



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.9212 of 2014

A.Mohammed Rafiq

... Petitioner

vs.

The Management,
Bharat Heavy Electrical Limited,
Thiruchirappalli.

... Respondent

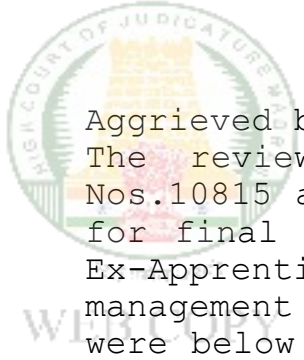
PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondent to appoint the petitioner in the post of Plumber to the filled up by the Respondent as per their Employment Notification No.294, dated 01.04.2012.

For Petitioner	: Mr.K.Gokul
For Respondents	: No appearance

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to appoint the petitioner in the post of Plumber.

2.The petitioner has completed S.S.L.C., and I.T.I. (Plumber) and upon completion of the said course, the petitioner enrolled his name with the Employment Exchange. The petitioners were sponsored for undergoing apprenticeship training with BHEL and successfully completed his apprenticeship training. During the relevant period, BHEL had a recruitment policy of absorbing the apprentices. A number of apprentices from the previous batches were absorbed by the BHEL management. Due to ban on recruitment and other factors, there was no absorption after a particular period. Aggrieved by the same, a number of Non Muster Roll Employees filed petitions before the competent authority seeking a declaration that they were entitled to permanency status and they were allowed. Subsequently, they were also absorbed by the management. But, later the trainee apprentices were not inducted by the BHEL contending that the petitioners are not having any right and this was questioned by an Association of Apprentices. Their Writ Petition was allowed by an order, dated 14.05.2008 in W.P(MD)No.9639 of 2007. The said Writ Petition was taken up along with W.A.No.685 of 2007 filed by the Management.



Aggrieved by the said order, the management filed a review petition. The review was dismissed. Challenging the same, Civil Appeal Nos.10815 and 10816 of 2013 was filed. When the matter was taken up for final hearing, the management as well as the counsel for BHEL Ex-Apprentice Association, Trichy, agreed for a consent order. The management undertook to absorb those members of the Association who were below 40 years of age as on 05.11.2007. The Civil Appeals were disposed of on that basis.

3.The petitioner was informed that they should await the outcome of the case filed by the BHEL management in the Supreme Court. The case in the Supreme Court ended only on 05.11.2007. Therefore, the petitioner was constrained to file this Writ Petition.

4.It is further stated by him that the Supreme Court order in Civil Appeal Nos.10815 and 10816 of 2013 is a consent order and cannot be a precedent and it is not open to the management to confer benefit on some and discriminate against others. Hence, the petitioners are entitled to claim on the basis of the order, dated 14.05.2008 in W.P(MD)Nos.7657 of 2007 etc., batch. BHEL is a Central Government undertaking and it has to act as a model employer and it has to follow an even policy. The recruitment policy was amended only in the year 2006. The petitioner belonged to 2000 and 2002 batch. The amendment made later cannot affect his case. The case of the petitioner would transcend the provisions of the Apprentice Act, 1961. The petitioner has submitted representation to the respondent seeking absorption, but the representation was not considered.

5.Heard the learned counsel for the petitioner.

6.It is brought to the notice of this Court that a batch of Writ Petitions were filed, who have completed apprenticeship training in Bharat Heavy Electrical Limited (BHEL), claiming appointment in permanent regular service in Bharat Heavy Electrical Limited for various posts. The very same prayer is also sought for in this Writ Petition.

7.In the batch of Writ Petitions mentioned above, namely in ***W.P (MD)Nos.6656 of 2005 etc., batch, (R.Subbiah Vs. The Management of BHEL Rep. by its Chairman and Managing Director)***, this Court by an order, dated 04.08.2014, after considering the issue involved in those Writ Petitions in detail, has held that the conduct of the respondent/Management need not provide employment to the petitioner is based on factual and legal basis. It was further held that the respondent/Management cannot be said to have adopted different yardstick insofar as the petitioner is concerned and the petitioner cannot get any preference in employment as claimed by him.

8.In this context, reference can be made to paragraph Nos.24 and 25 of the order, dated 04.08.2014, is as follows:-



"24.As the conduct of the respondent management in not providing employment to the petitioners is thus based on factual and legal basis as explained above, the respondent Management cannot be said to have adopted different yard stick insofar as the petitioners are concerned and the present set of petitioners cannot get any preference in employment. At this juncture, the learned counsel for the petitioners has by relying on the following Judgments, contended that when the similarly placed apprentices were already given employment either under Section 12(3) Settlement or on the strength of the consent order passed by the Hon'ble Apex Court, there is absolutely no reason to deny the same to the present set of petitioners: **(i) 1991 Supp (2) SCC 294 (Ashish Mathur Vs. Oil and Natural Gas Commission and others); and (ii) 2011 (4) LLN 354 (DB) (Mad) (The Chairman, Tamil Nadu Electricity Board and another Vs. D.Venkatesan and another)**. However, the same are not applicable to the facts of the present case. As the grounds on which other set of workers were absorbed are no longer available to the present petitioners and as there was ban on recruitment during the relevant period and as the recruitment policy was also changed due to the guidelines issued by the judiciary as well as executive, the question of extending the same benefit to the petitioners herein does not arise. Considering the then prevailing circumstances, the petitioners herein cannot be now permitted to say that they have the right of legitimate expectation of employment in the respondent BHEL.

25.One more ground on which the learned Senior Counsel for the respondent BHEL opposed the petitioners' claim for employment is that they are over aged. The learned Senior Counsel for the respondent BHEL management has, by relying on the following Judgments reiterated that the management cannot be called upon to violate its own Rules and Regulations in the matter of recruitment: **(i) (2006) 8 SCC 671 (Kendriya Vidyalaya Sangathan Vs. Sajal Kumar Roy); and (ii) (2011) 3 SCC 436 State of Orissa Vs. Mamata Mohanty**. In both the cases, the Hon'ble Apex Court following the earlier decisions, is of the view that "the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations and it is intended to be used in marginal cases where exceptionally qualified candidates are available and it is not intended as an 'open sesame' for all and sundry.....". "In the absence of an enabling provision for grant of relaxation, no relaxation can be made. Even if such a power is provided under the statute, it cannot be exercised arbitrarily and such a power cannot be exercised treating it to be an implied, incidental or necessary power for relaxation of the statutory provisions. Even an implied power is to be exercised with care and caution with reasonable means to remove the obstructions or overcome the



resistance in enforcing the statutory provisions or executing its command. Incidental and ancillary powers cannot be used in utter disregard of the object of the statute."

9. It is further held in the order, dated 04.08.2014, that the claim of the petitioner is factually and legally unsustainable and he is not entitled to claim any relief and the Writ Petitions are dismissed.

10. In the light of the above decision rendered by this Court, while dismissing the identical prayer sought for by the petitioner, the relief sought for in this Writ Petition cannot be granted. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

AM
TE/SV-MMS/SAR-3 : 05/01/2018 : 4P/1C

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