



## 274. If an employee refuses to accept an internal departmental transfer (as per their employment contract), should it be considered job abandonment or illegal termination?

When an employee refuses to accept an internal departmental transfer that is in accordance with their employment contract, the legal implications depend on multiple factors, including statutory provisions, contractual terms, and judicial precedents.

### Understanding Transfers in Employment

A transfer is the reassignment of an employee from one role, department, or location within the same organization. It can be horizontal (same level), vertical (promotion/demotion), geographical, departmental, or functional. Transfers are typically done for organizational efficiency, workforce balancing, employee skill development, or restructuring.

### Legal Provisions on Employee Transfers

Several laws in India regulate employment transfers, ensuring fairness and compliance with due process:

#### 1. Industrial Disputes Act, 1947

- **Section 2(ra) & Fifth Schedule (Point 7)** states that transferring a workman **malafide** (in bad faith) is an "unfair labour practice."
- This means an employer cannot transfer an employee as a punitive measure, for victimization, or arbitrarily without valid reasons.

#### 2. Industrial Employment (Standing Orders) Central Rules, 1946 (Schedule IB)

- Allows a workman to be transferred within the same employer's establishment as per work exigencies.
- Conditions for a valid transfer:
  - No adverse impact on wages, grade, continuity of service, or other conditions.
  - Workman must be capable of handling the new job.
  - If relocation across states is involved, either prior consent or a specific employment contract clause is needed.
  - Reasonable notice and joining time must be provided.
  - Travel and incidental expenses must be covered by the employer.

#### 3. Contract of Employment

- If the employment contract explicitly states that the employer has the right to transfer the employee, then the employee is contractually bound to accept reasonable transfers.
- The transfer should be **bona fide** (in good faith) and align with business requirements.

#### 4. Workmen vs. Non-Workmen Distinction

- **Workmen (covered under the Industrial Disputes Act, 1947):** Transfers that adversely affect service conditions or have a punitive nature may be challenged.
- **Non-Workmen (managerial or supervisory roles):** Transfers are primarily governed by the employment contract and company policy.

### Refusal to Accept Transfer: Legal Consequences

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## 1. Can It Be Considered Job Abandonment?

- If an employee refuses to report to work in the transferred department despite contractual provisions allowing transfers, this can be deemed voluntary job abandonment.
- The employer must issue formal notices directing the employee to report to duty.
- If the employee still refuses, it may be treated as absence without justification, leading to disciplinary action or termination.

## 2. Can It Be Considered Illegal Termination?

- If the transfer is malafide, punitive, or violates statutory provisions (e.g., relocation without consent when required), and the employee refuses to accept it, a unilateral termination by the employer may be illegal dismissal.
- The employee may challenge such termination under the Industrial Disputes Act, 1947, and seek reinstatement, compensation, or back wages.

### Judicial Precedent: Gujarat High Court Case

The case of *Kiranbhai Harkishandas Patel vs. M/s Meet Chetans Pvt Ltd* (R/Special Civil Application No. 5297 of 2022, Order Dated: 05/04/2024) is a significant judgment concerning employee transfers, job abandonment, and wrongful termination claims under Indian labor laws.

### Background of the Case

#### 1. Petitioner (Employee):

- *Kiranbhai Harkishandas Patel*, employed as a Machine Operator in the Production Department of M/s Meet Chetans Pvt Ltd.
- Claimed that he had been working continuously for over 24 years (from 15.10.1986 to 07.04.2011) before allegedly being illegally terminated on 08.04.2011.

#### 2. Respondent (Employer):

- *M/s Meet Chetans Pvt Ltd.*, a private company engaged in manufacturing.
- Contended that Patel was never terminated but instead was transferred to another department as per the company's requirements.
- Argued that the employee abandoned his job by refusing to accept the transfer and failing to report for duty.

### Arguments Presented

#### Petitioner's (Workman's) Claims:

##### 1. Illegal Termination Allegation:

- Argued that he was **orally terminated** by the employer on **08.04.2011**, without any written notice.
- Claimed that despite multiple attempts to resume work, the employer **denied him entry into the workplace**.
- Contended that no due process was followed as per the **Industrial Disputes Act, 1947**, which requires valid reasons, notice, and compensation for termination.

##### 2. Non-Compliance with Labor Laws:

- Asserted that he had completed 240 days of service in a year, making him eligible for protection under Section 25F of the Industrial Disputes Act (which mandates retrenchment compensation).
- Claimed that he was entitled to reinstatement with back wages due to wrongful termination.

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### 3. Labour Court's Incorrect Findings:

- Claimed that the Labour Court wrongly interpreted the matter as a transfer case instead of termination.
- Argued that there was no formal transfer order issued, and the employer failed to produce any substantial evidence to justify the transfer.

### Employer's (Company's) Defense:

#### 1. Denial of Termination Claim:

- The employer maintained that Patel was never terminated but was only transferred to another department within the same establishment.
- Stated that Patel refused to comply with the transfer order and did not report to duty.

#### 2. Right to Transfer Employees:

- The employment contract contained a clear transfer clause, which allowed the employer to reallocate employees based on business needs.
- Patel had originally joined as a Helper, and his appointment and confirmation letters explicitly stated that he could be transferred as per company requirements.

#### 3. Evidence of Job Abandonment:

- The employer produced official letters dated 14.06.2011 and 29.06.2011, which were sent to Patel asking him to resume work in the newly assigned department.
- Patel, however, never responded to these letters nor reported for duty.
- In a conciliation meeting on 03.08.2011, Patel admitted that he was only willing to work in his previous department (Packing Department) and refused to work elsewhere.

### Key Legal Issues Considered by the Gujarat High Court

1. Was Patel's employment terminated, or did he voluntarily abandon his job by refusing an internal transfer?
2. Did the employer follow due process before ending the employment relationship?
3. Was the Labour Court justified in rejecting Patel's plea for reinstatement with back wages?
4. Does an employee's refusal to accept a transfer order amount to voluntary resignation or job abandonment?

### Court's Observations & Judgment

#### 1. Contractual Right to Transfer Employees

- The court reviewed Patel's appointment and confirmation letters, which explicitly permitted transfers to different departments.
- The court ruled that Patel was contractually bound to accept reasonable transfers as long as they did not negatively impact his wages, grade, or working conditions.

#### 2. Failure to Provide Counter-Evidence by Patel

- Patel failed to respond to the employer's notices directing him to join the transferred department.
- During cross-examination, Patel admitted that he had never sent any reply to the employer's letters requesting him to report for work.
- This failure to contest the employer's version weakened his case.

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### 3. Employee's Reluctance to Accept Transfer

- Patel categorically refused to work in any department other than the Packing Department.
- In his letter to the conciliation officer, he explicitly stated that he was willing to work only in his old department.
- The court ruled that this amounted to non-compliance with a lawful employer directive, leading to voluntary job abandonment.

### 4. Finding of Voluntary Abandonment, Not Termination

- The court concluded that Patel was not terminated but had voluntarily chosen to not work in the transferred role.
- Since Patel refused a reasonable work assignment despite multiple reminders, his claim of illegal termination was dismissed.

### 5. Compensation Awarded as Goodwill Gesture

- While Patel's claim for reinstatement and back wages was rejected, the court considered his long tenure (24+ years) and the prolonged litigation process.
- As a goodwill measure, the court awarded ₹1,00,000 compensation, clarifying that this was not a legal entitlement but an ex gratia payment.

### Key Takeaways from the Judgment

#### 1. Refusal to accept a valid internal transfer can be considered job abandonment.

If an employee contractually agrees to transfers and refuses a reasonable reassignment, courts may view it as voluntary resignation.

#### 2. Burden of proof in termination cases lies with the employee.

An employee claiming wrongful termination must prove that the employer actively dismissed them. Simply refusing a transfer does not amount to termination.

#### 3. Employers should issue formal transfer orders to avoid disputes.

- Even though the employer won the case, the lack of a formal written transfer order created some ambiguity.
- Issuing clear transfer notices in writing can prevent legal challenges.

#### 4. Transfers must be reasonable and in good faith.

- Employers must ensure that transfers do not result in demotion, loss of pay, or harsh conditions for the employee.
- Malafide transfers (transfers made to punish an employee) can still be challenged under unfair labor practices.

#### 5. Judicial discretion in awarding compensation.

- Even though the court ruled against Patel, it granted ₹1,00,000 compensation due to his long service and litigation hardships.
- This was a goodwill gesture rather than a legal precedent.

### Conclusion

This case reinforces that if an employment contract allows for transfers, an employee must comply with a valid transfer order unless it is unreasonable or punitive. Refusing such a transfer without justifiable reasons can be treated as job abandonment rather than wrongful termination.

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