

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.02.2015

DATED : 10.02.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.A.Nos.1047 to 1062 of 2008 and W.P.No.9713 of 2002

W.A.No.1047 of 2008:

1. The Management of
Bharath Heavy Electricals Limited,
rep. 2by its Chairman and Managing
Director, BHEL Corporation Office,
Siri Fort, New Delhi - 110 049
2. The General Manager,
Bharat Heavy Electricals Limited,
Ranipet, Vellore District. ... Appellants
in all the W.A.No.1047 to 1062/08 and
Respondents in W.P.9713/12

M. Rajaram Mohandoss Gandhi ...Petitioner in W.P.9713/02

Vs.

1. R.Govindan
2. G.Ezhil ... Respondents in W.P.1047 of 2008

- 1 M.KARVIZHIYAM
- 2 C.SUNDARARAJAN
- 3 M.SELVARAJAN
- 4 G.PUNIYAKOTTAI
- 5 K.ANBARASU
6. N. JAYARAMAN ...RESPONDENTS IN W.A.No.1048/08
IN W.P.5930/2000

E. NIXON ...RESPONDENT IN W.A.NO.1049/08
AGAINST W.P.NO.11608/02

P. DAMODARAN ...RESPONDENT IN W.P.1050/08
AGAINST W.P.44589/02

1. A. JOHNSON
2. K. BALAJI
3. K. JAGADEESANRESPONDENT IN W.A.NO.1051/08
AGAINST W.P.NO.25061/05

K. RAGHUPATHYRESPONDENT IN W.A.NO.1052/08
AGAINST W.P.NO.42066/08

R. NAGARATHINAMRESPONDENT IN W.A.NO.1053/08
AGAINST W.P.NO.16250/07

R. VENKATTESANRESPONDENT IN W.A.NO.1054/08
AGAINST W.P.NO.28869/07

C. PARUGUNANRESPONDENT IN W.A.NO.1055/08
AGAINST W.P.NO.28870/07

V. KALYANASUNDARAMRESPONDENT IN W.A.NO.1056/08
AGAINST W.P.NO.31198/07

G. MADURAIVEERANRESPONDENT IN W.A.NO.1057/08
AGAINST W.P.NO.33479/07

P. SRIRAMULURESPONDENT IN W.A.NO.1058/08
AGAINST W.P.NO.3214/08

A. RAVINDRENRESPONDENT IN W.A.NO.1059/08
AGAINST W.P.NO.30224/07

T. KARTHIKEYANRESPONDENT IN W.A.NO.1060/08
AGAINST W.P.NO.31199/07

A. RAVICHANDRANRESPONDENT IN W.A.NO.1061/08
AGAINST W.P.NO.35781/07

J. BALAJIRESPONDENT IN W.A.NO.1062/08
AGAINST W.P.NO.4702/08

1. M/s. Bharat Heavy Electicals Ltd
rep by Chairman & Managing Director
Siri Fort
New Delhi- 110 049

2. General Manager
Bharat Heavy Electricals Ltd
Boiler Auxiliary Plant
Ranipet 632 405

...Respondent in W.P.9713 of 2002

Writ Appeal in W.A.No.1047 of 2008 is filed under Clause 15 of the Letters Patent Act against the Order dated 23.6.2008 made in W.P.No.5929 of 2000 on the file of this Court.

W.P.No.5929 /00, 5930/00 Praying to issue a writ of mandamus directing the respondents to consider the petitioners for appointment of a permanent basis in the posts of Chargemen giving due preference to them in accordance with the policy of communal reservation for which the petitioner are entitled holding the practice of the respondents in filing up vacancies in the post of chagement in the 2nd respondent establishment by confining recruitment to the post only to in service employees excluding candidates from the open market as violative of Articles 14 and 16 of the constitution of India.

W.P.No.42066 of 2006:- praying to issue a writ of Mandamus directing the respondents to grant appointment to the petitioner in the permanent regular service of the respondent company in the post of welder grade IV.

W.P.No.11608 of 2002:- Praying to issue a writ of mandamus directing the respondents to regularise the service of the petitioner with effect from the date of his joining the respondent company i.e. from 11.12.1997 and in any event to pay him the same wages as paid to permanent skilled workers doing the same work and issue such further or other consequent orders for attendant benefits.

W.P.No.25061 of 2005:- Petition praying to issue a writ of mandamus directing the respondents to absorb the petitioners in the service of respondent company and regularise their service.

W.P.No.44589 of 2002:- Praying to issue a writ of mandamus directing the respondent to regularise the service of the petitioner with effect from January 2001 when he began working in the respondent company.

W.P.No.16250 & 33781/07 Praying to issue a writ of mandamus directing the respondent to absorb the petitioner in the permanent service of the respondent Company as a welder.

W.P. 30224 , 31198, 31193 of 2007 and 470/08, 3214/08, 28869/07, 28870/07

praying to issue a writ of mandamus directing the respondent to appoint the petitioner in the permanent service of the respondent Company as a Fitter

W.P.No.33479/07 prying to issue a writ of mandamus directing the respondents to appoint the petitioner in the permanent service of the respondent company as a Electrician.

W.P.No.9713 of 2002 Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to regularise the service of the petitioner with effect from September 1996 when he begin working in the Second respondent factory and in any event to pay him the same wages as paid to permanent skilled workers doing the same work and issue such further or other consequent orders for attendant benefits and issue such further or other orders or directions.

For Appellant : Mr.P.Sanjay Mohan, Sr.Counsel
in all WAs & WP for M/s.S.Ramasubramniam
Associates

For Respondents : Mr.V.Prakash, Sr.Counsel
in all WAs & WP for Mr.D.Anbarasu

COMMON JUDGMENT

M.M.SUNDRESH, J.

As the issues involved in the writ appeals and the writ petition are common, they have been taken up together and disposed of by a common judgment. Writ Appeal No.1047 of 2008 is taken up as a lead case.

2. The factual Matrix:-

2.1 All the private respondents/writ petitioners have undergone training as Apprentices with the appellants. Contracts of Apprenticeship have been entered into between the appellant and the private respondents. The following is the apposite clause in the contract of apprenticeship governing the parties.

"5.It shall not be obligatory on the part of the Employer to offer any employment to the Apprentice on completion of the period of training in his establishment, nor shall it be obligatory on the part of the Apprentice to accept any employment under the Employer."

2.2. After completion of the apprenticeship, the private respondents/writ petitioners continued to work as NMRs. They were working in the said capacity for few months but less than a year. Thereafter, their services were discontinued.

2.3. The recruitment policy, which was at vogue at the time of the Apprenticeship Agreements entered into between the parties, was subsequently changed in the year 2007 by which the recruitment was sought to be made through advertisement. Accordingly, there was no preference envisaged in favour of apprentices.

2.4. In addition to the Apprentices Agreements, the rights of the private respondents/writ petitioners are governed by Section 22 of the Apprentices Act. A fruitful recapitulation is as follows:

"22. Offer and acceptance of employment-(1) It shall not be obligatory on the part of the employee to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in Sub-Section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employee shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract."

2.5. Writ petitions have been filed by the private respondents starting from the year 2000 till 2007. Though the period of apprenticeship followed by continuation as NMR for few months expired many years ago, the agreements have been signed by the parties in the year 1989.

2.6. Writ petitions have been filed before the Madurai Bench of this Court by the Apprentices, who worked in the said capacity at Trichy, seeking appointments on regular basis. They were allowed by the learned single Judge and confirmed by the Division Bench by order dated 14.05.2008 in W.A.MD.No.685 of 2007 and W.P.Nos.7657 of 2006 and 9639 of 2007 by placing reliance upon Section 22(2) of the Apprentices Act on the factual premise that there were no agreements in existence. The Division Bench also took note of the settlement entered into under Section 12(2) of the Industrial Disputes Act between the Management and various Unions.

2.7. The Private respondents/writ petitioners before us contended before the learned single Judge that they were also entitled for the relief granted by the Division Bench being

similarly placed. Agreeing with the stand taken by them, the writ petitions were accordingly allowed. Challenging the orders passed, the present writ appeals have been filed.

3. Submissions of the Appellants:-

Learned Counsel appearing for the appellants submitted that the private respondents do not have any lien over the posts and the claim made by them is hit by delay and laches. There is absolutely no explanation for the belated approach to this Court. The facts governing the cases on hand are different from those available before the Division Bench. The agreements signed by the parties would only attract Section 22(1) of the Apprentices Act. Though for some of the respondents agreements are not available, it could be safely inferred that they were duly entered into. The recruitment policy has to be read inconsonance with the agreements entered into between the parties as well as Section 22(1) of the Apprentices Act. The private respondents were not working for quite a number of years. Therefore, the settlement entered into in the year 2005 would not be of any help to them. The settlement under Section 12(3) is conciliatory in nature. It was entered into between the NMRs and the Management and not with the Apprentices. Since Section 22(1) would apply to the present cases, the question of preference to the private respondents would not arise. The observation made by the Division Bench in fact would help the case of the appellants. Thus, the learned Senior Counsel submitted that the writ appeals will have to be allowed and consequently, the writ petitions will have to be dismissed.

4. Submissions of the Respondents:-

Mr.V.Prakash, learned Senior Counsel appearing for the private respondents/writ petitioners made the following submissions:

What is applicable to the private respondents in the old recruitment policy i.e., Rule 4.4, which speaks about induction being "normally" made by absorption. As there was a ban on recruitment, the private respondents could not approach the Court earlier. A mere delay by itself cannot deny a legitimate right. The private respondents were taken for training through employment exchange. The settlement arrived at under Section 12(3) was entered into by the Unions by excluding the private respondents. The appellant, being a model employer and a statutory body, is required to act fairly. Hence, the writ appeals are to be dismissed and as a sequel, the writ petitions will have to be allowed.

5. DISCUSSION:-

5.1. The existence of Apprenticeship Agreements signed by the parties is not in dispute. As the appellant has produced agreements signed in the year 1989, it may be safely be inferred as to their existence, covering all the cases. Thus, the adverse

inference drawn by the Division Bench has no application. There is also no specific denial to the existence of the agreements and hence, we proceed further on the premise that the agreements were entered into between the parties.

5.2. Clause 5 of the agreement absolves the appellants on its obligation to offer any employment to an apprentice and correspondingly such apprentices are not obliged to accept any employment. Being the signatories to the contracts the private respondents cannot resile. If the said clause is read in consonance with Section 22(1) of the Apprentices Act, then, the only conclusion that can be arrived is the non-availability of legal right to seek absorption, regularisation and preference as a matter of right. The Supreme Court of India in CHAIRMAN/M.D., MAHANADI COAL FIELDS LTD. AND OTHERS v. SADASHIP BEHERA AND OTHERS ((2005) 2 SCC 396), while considering the purport of Section 22(2) of the Apprentices Act, has observed as follows:

"11. Learned counsel appearing for the appellants has placed particular reliance upon the decision reported in (2005) 2 SCC 396 = 2005(1) LLJ 870 (CHAIRMAN/M.D., MAHANADI COAL FIELDS LTD. AND OTHERS v. SADASHIP BEHERA AND OTHERS), wherein it was observed :-

"6. There is another aspect of the matter which deserves consideration. The whole stand of the writ petitioner (Respondent 1 in this appeal) was that he had undergone apprenticeship training with Mahanadi Coalfields Ltd. and, therefore, he was entitled to be appointed on the post of welder. The Apprentices Act was enacted in the year 1961 and as the preamble shows that it is an Act to provide for the regulation and control of training of apprentices and for matters connected therewith. Section 2(aa) defines an "apprentice" and it means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. Section 2(aaa) defines "apprenticeship training" and it means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. Section 4 provides that no person shall be engaged as an apprentice to undergo apprenticeship training unless he has entered into a contract of apprenticeship with the employer and the training shall be deemed to have commenced on the date on which the contract

of apprenticeship has been entered into. It further provides that every such contract shall be sent by the employer to the Apprenticeship Adviser for registration. Sections 6 and 7 lay down that the period of apprenticeship training shall be specified in the contract of apprenticeship and the same shall terminate on the expiry of the period of apprenticeship. Rule 6 of the Apprenticeship Rules, 1991 (hereinafter referred to as "the Rules") mandates that the contract shall be sent by the employer for registration within three months of date on which it was signed. Sub-rule (3) of Rule 6 provides that the obligation of the employer and that of the trade apprentice shall be as specified in Schedule V or VI, as the case may be. Clause (10) of Schedule V which relates to the obligation of the employer reads as follows:

"(10) It shall not be obligatory on the part of the employer to offer any employment to the apprentice on completion of a period of his apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer."

7. These provisions show that apprentice is a person who is undergoing a training in pursuance of a contract of apprenticeship duly registered with the Apprenticeship Adviser and the employer who is imparting training is under no obligation to offer any employment to such a person. The legislature has made the aforesaid position clear by making a specific provision in this regard namely Section 22 of the Act and sub-section (1) thereof lays down that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training. Sub-section (2) however provides that notwithstanding anything in sub-section (1) where there is a condition in a contract of apprenticeship that an apprentice shall, after successful completion of apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer

in that capacity for such period and on such remuneration as may be specified in the contract. Thus the provisions of the Act and the Rules made thereunder show that in absence of any condition in the contract which is entered into between the employer and the apprentice at the time of commencement of his apprenticeship training and which is registered with the Apprenticeship Adviser to the effect that the apprentice shall serve the employer, an apprentice cannot claim any right to get an employment on successful completion of his training. It is not the case of Respondent 1 that in the contract of apprenticeship there was any condition that after completion of training he would serve the employer and in absence of such a condition, the employer namely the appellants are not bound to offer any employment to them. In the absence of any legal right inhering in the writ petitioner (Respondent 1 herein) no writ of mandamus could be issued commanding the appellants to give an appointment to him on the post of welder."

5.3. Taking into consideration of the law governing the field, the Division Bench, in the judgment referred to supra, has held as follows:

"17. The respondents in the appeals and the petitioners in the writ petitions had completed their apprenticeship long back (at least a decade and a half and even earlier). The Management has produced before this Court in its typed set a model form of contract of Apprenticeship training to bolster his claim that Section 22(1) of the Apprentices Act is applicable rather than Section 22(2). The model form, which has been produced by the Management, also contains an enclosure where there is a reference to the main provisions of the apprenticeship rules relating to contract of apprentices with training. Clause 4 of the Annexures, which is part of the contract of apprenticeship training (available at Page No.5 to 8 of the typed set produced in the appeal) indicates that it shall not be obligatory on the part of the employer to offer any employment in his establishment nor shall it be obligatory on the part of the Apprentice to accept an employment under the employer. If this model form

could be considered as the contract of apprenticeship training, obviously the Management would be justified in its challenge to the order of the learned single Judge inasmuch clause 4 of the document clearly excludes any special contract and makes it clear that it shall not be obligatory on the part of the employer to offer any employment. "

5.4. By applying the ratio laid down above to the facts of the case, the only conclusion that could be drawn is that Section 22(1) of the Apprentices Act would govern the cases and therefore, the private respondents cannot as a matter of right claim the relief sought for.

5.5. Submissions have been made on the settlement arrived at under Section 12(3) of the Industrial Disputes Act between the Unions and the appellants. A perusal of the settlement would show that it dealt with the cases of NMRs and their absorption in a phased manner. There is absolutely no reference to the status of an apprentice. Those NMRs were working on the relevant date as against the private respondents before us. Hence, we are of the considered view that the settlement has been arrived at on the fact situation, which has no bearing on the cases on hand. We may note, the private respondents herein were discharged from the services many years before the filing of the writ petitions.

5.6. We also take note of the fact that many of the private respondents did not have the age and qualification even at the time of filing the writ petitions. Much water had flown under the bridge thereafter. Some of them tried to get the appointment by participating in the selection process subsequently in pursuant to the orders passed by this Court, by which, certain relaxation was also given. Unfortunately success eluded them. We also do not find any acceptable reason for approaching the Court belatedly. Though the question of delay and laches is not one of law than that of practice and prudence, the continued unexplained silence of the private respondents, in our considered view also, deserves to be taken note of while exercising the extraordinary discretionary jurisdiction under Article 226 of the Constitution of India. A feeble attempt made taking umbrage under the ban on recruitment cannot be accepted as it is neither factually established nor there is any material to show that it prevented further course of action till the filing of the writ petitions. The writ petitions are filed on a span of seven years. In view of the foregoing reasons, we are unable to accept the reasoning of the learned single Judge.

6. In the result, the orders passed by the learned single Judge are hereby set aside and the writ appeals stand allowed. Consequently, the writ petition is dismissed. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

raa

To

1. The Chairman and Managing Director
Bharath Heavy Electricals Limited,
BHEL Corporation Office,
Siri Fort, New Delhi - 110 049

2. The General Manager,
Bharat Heavy Electricals Limited,
Ranipet, Vellore District.

3. The General Manager
Bharat Heavy Electricals Ltd
Boiler Auxiliary plant
Ranipet

17 ccs to Mr.K. Sudalaikannu, sr. 7173

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W.A.Nos.1047 to 1062 of
2008 and W.P.No.9713 of
2002

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