

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.36479 of 2016

ORDER:

Heard the learned counsel for the petitioner and Sri G.Praveen Kumar, learned counsel for 3rd respondent.

2. This Writ Petition has been filed assailing the Reference dt.27-05-2015 made by 3rd respondent under Section 10 of the Industrial Disputes Act, 1947 for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad for decision on the following issue:

“Whether the action of the management of M/s.Bharat Heavy Electricals Limited, Hyderabad, over the issue of non-granting of special pay (2.5 increments) to Supervisors joined between 01-01-2007 and 31-12-2009 is legal and justified? If not, to what relief the Supervisors are entitled to?”

3. Learned counsel for the petitioner contends that the reference is for the benefit of persons employed as Supervisors in the petitioner-organization and the very terminology used to describe such employees is indicative that they are not falling within the definition of term “workman” under Section 2 (s) of the Act, 1947 and therefore the very reference is without jurisdiction.

4. There is no dispute with regard to the settled legal position that the terminology used to describe an employee is not conclusive and that the nature of the duties performed by the employee is to be considered to determine the question whether he falls within the decision of ‘workman’ in Section 2 (s) of the said Act or not. This is a matter requiring evidence and is not convenient for this Court to decide.

5. Therefore, granting liberty to the petitioner to raise the question as to whether the Supervisors for whose benefit the reference is made are falling within the definition of the term 'workman' in Section 2 (s) of the said Act or not as a preliminary issue by filing a counter affidavit before 1st respondent and directing 1st respondent to decide the same as preliminary issue, the Writ Petition is disposed of without expressing any opinion on the merits of the contentions of the petitioner. No costs.

6. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

Date: 27-10-2016
kvr

JUSTICE M.S.RAMACHANDRA RAO

