

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.20816 of 2011

K.Balu

.. Petitioner

vs.

1. Director/HR,
Bharat Heavy Electricals Limited,
BHEL House, SIRI Fort,
New Delhi 110 049.
2. BHEL/Ranipet,
Rep.by The Head of the Unit,
(at present Executive Director)
Ranipet. 632406.
3. Mr.R.Ravindran,
Staff No:2169290,
(Formerly Sr.Deputy General Manager/HR)
Retired as Addl.General Manager/HR/BHEL/Ranipet
To be served through Director/HR/Bharat Heavy Electricals
Limited,
BHEL House, SIRI Fort, New Delhi 110 049.
4. Mr.B.Sankar
Staff No: Not known,
Formerly General Manager (I/C)/HR, Presently Executive
Director/HR,
Bharat Heavy Electricals Limited,
BHEL House, SIRI Fort,
New Delhi 110 049.
5. Mr.A.V.Krishnan
Staff No: 2104709
Formerly BHEL Ranipet Unit Head,
Executive Director/Bharat Heavy Electricals Limited.,
Thiruchirappalli 620 014.
6. Mr.K.Manoharan,
Staff No: 2120925,
Additional General Manager/HR/Bharat Heavy Electricals
Limited,
Ranipet 632 406.

7. Mr.R.N.Misra,
Staff No: 2059428,
Retired as Executive Director/BHEL/Tiruchirappalli 620 014,
To be served Director/HR/Bharat Heavy Electricals Limited,
BHEL House, SIRI Fort, New Delhi 110 049
8. Mr.T.Anandan,
Staff No: 2075385,
Retired as General Manager/HR/BHEL/Tiruchirappalli 620 014,
To be served Director/HR/Bharat Heavy Electricals Limited,
BHEL House, SIRI Fort, New Delhi 110 049.
9. Mr.G.Venkataramani
Staff No: 2093987
General Manager/Quality
Bharat Heavy Electricals Limited,
Tiruchirappalli 620 014. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to calling for the records of the 3rd respondent dated 12/02/2008 in BAP:HR:TR, Transfer Order dated 16/02/2008 in BAP:HR:4154126:00 and the consequential rejection orders dated 03/05/2008 in BAP:HR:LLX and the order of the 1st respondent dated 14/12/2009 in reference No.AA/HR/LLX effected by conspiracy to victimization and quash the same as illegal and direct the respondents 1 and 2 to retransfer the petitioner to BHEL, Ranipet Unit.

For Petitioner : Mr.Siraj for Ms.A.Arulmozhi

For Respondents : Mr.John Zarchriah
for M/S.Fox Mandal Associates
for R1 and R2.

R9-Dismissed vide court order 25.07.2013.
No appearance for R3 to R8.

ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent dated 12/02/2008 in BAP:HR:TR, Transfer Order dated 16/02/2008 in BAP:HR:4154126:00 and the consequential rejection orders dated 03/05/2008 in BAP:HR:LLX and the order of the 1st respondent dated 14/12/2009 in reference No.AA/HR/LLX and to direct the respondents 1 and 2 to retransfer the petitioner to BHEL, Ranipet Unit.

2. The averments made in the Writ Petition is that the petitioner was posted as Design Assistant Grade III in BHEL, Ranipet. Then he got promotions and as on 25/06/2007, the Petitioner holding the Post of Senior Executive Foreman.

3. It is further averred in the Writ Petition that the petitioner got married to Ms.P.Lalitha, an employee of Government aided Polytechnic College at Gudiyattam in the year 1991. The petitioner was issued with a transfer order dated 16/02/2008. At that time, his daughter was studying 12th and 7th standard in a private school at Katpadi and according to the Petitioner, his presence in the family is absolutely necessary for the welfare of the family members.

4. The third respondent called the petitioner for a personal discussion to his office on 28/12/2007 and advised him to submit a request for transfer with the reason. Accordingly, the petitioner submitted his request for department transfer to the third respondent on 31/12/2007. On 16/02/2008, the impugned transfer order was passed and was received by the petitioner transferring to Trichy BHEL Unit. The petitioner made a representation on 17/02/2008. As there was no response for the said representation, the Petitioner filed W.P.No.4557 of 2008. This Court directed the 3rd respondent to pass orders on the representation dated 17/02/2008. The petitioner submitted further representation along with the order of this court on 30.04.2008. The 3rd respondent by order dated 03/05/2008 rejected both the above stated representations and challenging the impugned order dated 03/05/2008, the present writ petition has been filed before this Court.

5. According to the learned counsel for Petitioner, the transfer order from Ranipet to Trichy has been issued against the petitioner with a malafide intention. The Petitioner was heading BHEL, Ranipet Unit and 5th respondent has no power to transfer any employee from other units of BHEL, Ranipet, and hence he cannot assume authority for any official unit transfers. He further submits that the transfer order was issued to the Petitioner as a punishment on account of invoking RTI Act.

6. Learned Standing counsel appearing for the respondents 1 and 2 would submit that the Petitioner joined BHEL, Ranipet, on 17/05/1983 and has been working in Ranipet for nearly 25 years. The Transfer order dated 16.02.2008 was issued to the petitioner only after 25 years of his service, Till that time, he has not been transferred any where. The Petitioner's service was governed by BHEL Conduct, Discipline and Appeal Rules, 1975 and he was also liable to be transferred as per

the Policy of the Respondent Company and the rules applicable to him and also as per the terms of his appointment.

7. In the counter affidavit, it is also stated that the petitioner was involved in a private business from his residence in the year 2006. When the Vigilance Department of the Respondents 1 and 2 had reported that the Petitioner was indulging in Private business, he was given notice of the same and requested to desist from doing so. However, the said allegation was denied by the Petitioner. Despite warnings and notice, the petitioner continued his business and the said business was adversely affecting his work in the Unit. Initially, the Petitioner was transferred to a Post involving travel inside the Unit itself, which was requested to a Post not involving travel. However, the Petitioner requested to a Post, not involving travel. An administrative decision was taken to transfer him to a Unit where the services of a Senior Supervisor of his calibre can be suitably utilised. At that time, expansion activities were being carried out in the Trichy Unit of the respondent company. It was in this scenario, a decision was taken by the Unit heads of both Trichy Unit and Ranipet Unit to transfer the employee from Ranipet Unit and to utilise the services of the Petitioner at Trichy Unit. Therefore, the petitioner was transferred on 16.02.2008 and relieved from the 2nd respondent Unit and given all the transfer benefits. But the Petitioner joined duty on 22.02.2010 at Tiruchirappalli. The Petitioner got leave sanctioned from Trichy Unit for some months and afterwards, he continued to be absent unauthorisedly and that Disciplinary Action was taken by the respondent-Trichy Unit for misconduct of unauthorised absence and the petitioner was dismissed from service by the Trichy Unit with effect from 22.05.2012. Challenging the dismissal order, the Petitioner has obtained award dated 12.11.2014 from CGIT, to reinstate him in service. The said award was challenged in WP. No.666 of 2015 and the interim stay also granted and the said Writ Petition is still pending.

8. The statement made by the respondents 1 and 2 in their counter affidavit would disclose that the Petitioner was dismissed from service and the Petitioner obtained Award from CGIT for reinstatement and challenging the said Reinstatement order, a Writ Petition has been filed and the same is now pending before this Court in WP. No.666 of 2015. Therefore, at this stage, this Court cannot adjudicate the issues raised by the writ petitioner and no relief can be granted.

9. In the light of the above discussion, the Writ Petition is dismissed. No costs.

Sd/--
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rkp/ssb

To

1.Director/HR,
Bharat Heavy Electricals Limited,
BHEL House, SIRI Fort,
New Delhi 110 049.

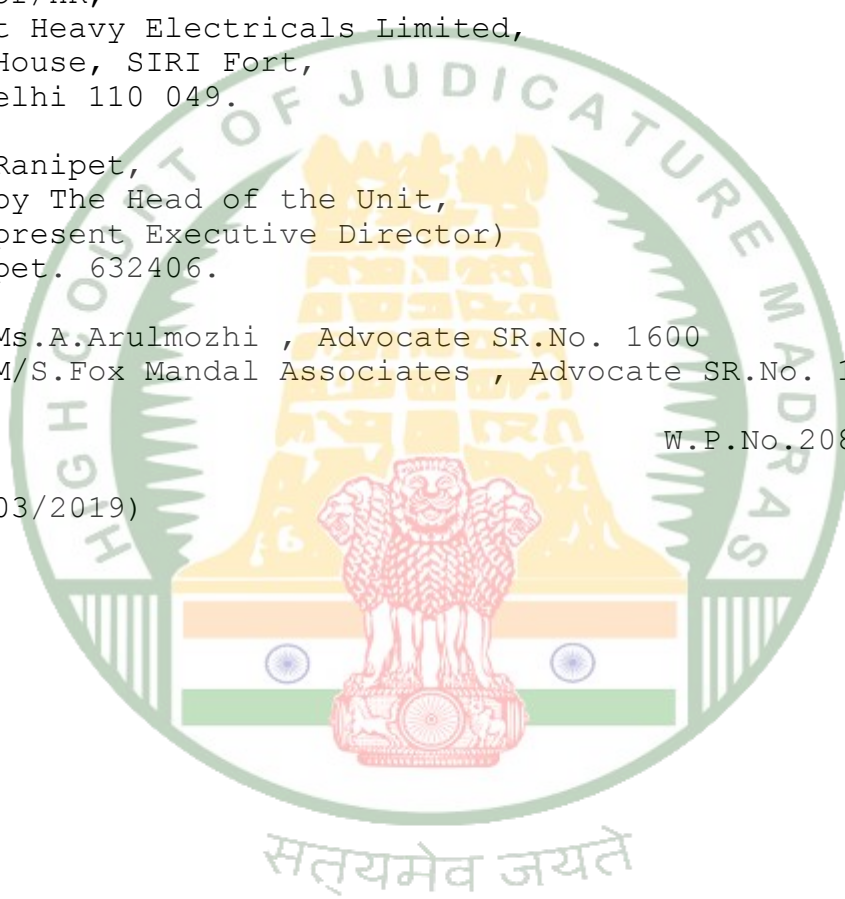
2. BHEL/Ranipet,
Rep.by The Head of the Unit,
(at present Executive Director)
Ranipet. 632406.

+lcc to Ms.A.Arulmozhi , Advocate SR.No. 1600

+lcc to M/S.Fox Mandal Associates , Advocate SR.No. 1640

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A.SK(13/03/2019)



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