



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2018

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6226 of 2014

and

M.P(MD)No.1 of 2014 W.M.P(MD)No.18545 of 2017

G.Raghavalu

... Petitioner

Vs.

1. Additional General Manager,
Boiler Production,
Bharat Heavy Electricals Limited,
Tiruchirappalli-620 014.

2. Manager/C& PR (Enquiry Officer)
Bharat Heavy Electricals Limited,
Tiruchirappalli-620 014.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned charge sheet No.BP.P2:2179342 dated 28.05.2013 issued by the first respondent and the consequential Enquiry Notice dated 31.03.2014 issued by the second respondent and quash the same as illegal.

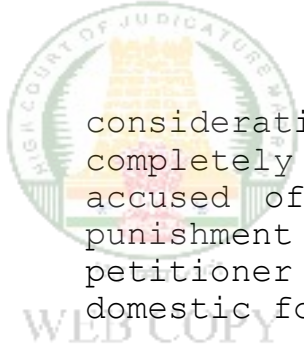
For Petitioner : Mr.M.E.Ilango
For Respondents : Mr.Raguvaran Gopalan for
Mr.K.Prabhakar for R1 and R2

O R D E R

The petitioner is employed as a Technician in BHEL. He questions the issuance of the impugned charge memo dated 28.05.2013, by the first respondent.

2.The writ petition is opposed by the Standing Counsel for the respondents. The respondents have filed a detailed counter affidavit and also a typed set of papers.

3.The principal contention raised by the learned counsel for the Management is that this Court would be justified in interfering with the charge memo only if it can be shown that it is suffering from want of jurisdiction or it has been issued for *mala fide*



consideration. According to the counsel, both the grounds are completely absent. He would also point out that persons, who were accused of similar delinquency, were dealt with by imposing the punishment of Censure. He would therefore suggest that the petitioner should be relegated to avail the remedy before the domestic forum.

4. The learned counsel for the petitioner submitted that his promotion has been withheld on account of the impugned charge memo. If the punishment of censure as submitted is imposed on him, he would lose his promotional opportunity also. He also drew the attention of this Court to the fact that he is on the verge of retirement. He has hardly three months to go. He wanted this Court to go into the nature of the delinquency committed by him and therefore, take a call in the matter.

5. Though this Court would normally not venture into discussing the minute details while considering a challenge to the charge memo, in this case, departure is required. This is for more reasons than one. The only delinquency as against the writ petitioner is that he distributed the handbill in the factory premises. This Court went through the contents of the said handbill. It is seen that as many as three workers died in an industrial accident caused within the factory premises. Therefore, in order to emphasise the safety aspects, certain demands had been raised. The first demand is that the Management must implement the periodical man maintenance programme. The next demand is that there should be a proper ventilation provided. Thirdly, safety equipment as per international standard should be provided to the workmen. Lastly, compassionate appointment was sought for the wife of the deceased worker who died in one such industrial accident. Though the distribution of handbill in the factory premises by itself constitutes misconduct, in the facts and circumstances of the case, this Court is of the view that the Management ought not to view it otherwise. A mechanical approach cannot be adopted in such cases. In order to create awareness regarding safety, if the workers do certain acts, the appropriate response is to enhance the safety standards. The response can never be issuing a charge memo.

6. The learned counsel appearing for the writ petitioner drew the attention of this Court to the order dated 25.11.2014 passed by this Court in W.P(MD)Nos.13601 and 23060 of 2014.

7. This Court held that no disciplinary action will lie for mere distribution of handbill. As already pointed out, what has been highlighted in the handbill is more important. This Court in the said case has granted relief to the workman after perusal of the handbill.

8. Adopting the very same approach, this Court has no hesitation to quash the charge memo impugned in this writ petition.



9. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

+ 1 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR No. 58812

SKN

TE/SKN-RSK/SAR-1 : 14/06/2018 : 3P/2C

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