



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P(MD)Nos.22986 to 22997 of 2018
and

W.M.P(MD)Nos.20870 to 20893 of 2018

S.GANESAMOORTHY	..Petitioner in WP(MD)22986/2018
M.SAKTHIVEL	..Petitioner in WP(MD)22987/2018
N.KAREEMUDDIN	..Petitioner in WP(MD)22988/2018
S.SATHIYASEELAN	..Petitioner in WP(MD)22989/2018
M.SELVAM	..Petitioner in WP(MD)22990/2018
S.MARI RAJAN	..Petitioner in WP(MD)22991/2018
M.SENTHIL KUMAR	..Petitioner in WP(MD)22992/2018
P.GANESAN	..Petitioner in WP(MD)22993/2018
K.P.GANESH KUMAR	..Petitioner in WP(MD)22994/2018
R.MUTHU KUMAR	..Petitioner in WP(MD)22995/2018
G.MANOKARAN	..Petitioner in WP(MD)22996/2018
G.VIGNESH	..Petitioner in WP(MD)22997/2018

Vs

BHARATH HEAVY ELECTRICALS LIMITED,
REP BY ITS DEPUTY MANAGER (HR-EE&CE)
TRICHY-14 .. Respondent(in All Cases)

Common Prayer in WP(MD)Nos.22986 to 22997 of 2018:

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorari calling for records relating to the impugned order of transfer vide Office order Trasn/1014/302/2018,Trasn/1014/332/2018,Trasn/1014/331/2018,Trasn/1014/317/2018,Trasn/1014/317/2018,Trasn/1014/317/2018, Trasn/1014/328/2018, Trasn/1014/329/2018, Trasn/1014/296/2018, Trasn/1014/330/2018, Trasn/1014/311/2018 and Trasn/1014/311/2018 dated 09.10.2018 respectively, passed by the respondent and quash the same as illegal and pass such further or other orders.

For Petitioner: Mr.T.Antony Arul Raj,

COMMON ORDER

The writ petitioners herein have sought the indulgence of this Court to invoke Article 226 of the Constitution of India and issue a writ of certiorari to call for the records relating to the impugned orders of transfer dated 09.10.2018 passed by the respondent and quash the same as illegal.

2.The short point involved in these cases is that the petitioners are members of the Association by name BHEL Welders' Association. They have raised certain demands before the management of the respondent for consideration, which according to them have not been considered positively. Hence, the association called for strike on 07.05.2018. To counter-blast the strike notice, 13 employees who were members of the BHEL Welders' Association were



transferred to Northern States. Aggrieved by that, the employees filed writ petitions in W.P(MD)Nos.11006 to 11016 of 2018 before this Court and interim order is granted.

3. Following the strike notice, conciliation proceedings were commenced. Despite 4 rounds of conciliation, no fruitful result reached. Failure report was filed on 24.08.2018 and the matter has now been submitted to the Assistant Commissioner of Labour (Central) for arbitration. While so, the impugned orders have been passed transferring the petitioners herein to various other units of BHEL Company. Hence, alleging that the transfer is punitive in nature, the writ petitions are filed.

4. The impugned orders transferring the petitioners herein reveals that the petitioners have unauthorisedly abstained from duty in a concerted action, since 01.10.2018, which has caused reduction in daily production output. Prior to resorting of abstaining duty, they have indulged in agitation and sit in strike inside the factory premises. Their conduct has affected the industrial peace. Despite appeal made by the Executive Director on 03.10.2018 explaining the current critical situation of the company, the petitioners herein have acted detrimental to the interest of the organisation. The transfer orders which are impugned before this Court sound that the petitioners are transferred from BHEL, Trichy to other units, since their conduct is detrimental to industrial harmony.

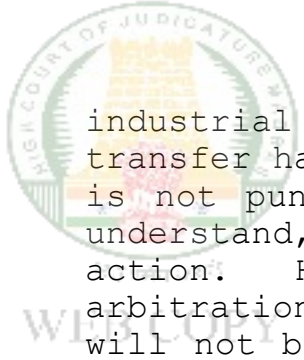
5. Heard the learned counsel appearing for the petitioners.

6. The petitioners herein would contend that it is a punitive measure taken by the management against the Union Members in order to crush their bargaining power.

7. The learned counsel appearing for the petitioners would fervently appeal that the demand made by the writ petitioners are very genuine and only for the production and safety of the workers they were raising these demands. However, their voice are crushed by the high-handedness of the respondent.

8. The perusal of the impugned orders as well as the admissions made by the writ petitioners in their common affidavit would *prima facie* show that the demand of the workers' union and the management offer have not met each other. Hence, the conciliation proceedings have broken. Later, the matter has been referred for arbitration. When the process of amicable settlement on dispute is under way, the petitioners herein have tried to bypass the established process and had involved in agitation, sit in strike and had abstained from work. The conduct of the petitioners herein has caused detriment to the industry affecting its production and industrial peace. In the said circumstances, this Court does not find any *mala-fide* in the action of the respondent.

9. It appears that the *bona-fide* intention to save the



industrial peace and avert reduction in production, the decision of transfer has been taken. The reasoning given in the impugned orders is not punitive in nature, but preventive in nature. One has to understand, the difference between punitive action and preventive action. Having participated in the conciliation proceedings and arbitration, resorting to sit in strike and unauthorised absence will not be conducive for peaceful industrial atmosphere. To tide over the crisis, as a preventive measure, the respondent has passed the impugned orders. Hence, there is no merit in these writ petitions and accordingly, these writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar(CS-II)

TO
THE DEPUTY MANAGER(HR-EE AND EC),
BHARATH HEAVY ELECTRICAL LIMITED,
TRICHY-14.

+1cc to Mr.T.ANTONY ARUL RAJ,Advocate, SR.No. 96107

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and
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