

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-02-2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.19636 of 2015 and 15507 of 2016

R. Karunakaran

Petitioner in
both the WPs

Vs

- 1 The Bharat Electronics Limited
Rep by its Chairman cum
Managing Director
16/2, Race Course Road
Bangaluru - 500 001.
 - 2 The Executive Director -HR
The Bharat Electronics Limited -
Corporate Officer
Outer Ring Road, Naga Vara
Bangaluru - 560 045.
 3. The Deputy General Manager (HR &P)
Human Resources & Administrative
Department
Bharath Electronics Limited
Nandambakkam
Chennai - 600 089
- Respondents
in WP.19636/2015
- 1 The Bharat Electronics Limited
Rep by its Chairman cum
Managing Director
16/2, Race Course Road
Bangaluru - 500 001.
 - 2 The General Manager (HR &P)
Human Resources &
Administrative Department
Bharath Electronics Limited
Nandambakkam
Chennai - 600 089
- Respondents in
WP.15507/2016

Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorari and mandamus to call for the entire records of the order passed by the second respondent in No.17556/IUT/HOA dated 23-06-2015, the order passed by the third respondent in bearing No.CHT 206438/HR & A/CHN/2015 dated 23-06-2015 and also the order passed by the third respondent in bearing No.CHT 206438/HR & A/CHN/2015 dated 24-06-2015 and quash the same and further direct the third respondent to reinstate the petitioner in his earlier placement and pass orders. (W.P.No.19636 of 2011)

To issue a writ of Mandamus to consider and pass order on the petitioner's representation dated dt 29.3.2016 in the light of the interim order passed in M.P. No.1/2015 in W.P. No.19636/2015 dt 3.7.2015 and further direct the 2nd respondent to permit the petitioner for reporting duty, release the petitioner's P.F. Pension and Salary Arrears from the month of July 2015 (W.P.No.15507/2015)

For petitioner :Mr. R. Sankara Subbu
for M/s. B. Saravanan
in both the WPs.

For all the respondents:Mr. V. Karthic, Senior Counsel
Asst. by Mr. T. Madhusuthan Reddy
in both Writ Petitions.

COMMON ORDER

Both the writ petitions are taken up together and are given disposal by this common order, as the facts are intertwined.

2. In W.P.No.19636 of 2015:

The petitioner would aver that he is a Diploma holder and Civil Engineer and joined the services of the Bharat Electronics Limited ('BEL' in short) as an Assistant Supervisor (Civil) (Wage Group-VIII) on 16-05-1985 and was initially promoted to the post of Senior Assistant Supervisor (Wage Group-IX) with effect from 01-06-1988. The petitioner got his further promotion to the post of Junior Section Officer with effect from 01-06-1993 and Executive Assistant - II with effect from 01-08-2000 and further, he was issued with an order of demotion to the post of Junior Section Officer by the third respondent and from 2009, he was holding the said post. It is the case of the petitioner that he is the Joint Secretary of the Chennai Bharat Electronics Employees Union ('CBEEU' in short) and being the Joint Secretary, he filed W.P.No.8721 of 1998 on the file of this

Court praying for conducting the election by way of secret ballot to elect the representative and obtained an order dated 04-02-1999, for conducting the election. It is also his grievance that right from the beginning, the Management of BEL has been taking steps to stop the activities of the new Union as they did not act according to the will and pleasure of the Management and the Office Bearers were also targeted by issuing false and frivolous charge memos and the petitioner was also one such beneficiary, having received several memos, without any basis and that too, on flimsy grounds. The petitioner would aver that the Technical Cadre posts were introduced in the year 1989 and are governed by the 'Certified Standing Orders'. However, the Chairman cum Managing Director issued office order No.HO772/019 dated 10-04-2001, whereby the Executives Conduct, Discipline and Appeal Rules were consolidated, incorporating the guidelines of the Chief Vigilance Commissioner and Government of India and named as BEL Conduct, Discipline and Appeal Rules and the employees, both executive and technical, were brought under the said Rule.

2.1 The petitioner was also issued with a charge memo dated 03-12-2001 stating that inspite of his promotion to the executive category post, he continued in the post of General Secretary of CBEEU and also used to participate in the conciliatory efforts in the form of discussion, in his capacity as General Secretary. It is the specific case of the petitioner that he has been treated unfairly, as he is the General Secretary of the CBEEU, which does not come in the line of the Management.

2.3 The petitioner has challenged the punishment imposed on him by way of a writ petition, W.P.No.19531 of 2003 and the same is pending before this Court and the petitioner, to his shock and surprise was issued with an order of transfer, transferring him from Chennai Unit to Mumbai Unit, vide a common order of transfer dated 23-06-2015, wherein 19 numbers of employees were transferred from various units throughout India.

2.3.1 According to the petitioner, since he is not an Executive, the said order of transfer is also unsustainable. It is also the case of the petitioner that since he is aged about 57 years, he may not be transferred unless there are some specific reasons for the company. The petitioner would aver that only because of his Union activities he is personally targeted and transferred to Mumbai.

2.3.2 Adding on further, the petitioner would submit that he is suffering due to Blood Pressure; his wife is a sugar patient and has two dependent sisters, one handicapped and another widow and a brother-in-law, living along with his family, suffering due to cancer and mother aged 80. In such circumstances, the petitioner prays for quashment of the impugned order.

3. In the stay petition, M.P.No.2 of 2015, this Court has granted interim stay of the order of transfer vide order dated 03-07-2015. M.P.No.3 of 2015 has been filed by the Management for vacating the stay.

4. W.P.No.15507 of 2016:

The petitioner apart from narrating the facts stated in W.P.No.19636 of 2015 would state that immediately after the order of transfer, he submitted a representation to the third respondent requesting him to consider his grievance and also his transfer to Mumbai, and without assigning any reasons, the said representation has been rejected in a mechanical manner vide order dated 24-06-2015, and adding salt to the wound, he was ordered to join the present transferred place within 12 days from 23-06-2015 and would further contend that the order of rejection of request of re-transfer and not permitting him to join duty to the very same place is in utter violation of the interim order dated 03-07-2015 in M.P.No.2 of 2015 in W.P.No.19636 of 2015 granted by this Court.

4.2 He has also submitted a representation dated 29-03-2016, to the second respondent with a request to consider his prayer for allowing him to continue to work in Chennai Unit for 15 months, so that he would reach his superannuation peacefully and also receive his arrears of salary along with other monetary benefits. The said representation was not considered by the respondent and hence the petitioner has come forward with this writ petition.

4.3 Notice was ordered to the respondent on 26-04-2016.

5. In both the writ petitions, counter affidavits had been filed by the respondents. In W.P.No.19636 of 2015, on behalf of the respondents, the Executive Director - HR for BEL has filed a counter affidavit wherein it is averred among other things that as per Clause 8.0 of the Inter Unit Transfer Rules & Benefits for Executives (including TC Personnel) dated 11-04-2008, Executives, (including TC Personnel), have to comply with the transfer orders issued and the decision taken to transfer the petitioner as well as 19 other employees, for the reason that an

investment of Rupees Fifty Crores has been sanctioned for development in various spheres of activities in Navi Mumbai Unit ('NAMU' in short) and on account of facing extreme difficulties to the voluminous work with the existing stream, a projection has been made for the requirement of junior level Civil Engineer vide letter dated 06-04-2015 and the Management of BEL enquired with all Units including the Chennai Unit for suggesting an employee, who is an Engineer with a Civil Engineering background, and, it was informed that two such Personnels are available-One Paneer Selvam, who is a Deputy Engineer and the other, the petitioner, who is an Assistant Engineer and taking into consideration of the fact that most of the Civil works in the Chennai Unit are outsourced and hence required the services of a Deputy Engineer, who is senior in position to manage the work effectively, the Chennai Unit suggested the name of the petitioner and accordingly, he along with 18 other persons were transferred vide impugned order of transfer dated 23-06-2015.

5.1 As per Clause 7.4 of Inter Unit Transfer Rules and Benefits for Executives, including Technical Cadre Personnel, to the extent possible, Executives (including TC Personnel) beyond 57 years of age may not be transferred unless it is in the Company's interest to do so.

5.2 The petitioner, who is under the cadre of Assistant Executive -III and comes under the category of Technical Cadre Personnel, as such, is also borne by Clause 7.4. Even at the time of his promotion as Assistant Executive vide order dated 01-02-2013, it has been clearly indicated that the petitioner would be governed by the terms of appointment order, Certified Standing Orders of BEL, Rules and Regulations that had been in force or amended, altered or extended from time to time. As such, the separate code, Executives Conduct Discipline and Appeal Rules, has been extended to the Technical Cadre also with effect from 10-04-2001. सत्यमेव जयते

5.3 It is further stated in the said affidavit that the petitioner has also filed I.D.No.334 of 2003 praying for a declaration that the Technical Cadre Grade Employees working in BEL are 'Workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and it was dismissed for default by the third Additional Labour Court, Chennai and it was yet to be restored and apart from that, the petitioner has been designated as Technical Cadre - II employee and despite his position, he has been continuous in his union activities and an enquiry was conducted and he was demoted to Wage Group - X and the same was challenged by the petitioner in W.P.No.19531 of 2003, which is still pending before this Court.

5.4 Insofar as the personal difficulties faced by the petitioner on account of ill-health of his family members, it is stated as per Clause 5.2 of the Inter Unit Transfer Rules & Benefits for Executives (including TC Personnel) dated 11-04-2008, of BEL, the medical benefits are available to the transferred executive and his dependants, both at the new station and at the previous station and insofar as the non-acceptance of the order is concerned, it is stated that the petitioner has been relieved from the Chennai Unit from 23-06-2015 itself, which is much prior to the interim orders as stated in the petition and further, the representation submitted by the petitioner was also rejected on 24-06-2015, drawing his attention to Clause 10.9.1, wherein it is stated that he is entitled for 12 days of joining time and the same could be availed, if he is so desired. Hence, it is the case of the respondents that it is not open to the petitioner to take a different stand at this juncture, and prays for dismissal of the writ petition.

6. Mr. R. Sankara Subbu, learned counsel for the petitioner would contend vehemently that the petitioner is the Joint Secretary of CBEEU and since he has been indulged in trade union activities of the members and his acts are not liked by the respondent-Management, he has been transferred to Mumbai. The learned counsel would further contend that the petitioner and the family members are suffering due to various ailments and when he is having only a few months of service, for the reasons best known to the respondents, the petitioner has been relieved on 23-06-2015 itself and much prior to the order of joining at Mumbai, he has obtained the interim order and the said order has been deliberately flouted and is clearly a contempt of court. It is also stated by the learned counsel for the petitioner that the contentions of the respondents that the petitioner raised an industrial dispute for a declaration that the Technical Cadre Grade Employees working in BEL are 'Workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and other Rules and Regulations relied on by them, have no application to the case on hand and though, he pleaded with the respondent/Management to reconsider the order of transfer and accommodate him at Chennai Unit, till the attainment of his superannuation, the same has not been considered with a malafide intention and oblique motive to punish the petitioner for no fault on him and therefore, prays for a direction to the respondents to permit him to report duty at Chennai Unit and release his salary and other monetary benefits.

7. Per contra, Mr. V. Karthic, learned Senior Counsel assisted by Mr. T. Madhusuthan Reddy, learned counsel has drawn the attention of this Court to the counter affidavits filed by the respondents in both the writ petitions and would submit that since he refused to join duty at NAMU, the cause of his non-employment and non-payment of his salary, he is entitled to his terminal benefits only upto the date of his relieving from the Chennai Unit of BEL.

7.1 The learned Senior Counsel would point out that a public sector employee is liable for transfer, being an incident of service and also a condition of his service career and would further submit that as per Clause 7.4, the Technical Cadre Personnel were also included under the Executives Conduct Discipline and Appeal Rules, with effect from 10-04-2001, according to which beyond 57 years of age may not be transferred unless it is in the Company's interest to do so. The transfer of the petitioner was made only in the bona fide interest of the Company, which needed a Junior level Civil Engineer for NAMU wherein an investment of Rupees Fifty Crores has been sanctioned for development in various spheres of activities. The petitioner, who is an Engineer with a Civil Engineering background was selected as fit person and accordingly, he along with 18 other persons were transferred vide impugned order of transfer dated 23-06-2015. Therefore, the order of transfer is not a punitive one and no mala fide or oblique motive is involved in the order of transfer.

7.2 The learned Senior Counsel has also drawn the attention of this Court to the judgments reported in (i) 2001 (8) SCC 574 (National Hydroelectric Power Corporation Limited Vs. Shri Bhagwan) (ii) 2007(1) LLN 381 (Chairman and Managing Director, Tamil Nadu Salt Corporation Ltd., Chennai Vs. M. Subramanian), (iii) 2015 (2) LLN 443 (DB) (State Bank of India Vs. S.V. Tharanath) and (iv) 1995 Supp (2) SCC 151 (State of U.P. and another Vs. V.N. Prasad(DR)) and would submit that the administrative exigency with regard to the decision to effect transfer cannot be interfered with by Courts unless it is shown that the said order of transfer is borne out of mala fides or the same is made in violation of the statutory provisions or not passed by Competent Authority and as per Rules, if employee is liable to be transferred to outside circle, there should be exigency of service, which is common requirement but the said exigency need not be necessarily set out in Transfer Order and it should be presumed that employer understands exigency and unless contrary is pleaded and proved, the same cannot be interfered with.

7.3 In the case on hand, the petitioner has miserably failed to prove the mala fide or the violation of Rules and Regulations and taking into consideration of the fact that the respondent/Management has issued the order of transfer only to mete out the administrative exigency and no ill intention can be set-forth, prays for dismissal of the writ petition.

8. This Court paid its anxious consideration and best attention to the rival submissions made on behalf of both the parties and have also perused the records produced by the respondent/Management.

8.1 It is the primordial stand taken by the petitioner that the Technical Cadre grade employees are 'workmen' within the meaning of Industrial Disputes Act, 1947 and as the petitioner is in the rank of Assistant Engineer - III, he would not be transferred in exercise of the powers conferred under Inter Unit Transfer Rules & Benefits for Executives (including TC Personnel) dated 11-04-2008. It is to be pointed out, at this juncture, that as per the counter affidavit filed on behalf of the respondents in both the writ petitions, it is stated that the petitioner has made a challenge to the exercise of such a power said aspect in I.D.No.334 of 2003 and it was dismissed for default by the third Additional Labour Court, Chennai. The industrial disputes, I.D.Nos.448 of 2000 and 334 of 2003 were dismissed for default and no steps have been taken to restore the same.

8.2 The Inter Unit Transfer Rules & Benefits for Executives (including TC Personnel) dated 11-04-2008 have been made applicable to Executives including Technical Cadre Personnel and as per the said Rule, they are liable for transfer from Unit to another for the reasons mentioned in Clause a, b and c and the competent authority to transfer the Executives including the Technical Cadre Personnel is the Chairman.

8.3 As per Clause 7.4, to the extent possible, Executives (including TC Personnel) beyond 57 years of age may not be transferred unless it is in the Company's interest to do so. As already pointed out, the Deputy General Manager (HR & A), Human Resources Division has sent a communication dated 06-04-2015, to the deputy General Manager (HR), Bangalore to consider the junior level executives preferably TC Cadre/E-1/E-II Personnel from other Unit/s to their Mumbai Unit and it is the specific stand taken by the Management that in the light of the said communication, study was done with regard to the Chennai Unit and they found two employees, J. Paneer Selvam, who is a Deputy Engineer and the petitioner, who is an Assistant Engineer and

taking into consideration of the fact that most of the Civil works in the Chennai Unit are outsourced and since they continued to took the services of the Deputy Engineer and also taking note of the fact that the said person is senior in position, the name of the petitioner was suggested and the petitioner along with other 18 persons were transferred vide impugned order of transfer dated 23-06-2015.

8.4 The learned counsel for the respondents has also drawn the attention of this Court to the transfer orders of few employees of BEL, viz., Mr. V. Swaminathan, Mr. A.N. Vijayakumar and Mr. H.J. Sampath Kumaran, who have crossed the age of 57 years, even in the year 2010 and 2011, based on the requirements of BEL and therefore, it cannot be said that the petitioner has been singled out with an order of transfer to Mumbai.

8.5 The petitioner has also pleaded mala fide intention on the part of the Management due to his trade union activities. It is well-settled position of law that mala fide intention has not only to be averred but it is to be strictly proved. However, in the facts and circumstances of the case, the mala fide or oblique motive on the part of the Management to transfer the petitioner from Chennai to Mumbai Unit is not proved by the petitioner and insofar as the interference of the said transfer order is concerned, the above stated decisions lay down the proposition to transfer an employee as a condition of service and unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, it cannot be subject to judicial interference as a matter of routine. In the considered opinion of the Court, based on the need basis only, BEL decided to transfer 19 persons including the petitioner and also transferred vide order dated 23-06-2015 and the said transfer was in the best interests of the Employer and it cannot be found fault with.

8.6 The petitioner after his transfer has also given a representation for re-posting in the very same place, i.e., in Chennai Unit and it was also considered and rejected by the third respondent vide communication dated 24-06-2015. Insofar as the plea made by the petitioner that he has one months' time and within eight days from the date of receipt of the order of transfer, he obtained the interim order and it has not been complied with, this Court is of the view that the petitioner has been relieved from the Chennai Unit on 23-06-2015, which is earlier to the order of stay in M.P.No.2 of 2015 in W.P.No.19636 of 2015 and the one months' time is only for the date of his joining and not for relieving him from the parent unit.

8.7 This Court, on the basis of the entire materials, is of the considered view that the impugned order of transfer does not warrant interference. The petitioner also, despite rejection of request for accommodation to the very same place to which he has been posted, has not joined the transferred post.

9. In the light of the reasons assigned above, this Court has found that both the writ petitions lack merits and accordingly, both the writ petitions are dismissed.

9.1 In view of the dismissal of the writ petitions, the interim order granted in M.P.No.2 of 2015 in W.P.No.19636 of 2015 stands vacated and all the connected miscellaneous petitions (M.P.Nos.1 and 3 of 2015 in W.P.No.19636 of 2015 and W.M.P.No.13488 of 2016 in W.P.No.15507 of 2016) are dismissed. However, in the circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

glp

+ 2 ccs to M/s. S.Venkataraman, Advocate SR.9501

+ 2 ccs to M/s. A. Radhika, Advocate Sr.9642

W.P.Nos.19636 of 2015 and 15507 of 2016

UG(CO)

EU 21.2.17

सत्यमेव जयते

WEB COPY