

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.02.2019

Delivered on: 19.02.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.9480 of 2018

and

W.M.P.No.11380 of 2018

Supervisors Union BHEL/BAP/Ranipet,
BHEL Post,
Ranipet,
Vellore-632 406
rep.by its General Secretary .. Petitioner

Vs.

1.The Secretary,
Union of India,
Ministry of Heavy Industries & Public Enterprises,
Department of Heavy Industries,
Udyog Bhavan,
New Delhi-100 011

2.The Director-HR,
Bharat Heavy Electrical Limited,
Siri Fort,
New Delhi-110 049

3.The Executive Director,
Bharat Heavy Electrical Limited,
Ranipet,
Vellore-632 406

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the 2nd and 3rd respondents to call the petitioner Union for negotiation for the present wage revision applicable to S1 to S3 grade Supervisors earlier to engaging in negotiations with the Trade Union representing the workmen.

For Petitioner .. Mr.R.Sivakumar

For Respondents .. Mr.A.Veeramani for R1

Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co for R2 and R3

ORDER

The petitioner herein is a registered Trade Union and has been espousing the cause and interest of its members, who are Supervisors, employed in the respondent establishment. The second respondent establishment is the Government of India undertaking and is under the control of the first respondent. The petitioner Union has been representing the interest of categories of S1 to S3 Supervisors to the Management in regard to settlement of service conditions of them.

2.The grievance of the petitioner Union is that in regard to the Management staff, viz., the Executives and Supervisors from S4 to S8 Grades, the service conditions were governed by various Board Directives issued in the name of Hon'ble President. Regarding the 'Workmen' category is concerned, who are referred to as 'Artisans', their terms and conditions of employment are fully governed by various Bi-Partite settlements entered into between the Management and the respective Trade Unions from time to time. Whereas, the service conditions of Supervisors in S1 to S3 Grades alone were not covered by Bi-Partite settlement, since they were not recognised as 'Workmen' and the Petitioner Union therefore was not called for any negotiations by the Management.

3.In regard to their grievance, number of representations have been addressed to the Management and the Government to recognise the category of Supervisors, viz., S1 to S3, as 'Workmen' and in turn recognise the Union to represent their interest with the Management in settlement of their service conditions. However, in the past, the petitioner Union and the category of Supervisors in S1 to S3 Grades had been sidelined and they were not invited for negotiations at all by the Management.

4.The last wage negotiations and the revision of wages had come to an end on 31.12.2016 and wage revision need to be revised from 2017. However, the second respondent, despite holding talks towards arriving at Bi-Partite settlement with the 'Worker' category, was not inclined to invite the petitioner Union for such negotiations for settlement of service conditions of the Supervisors in S1 to S3 Grades. According to the petitioner Union the wage talk was in progress and since the

Petitioner Union was not called, they are before this Court seeking for issue of writ of mandamus.

5.The learned counsel Mr.Shivakumar, appearing for the petitioner herein would submit that All India Supervisors Federation has been representing to the respondents that the category comprising S1 to S3 Supervisors needs to be consulted for periodical wage revision and their exclusion from the negotiations by the Management would only undermine their service interest. The learned counsel would submit that an approval has been sought for recognising the Union comprising S1 to S3 Supervisors, vide letter dated 28.04.2010. In response to the requisition, the Ministry has issued a letter on 01.06.2010, wherein, it is stated that the second respondent has decided to treat Supervisors in S1, S2 and S3 Grades as 'Unionised Supervisors'. On being recognised as 'Unionised Supervisors', in fact, these Supervisors belonging to S1 to S3 Grades were treated on par with the other Workers in terms of several conditions of service. The learned counsel would also submit that as a matter of fact though these employees are categorised as Supervisors, they do not have any supervisory power, which is normally attached to the post of Supervisors. Merely by designating them as Supervisors will not take them out of the benefit of representing their interest through Unions. The learned counsel would also submit that the Union has also raised a dispute in regard to the wage revision of Supervisors S1 to S3 Grades on par with certain category of Workmen, which would further fortify the fact that the said Supervisors were 'Workmen', as defined under the provisions of the Industrial Disputes Act. According to the learned counsel, the wage revision negotiations is underway and therefore, it is imperative on the part of the Management to call the Petitioner Union for negotiations, as any settlement of wages, without the Supervisors in S1 to S3 Grades being represented, their right to have proper wages would be prejudicially affected.

6.Per contra, the learned counsel appearing for the second respondent Management would submit that regardless of the fact whether S1 to S3 Supervisors are recognised category or not, they were in fact called for negotiations and were part of the negotiations in the meeting which was held on 27.09.2018. The said fact is reflected in the minutes of the meeting. Therefore, there is no cause for complaint by the petitioner Union that they were not called for negotiations. The dispute regarding the status of Supervisors in S1 to S3 Grades is not settled and the Management stoutly dispute their status as 'Workmen', notwithstanding the fact that the category being shown as 'Unionised category'. The learned Counsel Mr.Anand

Gopalan would submit that in any event, no relief could be granted to the writ petitioner presently for the reason that the negotiations for the wage revision had been completed and the Management has since announced revised pay scales for the Supervisors and to that effect a Circular was issued on 12.09.2018. Thereafter, as per the revised pay structure, the members of the Petitioner Union have received the salaries and therefore, the present writ petition cannot be maintained.

7. At this, the learned counsel for the petitioner would submit that the same situation will arise in future, in which the Management would attempt to sideline the Petitioner Union. As regards their invitation to the meeting held on 27.09.2018, it is submitted that there were no negotiations at all and calling the petitioner Union appeared to be an empty formality and no worthwhile discussion took place. In any event, he would implore this Court to protect the future interest of Supervisors belonging to S1 to S3 Grade.

8. Heard the learned counsels appearing for the parties.

9. Although on behalf of the Management the status of the Workmen, as claimed by the petitioner, has been contested on merits, yet, ultimately, it boils down to the fact that the Government of India itself has recognised the Supervisors belonging to S1 to S3 Grades as 'Unionised Supervisors'. In fact, a letter issued by the Ministry dated 01.06.2010 would clearly disclose the said fact. Once the Management has decided to treat the Supervisors in S1 to S3 Grades as 'Unionised Supervisors', it is not open for them to turn around and say that the Petitioner Union, which is representing them, need not be called for negotiations whenever such negotiations are held with the Workers for settlement of service conditions.

10. As rightly contended by the learned counsel for the petitioner that merely designating the employees as 'Supervisors' will not exclude them from the application of the provisions of the Industrial Disputes Act and such categorisation cannot per se push them out of the definition of the 'Workman' as contemplated in the Industrial Disputes Act. It all depends on what duties and functions which are vest in the post of Supervisors and how it is discharged by them. In any event, once the Government itself has considered their request and the second Respondent Management itself has recognized that they are 'Unionised Supervisors', the natural corollary of such recognition is to treat the 'Supervisors' on

par with 'Workmen' for the purpose of calling them for negotiations, while settling various service conditions applicable to the Supervisors.

11. Though the learned counsel for the Management would contend that they were treated as 'Unionised Supervisors' only in respect of particular benefit, which is given to the Workers, viz., increment, nevertheless such recognition for a particular benefit alone cannot be accepted for the reason that an employee cannot be a 'Workman' for one purpose and a 'Supervisor' for other purpose. Therefore, such contention appears to be per se unacceptable and therefore, the same is rejected.

12. In any event, it appears that the wage settlement has been put in place even for the Supervisors in S1 to S3 Grades, as disclosed by the Management in its counter and the members of the Petitioner Union have also started receiving the pay as per the new pay structure. In view of the said development, this Court could not pass any orders to unsettle what has been settled already. At the same time, this Court finds that the argument and the submissions advanced on behalf of the counsel appearing for the petitioner has considerable force and in such view of the matter, it is held that the petitioner Union hereby is entitled to be called for talks/negotiations by the Management/second respondent in regard to the settlement of any service conditions as applicable to Supervisors belonging to S1 to S3 Grades.

In the result, the writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Secretary,
Union of India,
Ministry of Heavy Industries & Public Enterprises,
Department of Heavy Industries,
Udyog Bhavan,
New Delhi-100 011

2.The Director-HR,
Bharat Heavy Electrical Limited,
Siri Fort,
New Delhi-110 049

3.The Executive Director,
Bharat Heavy Electrical Limited,
Ranipet,
Vellore-632 406

+1 cc to Mr.A.V.Arun, Advocate Sr.No.15095

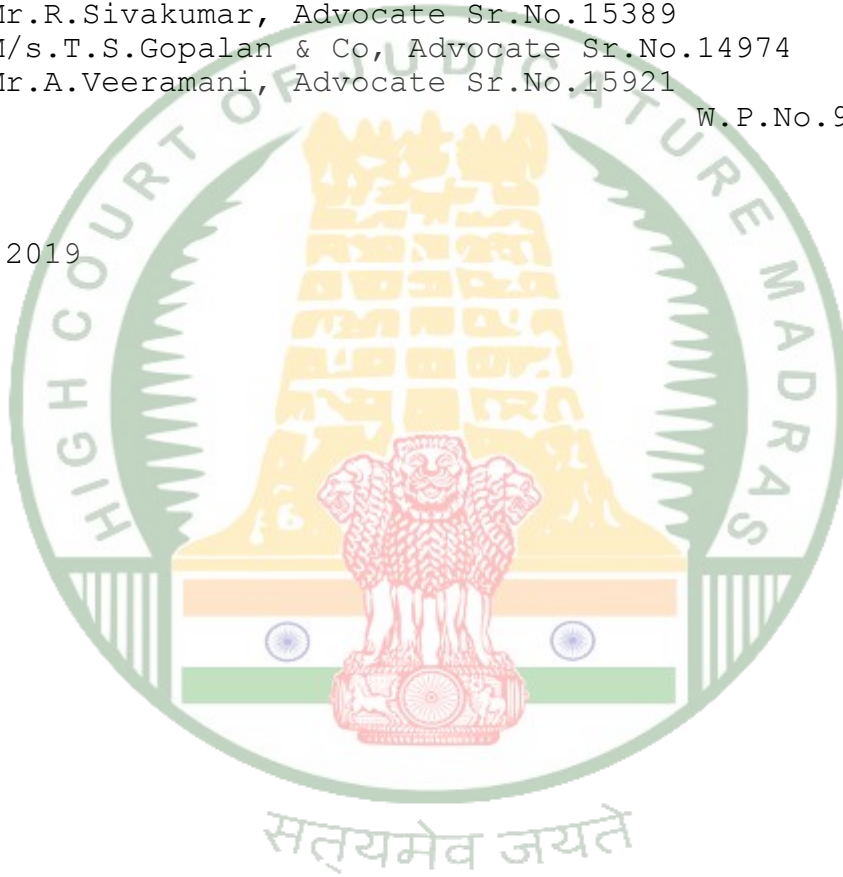
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SJ(CO)
CSL/21.03.2019



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