

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2015

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.36430 of 2015 &
M.P.Nos.1 & 2 of 2015

- 1 NLC Labour Staff Union (CITU)
Rep. by its General Secretary
- 2 R. Sivasubramanian [PETITIONERS]
- Vs
- 1 M/S. NLC Limited
Rep. by its Chairman cum Managing Director
Corporate office, Neyveli - 607 801.
- 2 The Presiding Officer
Central Government Industrial Tribunal
Cum Labour Court
Sastri Bhavan, Nungambakkam
Chennai - 600 006
- 3 The Deputy General Manager (HR/MINE II)
Neyveli Lignite Corporation
Office of the Chief General Manager /
Mine II and Expansion
Human Resource Department
Neyveli - 607 802.

[RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus, to call for the records pertaining to the order dated 26.10.2015 passed by the 3rd Respondent in Memo No.M-II/HR/G(EB)/502/2015 quash the same and consequently direct the 1st and 3rd Respondents and their Officials from altering the conditions of service of all the Workmen concerned in ID No.75/2014 as on the date of reference adversely in any manner to their detriment and till the dispute in ID No.75 of 2014 is either adjudicated or settled without getting prior permission from the 2nd Respondent u/s. 33 (1)(a) of the I.D Act and to restore the transferred workmen to their original place work/Division and also to restore them to

the CME Operator Work with all consequential benefits award costs.

For Petitioner : Mr.V.Ajoy Khose

O R D E R

Heard Mr.V.Ajoy Khose, learned Counsel appearing for the petitioners.

2.The first petitioner is the Labour staff Union, registered under the Trade Union Act and the second petitioner is the workman, and they are aggrieved by the order of internal transfer dated 26.10.2015, transferring certain employees from CME Division.

3.The impugned order is assailed broadly on two grounds. Firstly, by contending that a dispute was raised by the petitioner Union, which has been referred by the Government of India to the Central Government Industrial Tribunal-cum Labour Court (CGIT), Chennai, to adjudicate the dispute as to whether the action of the respondent Management in denying W-6 Grade to S.Muthuraj and 85 others who are working as CME Operators, is legal and justified and if not to what relief the concerned workmen are entitled ? Upon such order of reference, the CGIT has taken the same on file as I.D.No.75 of 2014 and the respondent Management have also filed their counter statement. Just prior to the order of reference, another nine employees were transferred by order dated 14.08.2014.

4.The petitioners would state that they have not challenged the same, since the nature of duties and responsibilities which were to be discharged by them were identical. Subsequently, by another order dated 15.6.2015, four employees were transferred to the Divisions as mentioned in the order dated 15.6.2015. Immediately thereafter, the petitioners approached the CGIT, and filed a complaint during July 2015. In the said complaint, the petitioner Union has raised a contention that the Management is taking steps to transfer the remaining workmen concerned also to other places and they are trying to keep them away from CME Operators and to defeat the adjudication of the main dispute before the Industrial Tribunal in I.D.No.75 of 2014.

5.The said Industrial Dispute No.75 of 2014 as well as the complaint are pending before CGIT. Now the petitioner Union is aggrieved by the impugned order of transfer dated 26.10.2015 and has approached this Court by contending that the attempt of the Management is to render the Industrial Dispute raised by the

petitioner Union as infructuous. The learned counsel in support of this contentions placed reliance on the Hon'ble Division Bench Judgment of this Court in ARASU VIRAIVU POKKUVARATHU OZHIYAR SANGAM v. STATE EXPRESS TRANSPORT CORPN. LTD. [2006-III-LLJ].

6. After hearing the learned counsel for the petitioners and perusing the materials placed on record, this Court is of the view that the aggrieved employees whose names are listed in the impugned order dated 20.10.2015, should necessarily approach the Tribunal since the earlier set of employees who were aggrieved by the earlier transfer orders have already preferred complaints and are pending at their instance. Therefore, to bypass such a remedy, which in my opinion is an efficacious remedy, should not be permitted. Further, the petitioner Union is also one of the complainant in the complaint filed before the CGIT in July, 2015 along with four aggrieved employees. Therefore, this Court is not inclined to entertain this Writ Petition at this juncture.

7. Accordingly, liberty is granted to the aggrieved workmen to approach the Tribunal for necessary relief and it is also open to the petitioner Union to canvass all contentions which have been raised by them in the complaint filed during July 2015, wherein a plea has been raised that periodic orders of transfer have been issued only with a view to defeat the adjudication of the main Industrial Dispute pending as I.D.No.75 of 2014.

8. Further, the learned counsel on instructions submitted that the employees whose names find place in the impugned order dated 26.10.2015 are not aggrieved by the orders of transfer, but their main concern is that they should not be asked to do any other type of work other than the CME Operators. This issue can also be raised by the petitioner Union as well as by the aggrieved employees before the Tribunal and if the same is done, the Tribunal shall adjudicate the said issue also.

9. The learned counsel for the petitioners submitted that the Tribunal may be directed to give an early disposal to the complaint which is now pending before the Tribunal and it is fairly conceded by the learned counsel that the Tribunal has been promptly disposing of matters and at the most the outer time limit is about six months.

10. In the light of the above, the second respondent is directed to consider the complaint which is already filed by the petitioner Union and four other employees during July 2015 as well as the complaint to be filed by the aggrieved employees whose names have been placed in the impugned order dated

26.10.2015, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

11. Accordingly, the Writ Petition stands disposed of with the aforesaid liberty. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa
To

- 1 M/S. NLC Limited
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+1 cc to Mr.V.Ajay Khose, Advocate sr.61883
+1 cc to F.B.Benjamin George sr.no.62173

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