



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2020

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.11231 of 2020

R.Marimuthu

...Petitioner

-Vs-

1.The Executive Director,
Bharat Heavy Electricals Ltd.,
Trichy-620 014.

2.The General Manager,
Bharat Heavy Electricals Ltd.,
Trichy-620 001.

3.The Officer-In-Charge,
Apartments Maintenance,
Bharat Heavy Electricals Ltd.,
Trichy-620 014.

4.The General Manager (Accounts),
Bharat Heavy Electricals Ltd.,
Trichy-620 001.

5.K.Dhandapani

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 not to allow the 5th respondent to retire peacefully without settling the petitioner's amount of Rs.6 Lakhs.

For Petitioner : Mr.M.Suresh

ORDER

This Writ Petition has been filed by a third party, who is not an employee in any Central or State Government Department or Organization or Public Sector Undertakings, seeking for a prayer of Writ of Mandamus, directing the respondents 1 to 4 not to allow the 5th respondent to retire peacefully without settling the petitioner's amount of Rs.6 lakhs.

2.Heard Mr.M.Suresh, learned counsel appearing for the petitioner.

3.The case of the petitioner is that, the petitioner was
<https://hcservices.mca.gov.in/Mcservices/> Mechanic Shop at Trichy, where the 5th respondent



was residing next to the shop. Therefore, it is the claim of the petitioner that he knew the 5th respondent for the past 50 years.

4. Because of this closeness, it seems that, the 5th respondent requested the petitioner to lend a hand loan of Rs.6 lakhs. Accordingly, the petitioner claimed to have given a sum of Rs.6 lakhs to the 5th respondent as hand loan on 04.07.2012. Though the 5th respondent has assured to return the amount immediately, he has not returned the same.

5. In this regard, the petitioner claims that, he had given a police complaint on 03.06.2017 at BHEL Police Station, Trichy. However, that complaint has not yielded any fruitful result.

6. In the meanwhile, the petitioner had fixed marriage for his son, which was to be conducted on 24.05.2020, expecting that the hand loan given to the 5th respondent would be returned back by the 5th respondent.

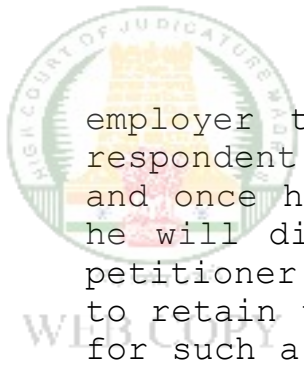
7. However, the 5th respondent had not returned the money and also he had allegedly threatened the petitioner that if he take any action through police, he know how to deal with such complaint and even he will go to the extent to kill the petitioner.

8. Therefore, through his Lawyer, on 06.06.2020, the petitioner had given a notice to the respondents 1 to 4 as well as the 5th respondent. The sum and substance of the notice is that, since the 5th respondent had not returned the amount of Rs.6 lakhs with interest obtained by him from the petitioner as hand loan and without returning the same, if the 5th respondent, on superannuation, is permitted to retire, he will escape from the clutches of law and thereafter, it would be a difficult task for the petitioner to recover the money from the 5th respondent.

9. Since the said Advocate notice dated 06.06.2020 issued to the respondents, including official respondents has not yielded any fruitful result, the petitioner has filed this Writ Petition with the aforesaid prayer.

10. On seeing this prayer as well as the averments made in the affidavit and the documents filed in support of this Writ Petition, I was wondering that how these kind of grievances can be redressed by this Court, exercising the jurisdiction under Article 226 of the Constitution of India in the service portfolio.

11. When a question was posed to Mr.M.Suresh, learned counsel appearing for the petitioner, he would submit that, the 5th respondent will retire on 24th day of September, 2020 on superannuation once he is permitted to retire peacefully by the



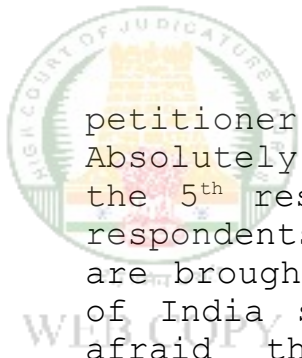
employer that is official respondents herein, certainly the 5th respondent will retire and he will escape from the clutches of law and once he vacate the quarters of BHEL, where he is staying now, he will disappear and it would be a very difficult task for the petitioner thereafter to recover his money. Therefore, in order to retain the service of the 5th respondent at BHEL, except seeking for such a prayer to the BHEL authorities to retain the service of the 5th respondent, the petitioner had no other option. Therefore, he has chosen to file this Writ Petition, the learned counsel replied.

12.I was still wondering on hearing the said reply given by the learned counsel appearing for the petitioner, as he has no bother or tend to understand the jurisdiction of this Court, exercising the power under Article 226 of the Constitution of India.

13.The writ jurisdiction is an extraordinary power vests with the High Court under Article 226 of the Constitution of India for issuance of prerogative writs. If at all the petitioner has got any grievances with regard to the alleged transaction of money between the petitioner and the 5th respondent, the same could have been or can be agitated in the manner known to law. Either the petitioner could have filed a suit for recovery of money or he could have filed a complaint under Section 138 of the Negotiable Instruments Act, as the petitioner claims that the cheque for repayment of the loan was issued by the 5th respondent, otherwise if the petitioner felt that the 5th respondent cheated the petitioner, he could have set the law in motion by making a police complaint and could have pursued the same effectively.

14.In this context, if at all the petitioner had already given a police complaint in the year 2017 to the concerned Police Station and if the said complaint had not been taken on record, he could have also pursued his remedy under various provisions of the Code of Criminal Procedure by approaching the Superintendent of Police or Commissioner of Police concerned and even in that attempt, if the petitioner fails, he can very well approach the concerned Magistrate Court under the provisions of the Code of Criminal Procedure by way of filing a complaint seeking direction to register a case against the 5th respondent and investigate the same by the concerned police.

15.When these kind of enormous legal remedies are available in the eye of law before the petitioner, instead of choosing any one of such method, which is permissible under law, the petitioner has chosen to adopt this method by approaching this Court by filing Writ Petition under Article 226 of the Constitution of India that to before the service portfolio as if that the



petitioner is having any service dispute with the 5th respondent. Absolutely the petitioner does not have any service issues with the 5th respondent, as he is only a third party to the official respondents namely, BHEL. When these kind of personal disputes are brought to the jurisdiction under Article 226 of Constitution of India seeking remedy by issuance of prerogative writs, I am afraid that the majesty of this Court as well as the jurisdictional aspects under which, this Court exercise its power under Article 226 of the Constitution of India, would be at stake and will be questionable also.

16. When these kind of litigations or issues come to the knowledge of the learned counsel, they should properly advise the litigant to avail proper remedy available before him under law as indicated above.

17. Even some of the learned Members of the Bar without even verifying the proper legal remedy available to the litigant, who comes to the learned Members with a problem, straight away approach the High Court whether knowingly or unknowingly by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. This kind of practice or this kind of case is not coming for first time before this Court and this Court has come across many such cases at frequent interval and when such cases are coming, time and again or repeatedly, this Court has sensitized the litigants, who come before this Court through the learned Members of the Bar to workout their remedies in the manner known to law, instead of approaching the High Court without having any jurisdiction to that effect. However, such a practice has not come to an end and it is continued like the one that we are now facing in this Writ Petition. This kind of situation, we desire and wish, shall not continue forever and the learned Members of the Bar should be more vigilant. This Court requests the learned Members of the Bar to be more vigilant on jurisdictional aspects of the Courts and render correct and proper advise to the litigants, who innocently, with eager or anger, approach the learned Members of the Bar for immediate redressal of their grievances.

18. In view of the above, this Court has no hesitation to hold that this Writ Petition cannot be entertained for the reasons stated above, therefore, it is liable to be dismissed.

19. Since the judicial time of this Court is consumed by the petitioner by this unwarranted litigation, it can be dismissed even with cost. However, this Court does not wish to impose cost, as the petitioner seems to have already lost the money with the 5th respondent.



20. In the result, this Writ Petition fails. Therefore, it is dismissed. However, there shall be no order as to costs for the aforesaid reason.

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// True Copy //

Sd/-

Assistant Registrar (CS-I)

/ /2020

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Executive Director,
Bharat Heavy Electricals Ltd.,
Trichy-620 014.
2. The General Manager (Accounts),
Bharat Heavy Electricals Ltd.,
Trichy-620 001.

Order made in
W.P. (MD) No. 11231 of 2020
09.09.2020

= KM (18.09.2020) 5P 3C