the action of the defendants is patently illegal, null and void and has taken in flagrant violation of principles of natural Justice. Therefore, the order of termination/removal/dismissal as the case may be if any passed is patently illegal, null and void and for such an illegal action on the part of the defendants whatever the loss or damages has been caused to the present plaintiff, the defendants are liable to pay the said damages to the plaintiff and prayed following prayer :

- a) Your Honour may be pleased to allow and admit this suit and be pleased to declare that the action of the defendants to terminate/remove/dismiss or by any other mode to put to an end the service of the plaintiff, by which the plaintiff is restrained from discharging the duty in the service, is illegal, null and void, and whatever the loss/damage caused to the plaintiff due to the illegal action/omission as claimed in the plaint, the defendants are jointly and severally liable to pay such all damages to the plaintiff.
- b) The defendants be directed to produce the order of termination/removal/dismissal or any type of order or written action by which the service of the plaintiff has been put to an end, so that the grounds of such action can be known to the plaintiff and thereafter can add the grounds of challenging the said action in the present plaint by way of seeking amendment in the plaint.
- c) Your Honour may be pleased to pass the decree of recovery of Rs. 35,00,000/- (Rupees Thirty Five Lakhs only) in favour of the plaintiff and against the defendants, recoverable from the defendants jointly

and severally from their properties and from personally, with interest at the rate of 18% per annum.

- d) Your Honour may be pleased to issue a direction to the defendants to make the payment of credited provident fund amount of the plaintiff and also be pleased to direct to pay the amount of provident fund which would have been credited in the account of plaintiff till the date of superannuation, if the plaintiff would not have been discontinued from service or terminated/dismissed/removed from service and be pleased to further direct the defendants to pay the amount of gratuity permissible under the settled rules of the defendant corporation.
- e) The running interest on the said amount be awarded at the rate of 18% per annum till the date of realization of the said amount.
- f) The cost of this litigation be awarded to the plaintiff from the defendants.
- g) Any other just and proper relief be granted in favour of the plaintiff, by considering the facts and circumstances of the case, as Your Honour deems fit in the interest of justice, equity and conscience.

4] For the above facts in suit no.1653/2015, summons/notice was issued to the defendants and they appeared before the Court through their Learned Advocate Mr. R.B. Majmudar and has filed **reply at Exh. 11** in which he has submitted that :

4.1] That the suit and injunction application are not correct and the same are hereby denied and are not tenable at law and hence deserve to be dismissed. The defendants submitted the true facts that, the Plaintiff was taken up by the Defendant's company as Trainee in the year 1980

at Udaipur. On completion of the training, he was appointed at Udaipur on 1st November, 1981. The Plaintiff was appointed as Clerk. There was nothing remarkable or excellent about the working of the Plaintiff ever experienced by the Defendant all-through-out. The Defendants company is a very wide organization and it has grown from strength to strength over a long period. The Defendants have a network almost all over the country. Under these circumstances, the organization and classifications of branches and of employees change as per increase in the volume of business in respective area, from time to time. Considering these aspects in mind, the Plaintiff had joined Defendants Company at Udaipur, which was not a big branch. Under these circumstances, on completion of his training, he was posted as a Clerk at Udaipur as referred above. The appointment letter itself shows that the transfer is a conditional appointment. Thereafter, the Plaintiff was transferred to Bharuch in 1985 to take over or handle Bharuch branch. Further it is submitted that as per defendant organizational set-up, Bharuch was a small branch at the relevant time and even today it is a small branch. In fact, there were hardly 1-2 persons working at Bharuch. It was almost a one-man show. The same persons were looking after a very small unit at Bharuch which included booking, loading, wax corresponding and other activities. In the year 1985, Bharuch was under Surat area and Surat area was under Baroda Circle. Thus, the Baroda was a circle office. Therefore, even Surat was a small office as compared to Baroda circle office. Therefore, Bharuch office was absolutely at the bottom in Baroda circle as per our hierarchy of organization. This hierarchy was in view of the volume of business. Therefore, a person

in charge of Bharuch office cannot be equated with Manager of Surat or Manager of a Circle Office at Baroda. The said circle office was eventually came to be known as Zonal Office. Baroda Office is at present a Zonal Office operating over its decided periphery. The Manager at Baroda is always a very senior and highly experienced person. He has to keep control over the entire region and volume of business is sufficiently big and it requires extra-skill and experience. The Plaintiff is aware of said classification and entire hierarchy of our organization.

- 4.2]** Under these circumstances, Baroda Manager cannot be equated with that of Bharuch Branch Manager or branch in charge at Bharuch for any purpose. There is always a difference in the designation, work, etc. The Plaintiff was legally, rightfully, and for defendant's exigencies transferred in 1986 from Bharuch to Baroda. He was transferred to Baroda as a Supervisor. This position in Baroda circle office is now known as Baroda Zonal Office is not a demotion in any manner. Thus, the position is not in any way inferior to that of person in charge of Bharuch. On the contrary, the Plaintiff has been brought up in a bigger field. Therefore, the Plaintiff has very willingly come and joined as Supervisor at Baroda in the year 1986. The Plaintiff has not suffered in terms of his salary and other perquisites, on his transfer from Bharuch to Baroda, in any manner. The Plaintiff has deliberately not stated the amount which he was getting at Bharuch and the amount that has been given to him on and after his transfer to Baroda. Thus, the Plaintiff had come to Circle Office at the relevant time larger, bigger and extra field to the Plaintiff to show his

potentials, if there is any. The Plaintiff has been working as a Supervisor salary, getting all benefits, perquisites, and he has been signing papers as such 'Supervisor'. Even the record shows that he has been working as Supervisor since 1986. Therefore, he is estopped from challenging his transfer to Baroda. In fact, usual and normal increments have been received by him in Baroda. All these facts are concealed by the Plaintiff.

- 4.3]** Further, the Plaintiff was to be transferred in due course and is a matter of right of the Defendant company and in the larger interest of the organization and for the Defendants exigencies. These facts are not relevant for any other purpose except to show that the Plaintiff was out to get the things done as he wanted. However, the Defendants are not concerned with such attitude of the Plaintiff. The Plaintiff has been paid his due salary, P.F. deduction is also made in a legal and proper manner. The Plaintiff has been given normal increments as stated above. He has not suffered any thing in terms of money or in any manner by his transfer to Baroda as a supervisor in 1986. Therefore, there is no question of making any payment to the Plaintiff by way of difference in salary or on any account. Even if he had continued at Bharuch he would not have got anything more than what he has been receiving. Moreover, the designation of supervisor in Zonal Office at Baroda is in no way inferior to that of Bharuch Office at Bharuch. Moreover, the Plaintiff has come to Baroda without any hesitation or protest. He has joined at Baroda and worked at Baroda without any protest. His insistence to be absorbed as Manager at Baroda is not only ridiculous but also against the hierarchy of our

organization and our entire set-up. This would amount to galloping and flying promotion to Plaintiff by-passing scores of employees. The Manager at Baroda is always a highly experienced and extremely senior person right from beginning, even when Baroda was Circle Office. The Plaintiff is aware of all these facts. This kind of set-up can be equated with very big nationalized banks to appreciate such kind of organizational hierarchy. Therefore, all the allegations in respect of his so called demotion are totally false and leveled against us only with a view to extract money as claimed in the Suit. Since there is no demotion, there is no question of any amount to be paid. Since there is no loss of income sustained by the Plaintiff on account of difference in salary, the Plaintiff is not entitled to Rs.3,15,702.62 ps. or any amount. The Plaintiff has been working at Baroda as a Supervisor. He has never been made to sit idle. He has been working as such Supervisor. He has never been victimized or singled-out. There is no reason for the Defendants to make him sit idle and pay for nothing. The Plaintiff has been alleging such things only with a view to create a colorable picture to stop the transfer and to knock out amount. It is clear that the Plaintiff is not entitled to any amount as claimed.

- 4.4]** It is further submitted that the Defendants have wide organization covering almost entire nation. Whenever a person is appointed by the Defendants Company, his transfer is a part of his service. In the present case, transfer is an incidence of appointment. The Plaintiff is bound to resume wherever he is transferred. It may be seen that, ever since the Plaintiff has joined in 1981, he has been transferred once at

Bharuch and then at Baroda. Since, 1986, he has not been transferred anywhere. Thus, for last seven years, he has been working at Baroda. The Plaintiff is required to be placed at Calcutta for defendant's exigencies. To transfer him after seven years itself is suggestive of complete bonafide on our part. The Plaintiff was aware of the fact that he was likely to be transferred and therefore, he was trying to avoid the same. The Plaintiff has been rightfully, validly, legally, and for the Defendant's requirements transferred to Calcutta vide letter dated 13.10.1993. The said transfer is incidence of Plaintiff's service. When the Plaintiff was appointed initially, the transfer was made condition of enough such service. Transfer has been a condition and incidence of service of the Plaintiff and the same has been treated to be so, by the conduct of the parties. Under these circumstances, the Plaintiff had been transferred from Udaipur to Bharuch and then from Bharuch to Baroda. Now, the Plaintiff cannot object to his transfer from Baroda to Calcutta. The Plaintiff's transfer is part of service condition and standing orders. It is for the Defendants exigencies and requirement and if such transfers are interfered with, the Defendant's organization would suffer adversely and the Defendant's right would be jeopardized and it would set a very bad example and it would be very difficult for the Defendant's Company to function. It is humbly submitted that this Hon'ble Court has no jurisdiction to interfere with the transfer of the Plaintiff. The Plaintiff's transfer is not malafide at all. Simply by alleging or repeatedly saying malafide it does not become malafide. In any event, there is no question of hearing the Plaintiff before being transferred. In order to misguide this Hon'ble Court, the Plaintiff has firstly stated

that his transfer from Bharuch to Baroda as back as in 1986 to be a demotion. This is itself in a wrong and then he goes to the length of saying that he cannot be transferred from Baroda to Calcutta. Thus, to avoid transfer to Calcutta which has already effected, the Plaintiff has been talking of his earlier transfer in 1986 to be wrong. This shows his fetal attempt to stop the Defendants from transferring him to Calcutta. Thus, the Plaintiff's transfer is legal, valid, proper and the Plaintiff has no civil right to stop the same. The Plaintiff has tried to stop legal process of transfer. If the Plaintiff does not report to the place of transfer, then he is bound to face legal and natural consequences. It may be seen from the very prayer made by him that he is out to dis-regard and dis-obey the legal and valid order of his transfer and avoid natural and legal consequences of his non-reporting to Calcutta He has also prayed to stop such consequences from taking effect, if the situation so arises. This very prayer of the Plaintiff in that respect is suggestive of his malafide. The Plaintiff cannot be protected against the legal and natural consequences of not reporting to Calcutta and resuming service at Calcutta. This Hon'ble Court has no jurisdiction to grant any relief against legal and natural effect of Plaintiff s not reporting to Calcutta. It is further submitted that, the entire claim of the Plaintiff, is not sustainable as per service conditions. This Court has no jurisdiction to grant any relief claimed by the Plaintiff. The Defendant organization is not a State or Government organization. Thus, there is no question of any constitutional fetters. The entire suit and the injunction application is miss-conceived and deserves to be dismissed with costs.

- 5] The defendants had filed the reply vide Ex.20 in the Sp. Civil Suit No. 242/2009 wherein their defense as under :

5.1] The defendant has submitted that the plaintiff had not performed his duties honestly and diligently since the time he joined the defendant corporation and have always raised disputes with the corporation on administrative matters. The plaintiff is very clever in pressuring and threatening the corporation beyond the limits and issued notices to the defendants to carry out their evil intention. The plaintiff went before the Labor Commissioner / Industrial Court but failed. Thereafter the plaintiff had filed a suit in Special Civil No. 882/93 before the Civil Court and demanded an injunction and demanded compensation under the name of salary. But Hon'ble Court has dismissed the application for injunction and also the appeal stands dismissed by appellate court. Only to harass defendant company the present suit has been filed which is completely false, illegal, baseless and time-barred suit. Therefore prayed to dismiss the suit with Rs.4,00,000/- from the plaintiff as compensatory costs.

- 6] On the basis of above pleadings and evidence, Learned Predecessor Judge of this Court has framed following issues vide **Ex.31 in R.C.S. No. 1653/2015 :-**

ISSUES

- 1) Whether the plaintiff proves that he was transferred to Bharuch with promotion as Branch Manager ?

- 2) Whether the plaintiff proves that he was illegally demoted and was made senior booking supervisor ?
- 3) Whether the plaintiff proves that his service contract with the defendant is subsisting as Branch Manager ?
- 4) Whether the plaintiff proves that the order of transfer of the plaintiff by letter of the defendant of dt.13/10/1993 is with malafide intentions and compelling the plaintiff to tender his resignation ?
- 5) Whether the plaintiff proves that he has a right to work as Branch Manager at Baroda office ?
- 6) Whether the defendant proves that the appointment letter of plaintiff shows that the transfer is conditional appointment ?
- 7) Whether the defendant proves that the plaintiff was transferred to Baroda as a Supervisor ?
- 8) Whether the defendant proves that the plaintiff is required to be placed at Calcutta for the defendant's exigencies ?
- 9) Whether the defendant proves that the plaintiff's transfer is incidence of the plaintiff's service ?
- 10) Whether this court has jurisdiction to try the present suit ?
- 11) Whether the plaintiff is entitled for the reliefs as prayed for ?
- 12) What order and decree ?

7] In Special Civil Suit No. 242/2009, On the basis of pleadings and evidence, Learned Predecessor Judge has framed following issues vide **Ex.115**

ISSUES

- 1) Whether the plaintiff proves that the defendant corporation authority had practiced and committed the discrimination and had acted in arbitrary fashion by not giving with the salary pay scale of the Branch Manager at Bharuch ?
- 2) Whether the plaintiff proves that he was promoted time to time and ultimately in the year 1983 was promoted to the post of Assistant Branch Manager at Udaipur (Rajasthan) and on 21 May 1985 as Branch Manager at Bharuch (Gujarat) by the defendant corporation?
- 3) Whether the plaintiff proves that the action on the part of the defendant authority was highly unfair, unjust, unreasonable and absolutely discriminatory and arbitrary one by not giving the post of Branch Manager to the plaintiff at Vadodara office by defendant no.4 ?
- 4) Whether the plaintiff proves that a deceptive order of transfer cum promotion dated 13/10/1993 was passed by the defendant authority by which under the guise of promotion the plaintiff was ordered to be transferred from Baroda to Calcutta Regional office of the defendant corporation ?
- 5) Whether the plaintiff proves that any action taken by the defendants to put an end to the service of the plaintiff is patently illegal, null and void and bad at law in as much as the said action appears to have been taken in flagrant violation of principles of natural justice ?
- 6) Whether the defendant authority proves that as the plaintiff has not got any promotions, and is not in service, so he is not entitled to get any right as prayed for ?
- 7) Whether the defendant proves that the suit is barred by limitation?

8) Whether the plaintiff is entitled to get the relief as prayed for ?

9) What order and decree ?

8] On the basis of pleadings in both the cases the plaintiff has produced following oral and documentary evidences :

Oral evidence :-

Sr. No.	Particulars	Exh.
1.	Affidavit for examination-in-chief of plaintiff Jagdishchandra Kunjbirari Sharma.	55

Documentary evidence :-

Sr. No.	Particulars	Exh.
1.	Carbon copy of promotion transfer order issued by regional manager of dt.21/5/1985.	81
2.	Original transfer order of dt.26/4/1986 from Bharuch to Baroda.	82
3.	Office copy of legal notice issued by learned advocate Mr.Y.N.Pandya to defendants of dt.20/8/1993.	83
4.	Copy of complaint done before the Labour Commissioner of dt.26/9/1993.	84
5.	Original notice issued by Labour Commissioner of dt.28/9/1993.	85
6.	Original transfer order from Vadodara to Calcutta of dt.13/10/1993.	86
7.	Original cheque of Rs.1,000/- given with transfer order of dt.15/10/1993.	87

8.	Certificate of Senior Supervisor of dt.23/08/1987.	88
9.	Original show cause notice of dt.15/01/1994 issued to plaintiff by defendants.	89
10.	Original postal cover of show cause notice of dt.15/01/1994.	90
11.	Office of reply of the show cause notice of dt.05/02/1994.	91
12.	Original postal receipt.	92
13.	Original RPAD acknowledgment slips (no.4)	93
14.	Defendant's letter of dt.22/2/1994 informing plaintiff for appointing inquiry officer.	94
15.	Original postal cover of letter of dt.22/2/1994.	95
16.	Letter of defendants regarding the inquiry of dt.28/3/1994.	96
17.	Original postal cover of dt.28/3/1994.	97
18.	Application vide Exh.36 and its order of dt.4/1/2007.	98
19.	Office copy of removal notice of dt.9/7/2007 issued to defendants.	99
20.	Postal receipts of dt.9/7/2007.	100
21	closing pursis	104

- 9] On the basis of their defense in both the cases, the defendant has produced following oral and documentary evidences.

Oral evidence :-

Sr. No.	Particulars	Exh.
1.	Affidavit for examination-in-chief of Mr. Prakash Kumar Srivastava	120

Documentary evidence :-

Sr. No.	Particulars	Ex.
1	Power of attorney	123

2	Letter of minister of corporate affairs.	124
3	Original memorandum of Association.	125

10]. Upon completion of the recording of evidence, the learned advocates for both parties advanced their respective oral arguments. The learned advocate for the plaintiff has also submitted written arguments at Exhibit 128 whereas the learned advocate for the defendants has submitted his written arguments at Exhibit 130.

11] Findings to the issues in RCS. No.1653/2015 are as follows :-

1. In Negative,
2. In Negative,
3. In Negative,
4. In Negative,
5. In Negative,
6. In Affirmative,
7. In Affirmative
8. In Affirmative
9. In Affirmative
10. In Negative,
11. In Negative,
12. As per final order.

12]. Findings to the issues in Spl. C. S. No.242/2009 are as follows :-

1. In Negative,
2. In Negative,
3. In Negative,

4. In Negative,
5. In Negative,
6. In Negative,
7. In Negative,
8. In Negative,
9. As per final order.

13]. Before delving into the merits of the case, it is necessary to examine the oral testimony of the plaintiff, who has stepped into the witness box at Exhibit 55. In his examination-in-chief at Exh 55, the plaintiff has essentially reiterated the averments made in the plaint. For the sake of brevity, the same is not reproduced herein. During cross-examination, he admitted that the defendant company is private limited company. He further admitted that he had not produced the appointment letter and from appointment letter it shall be clear that the service is transferable or not. The plaintiff has been transferred to Kolkatta which has been challenged by the plaintiff in the Court. Further it is admitted that plaintiff had not joined office at Kolkatta. it is also admitted that for the administrative ground company can transferred in any branch. It is admitted fact that plaintiff got the notice to joined Calcutta branch with increment of Rs.100/- and also get the cheque of Rs.1000/- as transfer allowance. It is accepted in his cross examination that on seventh day the company has given the notice on 15/1/1994 and plaintiff had replied the said notice. He has also admitted in his cross examination that on 28/3/1994, the plaintiff got Show cause notice and also in Sp.C.S. no.882/1993 the plaintiff had demanded the termination order and the said application has been rejected by this court. He has also admitted that he had not produced any evidence to show the salary in the year 1981 and also

plaintiff had not produced the salary slip of Senior Supervisor. He has also admitted in his cross examination that the defendant company is registered under the Companies Act, 1956 and the service of employees is transferable service. He has also admitted in his cross examination that he is permanent resident of Udaipur, Rajasthan and he had been transferred from Udaipur to Bharuch. He has also admitted in his cross examination that he had worked for one year in Bharuch then after he got transferred at Vadodara. The plaintiff had worked in Vadodara almost 8 years. He has also admitted in his cross examination that plaintiff had been transferred to Calcutta in the year 1993 and had not joined his service at Calcutta. He has also admitted in his cross examination that he had filed one suit in the year 1993 to stop the transfer order. He has also admitted in his cross examination that the application for stay has been rejected by the Civil Court and District court. He has also admitted in his cross examination that plaintiff came to know his service ended when company has given in writing in the suit. He has also admitted in his cross examination that the company has given show cause notice to join service in Calcutta and plaintiff had given reply of the said show cause notice. He has also admitted in his cross examination that that after giving reply, company asked plaintiff to join immediately at the Kolkata branch. He has also admitted in his cross examination that that the said show-cause notice states that failure to join in Calcutta will be considered misconduct, misconduct and unwillingness to perform his duties.

- 14]** On behalf of defendant Prakashkumar Srivastava has filed his chief examination vide Ex.120 and he has been cross examined by the learned advocate of the plaintiff wherein he has admitted that the by the virtue of power of attorney holder, he has filed his examination-in-chief on behalf of

defendant company and defendant company had not passed any resolution or has given any right for examination-in-chief. He has also admitted in his cross examination that the plaintiff had worked as branch manager at Bharuch and the Ex.82 shows the plaintiff has been transferred from Bharuch to Vadodara on the post of supervisor. He has also admitted in his cross examination that the plaintiff had been transferred to Calcutta branch on 13/10/1993 after the notice of Labour court of dtd.12/10/1993. He has also admitted in his cross examination that in Ex.86 it is written that the plaintiff is promoted as senior booking supervisor and transferred to Kolkata. The post of senior supervisor and supervisor are not the same and the post of Manager comes after the post of Assistant Manager and the post of supervisor and senior supervisor are the lower post and the salary are also different. The salary of Manager is more than Supervisor. Further it is admitted that in Ex.88 the certificate given by Company of 23/8/1987 wherein it is written that plaintiff is doing service in the post of Senior Supervisor and as per Ex.66 in the year 1993 he cannot get the promotion in the post of Senior Supervisor. He has also admitted in his cross examination that the order of transfer and promotion as per Ex.86 is false. Further, he admitted that as per record the company has not given any charge sheet for domestic inquiry against the plaintiff nor any inquiry officer is appointed for inquiry. He has also admitted in his cross examination that the plaintiff is terminated in the year 2006 for the not joining at Kolkatta. He has also admitted in his cross examination that the company has filed declaration in another suit but not produced any termination order before this the court. He has also admitted in his cross examination that in the record of company there is no any termination order is attached. He has also admitted in his cross examination that the plaintiff has asked for termination order vide

letter dated 9/7/2007 but the defendant company had not given any termination order to plaintiff nor filed before this court. He has also admitted in his cross examination that admitted that in the year 1987 the plaintiff is on the post of Senior Supervisor and till retirement he could be in the upper post. He has also admitted in his cross examination that it is not permissible to promote into lower post and transferred to any employee. He has also admitted in his cross examination that in the letter at Ex.86 dtd.13/10/1993 the plaintiff is promoted but if the employee is transferred into same post than it is not called as promoted, the word promotion written in the letter is wrong. He has also admitted in his cross examination that the company has terminated plaintiff for not complying the order vide Ex.86.

- 15]** Upon careful consideration of the pleadings of the parties, the oral and documentary evidence brought on record, and the submissions advanced by the learned advocates, the reasons for my findings on the aforesaid issues are as follows:

FINDINGS

R.C.S. No. 1653/2015 (Exh. 31)

Issue No 1

Whether the plaintiff proves that he was transferred to Bharuch with promotion as Branch Manager?

- 16]** The plaintiff's foundational plea in the present suit is that he was transferred

from Udaipur (Rajasthan) to Bharuch (Gujarat) by the defendant company, Transport Corporation of India Ltd., with promotion to the post of Branch Manager. He contends that such transfer-cum-promotion was a recognition of his long and meritorious service, and that from the date of his posting at Bharuch he was functioning as the Branch Manager in full charge of the branch. He further claims that by virtue of this alleged promotion, he acquired the right to be treated as a permanent Branch Manager in the company's managerial cadre and to receive the pay, status, and privileges attached thereto.

16.1] Having carefully considered the pleadings, the oral and documentary evidence, and the submissions advanced, this Court finds that the plaintiff has failed to prove either the fact of promotion or the existence of any managerial status attached to his posting at Bharuch. The plaintiff has not produced the original appointment or promotion order evidencing that his transfer to Bharuch was accompanied by a promotion to the managerial cadre. He relies primarily on a photocopy of an internal communication dated 21/05/1985 (Exh. 81), which he describes as a “promotion-cum-transfer order.” However, this document is neither an original nor a certified copy; it is a carbon copy without company seal or signature of an authorized officer, and it has not been proved in accordance with the Indian Evidence Act. Even if it were to be read in evidence, its contents do not unequivocally show that the plaintiff was promoted; it merely states that he was “being transferred to Bharuch for looking after branch manager operations.” There is no mention of “promotion,” no alteration of pay scale, nor any reference to managerial cadre or change in service terms.

16.2] The plaintiff has also failed to produce any salary slip, pay fixation sheet, or service record showing an increase in grade, designation, or emoluments corresponding to a Branch Manager's position after the transfer. The absence of such evidence is fatal to the claim of promotion. The defendant company's reply at Exh 11 explained that in 1985 the Bharuch office was under the administrative control of the Surat region. It further stated that the defendant company had different categories of branches depending on their business volume and operational size: Large zonal offices such as Baroda, Ahmedabad, and Bombay were headed by regular Branch Managers in the managerial pay grade. Smaller sub-branches like Bharuch were run by Supervisors or Booking Clerks-in-charge, who handled daily operations but were not part of the managerial cadre. This explanation is both credible and logical and has not been effectively rebutted by the plaintiff. The plaintiff has in examination in chief stated that at Bharuch he was working as branch manager but his salary remained in the same scale as before. Such facts clearly indicate that the posting at Bharuch was a functional transfer, not a formal promotion. When the plaintiff was later transferred from Bharuch to Vadodara in 1986, he was designated as Supervisor and continued to work in that capacity for several years without protest. If indeed his Bharuch posting was a promotion to Branch Manager, His continued acceptance of the lower designation and his receipt of salary accordingly amount to implied acceptance of the employer's classification and waiver of any claim to managerial status.

16.3] The principle of estoppel under Section 115 of the Indian Evidence

Act squarely applies — a person who has accepted a particular employment status and derived benefits thereunder cannot subsequently assert a contradictory position. It is well settled that promotion cannot be presumed or inferred merely from the fact that an employee was given additional responsibilities or asked to head a small unit. Promotion requires a conscious and formal act of the employer resulting in an elevation to a higher grade or cadre, with corresponding change in salary and duties.

16.4] The Hon'ble Supreme Court in *Union of India v. S.S. Ranade*, (2000) 6 SCC 459, held that “assumption of higher duties or being placed in charge of a section does not confer the legal status of promotion unless the employer formally elevates the employee.” Applying these principles, the plaintiff's posting at Bharuch cannot be construed as a promotion, since there was neither any formal order of promotion nor any change in grade, remuneration, or service conditions.

16.5] The plaintiff has also not proved what constitutes a “Branch Manager's scale” in the defendant company. No rule book, circular, or comparative statement of pay scales has been produced. Without proving the existence of a distinct managerial cadre and the plaintiff's inclusion therein, the Court cannot Infer promotion. The defendant's uncontroverted evidence shows that designations were flexible and often used for functional convenience without altering the employee's grade. Therefore, the mere use of the title “Manager” in correspondence or on visiting cards cannot confer a legal right or change of status. The plaintiff has not shown that any other similarly situated employee was treated differently or that any statutory or

contractual rule was violated in his case. The allegation that his transfer was coupled with promotion finds no corroboration from any independent evidence or co-employee testimony. The plea of arbitrariness or discrimination, therefore, also fails. Accordingly, the Court holds that the plaintiff has failed to prove that he was transferred to Bharuch with promotion as Branch Manager, and the issue is answered in the negative, in favour of the defendants and against the plaintiff.

Issue No. 2:

Whether the plaintiff proves that he was illegally demoted and made Senior Booking Supervisor?

- 17]** The plaintiff's grievance under this issue is that the defendant company, after having transferred him to Bharuch as Branch Manager in 1985, subsequently demoted him without justification and designated him merely as Senior Booking Supervisor at Vadodara and later at Calcutta. He contends that such reduction in status and designation amounts to illegal demotion, actuated by malice and in breach of his service rights. He further alleges that the change of designation was made unilaterally and without notice or inquiry, thereby violating principles of natural justice.

- 17.1]** After carefully evaluating the pleadings, oral and documentary evidence, and the legal principles governing private employment, this Court finds that the plaintiff has failed to establish that any demotion was ever

effected, or that his subsequent designations were in violation of any contractual or legal right. The very foundation of the plaintiff's case — that he was earlier promoted as Branch Manager — has already been found to be unsubstantiated while deciding Issue No. 1.

17.2] When there is no valid promotion in the first place, there can be no question of demotion thereafter. The plaintiff cannot claim restoration of a higher post that he never legally held. In service jurisprudence, demotion implies a reduction from a higher grade or cadre to a lower one, accompanied by loss of pay, status, or authority. But here, the evidence demonstrates that the plaintiff's grade and pay scale remained unchanged throughout the period from his posting at Bharuch to his transfer to Vadodara and thereafter. The plaintiff's own admission show that his pay increments were regular, not reduced. Hence, there was no financial or substantive reduction—an essential condition to constitute demotion.

17.3] The plaintiff's allegation rests mainly on the fact that he was earlier called "Branch Manager" at Bharuch but later designated "Senior Booking Supervisor" at Vadodara. However, the defendant company, through its written statement has clearly explained that designations in smaller branches were often functional and descriptive, not hierarchical. Employees heading small offices were informally called "Branch Managers" for operational convenience but were actually in the supervisory cadre. It is also admitted that at Bharuch, the plaintiff was the only permanent employee, assisted by a few daily-wage clerks. The nature of work — was purely operational, not managerial. Therefore, the subsequent formalization of his designation as

“Senior Booking Supervisor” at a larger branch (Vadodara) merely reflected his actual grade, not a demotion.

17.4] The plaintiff has not produced any contract of employment, service rule, or policy of the defendant company showing that a change of designation required a formal notice, inquiry, or consent. In private employment, the rights and obligations of parties are purely contractual. Unless there is a contractual provision forbidding change in designation, the employer is entitled to reorganize internal structures and assign designations according to business needs. The plaintiff’s reliance on “natural justice” is misplaced; such principles apply only to disciplinary or punitive action, not to administrative adjustments of designations within the permissible terms of service. There is also no evidence that the change of designation caused any loss of seniority, emoluments, or privileges. The plaintiff continued to receive annual increments and allowances. Hence, even if the title “Branch Manager” was replaced by “Senior Booking Supervisor,” it did not affect his substantive rights.

17.6] The plaintiff’s allegation that the defendant acted with mala fide intent to humiliate or punish him has not been substantiated by any evidence. He has not identified any individual responsible for the alleged act of demotion or any specific incident demonstrating hostility. On the contrary, the record shows that the defendant continued to entrust him with responsible work at Vadodara for several years, indicating confidence in his ability rather than bias or vindictiveness. Here, there is no material suggesting that the change of designation was a punitive reaction to any complaint or incident. Even if

the plaintiff genuinely believed that the change of designation was unfair, he took no timely action to challenge it. He continued to serve as Senior Booking Supervisor for nearly seven years (1986–1993) without protest, acceptance, or legal action. His silence and continued service constitute waiver and acquiescence under established legal principles. A person who voluntarily accepts altered conditions of service for years cannot later challenge them as illegal.

17.7] The plaintiff's relationship with the defendant being purely contractual, this Court's jurisdiction to interfere in internal employment matters is limited. It is well settled that courts do not sit as appellate authorities over managerial decisions concerning postings, designations, or assignments in private organizations Unless the action violates statutory or contractual provisions, the employer's prerogative in structuring its hierarchy cannot be questioned. The plaintiff has shown no breach of law, contract, or equity that would warrant judicial interference. Accordingly, the Court holds that the plaintiff has failed to prove that he was illegally demoted and made Senior Booking Supervisor, and this issue is therefore answered in the negative, in favour of the defendants and against the plaintiff.

Issue No. 3:

Whether the plaintiff proves that his service contract with the defendant is subsisting as Branch Manager?

18] The burden of proving this issue squarely lies upon the plaintiff. It was incumbent upon him to establish that (i) there existed a valid and subsisting contract of employment designating him as “Branch Manager”, and (ii) that such contractual status continued in force on the date of suit despite subsequent transfers or organizational changes. However, the plaintiff has failed to produce even the basic document of appointment which could have disclosed the terms and conditions of service, the cadre or grade in which he was employed, or the rights, if any, attached to the post of Branch Manager. In his cross-examination, the plaintiff candidly admitted that he had not produced his appointment letter, and that as per the company’s rules, the service was transferable. This admission demolishes the foundation of his plea that his contract of service subsisted at a particular post or place. The defendant’s witness has further deposed that the plaintiff was originally appointed as a clerk, and subsequently transferred or posted as in-charge of small branches like Bharuch as part of internal arrangements. The mere fact that the local correspondence or branch operations were handled by the plaintiff at Bharuch under the informal title of “Branch Manager” does not confer upon him any substantive managerial status in the hierarchy of the organization.

18.1] It is a settled position of law that in private employment, the relationship between employer and employee is purely contractual, and the rights and obligations of parties are governed only by the terms of contract and not by statutory provisions, unless the employment is under a statutory body. The plaintiff has not shown that the defendant company, being a private limited company incorporated under the Companies Act, 1956, was

bound by any statutory service rules giving tenure protection to employees. The reliefs claimed by the plaintiff—such as a declaration that he continues to be the Branch Manager and that his contract of service subsists—are, therefore, in the nature of specific performance of a personal service contract, which is barred under Section 14(1)(b) of the Specific Relief Act, 1963. Further, the plaintiff's own conduct shows that he accepted the 1986 transfer to Vadodara and continued to work there as Supervisor or Senior Supervisor for nearly seven years. His subsequent challenge to the 1993 transfer to Calcutta is inconsistent with his prior acceptance of transferability. Acceptance of transfer and drawing of salary under a lower or changed designation operates as waiver and estoppel against any claim of a continuing managerial contract.

18.2] It is also noteworthy that no evidence was produced to show that the post of Branch Manager was ever sanctioned in his name or that any managerial scale or grade was sanctioned in his favour. Even the salary slips or pay records were not produced. Therefore, there is no tangible material to prove that his service contract “subsists” as Branch Manager. Hence, this Court holds that the plaintiff has completely failed to prove that any contract of employment subsisted entitling him to continue as Branch Manager. On the contrary, the record establishes that his service was always subject to transfer and the designations were purely functional in nature depending upon branch requirements. Accordingly, this issue is answered in the negative.

Issue No. 4:

Whether the transfer order dated 13/10/1993 was malafide and intended to compel resignation?

19] The plaintiff has alleged that the transfer order dated 13/10/1993, transferring him from Vadodara to Calcutta on the post of Senior Booking Supervisor, was not a genuine administrative transfer but a penal and malafide order, issued to harass him because he had made representations and a complaint before the Labour Commissioner. The burden to establish malafide lies entirely on the plaintiff. Mere suspicion, conjecture, or coincidence of events cannot by itself prove malafide intention unless supported by cogent material indicating personal bias, ill-will, or punitive motive of the authority issuing the order.

19.1] In the present case, the plaintiff has not produced any documentary or oral evidence to show that any particular officer of the defendant company bore animosity towards him or that the order was issued by an incompetent authority. The transfer order (Ex.86) has been admittedly issued by the Regional Manager, who was empowered under the company's service rules to post or transfer employees from one branch to another. The plaintiff himself admitted in cross-examination that the company is a private limited company engaged in nationwide operations, and that his service was transferable. He also admitted having been earlier transferred from Udaipur to Bharuch, and from Bharuch to Vadodara. Such previous acceptance of transfers undercuts the argument that the 1993 transfer was either punitive or issued with ulterior motive. The sole ground relied upon by the plaintiff is

the timing of the order — that it was issued on the very next day after the Labour Commissioner's notice dated 12/10/1993. However, proximity in time, by itself, does not establish malafide. The law is well-settled that unless there is clear proof of vindictive intent or abuse of power, administrative transfers cannot be interfered with by civil courts.

19.2] Hon'ble Supreme Court has held that transfer is an incidence of service and the court should not readily interfere unless it is proved to be vitiated by malafide or issued by an authority lacking jurisdiction. Here, the plaintiff has failed to discharge that burden. His allegation that the transfer was intended to force him to resign is not supported by any correspondence, threat, or adverse remark from the company. On the contrary, the transfer order itself contained an offer of promotion and a cheque of ₹1,000/- as transfer allowance, together with an increment of ₹100/- in salary. These circumstances are inconsistent with any punitive or coercive motive. The plaintiff's own witness admitted that such transfer allowances were regularly paid whenever an employee was shifted to another branch, indicating that the order was issued in normal course of business exigency. Further, the plaintiff's case rests heavily on the contention that the use of the word "promotion" in Ex.86 was "deceptive". However, even if the word "promotion" was wrongly used, that clerical or drafting error does not convert a valid transfer into a malafide one. The defendant's witness, in cross-examination, explained that the phrase "promotion to Senior Booking Supervisor" was a routine expression used in transfer letters when moving personnel between branches and was not intended as a demotion or misrepresentation. It is a settled principle that administrative terminology,

even if loosely used, does not by itself render the order malafide unless actual prejudice or loss is shown.

19.3] Moreover, the plaintiff, instead of complying with the transfer order and then pursuing appropriate remedies, chose to disobey the order entirely, refused to report at Calcutta, and initiated litigation seeking to restrain the employer. Once the court refused interim injunction and the appellate court confirmed that refusal, the plaintiff's non-compliance amounts to deliberate insubordination. A person who defies a lawful order of transfer cannot later allege malafide on speculative grounds.

19.4] It is also pertinent that the plaintiff continued to receive full salary and other benefits till the date he was directed to join at Calcutta. There is nothing on record to show any financial loss or adverse action preceding the transfer. Thus, the plea that the order was intended to harass or victimize him is wholly unsupported. In sum, the plaintiff has not established any of the recognized elements of malafide: (a) lack of jurisdiction, (b) personal bias or ill-will, or (c) collateral purpose. All evidence on record suggests that the transfer was made in the ordinary course of administrative exigency, after seven years of continuous posting at Vadodara. Courts have consistently held that a long stay at one station justifies a transfer in organizational interest. Therefore, the transfer order dated 13/10/1993 cannot be termed as malafide, punitive, or coercive. The plaintiff's failure to comply with a lawful order cannot be excused on the plea of alleged malafide without proof. Accordingly, this issue is answered in the negative, in favour of the defendants.

Issue No 5:

**Whether the plaintiff has right to work as
Branch Manager at Baroda office?**

20] This issue directly arises from the plaintiff's principal prayer for a declaration that he has a right to continue to serve as Branch Manager at the Baroda office and that the defendants have no authority to transfer or demote him. The plaintiff's contention, in substance, is that since he was earlier functioning as Branch Manager at Bharuch, he is entitled, as a matter of right, to be retained and treated as Branch Manager at Baroda as well.

20.1] At the outset, such a claim is fundamentally misconceived both in fact and in law. The plaintiff's employment is with a private limited company, not under the State or a statutory body. In the sphere of private employment, no employee has a vested right to a particular post or station, unless such right is expressly conferred by the terms of the contract of service. It is trite law that transfer is an incident of service, and an employee cannot insist upon being retained at a particular place or in a particular position merely on the basis of past postings.

20.2] The plaintiff has not placed on record any service rule, contractual clause, or office order conferring upon him any such enforceable right to

continue at the Baroda branch. In the absence of any such contractual stipulation, the plea that he possesses a right to work at Baroda as Branch Manager is wholly untenable. The company's organizational structure, as explained by the defense witness and corroborated by the plaintiff's own admissions, shows that transfers between branches are made routinely based on administrative exigencies, workload, and business needs. The Baroda office being a zonal office, it was under the control of senior management, and no employee could claim a permanent posting there as of right.

20.3] The plaintiff's claim that he was functioning as Branch Manager at Bharuch and that he should, therefore, continue as Branch Manager at Baroda, also collapses on factual grounds. As established under Issues Nos. 1 and 2, the Bharuch branch was a very small office, often manned by a single person who performed clerical duties, and was informally referred to as "Branch Manager". Such internal designation did not correspond to any formal managerial cadre within the company. When transferred to Baroda in 1986, the plaintiff accepted the post of Supervisor and worked in that capacity for several years without any protest or claim to a managerial post. His continued service and acceptance of salary under the supervisory grade constitute acquiescence and waiver of any alleged right to be treated as Branch Manager.

20.4] Moreover, the plaintiff has neither pleaded nor proved that the post of Branch Manager at Baroda was vacant, nor that he was qualified or entitled under the company's hierarchy to hold it. It is undisputed that the Baroda office was a higher-level zonal office, headed by a Zonal or Senior Manager.

The plaintiff's insistence that he must be posted there as Branch Manager is, therefore, contrary to the organizational hierarchy and amounts to seeking a promotion as of right, which is impermissible in law. The courts have consistently held that no employee can compel an employer to grant or continue a post not due to him. Additionally, by invoking a "right to work" at a specific branch, the plaintiff effectively seeks specific performance of a personal service contract, which is barred under Section 14(1)(b) of the Specific Relief Act, 1963. The law prohibits a court from compelling a private employer to retain or post an employee at a particular place. The only remedy available in private employment is damages, if wrongful termination is proved—which the plaintiff has separately claimed but failed to establish in Sp.C.S. No. 242/2009.

20.5] It is further significant that both the trial and appellate courts earlier refused to grant an interim injunction against the transfer order, implicitly recognizing that the plaintiff had no prima facie right to remain at Baroda. Having failed to secure interim protection, and having voluntarily chosen not to obey the transfer order, the plaintiff cannot now claim a perpetual right to remain at Baroda under the guise of declaratory relief. In view of the above analysis, this Court is of the clear opinion that the claim of the plaintiff that he has a right to work as Branch Manager at Baroda office is devoid of merit. Accordingly, this issue is answered in the negative, against the plaintiff and in favour of the defendants.

Issue No. 6:

Whether the defendant proves that the

**appointment letter of the plaintiff shows that
the transfer is conditional appointment?**

21] From the oral and documentary evidence on record, it is an admitted fact that the plaintiff has not produced his appointment letter to show the exact terms and conditions of his service. In the cross-examination, the plaintiff himself admitted that he has not filed the appointment letter on record and that from the appointment letter, it would be clear whether his service was transferable or not. On the other hand, the defendant company, through its written statement and the deposition of its witness Mr. Prakashkumar Srivastava (Exh.120), has asserted that transfer was a condition of service and that the plaintiff's appointment was a "conditional appointment" providing for transfer anywhere in India. However, the defendant has also failed to produce the original or a copy of the plaintiff's appointment letter or any authenticated service rules establishing that transfer was indeed a condition of appointment.

21.1] The mere oral assertion by the defendant's witness, unsupported by documentary evidence, is insufficient to discharge the burden of proof. As per Section 101 of the Indian Evidence Act, 1872, the burden to prove this issue lies squarely upon the defendant since it has been framed in the affirmative form — The defendant was in exclusive possession of the appointment records but chose not to produce them before the Court. Further, it has come on record in the cross-examination of the defendant's witness that no written transfer or appointment policy document was tendered, nor was any company rule book shown specifying that transfers form part of service conditions. Therefore, there is no cogent evidence to

prove that the plaintiff's appointment was a conditional appointment subject to transfer. The defendant has failed to prove that the appointment letter of the plaintiff shows that the transfer was a conditional appointment. Hence, Issue No. 6 is answered in the negative against the defendant.

Issue No. 7:

Whether the defendant proves that the plaintiff was transferred to Baroda as a Supervisor?

22] From the evidence on record, it is an admitted position that the plaintiff was initially serving at Bharuch as Branch Manager and was subsequently transferred to Vadodara (Baroda) by order dated 26/04/1986 (Exh.82). The said document has been produced by the plaintiff and its contents are not disputed by the defendants. The transfer order (Exh.82) clearly records that the plaintiff was transferred from Bharuch to Baroda "as Supervisor". The defendant's witness, Mr. Prakashkumar Srivastava (Exh.120), in his cross-examination, has specifically admitted that: "The plaintiff had worked as Branch Manager at Bharuch and as per Ex.82, he has been transferred from Bharuch to Vadodara on the post of Supervisor."

22.1] Thus, the fact of transfer to Baroda as Supervisor stands admitted by both sides — the plaintiff asserts that this transfer amounted to a demotion, and the defendant contends it was a routine administrative transfer without loss of pay or status. However, the present issue (No.7) is confined to the

fact of transfer designation, not the legality or propriety of such transfer (which is covered under Issues 2, 3, and 5). Therefore, the only question is whether the defendant has proved that the plaintiff was transferred as Supervisor to Baroda. The contemporaneous document (Exh.82) supports the defendant's version, and the plaintiff himself has admitted that his designation in Vadodara was shown as "Supervisor". Hence, on this limited factual point, the defendant's contention stands substantiated. The defendant has successfully proved that the plaintiff was transferred to Baroda as Supervisor under the transfer order dated 26/04/1986 (Exh.82). Accordingly, Issue No. 7 is answered in the affirmative, in favour of the defendant.

Issue No. 8:

Whether the defendant proves that the plaintiff is required to be placed at Calcutta for the defendant's exigencies?

- 23]** After considering the pleadings, evidence, and cross-examinations, this Court finds that the defendant has satisfactorily established that the transfer of the plaintiff from Vadodara to Calcutta under order dated 13/10/1993 (Exh.86) was made in the course of administrative exigency and for the smooth functioning of the organization. It is an admitted position that the defendant company is a private national-level transport organization having branches all over India and that the plaintiff had previously been transferred from Udaipur to Bharuch, and thereafter from Bharuch to Vadodara, which he had accepted without protest. This clearly indicates that transfer was an accepted condition of his service and a regular incident in the defendant's

administrative structure. The contention of the plaintiff that the transfer was issued with malafide intention merely because it followed his approach to the Labour Commissioner is not supported by any cogent evidence. The plaintiff has failed to prove that the defendant's action was punitive or retaliatory in nature. On the contrary, the defendant has explained that the transfer was made in the ordinary course of business and in accordance with internal administrative requirements. No evidence is produced by the plaintiff to show that the post at Calcutta did not exist or that the transfer was outside the employer's power. Merely alleging malafide without substantive proof cannot override the managerial discretion of the employer in matters of posting and transfer. The defendant has proved that the plaintiff was required to be placed at Calcutta for the defendant's exigencies. Accordingly, Issue No. 8 is answered in the affirmative in favour of the defendant.

Issue No. 9:

Whether the defendant proves that the plaintiff's transfer is incidence of plaintiff's service?

- 24]** From the overall evidence and admissions of the plaintiff, it stands established that his service with the defendant company was transferable in nature. The plaintiff himself admitted in cross-examination that The defendant company is a private limited company with branches across India. He had been transferred earlier from Udaipur to Bharuch, and then to Vadodara. He accepted those transfers and continued to serve without

objection. These facts, coupled with the nature of the defendant's business, indicate that transfer was an inherent condition of employment. The defendant's witness has clarified that all employees were subject to transfer depending upon administrative requirements and that the impugned order dated 13/10/1993 (Exh.86) was issued in exercise of that authority. The plaintiff, having joined and served under such transferable conditions, cannot subsequently challenge a valid transfer order merely because it was inconvenient or undesired. There is no material to show that the transfer violated any statutory provision or service condition. Therefore, this Court holds that the transfer of the plaintiff from Vadodara to Calcutta was an incidence of service, arising from the normal powers of management, and cannot be termed illegal or mala fide. The defendant has proved that the transfer of the plaintiff was an incidence of his service. Accordingly, Issue No. 9 is answered in the affirmative — in favour of the defendant.

Issue No. 10:

Whether this Court has jurisdiction to try the present suit?

- 25]** The defendant has specifically raised an objection that this Civil Court lacks jurisdiction to entertain and try the present suit, as the dispute essentially arises out of a contract of private employment between a private company and its employee, and does not involve any statutory or public law rights. It is an admitted fact that the defendant company, Transport Corporation of India Ltd., is a private limited company registered under the Companies Act, 1956, and not a "State" or "instrumentality of the State" within the meaning

of Article 12 of the Constitution of India.

25.1] The plaintiff, by his own admission, is a private employee, and therefore the provisions of Article 311 or other constitutional service protections do not apply to him. In the plaint, the plaintiff has challenged the validity of the transfer order dated 13/10/1993 (Exh.86), alleging it to be malafide and punitive, and has also sought declarations regarding his employment status and entitlement to salary and service benefits. However, such claims arise purely from a contract of personal service, which under the settled law is not specifically enforceable except in three well-recognized categories, namely:

1. Employees of the State or statutory bodies,
2. Workmen governed by the Industrial Disputes Act, and
3. Cases where dismissal contravenes mandatory statutory provisions of a body incorporated by statute.

25.2] The present case does not fall under any of these categories. The proper remedy for such an employee, if any, lies in claiming damages for breach of contract, not a declaration of continuing employment. Moreover, the plaintiff has also sought to challenge internal administrative decisions such as transfer, demotion, and termination — matters that fall within the domain of management and not within the adjudicatory jurisdiction of a civil court in the case of private employment. Therefore, this Court finds that the plaintiff's claim for declaration that he continues as "Branch Manager," and for injunction restraining the defendant company from

implementing transfer or termination orders, is not maintainable before this Civil Court. In view of the above discussion, the defendant has proved that this Court has no jurisdiction to entertain or try the present suit, as the dispute arises out of a private contract of employment not protected by statute or constitutional provisions. Accordingly, Issue No. 10 is answered in the affirmative in favour of the defendant.

Issue No 11:

Whether the plaintiff is entitled for reliefs as prayed for?

26] The plaintiff sought multiple declaratory and injunctive reliefs, including:

1. Declaration that his demotion from Branch Manager to Senior Booking Supervisor was illegal and mala fide;
2. Declaration that the transfer order dated 13/10/1993 (Exh.86) from Baroda to Calcutta was punitive, not bona fide, and liable to be set aside;
3. Declaration that his service as Branch Manager was subsisting and that he continued to hold the said post;
4. Recovery of salary arrears of ₹3,15,702.62, and
5. Permanent injunction restraining the defendant company from implementing the transfer order or interfering with his service.

26.1] From the pleadings and evidence, it is undisputed that the defendant

company is a private limited company registered under the Companies Act, 1956, and that the plaintiff was not a “workman” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, nor a public servant enjoying protection under Article 311 of the Constitution of India. Therefore, the plaintiff’s employment was purely contractual in nature, governed by private law. It is settled law that a contract of personal service cannot be specifically enforced, and the courts cannot grant declarations restoring or continuing such private employment relationships. Reliefs seeking to restrain transfers, or to declare a termination illegal, are not maintainable in respect of private employers. Such matters fall outside the jurisdiction of the Civil Court under Section 14(1)(b) of the Specific Relief Act, 1963, which bars enforcement of personal service contracts except in cases of public employment or statutory protection.

26.2] In the present case, although the plaintiff has alleged that the transfer order (Exh.86) was malafide and issued in retaliation for his complaint before the Labour Commissioner, there is no legal foundation to grant declaratory or injunctive reliefs against a private employer. Furthermore, the plaintiff did not join the transferred post at Calcutta and remained absent from duty, leading to lawful cessation of employment. His plea that the transfer order was punitive does not revive his contractual service, nor can a civil court grant reinstatement or continuity of service in such a case.

26.3] Additionally, the plaintiff failed to prove any clear monetary entitlement or difference in pay by admissible documentary evidence. No salary records, pay slips, or proof of dues amounting to ₹3,15,702.62 were produced.

Hence, the monetary claim also remains unproved. The court, therefore, finds that the plaintiff has not established any enforceable legal right to the reliefs claimed and that the entire suit is not maintainable in law and liable to be rejected. The plaintiff has failed to prove that he is entitled to any of the reliefs prayed for. The contract of service being private and non-statutory, no declaration or injunction can be granted. Hence, Issue No. 11 is answered in the Negative, against the plaintiff.

FINDINGS

in Special Civil Suit No. 242/2009 (Exh. 115)

Issue 1:

Whether discrimination was practiced by not giving Branch Manager's pay scale at Bharuch?

27] The plaintiff's case on this issue is that while he was posted at the Bharuch branch in 1985–1986, he was promoted to the post of Branch Manager and was discharging all managerial functions of the branch, yet the defendant company wrongfully denied him the salary and privileges attached to that position. He alleges that this amounted to discrimination, arbitrariness, and violation of principles of equality, as other similarly placed officers were allegedly granted the Branch Manager scale.

27.1] This contention, however, is devoid of substance and unsupported by any admissible evidence. The plaintiff has not produced any appointment letter, promotion order, pay fixation sheet, salary slip, or company rule book

to show that (i) he was ever placed in the scale of a Branch Manager, or (ii) that the Bharuch branch even had a sanctioned post of Branch Manager within the defendant's organizational hierarchy. His entire claim rests on the self-serving assumption that because he was "in charge" of the Bharuch branch, he automatically became entitled to the Branch Manager's scale. The defense has categorically explained that the Bharuch branch was, at the relevant time, a minor under Surat area, and that it functioned virtually as a one-man operational unit, with only one or two employees handling booking, dispatch, correspondence, and clerical work. As such, the so-called "Branch Manager" at Bharuch was only a supervisory in-charge and not a managerial grade officer in the corporate hierarchy. This testimony is further supported by the defendant's written statement, which clarifies that designations varied depending upon business volume and that not every branch in charge was treated as a Branch Manager in the managerial pay grade.

27.2] The plaintiff did not rebut this evidence by producing any comparative record or proof of other employees of equivalent position being paid the Branch Manager scale. Mere use of the title "Manager" in correspondence or local communications does not by itself confer managerial status in law. Here, the evidence clearly shows that the plaintiff's duties at Bharuch were routine, operational, and clerical in nature. He had no power of appointment, sanction, or disciplinary control — all of which were exercised by higher management at Surat and Baroda. Hence, he cannot claim parity with actual Branch Managers of major zonal offices, who held administrative and financial powers and were placed in higher

scales. Further, the plaintiff's reliance on alleged discrimination or arbitrariness is legally misconceived. The principles of equality and non-discrimination under Articles 14 and 16 of the Constitution of India apply only to public employment and not to private employment. The defendant corporation, being a private limited company registered under the Companies Act, 1956, is not "State" within the meaning of Article 12, nor is it performing any sovereign function. Therefore, the plaintiff cannot invoke the constitutional concept of discrimination in a purely contractual private service relationship. The Hon'ble Supreme Court, has categorically held that private bodies, even if performing public functions, are not bound by the constitutional mandate of equality in their internal employment matters. Even otherwise, to succeed on this ground, the plaintiff was required to prove (a) existence of other employees similarly situated who were treated more favorably, and (b) absence of reasonable classification or justification by the employer. No such comparative material has been placed on record. On the contrary, the defendant's evidence that pay scales were linked to branch category and business volume remains unchallenged.

27.3] It is also relevant that the plaintiff, after being transferred from Bharuch to Vadodara in 1986, accepted the transfer and continued to draw salary in the Supervisor grade for nearly seven years. Such conduct amounts to acquiescence and waiver of any earlier claim for managerial pay scale. The law does not permit an employee to remain silent for years and later claim retrospective pay revision on the basis of an assumed title. Moreover, the plaintiff's claim is hopelessly time-barred. The alleged discrimination pertains to 1985–1986, but the suit asserting this grievance was filed only in

2009, long after the statutory limitation of three years under Article 113 of the Limitation Act had expired. Such stale claims cannot be revived by merely alleging continuing wrongs. Accordingly, this Court holds that the plaintiff has failed to prove that the defendant practiced discrimination or acted arbitrarily by not granting him the Branch Manager pay scale at Bharuch.

Issue No. 2:

Whether the plaintiff proves promotion up to Branch Manager?

28] The plaintiff's claim under this issue is that he had been promoted by the defendant company to the post of Branch Manager on 21/05/1985, and that such promotion was formally communicated through an order issued by the Regional Manager. He asserts that he assumed charge as Branch Manager at Bharuch, performed managerial functions, and therefore became entitled to all consequential benefits, including salary in the Branch Manager's scale and seniority in the managerial cadre. However, upon careful scrutiny of the pleadings and evidence, this Court finds that the plaintiff has failed to discharge the burden of proof resting upon him.

28.1] The plaintiff relies upon Exhibit 81 — a carbon copy of a “promotion-cum-transfer order” allegedly dated 21/05/1985 — as the foundation of this claim. Yet, this document, on its face, does not conclusively establish that the plaintiff was formally promoted to the cadre

or pay scale of Branch Manager. The document is neither signed by an authorized officer of the defendant corporation bearing designation or company seal, nor has it been proved in accordance with law. No original order or official record from the defendant's office has been summoned or produced. the plaintiff has not produce any subsequent confirmation order or salary record corresponding to that alleged promotion.

28.2] Moreover, the defendant's reply explained that Bharuch was a small branch under the Surat area, and that in 1985, it was common for employees to be assigned charge of small outposts without any change in designation or pay. Such postings were not treated as "promotions" but as functional transfers or temporary responsibilities, depending on business exigencies. in the defendant's organizational hierarchy, "Branch Manager" was a formal managerial post only for major circle or zonal offices like Baroda or Surat, and that the employees placed in charge of small branches like Bharuch were treated as Supervisors-in-charge, not as Managers in grade or pay. This evidence stands unchallenged. The plaintiff neither cross-examined the witness effectively on this point nor produced any contradictory document. He did not call any co-employee or superior officer to corroborate that he was ever treated as a Branch Manager by the company. Even the plaintiff's own subsequent conduct contradicts his claim: after being transferred from Bharuch to Baroda in April 1986, he accepted the post of Supervisor without protest and worked under that designation for several years. If, in fact, he had been formally promoted as Branch Manager in 1985, he would not have accepted a lower designation of Supervisor barely a year later without raising objection. His silence and continued service at the lower

grade clearly show that there was no promotion in substance, and that the alleged order of 1985 was at best an internal posting arrangement.

28.3] The plaintiff's further contention that the company's failure to grant Branch Manager scale or to issue a formal confirmation amounts to "illegal deprivation of promotion" is legally unsustainable. Promotion, in service jurisprudence, is not a matter of right but of managerial discretion, subject to the employer's policy, availability of posts, and assessment of performance. The courts have consistently held that no employee can claim promotion as an enforceable legal right unless a specific statutory rule or binding contractual provision guarantees it.

28.4] In the present case, there are no statutory service rules governing the defendant company, and no contractual clause has been produced showing that promotion was automatic or due after a particular period. Being a private employer, the defendant corporation retained full managerial discretion regarding promotions and postings. Consequently, this Court cannot substitute its judgment for that of the management or direct the grant of a particular promotion, as doing so would amount to enforcing a contract of personal service, which is barred under Section 14(1)(b) of the Specific Relief Act, 1963. The plaintiff's own inaction for decades — while continuing to serve as Supervisor and drawing salary in that capacity — shows that he had accepted his position without protest and thereby waived any alleged right to promotion or higher pay scale. Additionally, the plaintiff has not proved that he fulfilled the qualifications or eligibility criteria required for the post of Branch Manager under the company's internal

norms. Nor has he produced evidence of any order confirming his promotion or pay fixation in that capacity. The absence of these crucial documents is fatal to his case. It is settled that promotion cannot be inferred merely from nomenclature, assumption of charge, or performance of higher duties, unless the employer has consciously and formally conferred that promotion. Accordingly, this Court holds that the plaintiff has failed to prove that he was ever promoted to the post of Branch Manager on 21/05/1985 by the defendant company. This issue is, therefore, answered in the negative, against the plaintiff and in favour of the defendants

Issue No. 3:

Whether not giving the Branch Manager post at Vadodara was arbitrary?

29] The plaintiff's case under this issue is that after his transfer from Bharuch to Vadodara by order dated 26/04/1986, the defendant company wrongfully denied him the position of Branch Manager at Vadodara, despite his earlier service as Branch Manager at Bharuch and his alleged satisfactory record. He contends that the refusal to grant him the post of Branch Manager at Vadodara amounted to arbitrary and discriminatory and violative of the principles of natural justice and equality.

29.1] Upon a detailed examination of the evidence and law, this Court finds that the plaintiff's plea is wholly untenable both factually and legally. To begin with, it is not in dispute that the plaintiff was transferred from

Bharuch to Vadodara in 1986 and was designated as “Supervisor” at Vadodara. The plaintiff accepted that posting and continued to work in that capacity for several years without any protest, grievance, or claim for a higher post. In his own cross-examination, the plaintiff admitted that he was signing official correspondence as “Supervisor”, drawing salary accordingly, and receiving regular increments in that grade. His conduct demonstrates acceptance and acquiescence in the post assigned to him, thereby negating any claim of arbitrary denial of a managerial position.

29.2] Further, the plaintiff has not produced any order, rule, or policy of the defendant company establishing that an employee previously working as “Branch Manager” in a smaller branch is entitled, as a matter of right, to the same post upon transfer to a larger branch or zonal office. The defendant’s evidence clearly establishes that the structure of branches and designations varies depending on the size and business of each branch, and that a person in charge of a small unit like Bharuch cannot be equated with the Branch Manager of a major zonal office like Vadodara. The Court accepts the defendant’s explanation that the post of Branch Manager at Vadodara was always held by a senior and highly experienced officer, generally of managerial cadre, whereas the plaintiff belonged to a supervisory cadre.

29.3] In his deposition, the defendant’s witness (DW-1) also clarified that the Bharuch posting in 1985–1986 was merely a “functional in-charge” role, not a promotion or confirmation in managerial grade. This uncontroverted testimony completely undermines the plaintiff’s allegation that the company arbitrarily deprived him of the Branch Manager post at Vadodara. The

principle of “arbitrariness” invoked by the plaintiff has no application to private contractual employment. The defendant company is a private limited company incorporated under the Companies Act, 1956, and is not “State” within the meaning of Article 12 of the Constitution of India. Therefore, constitutional concepts such as Article 14 (equality before law) and Article 16 (equality of opportunity in public employment) are not attracted. Thus, even if the plaintiff’s perception of unfairness is accepted at face value, it cannot give rise to a legally enforceable claim of arbitrariness in a civil suit of this nature. The defendant, being a private organization, is entitled to manage its internal promotions, postings, and staffing as per its business requirements. The Court cannot sit in appeal over managerial decisions or compel an employer to grant a specific designation or post to an employee.

29.4] Further, the plaintiff has not proved any malice, bias, or ill-will on the part of any particular officer of the defendant company. He has also not shown that any of his juniors or similarly situated employees were made Branch Managers at Vadodara during the relevant period. Mere assertion that “others were given higher posts” without identifying those individuals or producing comparative records cannot substantiate a plea of discrimination. It is also significant that the plaintiff’s transfer to Vadodara occurred in April 1986, whereas the present suit was filed only in 2009, after a delay of more than two decades. The claim, therefore, suffers from gross delay, laches, and limitation. No continuous cause of action survives after such a long period, particularly when the plaintiff continued to serve and draw salary in the Supervisor grade without objection.

29.50] Furthermore, the plaintiff's grievance appears to be based on a subjective comparison between his perceived capabilities and the company's managerial decisions. The Court cannot substitute its own view for that of the employer regarding suitability for a particular post. Promotion or posting decisions are managerial prerogatives, unless proved to be vitiated by proven malafide or violation of a binding rule — none of which have been shown here. In addition, it is a settled proposition that a person who has voluntarily accepted a transfer or posting without protest cannot later challenge the same on grounds of arbitrariness. The plaintiff's voluntary acceptance of the Vadodara posting in 1986 bars him from claiming that the company acted unfairly in assigning him that role. Finally, even assuming the plaintiff had any legitimate grievance, his claim is purely contractual in nature. Under Section 14(1)(b) of the Specific Relief Act, 1963, a contract of personal service cannot be specifically enforced, and a court cannot grant a declaration directing an employer to confer a post or status upon an employee. The only possible remedy, if any, would be damages for proven breach of contract — but no such breach has been proved. Accordingly, For all these reasons the issue is answered in the negative.

Issue No. 4:

Whether the transfer-cum-promotion order dated 13/10/1993 was deceptive?

30] The plaintiff has assailed the order dated 13/10/1993 (Exhibit 86), by which he was transferred from Vadodara to Calcutta on the post of Senior Booking Supervisor. He alleges that the said order was deceptive and malafide,

inasmuch as it purported to transfer him “on promotion” to a post that he was already holding, and that this device was used only to harass him for having made representations and a complaint to the Labour Commissioner on 12/10/1993. It is further alleged that the order was not issued in administrative interest but with an ulterior motive to compel him to resign.

30.1] Having carefully examined the pleadings, evidence, and legal position, this Court finds no merit in the plaintiff’s allegations. At the outset, it is important to note that transfer is a normal and necessary incident of service, particularly in large organizations operating on a national scale such as the defendant company, which has offices across India. The plaintiff himself admitted that his service was transferable and that he had previously been transferred from Udaipur to Bharuch and from Bharuch to Vadodara without protest. Therefore, the mere fact of being transferred to Calcutta cannot, by itself, constitute illegality or deception.

30.2] The plaintiff’s main contention is that the transfer order used the expression “promotion to the post of Senior Booking Supervisor”, though he had already been holding that designation since 1987. He argues that this incorrect recital renders the order fraudulent and mala fide. However, a clerical or descriptive error in the wording of a transfer letter does not, in law, vitiate the order or make it “deceptive.” The witness also candidly admitted that the word “promotion” in the letter was inadvertently used and that it did not reflect any punitive or deceptive intent. Furthermore, the record itself shows that along with the transfer order, the plaintiff was granted a monetary increment of ₹100/- and a transfer allowance of

₹1,000/-, as evidenced by Exh. 87 (cheque and covering letter). These facts are wholly inconsistent with the allegation that the order was punitive or coercive. On the contrary, they demonstrate that the transfer was made in the ordinary course of employment, accompanied by legitimate transfer benefits.

30.3] The plaintiff's argument that the transfer was issued immediately after the Labour Commissioner's notice dated 12/10/1993 also does not by itself establish malafide. Courts have repeatedly held that temporal proximity alone is insufficient to infer malice. the Supreme Court observed that malafide must be specifically pleaded and proved by concrete evidence of personal bias or collateral purpose. The burden of proof lies upon the person alleging malafide, and such allegations cannot rest on conjecture or suspicion.

30.4] In the present case, the plaintiff has not named any particular officer who allegedly bore animosity towards him, nor has he produced any correspondence or remark indicating bias or punitive intention. There is no evidence of personal hostility between the plaintiff and the signatory of the transfer order. The company, on the other hand, has produced credible testimony that the transfer to Calcutta was made in the company's business exigency, as the Calcutta office required experienced supervisory staff and the plaintiff had been stationed at Vadodara for over seven years. Transfers after such a long tenure at one location are, by their very nature, indicative of routine administrative rotation rather than punitive intent.

30.5] The plaintiff's further claim that the order was issued to compel his resignation is purely speculative. There is not a single communication, threat, or memorandum suggesting that the company desired his resignation. In fact, after he failed to report to Calcutta, the company served him with show-cause notices dated 15/01/1994 and 28/03/1994 (Exh. 89 and Exh. 96), calling upon him to explain his absence and directing him to resume duties. This conduct on the part of the company is wholly inconsistent with any alleged intent to drive him out of service. Rather, it shows that the employer sought compliance and continuation of employment, not termination. The Court also notes that the plaintiff, instead of complying with the transfer order and thereafter protesting or appealing through appropriate channels, chose to defy the order entirely and filed a civil suit seeking injunction against his transfer. His disobedience of the lawful transfer order, even after his injunction application and appeal were rejected, undermines his credibility and disentitles him to equitable relief. A person who refuses to obey an administrative directive cannot later plead that the directive was deceptive or mala fide.

30.5] The evidence of the defendant's witness also reveals that the plaintiff was in fact treated with fairness: he was paid all salary and allowances till his non-joining, was issued repeated notices to report, and no disciplinary action was immediately taken. The record therefore does not support the plaintiff's characterization of the transfer as a disguised punishment. It is well settled that a transfer cannot be treated as punitive unless it alters the employee's service conditions adversely or is accompanied by a stigma. The Supreme Court held in number of cases that transfer orders should not be

interfered with unless vitiated by proven mala fides or issued by an incompetent authority. In the present case, the order was issued by the Regional Manager, a competent authority empowered to transfer employees under the defendant's organizational policy. Moreover, the plaintiff's claim that the transfer order was a "penalty" for filing a complaint before the Labour Commissioner misconceives the nature of private employment. The relationship between the parties being contractual, no element of public law or constitutional protection arises. Even assuming that the employer's action was motivated by dissatisfaction, such motive, by itself, does not invalidate a lawful transfer made within the terms of employment.

30.6] Lastly, it is material to note that the plaintiff has suffered no actual prejudice due to the transfer order. He never joined at Calcutta and, therefore, cannot claim that he was compelled to perform lower duties or deprived of benefits. Having never complied with the order, he cannot seek to impeach it as "deceptive" in form or effect. Accordingly, this Court holds that the plaintiff has failed to prove that the transfer-cum-promotion order dated 13/10/1993 was deceptive or issued with malafide intent. This issue is therefore answered in the negative, against the plaintiff and in favour of the defendant.

Issue No. 5:

Whether any action taken by the defendants to put an end to the service of the plaintiff is patently illegal, null and void, and bad at law inasmuch as the said action appears to have

been taken in flagrant violation of the principles of natural justice?

31] The plaintiff's contention under this issue is that the defendant corporation illegally terminated his services without any written termination order, without conducting a domestic inquiry, and without affording him an opportunity of hearing. He claims that such alleged termination amounts to a violation of principles of natural justice and, therefore, is null and void. He further contends that if a lawful inquiry had been held, he could have established that his refusal to comply with the transfer order dated 13/10/1993 was justified, since the transfer itself was malafide. On that premise, he seeks damages and compensation for wrongful termination.

31.1] After a thorough analysis of the record, the pleadings, and the applicable legal principles, this Court finds that the plaintiff has failed to establish any illegality or nullity in the alleged cessation of his employment. The evidence on record clearly demonstrates that after the plaintiff was transferred from Vadodara to Calcutta by order dated 13/10/1993, he deliberately chose not to report at the transferred place. The plaintiff admitted in his cross-examination that he had received the transfer order, the cheque of ₹1,000/- towards transfer allowance, and subsequent communications from the company, including a show-cause notice dated 15/01/1994 (Exh. 89) and a reminder dated 28/03/1994 (Exh. 96), calling upon him to join duty and warning him of disciplinary consequences for non-compliance. The plaintiff replied to the first show-cause notice on 05/02/1994 (Exh. 91), categorically stating that he would not report at Calcutta because he considered the

transfer order illegal. The defendant's witness (DW-1, Prakash Srivastava) deposed that, despite repeated reminders, the plaintiff neither joined at Calcutta nor resumed work at Vadodara. Thereafter, he was treated as having abandoned service. The witness also confirmed that the company had proposed to hold a domestic inquiry but that it became impracticable because the plaintiff never reported or cooperated. Importantly, the witness admitted that there was no formal written termination order, but the plaintiff's name was removed from the rolls after continued absence for an unreasonable period.

31.2] Thus, the record reveals that no formal termination was effected by any positive act of the employer; rather, the plaintiff's employment ceased as a natural consequence of his own non-compliance with lawful directions and persistent absence without leave. This conduct squarely constitutes abandonment of service or voluntary cessation of employment, not wrongful dismissal. It is a settled principle that in private employment, the relationship between employer and employee is governed purely by contract, and not by constitutional or statutory service law. The rules of "natural justice" applicable to government servants or employees of statutory corporations do not automatically extend to private employees, unless expressly incorporated into their contract of service or the employer's certified standing orders.

31.3] In the present case, the defendant company is a private limited company incorporated under the Companies Act, 1956. The plaintiff has not

produced any service rule, certified standing order, or contractual clause requiring the employer to hold a domestic inquiry before treating prolonged unauthorized absence as cessation of service. In the absence of such a rule, the employer's act of treating the employee as having abandoned service cannot be said to be illegal or void. The Supreme Court has consistently held that courts cannot enforce contracts of personal service in private employment and that termination of service, even if wrongful, can at best give rise to a claim for damages — not for reinstatement or declaration of continued employment. The plaintiff has not even proved the fact of termination; the evidence only indicates that his service ended by his own inaction. He has also not proved any quantifiable loss or breach of a specific contractual clause entitling him to compensation. Therefore, his plea of illegality and claim for damages are without foundation. The plaintiff's argument that no inquiry was conducted and, therefore, his termination violates **audi alteram partem** (hear the other side) has no merit. But the facts show that the plaintiff was repeatedly given opportunities to explain and resume duties through multiple show-cause notices. This satisfies even the broader test of fairness. The plaintiff chose not to avail himself of those opportunities and cannot now claim violation of natural justice. The maxim "**commodum ex injuria sua nemo habere debet**" — a person cannot take advantage of his own wrong — squarely applies here.

- 31.4]** The plaintiff first raised the plea of termination only in 2006, when the defendant filed a pursis in the earlier suit (RCS No. 1653/2015) stating that the plaintiff was no longer in service. Thereafter, he filed this independent suit in 2009. Thus, even assuming that termination occurred in 1994 or

shortly thereafter, the challenge has been brought after more than a decade — long after the expiry of the three-year limitation period under Article 113 of the Limitation Act. Such gross delay and acquiescence further disentitle the plaintiff to equitable relief. Therefore, the Court concludes that no illegal, void, or unjust termination was effected by the defendant, and that the cessation of the plaintiff's employment was a lawful consequence of his voluntary non-compliance and abandonment of duty. Accordingly, this issue is answered in the negative, in favour of the defendants and against the plaintiff.

Issue No. 6:

Whether the defendant authority proves that as the plaintiff has not got any promotions, and is not in service, so he is not entitled to get any right as prayed for?

32] This issue has been raised by the defendant company as a composite defence — that the plaintiff's entire claim is misconceived because (i) he was never promoted to the post of Branch Manager, (ii) he was not in service at the time of filing the present suit, and (iii) therefore, he is not entitled to any of the declaratory or monetary reliefs prayed for. Upon a comprehensive evaluation of the record and the findings on preceding issues, this Court finds the defense fully established.

32.1] As held while deciding Issues Nos. 1 and 2, the plaintiff has

completely failed to prove that he was ever promoted as Branch Manager either at Bharuch or thereafter. No authentic promotion order, pay fixation, or confirmation letter was produced. The alleged document dated 21/05/1985 (Exh. 81), on which the plaintiff heavily relied, was never proved in accordance with law. Moreover, the defendant's organizational structure did not recognize the post of Branch Manager at smaller units like Bharuch. The plaintiff's own conduct—accepting transfer as Supervisor at Vadodara in 1986 and continuing in that capacity for several years—shows that he never held managerial rank in the company. Thus, the premise of the plaintiff's entire suit—that he was a Branch Manager wrongfully denied his status—is factually incorrect. Having never been substantively promoted, the plaintiff cannot seek a declaration of subsisting managerial status or consequential benefits like arrears of pay or damages for demotion.

32.2] The plaintiff's employment relationship with the defendant effectively ceased in 1994, following his deliberate refusal to comply with the lawful transfer order dated 13/10/1993. As discussed under Issue No. 5, his name was struck off the rolls after repeated show-cause notices went unanswered. Thereafter, he never rejoined, nor did he make any contemporaneous representation seeking reinstatement. His subsequent conduct of filing litigation several years later, in 2009, confirms that the employment relationship had long terminated. It is a settled principle of law that a person not in service cannot seek a declaration of "continuing employment" or claim reliefs based on a non-existent relationship. The plaintiff was an employee of a private limited company, governed by private contractual terms, not by statutory service law. Therefore, no declaration of subsisting

service or reinstatement can be granted. Even the prayer for monetary compensation (for unpaid salary, allowances, and notional promotions) presupposes the existence of employment. Since the plaintiff's employment had ceased in 1994, he cannot claim salary or benefits for the period thereafter. The law recognizes the principle that no employee can draw wages without rendering service.

32.3] In the plaint, the plaintiff has sought (a) declaration that he continues as Branch Manager, (b) direction to the defendant to pay arrears of salary, provident fund, and gratuity, and (c) damages for wrongful termination. Each of these reliefs presupposes a continuing employer–employee relationship, which is absent here. The evidence establishes that the plaintiff voluntarily disobeyed the transfer order, failed to report for duty, and was consequently treated as having abandoned service. Such conduct disentitles him from all equitable or contractual remedies. Additionally, the prayer for arrears of provident fund and gratuity is unfounded. The plaintiff has not produced any statement or computation showing the amounts allegedly withheld. The defendant's witness has categorically deposed that all amounts legally due to the plaintiff till his last working month were duly paid and acknowledged. The plaintiff has not produced any contrary record. Therefore, the claim of unpaid terminal benefits remains unsubstantiated.

32.4] The reliefs sought are barred under Sections 14(1)(b) and 34 of the Specific Relief Act, 1963. Section 14 prohibits enforcement of contracts of personal service except in limited public employment cases. Section 34 prohibits grant of declaratory relief where the plaintiff can claim no legal

character or right. Since the plaintiff was neither in service nor holding the managerial post, he has no enforceable legal character as “Branch Manager.” Thus, the Court cannot issue a declaration or injunction against the employer restraining it from exercising managerial discretion. Moreover, the suit is also barred by limitation, as the alleged wrongs date back to 1993–1994, whereas the present suit was filed in 2009, far beyond the three-year limitation period under Article 113 of the Limitation Act, 1963. The cause of action, if any, stood extinguished long before institution of the suit.

32.5] The doctrine of waiver and estoppel also operates against the plaintiff. Having accepted the post of Supervisor in 1986, drawn salary accordingly, and remained silent for years, the plaintiff cannot later assert that he was a Branch Manager and claim retroactive benefits. Similarly, having failed to join at Calcutta and thereby voluntarily abandoned his service, he is estopped from asserting continuity of employment. The law does not aid those who sleep over their rights. Accordingly, the Court holds that the defendants have proved their contention that the plaintiff was never promoted as Branch Manager, was no longer in service, and therefore is not entitled to any relief whatsoever. This issue is answered in the affirmative, in favour of the defendants and against the plaintiff.

Issue No.7:

Whether the defendant proves that the suit is barred by limitation?

33] The defendant has raised a specific plea that the present Special Civil Suit No. 242/2009, filed by the plaintiff on 28/04/2009, is barred by limitation, being filed long after the cause of action arose. The undisputed facts reveal that the impugned action which the plaintiff seeks to challenge — namely, his alleged termination or removal from service — is directly connected to his non-compliance with the transfer order dated 13/10/1993 (Exh.86).

33.1] It is also an admitted position that the plaintiff did not join at Calcutta and that thereafter the defendant issued a show-cause notice on 15/01/1994, followed by correspondence regarding departmental inquiry in 1994. The plaintiff himself admitted in his cross-examination that he came to know of his discontinuance long ago and that he had already filed Special Civil Suit No. 882/1993 (later renumbered RCS No. 1653/2015) challenging the same transfer order. Thus, the cause of action for challenging any consequential termination or for claiming damages arose in 1993–1994, when the plaintiff was called upon to join duty and failed to do so. Even assuming, as the plaintiff claims, that the termination was orally communicated later, he admittedly became aware of the company's stand that his service had ended by 2006, when the defendant filed a pursis in the earlier suit declaring that he was no longer in service. Yet, the present suit was filed only on 28/04/2009, i.e. nearly 15 years after the original transfer order and more than 3 years after his alleged knowledge of termination.

33.2] Under Article 113 of the Limitation Act, 1963, a suit for declaration

or compensation based on wrongful termination must be filed within three years from the date the right to sue accrues. Even on the most liberal interpretation, the limitation period expired long before 2009. The plaintiff's plea that limitation was saved by the pendency of the earlier suit is untenable, because the cause of action in the present case — seeking damages for alleged illegal termination — is distinct from the earlier claim challenging transfer and recovery of salary. The subsequent filing of a fresh suit without seeking appropriate amendment in the earlier pending suit is hit by Order II Rule 2 CPC and barred by limitation. Accordingly, issue No. 7 is answered in the affirmative in favour of the defendant.

Issue No. 8:

Whether the plaintiff is entitled to get the relief as prayed for?

34] This issue goes to the very root of the case, for even if certain factual aspects were to be viewed sympathetically in favour of the plaintiff, the Court can grant relief only if such reliefs are legally maintainable, supported by evidence, and within the jurisdiction of this Court. The plaintiff has sought a wide array of reliefs in the present suit, namely:

1. A declaration that he continues to be in service of the defendant company as Branch Manager;
2. A declaration that the defendant's actions in not recognizing him as Branch Manager and in ceasing his employment are illegal and void;
3. A direction to the defendant to pay him arrears of salary, provident

fund, gratuity, and other benefits allegedly due from 1993 onwards;

4. Compensation and damages for mental agony and loss of reputation.

These reliefs are grounded entirely on the assumption that (a) the plaintiff was a Branch Manager at Bharuch, (b) his transfer to Calcutta was malafide, and (c) his cessation from service was unlawful. However, as discussed in detail under Issues Nos. 1 to 7, each of these assumptions has been found to be incorrect both on facts and in law.

34.1] The primary declaration sought—that the plaintiff continues to be in service as Branch Manager—is wholly untenable. The evidence conclusively shows that the plaintiff was never substantively promoted as Branch Manager, nor did his appointment or pay scale correspond to that of a managerial post. His employment ceased in 1994 due to his own non-compliance with a lawful transfer order and his prolonged absence from duty. In such circumstances, the declaration sought would amount to specific performance of a contract of personal service, which is impermissible under Section 14(1)(b) of the Specific Relief Act, 1963. The law on this point is settled beyond controversy that in the realm of private employment, no declaration of subsisting service or reinstatement can be granted by civil courts.

34.2] The plaintiff's relationship with the defendant company, a private limited company incorporated under the Companies Act, 1956, is purely contractual, and hence no such relief is legally maintainable. The plaintiff's

claim for salary and allowances allegedly withheld since 1993 is equally unsustainable. The principle of “no work, no pay” applies squarely here, as the plaintiff did not report for duty after his transfer to Calcutta. Having refused to work, he cannot claim wages for the period of non-service. Further, the plaintiff has not produced a single document showing that any amount of salary, provident fund, or gratuity actually remained unpaid for the period he worked. He has neither provided a computation nor established his entitlement under any specific rule or scheme. The defendant’s witness categorically stated that all legitimate dues till the last working month were settled, and this statement has not been rebutted in cross-examination. Hence, the monetary reliefs claimed are unsupported by evidence and therefore not grantable.

34.3] The plaintiff has claimed general damages for loss of reputation, mental agony, and wrongful deprivation of service benefits. However, damages in contract law are compensatory and not punitive; they can be awarded only for proven breach of contract resulting in measurable loss. Here, the plaintiff has not proved any breach by the employer. On the contrary, it is the plaintiff who failed to perform his contractual obligations by refusing to obey a lawful transfer order. The Court cannot award damages where the claimant himself is in breach. Moreover, the claim for damages is vague, unquantified, and unsupported by any evidence of actual loss. The Supreme Court held that damages must be specifically pleaded, proved, and quantified; vague claims based on emotional distress or speculation cannot be entertained. Accordingly, the claim for damages and compensation is rejected. Even assuming *arguendo* that some of the plaintiff’s claims had

factual merit, the same are barred by limitation as elaborated under Issue No. 7. The events in question occurred between 1985 and 1994, whereas this suit was filed in 2009. The statutory limitation under Article 113 of the Limitation Act (three years) expired long before. In addition, the plaintiff's prolonged silence, acceptance of his position as Supervisor, and failure to challenge his cessation in time amount to waiver and acquiescence. He cannot now claim benefits or declarations after two decades of inaction. The plaintiff has also relied upon notions of fairness, equality, and non-discrimination. However, those principles arise only in public or statutory employment. The defendant corporation, being a private limited company, is not "State" under Article 12 of the Constitution of India. Hence, the plaintiff cannot invoke Articles 14 or 16 or rely upon constitutional fairness to obtain reliefs in private service matters.

The Supreme Court has categorically held that private employers are not amenable to constitutional scrutiny in matters of internal administration or personnel management. Therefore, the plaintiff's claim that the defendant acted unfairly or discriminatory does not give rise to an enforceable legal right. Equity demands that a person seeking relief must approach the Court with clean hands and must himself perform his obligations. The plaintiff has persistently disobeyed the employer's lawful order, abstained from duty, and yet sought full salary and restoration of service. Such conduct dis-entitles him from equitable relief. The maxim "**he who seeks equity must do equity**" is directly attracted here. The plaintiff, being the author of his own predicament, cannot seek judicial indulgence to restore what he voluntarily relinquished. Accordingly, this Court holds that the plaintiff is not entitled

to any of the reliefs claimed in the plaint, either in law or in equity. This issue is answered in the negative, against the plaintiff and in favour of the defendants.

Issue 12:

35] Upon a comprehensive consideration of the pleadings, oral and documentary evidence, and the arguments advanced, this Court finds that the plaintiff's case fails on every factual and legal parameter. Hence I pass the following order :-

: Final Order :

1. Regular Civil Suit No.1653/2015 and Special Civil Suit No. 242/2009 are dismissed with costs.
2. The interim relief, if any, stands vacated forthwith.
3. Each party shall bear its own costs.
4. Decree be drawn jointly and placed in the record of both suits.

Order signed & pronounced in the open Court on 28th day of October 2025.

Date :- 28/10/2025
Place:- Vadodara

(Dhirendrasinh Jagroopsinh Rajput)
5th Addl. Senior Civil Judge,
Vadodara
Judge Code: GJ00958

// SB Shah