

P. Sekar Vs. Bhel, Ranipet and Others

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Court : Chennai

Decided On : Jun-22-1990

Reported in : (1991)ILLJ551Mad

Judge : K.S. Bakthavatsalam, J.

Appeal No. : W.P. No. 3997/1990

Appellant : P. Sekar

Respondent : Bhel, Ranipet and Others

Judgement :

1. The petitioner has come to this Court challenging the order of transfer by which he has been posted to Bharat Heavy Electricals, Ltd., Trichy.

2. The petitioner herein joined the services of the Bharat Heavy Electricals, Ltd. (hereinafter referred to as B. H. E. L.), Ranipet, the first respondent herein on 1st December, 1983, as Fitter Grade IV and was promoted from Grade IV to Grade III Fitter. It seems that the petitioner is a sitting executive committee member of the Boiler Auxiliaries Plant Staff Union, a recognised union. The petitioner alleges in the affidavit filed in support of the petition that the first respondent-management wanted to stifle the protesting voices of the union, in which he is an executive committee member, that it decided to victimise the vanguards of the union and was waiting for an opportunity to victimise the petitioner. It seems that there was an incident in which a gate was closed by which the workmen used to get in and

come out of the canteen and to the administrative block. It is also alleged in the affidavit that the said decision was taken without consulting the recognised unions and the workmen very much protested against the said action of the management. The petitioner submits in the affidavit that an order of interim suspension was made on 13th January 1990. It is also alleged in the affidavit that a false allegation has been made in the said order of interim suspension alleging that the petitioner indulged in violent acts. On 29th January 1990 a charge memo was issued to the petitioner which runs as follows :

'... The following charge has been made against you, and it is necessary that you should have an opportunity of defending yourself against it.

On 12th January 1990, you were on duty in A shift (i.e., 8.00 hours to 16.30 hours) you struck work during your shift hours and incited some other employees in production area to strike work during their shift hours. During the forenoon session of the same day, you had prevented a few production executives from carrying out their normal work in the shop floor by concerted action with a few other employees. At about 14.30 hours on 12th January 1990, when a group of production executives went to shop floor area on their routine round of inspection through the M & S office gate (South-Eastern side near Mazak machine) and when they reached near RM 65 Drilling machine in F-3 bay, you and Sri A. N. Valumani, staff No. 4157605, Fitter-III, Production, sprang at them and blocked their way physically. You restrained them from moving further, called and instigated a group of employees who were gathered near the gangway of F-3 bay to prevent these executives from moving from that area and on your instigation, they surrounded the production executives. You also violently behaved by gesticulations with these executives. Through your gesticulations, you have intimidated and threatened these executives with dire consequences. By mobilising a mob to surround them, you have physically prevented them and forced them to leave the shop floor. At about 15.15 hours on 12th January 1990, you intimated a co-employee, Shri. K. L. Murthy, Staff No. 2057344, Crane Operator I, while he was doing his duty, and whistled and shouted slogans at him. Showing your chappals you also threatened to beat Shri K. L. Murthy. Further, you had made vulgar signs to him by stripping your pants down. Thus you have behaved indecently ...'

It is stated in the charge memo that the charges come under items(11), (12), read with (56) (2) of the act in Standing Order 57. After an oral enquiry, an order of punishment was passed on 31st March, 1990 against the petitioner reducing him to the post of Fitter Grade IV. On the same day, the impugned order came to be passed transferring him to Trichy B. H. E. L., from Ranipet. The petitioner alleges in the affidavit that the impugned order of transfer is only by way of punishment, and that it has been done in a vindictive manner. It is further alleged in the affidavit that the impugned order is hit by doctrine of double jeopardy and that it is also in violation of principles of natural justice. It is also alleged that the order of transfer is ex facie illegal and that he has been transferred to Tirchy with mala fide intention. It is further stated that there is no need to transfer the petitioner to Trichy when employees similarly placed like him and who are juniors to him have been retained at Ranipet itself.

3. Notice of motion has been ordered by me on 5th April, 1990.

4. Sri Sanjay Mohan, learned counsel appears for the respondents, and has filed a counter-affidavit stating that the management held the enquiry in the proper manner and that based on the evidence in the enquiry, the petitioner has been reduced to Grade IV Fitter from Grade III. It is further claimed in the counter-affidavit that all those proceedings and the award of punishment therein had no connection with the separate proceedings issued to the petitioner transferring him to Trichy unit from Ranipet unit, that the transfer from one establishment to another is one of the conditions of the employment of the petition and the Standing Order. It is further stated in the counter-affidavit that during the period of existence of Ranipet unit, there have been hundreds of instances of transfer of people of all categories from Ranipet to Trichy and other places, that transfer from one place to another is common, that it is made in the usual course of organisational functions. It is further stated in the counter-affidavit that the transfer of the petitioner from Ranipet to Trichy has been done due to exigencies of work and in the usual course of business and that no objection whatsoever can be raised to the same under those circumstances. It is further stated that the mere fact that the transfer was made on the same day the punishment order was served on him cannot be taken into consideration to hold that it is done by way of punishment. It is further

claimed that the transfer has been made by way of punishment is not true.

4-A. Sri S. Kumaraswamy, the learned counsel appearing for the petitioner, strenuously contends that on the same day when the order of punishment was served on him, the order of transfer has been further contends that since the petitioner had been the leader of the union., the respondent-management was waiting for an opportunity to victimise him and as such the petitioner has been transferred now. The learned counsel further contends that once charges were framed against the petitioner and a punishment has been awarded, reducing his grade, the order of transfer is double punishment. The learned counsel further contends that the order of transfer has been passed with mala fide intentions, and this Court should consider it as a punishment, taking into consideration the circumstances and facts of the case.

5. Sri Sanjay Mohan, the learned counsel appearing for the respondent, contends that the order of transfer is only an administrative transfer and that it had not been done by way of punishment. He also points out that the transfer is one of the conditions of service and that it cannot be said that the impugned order of transfer seems to be a punishment. Learned counsel further argues that because the order of transfer has been made on the same day, it cannot be presumed that it is done by way of punishment and that no question of double punishment arose in this case. The learned counsel relies upon the correspondence and demonstrates before me that the transfer is due to the administrative exigency.

6. Considering the arguments of Sri S. Kumaraswamy, the learned counsel appearing for the petitioner, and of Sri Sanjay Mohan, the learned counsel appearing for the respondent, I am of the view that the contentions raised by the learned counsel for the petitioner are not tenable. It is true that the order of transfer and the order of punishment reducing his rank were made on the one and the same day. At the first blush, it may look that the order of transfer has been done by way of punishment. But, if the matter is looked upon with the records produced before me, I am of the view that the transfer has been made only due to the administrative exigency. Actually, even by November 1989, Senior Manager (Personnel) requested the Deputy General Manager, Trichy for the approval. I find

from the records that on 9th January 1990, one Natarajan has been transferred and it has been stated therein that in respect of the petitioner herein, it has been decided that he will be transferred later. The Senior Manager (Personnel) has put up a note to the Deputy General Manager with a query 'Whether we can transfer P. Sekar to B. H. E. L. /Trichy, in the month of January 1990.' I find from the files a note after discussion that the matter has been pending in view of suspension against the petitioner. Ultimately, when the proceeding was over, the petitioner came to be transferred on 31st March, 1990. As such, after examining the materials on records, I have no hesitation to hold that the petitioner has been transferred only for the administrative exigency and not by way of punishment as contended by the learned counsel for the petitioner. I am also of the view, that no victimisation arose in view of the fact that the question of transfer of the petitioner herein was raised even in the end of 1989 and it has been done duly after having discussion, which I find from the files. It is well settled that the order of transfer cannot be interfered with unless it is done by way of punishment or tainted with mala fide. In my view, both of these aspects are absent, so far as the present order of transfer is concerned and I do not see any reason to interfere with the order of transfer. Simply because the order of transfer and the order of punishment came to be passed on the one and the very same day, this Court cannot presume that it is done by way of punishment. If the facts of the case are examined with the records it is crystal clear that the impugned order of transfer in this case is not made by way of punishment. There are no merits in the writ petition. The writ petition is dismissed. No costs.

However, I am of the view the management will consider sympathetically any temporary measure to retain him at Ranipet unit, in view of the fact that the petitioner's wife is said to be in the advanced stage of pregnancy. I make it clear that it is purely a matter for the management to decide and I am sure that the management will consider it in the proper perspective..