



W.P.(MD).No.14306 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.07.2023

PRONOUNCED ON : 28.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.14306 of 2023

and

W.M.P(MD)Nos.12110 & 12723 of 2023

R.Kalyanakumar

... Petitioner

Vs.

- 1.The Senior Deputy General Manager
(HR-IR, Estt., Rectt & CSR),
Bharat Heavy Electrical Limited (BHEL),
High Pressure Boiler Plant,
Tiruchirappalli, Tiruchirappalli District – 14.
- 2.The Assistant General Manager (HR),
Bharat Heavy Electrical Limited (BHEL),
Tiruchirappalli,
Tiruchirappalli District – 14.
- 3.The Executive Director,
Bharat Heavy Electrical Limited (BHEL),
Tiruchirappalli,
Tiruchirappalli District – 14. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the order dated 08.05.2023 bearing reference No.HR:CE:IUT: 2212544 on the file of the first respondent and quash the same.

1/25



W.P.(MD).No.14306 of 2023

WEB COPY

For Petitioner : Mr.S.Srinivasa Raghavan
for Mr.R.M.Mahesh Kumaravel

For Respondents : Mr.R.Sankara Narayanan
Senior Counsel
for Mr.Raguvaran Gopalan

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorari, to quash the order, dated 08.05.2023 on the file of the first respondent.

2.The petitioner was working as a Technician (Machinist), Factory Civil Maintenance, HPBP, Trichy in the Bharat Heavy Electricals Limited (BHEL), which is managed by the respondents. The petitioner was elected as the working President of the Boiler Plant Employees Union/Indian National Trade Union Congress (INTUC), BHEL, Trichy during the election held on 28.01.2022 (hereinafter mentioned as 'INTUC, BHEL, Trichy'). The said INTUC, BHEL, Trichy is a registered Trade Union and affiliated with the Indian National Trade Union Congress, New Delhi. The list of newly elected office bearers and Executive Committee of the INTUC, BHEL, Trichy was furnished to the



W.P.(MD).No.14306 of 2023

Joint Commissioner of Labour, Trichy by the President of Tamil Nadu, INTUC, BHEL, Trichy on 29.01.2022. The All India President of INTUC approved the list of office bearers and Executive Committee and communicated the said list to the third respondent for approval on 31.01.2022.

3. One former member, namely P.Balasubramani of INTUC, BHEL, Trichy was expelled from the Union along with some other members and the same was confirmed by the All India President of INTUC vide communication, dated 31.01.2022, addressed to the third respondent. The said P.Balasubramani approached the Joint Commissioner of Labour, Trichy, challenging the election process of the newly elected office bearers and Executive Committee of the INTUC, BHEL, Trichy. After detailed enquiry and consideration of all facts and evidence, the Joint Commissioner of Labour, Trichy, vide his order dated 18.02.2022 declared that the INTUC, BHEL, Trichy functioning under the petitioner as working President has the support of the majority of the members of the Union and it was also held that the Union functioning under the said former member P.Balasubramani did not have the 2/3 majority as stipulated under Bye Law 25(b). Challenging the said order, a Writ Petition in WP.(MD)No.4009 of 2022



W.P.(MD).No.14306 of 2023

was filed by the said P.Balasubramani before this Court and this Court on 21.03.2022, directed the respondents to keep the order passed by the Joint Commissioner of Labour in abeyance for a period of eight weeks from 21.03.2022, thereby permitting the disputing parties to approach the civil court for appropriate relief. Under such circumstances, on 11.04.2022, the respondent Public Sector Undertaking (hereinafter referred to as 'respondent PSU') advised both factions not to use INTUC, BHEL, Trichy name until the issue is resolved. Challenging the order passed by the learned Single Judge of this Court in W.P(MD)No.4009 of 2022, the petitioner preferred an appeal in W.A(MD)No.324 of 2022 before the Hon'ble Division Bench of this Court, in which, it was held as follows:-

"3.According to us, once learned Single Judge was of the view that, order under challenge was not required to be interfered with, the said order ought not to have been put under abeyance."

4.On 30.04.2022, a civil suit in O.S.No.199 of 2022 was filed by the rival faction P.Balasubramani on the file of the learned District Munsif, Tiruchirappalli, for declaration that their faction is the



W.P.(MD).No.14306 of 2023

officially recognized INTUC Union of BHEL and the same is pending. On 23.06.2022, the respondent PSU conducted "representative Union Election" to recognize Trade Unions having majority members. INTUC, BHEL, Trichy led by the petitioner's faction also participated and secured third place with 579 votes and was recognized as selected to represent in the Joint Committee of BHEL (Corporate) as well as the Plan and Shop Councils, BHEL, Trichy.

5.On 10.09.2022, the respondent PSU held the first management meeting, in which four Trade Unions participated, wherein the petitioner led INTUC, BHEL, Trichy, faction was not invited. As a result of which on 15.09.2022, the petitioner made a representation to the third respondent objecting to the exclusion of the INTUC, BHEL, Trichy faction led by him. Since there was no response from the respondent PSU, the petitioner filed a writ petition in W.P(MD)No.24012 of 2022 seeking directions to comply with the election of INTUC Union in 2022. In the meanwhile, during the pendency of the said writ petition, the respondent PSU responded to the petitioner's representation, dated 15.09.2022, stating that the Joint Commissioner of Labour do not have jurisdiction to adjudicate and pass orders as to which group of Trade Unions have majority and



W.P.(MD).No.14306 of 2023

that only an order of civil court is necessary to enable the elected members of INTUC, BHEL, Trichy faction led by the petitioner to be a recognized as a majority elected office bearers. Pursuant to the same, the second respondent further issued a Circular dated 28.10.2022 wherein the names of the elected members of INTUC, BHEL, Trichy faction led by the petitioner was omitted. Challenging the same, the petitioner filed a writ petition in W.P(MD)No.25032 of 2022 and this Court vide order dated 24.11.2022 directed the respondent PSU to invite and permit the participation of INTUC, BHEL, Trichy faction led by the petitioner in the Joint Committee Meetings of the respondent PSU and other committees. Challenging the said order of this Court, the INTUC faction led by P.Balasubramani filed a writ appeal in W.A(MD)No.1422 of 2022, in which, the Hon'ble Division Bench of this Court stayed the operation of the order of the learned Single Judge in W.P(MD)No.25032 of 2022, dated 24.11.2022 and passed the following interim order:-

"In view of the fact that the Writ Court has breached the settled position of law that the internal disputes between the members of the Trade Union shall be resolved by Civil Court and not by this Court or the Labour Court, there will be an interim stay of the operation of the learned Single Judge.



W.P.(MD).No.14306 of 2023

WEB COPY

2.The Boiler Plant Employees Union (INTUC) will not get any representation in any of the joint committee meetings held by Bharat Heavy Electricals Limited (BHEL) till such time the Writ Appeal disposed of.”

6.Under such circumstances, on 08.05.2023, the impugned order was passed by the first respondent transferring the petitioner to IVP Goindwal (Punjab) with immediate effect. Claiming that the said transfer order is completely without cause, reason and is not in due course of transfer orders, this Writ Petition came to be filed.

7.The learned counsel appearing for the petitioner vehemently contended that the impugned transfer order passed by the first respondent is against the principles of law and equity and is punitive in nature. There is no explanation in the impugned order as to whether the transfer is in due course or on an administrative ground and the same is vitiated on malafide intentions of the respondent PSU. The petitioner led group of INTUC, BHEL, Trichy faction have been questioning and opposing the unreasonable and unlawful policies detrimental to the welfare of the workers and employees, as a result of



W.P.(MD).No.14306 of 2023

which, the first respondent has issued the impugned order of transfer out of pure vengeance. The petitioner has been working in the civil department in BHEL, Trichy as a Machinist and the present transfer to the unit in IVP Goindwal (Punjab) which is engaged in the manufacture of valves and repair work which incidentally is not the petitioner's fort or experience till date. The petitioner is a TAMILIAN and he does not know any language besides Tamil, and hence it is not possible for him to assimilate work in the different State. The said impugned order of transfer is cryptic and has not stipulated whether the said transfer has been occasioned by need-based issues of any kind. There is no provision in the Standing Orders which permits the Management to transfer an employee from one State to another, particularly when there is a possibility of lack of communication due to language and for all these reasons, the transfer order is bad in the eye of law and is vitiated by malafide and the transfer order dated 08.05.2023 passed by the first respondent is liable to be set aside.

8. Per contra, the learned Senior Counsel appearing for the respondents vehemently opposed each and every argument of the learned counsel for the petitioner and contradicted the same. He submitted that the writ petitioner was initially appointed in BHEL,

8/25



W.P.(MD).No.14306 of 2023

Trichy Unit as a temporary employee/artisan on 26.08.2005. Clause (4) of the terms and conditions of his offer of appointment, dated 26.08.2005 provides that the petitioner is liable to be transferred to any other unit of BHEL throughout the Country. At the time of issuing the impugned order of transfer, the writ petitioner was working as a Technician (Machinist). The Goindwal Unit is a part of BHEL, Trichy Complex Unit and it operationally and functionally reports to Trichy Unit. Recently, BHEL IVP, Goindwal Unit had requested BHEL, Trichy for a Machinist to ensure smooth operation of production activities at IVP, Goindwal Unit. Since the writ petitioner belongs to the Machinist trade and he was working in Factory civil department, he was found suitable for transfer to Goindwal Unit without substitute. Hence, only in order to meet the organizational requirement, the transfer order was issued to the petitioner on 08.05.2023 transferring him from Trichy to Goindwal Unit, after obtaining approval from the competent authority. Exclusively considering the work exigencies at IVP, Goindwal Unit, the writ petitioner was relieved from the services of the BHEL, Trichy effective from the afternoon on 10.05.2023. Immediately without joining in the assigned new station, the writ petitioner submitted a petition before the Assistant Commissioner of Labour (Central) Puducherry and the respondent PSU was served with a notice dated

9/25



W.P.(MD).No.14306 of 2023

11.05.2023 calling for a conciliation meeting on 12.05.2023. The writ petitioner and the respondent PSU, attended the Conciliation meeting on 12.05.2023, wherein the respondent PSU had filed a detailed reply to the petition of the writ petitioner before the Assistant Labour Commissioner, for which, the writ petitioner had sought time to file a rejoinder to the same and hence, the hearing on 12.05.2023 was adjourned and the next date of hearing is yet to be notified.

9. In addition to that, the writ petitioner had vide letter dated 14.05.2023 approached the National Commission for Scheduled Castes, Chennai, alleging that the impugned transfer order was motivated and was issued in bad faith with a view to insult the writ petitioner in order to shackle the progress of the writ petitioner, who hails from the Scheduled Caste. Upon receipt of the notice from the Commission dated 16.05.2023, the third respondent sent a detailed reply dated 24.05.2023 pointing out that the transfer was a matter of routine and was a part of the service conditions of the writ petitioner and also a condition of his initial appointment in BHEL way back in the year 2005.



W.P.(MD).No.14306 of 2023

WEB COPY

10. That apart, the Commission has forwarded the complaint to the Deputy Superintendent of Police and an F.I.R No.18 of 2023, dated 05.06.2023 has been lodged against the first respondent under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In this background that the instant writ petition came to be filed challenging the impugned transfer order dated 08.05.2023 on 15.06.2023. The writ petitioner for the reasons best known to him has failed to place on record the conciliation proceedings pending before the Assistant Labour Commissioner (Central) Puducherry, initiated by him and about the petition before the National Commission for Scheduled Castes which had resulted in an F.I.R against the executives of the Company. It is pertinent to mention that all these proceedings would show that the writ petitioner far from being a humble worker at the mercy of the whims of the Management is well versed with every trick in the book to trammel the Management and achieve his ends.

11. The contention of the writ petitioner is that the impugned transfer order is a result of the factional quarrel between the members of the INTUC, BHEL, Trichy, of which the writ petitioner claims to be a working President, does not hold good. The writ



W.P.(MD).No.14306 of 2023

petitioner has conveniently chosen to suppress the findings of this Court in W.P(MD)No.25032 of 2022, dated 24.11.2022, holding that the Management cannot be faulted for any of its conduct in the circumstances of the case. The actual dispute is between the two factions of INTUC Trade Union and the respondent PSU has no role in the internal affairs of the Trade Union and has acted strictly abiding by the Court order without any bias to any of the group. In fact, the respondent Management permitted the INTUC, BHEL, Trichy factions led by the petitioner from 24.11.2022 to 14.03.2023 to participate in all the meetings as per the order passed by this Court.

12.The attitude of the petitioner not bringing out the Trade Union issue in the petition submitted before the Assistant Labour Commissioner (Central), Puducherry, itself would prove that the allegations made against the respondent Management in this writ petition is an after-thought and cooked up for the purpose of this writ petition. The impugned order of transfer is completely in adherence to the Standing Orders of BHEL, Trichy, Clause 28 of which provides that employees are liable to be transferred even outside Thiruverumbur, that too, throughout the Country and transfer being the incident of service, the transfer order was issued on the basis of a request made



W.P.(MD).No.14306 of 2023

by Goindwal Unit. Hence, the petitioner ought to have joined in the said unit on the receipt of the said order. On the other hand, suppressing the Industrial Dispute pending before the Assistant Labour Commissioner and also the proceedings before the National Commission for Scheduled Castes, Chennai, the petitioner has filed this Writ Petition and hence, the same is vitiated by malafide and hence, liable to be dismissed.

13.Heard Mr.S.Srinivasa Raghavan, learned counsel appearing for the petitioner and Mr.R.Sankaranarayanan, learned Senior Counsel appearing for the respondents and anxiously perused the entire materials available on record.

14.The petitioner was appointed by an offer of appointment by the respondent Management on 26.08.2005 as a temporary employee/Artisan. Clause 4 of the terms and conditions of the said offer of appointment is extracted as follows:-

"You will normally be expected to work in Trichy complex of BHEL, and if need be shall work in other Units and erection sites of the



W.P.(MD).No.14306 of 2023

Company located throughout the Country. You are also liable to be transferred to any other existing or new Unit of BHEL or to any other Government of India Undertaking in India or abroad. Further, depending on work exigencies, you will be required to work in any section/bay/department and in different shifts.

15.The entire allegation raised by the writ petitioner of being a victim of the factional feud in the Trade Union politics of INTUC, BHEL, Trichy and being victimized by the respondent Management is not supported with proper evidence. W.P(MD)No.4009 of 2022, W.A(MD)No.324 of 2022, W.P(MD)No.25032 of 2022 and W.A(MD)No.1422 of 2022 were all seriously contested before this Court by two factions of the Trade Union, namely INTUC, BHEL, Trichy, in which, the respondent Management was only a formal party. To be more specific, this Court in W.P(MD)No.25032 of 2022, dated 24.11.2022 (Boiler Plant Employees Union/INTUC Vs. The Executive Director and others) has held as follows:-

"9..... Before the management, there were competing factions. All that the management stated was that the person seeking representation must get a



WEB COPY



W.P.(MD).No.14306 of 2023

formal direction in their favour from the competent Court. This stand taken by the management in my view is perfectly reasonable and I, therefore, reject the challenge to the impugned communication dated 22.09.2022 issued by the second respondent”.

16. That apart, a civil suit in O.S.No.199 of 2022 on the file of the learned District Munsif, Tiruchirappalli filed by the rival faction of INTUC, BHEL, Trichy, led by P.Balasubramani is also pending with respect to the declaration of which faction is the officially recognized faction of INTUC Union, BHEL, Trichy. When the feud between two factions of INTUC Trade Union, BHEL, Trichy, has culminated in filing of Writ Petitions and civil cases between the various Courts that has nothing to do with the respondent Management and ultimately the Hon'ble Division Bench of this Court in W.A(MD)No.1422 of 2022 has held that the members of the INTUC, BHEL, Trichy is not entitled to represent in any joint committee meeting of the respondent Management, till the said Writ Appeal is disposed of. The respondent Management has dealt with the factional dispute between two factions of INTUC, BHEL, Trichy, only in accordance with the time-to-time directions of this Court in various writ petitions at different points of time.



W.P.(MD).No.14306 of 2023

WEB COPY

17.In furtherance to the same, the Standing Orders of Bharat Heavy Electricals Limited, Tiruverumbur unit is the conclusive statute on which the administration and management of the respondent Management functions. Clause 28 of the said Standing Orders of Bharat Heavy Electricals Limited, Tiruverumbur, is extracted as follows:-

"28.Transfers:

Employees shall be liable to be transferred at the discretion of the Management from one Work, Department, Section or Job to another provided that in doing so the Management shall keep in view the suitability of the employee for the particular work and also that the pay, grade and seniority of the employee concerned is protected. Similarly, employees shall be liable to be transferred to any place outside Tiruverumbur.



W.P.(MD).No.14306 of 2023

18. That apart, the General terms and conditions of service of the respondent Management describe transfer in Clause 18 as follows:-

"18. Transfers:

Employees shall be liable to be transferred at the discretion of the Management from one work/Department/Section or station to another provided that in doing so the Management shall keep in view the suitability of the employee for the particular work and also that the pay, grade and the seniority of the employee concerned is protected. Similarly, employees shall be liable to be transferred to any office/Unit/Division/Project of the Company as also to any of the departments of Government of India or any other Public Sector Undertaking.

19. The learned Senior Counsel appearing for the respondents has placed the note of the Human Resource Management Department of the respondent Management dated 06.05.2023 for my perusal and the same is extracted as follows:-



WEB COPY



W.P.(MD).No.14306 of 2023

**BHARAT HEAVY ELECTRICALS LIMITED
TIRUCHIRAPPALLI**

Human Resource Management

Ref.No.TP:HR:TR

Date: 06/05/2023

NOTE

Sub:Manpower requirement of Machinist at IVP, Goindwal

– Reg.

Ref:Letter dated 22/04/2023 from Unit Head

Reference is made to the Letter dated 22/04/2023 from Unit Head requesting to spare one skilled manpower in Machinist Trade to IVP, Goindwal Unit.

Shri.R.Kalyanakumar (Staff No.2212544), Technician (Machinist) had worked as machinist in Plate Formed Products Development till June 2024 and possesses nearly 8 years of experience in machinist trade and later got transferred to Factory Civil Maintenance Department. He is found to be suitable to be spared to IVP, Goindwal unit without substitute. Biodata of the employee is attached herewith.

Considering the urgent requirement for skilled manpower in machinist trade, it is hereby proposed to transfer Shri.R.Kalyanakumar, Staff No.2212544, Technician (Machinist), Factory Civil Maintenance to IVP, Goindwal Unit in the existing grade and pay with immediate effect. He will be eligible for transfer benefits as per applicable rules.

Submitted for approval please.

Addl.GM(HR)

(R.K.Gautam)“



W.P.(MD).No.14306 of 2023

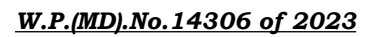
WEB COPY

20.The aforesaid note of the Human Resource Management Department of the respondent Management will make it clear that only on the requisition to spare one skilled manpower in Machinist Trade to IVP, Goindwal Unit, the proposal to transfer the petitioner, who is a skilled manpower in Machinist Trade has emerged and it is also found that the said decision has been taken only because the writ petitioner has been found to be suitable to be spared to IVP, Goindwal Unit without substitute.

21.A critical perusal of all the orders passed by this Court in the various writ petitions and writ appeals would make it clear that the respondent Management has nothing to do with the factional feud of the Trade Union, namely INTUC, BHEL, Trichy and the said Management had only played a balancing role whatever had been possible in the said dispute between the different faction of the same Trade Union.

22.It is a settled proposition of law that any dispute within a Trade Union cannot be resolved in a Writ Court or in a Labour Court but only by a competent civil Court and the respondent Management

19/25



23. The argument of the learned counsel appearing for the respondent is that, the impugned transfer order had emanated as a result of the factional disputes in INTUC is not sustainable. Having regard to the offer of appointment of the respondent Management, the respondent is entitled to comply with the impugned transfer order without any loss of seniority of his job.

24. It is settled proposition of law that transfer which is an incidence of service is not to be interfered with by the Court unless it is shown to be clearly unjustified, arbitrary or vitiated by malafide or infraction of any professed norms or principles.

25. However, in this case, only based on the conditions of service to which the petitioner is bound to and only on the requisition for a Machinist for the Unit of IVP Goindwal considering that the writ



W.P.(MD).No.14306 of 2023

petitioner is a skilled manpower Machinist, who would be suitable to meet the urgent need in IVP Goindwal Unit, the first respondent has passed the order of transfer which has been impugned herein and the said impugned order cannot be described as one which is vitiated by malafide and could be seen only as an administrative exigency.

26.The Hon'ble Apex Court in the case of **National Hydroelectric Power Corporation Limited Vs. Shri Bhagwan** reported in **(2001) 8 SCC 574**, has held as follows:-

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of male fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.



W.P.(MD).No.14306 of 2023

27. In another case, the Hon'ble Supreme Court in the case of Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and others reported in (2004) 12 SCC 299, has held as follows:-

"4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray v. State of Orissa. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see Union of India v. S.L. Abbas). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it."

28. To conclude by all means, the impugned transfer order cannot be negated as the one which is vitiated by malafide and a critical analysis of the various orders passed by this Court and also the Writ Petition and the counter-affidavit would clearly prove that this is a clear attempt made by the writ petitioner launching tangential proceedings to arm-twist and harass the respondent Management in its



W.P.(MD).No.14306 of 2023

exercise of routine administrative redeployment of manpower to the needy destination.

29.This Court is also inclined to mention that the writ petitioner has suppressed the pendency of an Industrial Dispute which he had raised with respect to the same impugned transfer order by approaching the Assistant Labour Commissioner (Central), Puducherry, and his petition pending before the National Commission for Scheduled Castes.

30.In fine, this Court is not inclined to interfere with the impugned order, dated 08.05.2023 passed by the first respondent as the same would certainly have a sloughing effect on the day-to-day administration and management of the respondent Management and this Court is inclined to dismiss the Writ Petition. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

28.07.2023

NCC : Yes
Index : Yes
Internet : Yes

23/25



W.P.(MD).No.14306 of 2023

ps
WEB COPY

To

- 1.The Senior Deputy General Manager
(HR-IR, Estt., Rectt & CSR),
Bharat Heavy Electrical Limited (BHEL),
High Pressure Boiler Plant,
Tiruchirappalli,
Tiruchirappalli District – 14.
- 2.The Assistant General Manager (HR),
Bharat Heavy Electrical Limited (BHEL),
Tiruchirappalli,
Tiruchirappalli District – 14.
- 3.The Executive Director,
Bharat Heavy Electrical Limited (BHEL),
Tiruchirappalli,
Tiruchirappalli District – 14.



WEB COPY



W.P.(MD).No.14306 of 2023

L.VICTORIA GOWRI, J.

ps

Pre-Delivery Order made in
W.P.(MD)No.14306 of 2023

28.07.2023