

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 19362 OF 2018

AND

W.M.P. NOS. 22766 & 22767 OF 2018

Bharat Heavy Electricals Ltd.
Boiler Auxillaries Plant
Indira Gandhi Industrial Complex
Ranipet 632 406, Tamil Nadu
rep. By its Asst. General Manager (HR) ...Petitioner

- Vs -

1. The General Secretary
Supervisory Union
BAP/BHEL, BHEL Post
Ranipet 632 406.
2. The Presiding Officer
Central Government Industrial
Tribunal-cum-Labour Court
1st Floor, B Wing, Shastri Bhavan
26, Haddows Road, Chennai 600 006.
3. Regional Labour Commissioner (C)
26, Haddows Road, Chennai 600 006.
4. Union of India
rep. By its Secretary
Government of India
Ministry of Labour, New Delhi 110 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the order dated 20.11.2017 made in No.L-42011/165/2016 IR (DU) on the file of the Deputy Director, Ministry of Labour, Shram Shakthi Bhavan, Rafi Marg, New Delhi 110 001, the 4th respondent herein and quash the same.

For Petitioner : Mr. A.V.Arun

For Respondents : Mr. R.Sivakumar for R-1
Mr. J.Madanagopal Rao for R-4

ORDER

The petitioner is a Government of India undertaking engaged in the business of engineering, manufacture, supply, erection, testing and commissioning of Electrostatic Precipitators, Air Preheaters, Industrial Fans, Wind Electric Generators, Desalination Plants and other products. The petitioner company comes under the direct control of the Ministry of Heavy Industries, Government of India. The 1st respondent is an Union, representing a category of supervisors, belonging to S-1 to S-3 grades, who are employed in the petitioner Management.

2. The 1st respondent approached the 3rd respondent, viz., Regional Labour Commissioner seeking for negotiation and settlement in regard to certain disparities in the pay as applicable to categories S-1 to S-3 supervisors and other incidental issues. The matter was taken up for conciliation by the 3rd respondent under the provisions of the Industrial Disputes Act. Before the 3rd respondent, on behalf of the petitioner herein, it was contended that the members of the 1st respondent Union were not workman as defined u/s 2 (s) of the Industrial Disputes Act and, therefore, no conciliation could be pursued under the provisions of the Industrial Disputes Act.

3. The 3rd respondent, after conclusion of the conciliation and having found no settlement between the parties, submitted a failure report to the 4th respondent on 19.10.16. On the basis of the failure report, the 4th respondent, Central Government, referred the dispute for adjudication vide its proceedings dated 20.11.17. The terms of reference for adjudication by the 2nd respondent, Industrial Tribunal-cum-Labour Court are extracted hereunder :-

"Whether the action of the management of BHEL, Ranipet Unit in not effecting the wage revision of supervisors in S-1 to S-3 Grade above the workmen in the A.6 to A.7 Grade is justified legal or not? If not, what is the appropriate wage rates and relief for the supervisors in the Grade of S-1 to S-3 in the establishment of BHEL, Ranipet."

4. After the reference, the dispute was referred as I.D. No.104/2017 and adjudication process was entered upon by the 2nd respondent/Industrial Tribunal-cum-Labour Court, Chennai. As against the reference by the 4th respondent Central Government, the present writ petition has been filed by the petitioner Management challenging the very reference itself on the ground that the members of the 1st respondent Union are not workman and, therefore, the reference is bad and void.

5. Learned counsel appearing for the petitioner Management vehemently submitted that the members of the 1st respondent Union, admittedly belonging to the category of supervisors, S-1 to S-3 and by very nature of their work and the benefits attached to the post, they fall outside the purview of Section 2 (s) of the Industrial Disputes Act and they cannot be termed as workman. Therefore, the industrial adjudication, as ordered by the 4th respondent, is without the authority of law and the same is unsustainable.

6. Learned counsel for the petitioner Management further submitted that unfortunately, the 3rd respondent, who conciliated the proceedings had not considered the preliminary objection raised on behalf of the Management, but mechanically proceeded to hold that the conciliation had ended in a failure and submitted a failure report to the Government. Accordingly, the learned counsel submitted that the very reference is bad without deciding the preliminary issue whether the supervisors belonging to S-1 to S-3 category were workmen or not. In the absence of any finding on that aspect, the reference cannot be proceeded further by the 2nd respondent.

7. Per contra, learned counsel appearing for the 1st respondent, with equal vehemence submitted that the writ petition filed against the reference itself is intended to non-suit the workmen, who belong to supervisor category, who had gone before the Conciliation Officer for negotiation and settlement of wage disparities. According to Mr. Shivakumar, learned counsel for the 1st respondent, that admittedly the supervisors belong to S-1 to S-3 categories are unionised supervisors and, therefore, for all practical purposes they have to be treated as workman and by merely designating them as supervisors, they cannot be excluded from the purview of Section 2 (s) of the Industrial Disputes Act. In any case, it was not for the Conciliation Officer to render any finding on the aspect whether the members of the 2nd respondent Union, who are supervisors, could be termed as workman or not under the provisions of the Industrial Disputes Act, since he was not exercising any judicial function empowering him to render a legal finding on such issues. Learned counsel further submitted that it is always open to the Management to raise such objections before the 2nd respondent Industrial Tribunal.

8. In support of his contentions, the learned counsel for the first respondent would rely upon the following decisions, viz.,

i) "1983(4) SCC 214 (S.K.Verma versus Mahesh Chandra and another)" wherein, the Hon'ble Supreme Court has held in paragraph 2 as under:

"2. There appears to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from court to court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope that public sector corporation will henceforth refrain from raising needless objections, fighting needless litigations and adopting needless postures."

ii) "1989 (3) SCC 271 (Telco Convoy Drivers Mazdoor Sangh and another versus State of Bihar and others)", wherein, the Hon'ble Supreme Court has held in paragraphs 13 to 15 as under:

"13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by section 10 of the Act. See Ram Avtar Sharma v. State of Haryana, [1985] 3 SCR 686; M.P. Irrigation Kararnchari Sangh v. The State of M.P., [1985] 2 SCR 1019 and Shambhu Nath Goyal v. Bank of Baroda, Jullundur, [1978] 2 SCR 793.

"14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the person raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under section 10(1) of the Act. As has been held in M.P. Irrigation Karamchhari Sangh's case (supra), there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the Government to do so would be to render section 10 and section 12(5) of the Act nugatory.

"15. We are, therefore, of the view that the State Government, which is the appropriate Government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the Government itself cannot be sustained."

iii) "(2010) 9 SCC 151 (Triveni Engineering and Industries Limited versus Jaswant Singh and another)", wherein, the Hon'ble Supreme Court has held in paragraphs 20 to 22 as under:

"20. Without going into the issue as to whether such a power and jurisdiction could be vested on the Labour Commissioner, we may decide the issue raised herein from another angle. The issue of whether or not a person is a 'workman' within the meaning of U.P. Industrial Disputes Act, 1947 is a matter to be decided by a competent court, after allowing the parties to lead evidence. Thereafter, on proper appreciation of the materials on record including the oral evidence, a decision could be rendered and the issue could be determined. The enquiry before the Labour Commissioner is of a summary nature and while exercising such a power of summary nature, the Labour Commissioner cannot decide and examine

factual matters relating to an issue as to whether or not the person concerned is a workman or not.

21. In the case of Sharad Kumar v. Govt. of NCT of Delhi, reported at (2002) 4 SCC 490, an issue regarding whether or not a person is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 came for consideration before this Court. This Court held that in such a matter the State Government could not arrogate upon itself the power to adjudicate such an issue inasmuch as the same could be determined by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. In this instance, the Division Bench has erroneously held that the aforesaid issue is an ancillary issue to the issue of applicability and interpretation of the Standing Order.

"22. Whether or not a person is a workman is a matter that relates primarily to facts and circumstances of the case. The same has nothing to do with the application and interpretation of the Standing Orders. What needs to be examined and looked into for deciding the aforesaid issue is the nature of job performed by the concerned person, duties and responsibilities vested on him and other such relevant material. In our considered opinion, the Division Bench of the High Court committed a mistake in determining the said issue as an ancillary to that of the applicability and interpretation of the Standing Order."

iv) "Order of this Court in W.P.No.8471 of 1998 dated 21.8.2006, wherein, a learned single judge of this Court has held in paragraphs 6 to 8 as under:

"6. I have considered the rival submissions of the learned counsels appearing for the petitioner as well as the second respondent.

7.(i) In the decision reported in 1957 (2) LLJ 1 (Newspapers Ltd. v. Industrial Tribunal, Uttar Pradesh and others), the Honourable Supreme Court held thus,

"In spite of the fact that the making of a reference by the Government under the

Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an 'industrial dispute' at all and therefore the jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge. State of Madras v. C.P.Sarathy [(1953) S.C.R. 334, 347 = 1953-I L.L.J. 174].

It may also be noted that the notification issued by the Uttar Pradesh Government on 3 January 1953 already quoted proceeds on the assumption that a dispute exists between the "employer and his workmen". The points of dispute in the reference, however, comprise the wrongful termination of the service of only Tajammul Hussain a lino operator. The words used in the first part of the notification show that the Government was labouring under the misapprehension that this dispute was between the employer on the one hand and his workmen on the other, which, in fact it was not. Tajammul Hussain could not be termed workmen (in the plural) nor could the Uttar Pradesh Working Journalists Union be called "his workmen" nor is there any indication that the individual dispute had got transformed into an industrial dispute. The very basis, therefore, of the reference was bad and must be held to be so."

(ii) In 2004 (4) LLN 753 (Mukesh K.Tripathi v. Senior Divisional Manager, Life Insurance Corporation and others), in para 24, the Honourable Supreme Court held thus,

"... The onus was on the appellant to prove that he is a workman. He failed to prove the same. Furthermore, the duties and obligations of a Development Officer of the Corporation by no stretch of imagination can be held to be performed by an apprentice."

(iii) In the decision of this Court reported in 1993 (1) LLN 169 (Edwin A. Daniel and another v. Labour Court, Coimbatore and another),

Justice M.Srinivasan (as he then was) in para 9 held as follows.

"9. It is next contended that the Labour Court has exceeded its jurisdiction in traversing beyond the scope of reference. According to learned counsel, the reference is limited to consider the question whether the non-employment of the petitioner is justified and to decide whether he is entitled to any relief. Learned counsel contends that it is not open to the Labour Court to consider the question whether the non-employment of the petitioner is outside the scope of the Industrial Disputes Act and whether the termination of his services fall outside the terms of S.2(oo) of the said Act. I do not agree. The reference is wide enough to include all the incidental questions which arise for consideration. The question referred is undoubtedly "whether the non-employment of the petitioner is justified." While deciding that question, it is open to the parties to contend that the petitioner is not entitled to the benefits of the Industrial Disputes Act."

"8. From the decisions cited above, it is clear that the petitioner/Management is entitled to raise the preliminary issue with regard to the status of the second respondent as to whether he is a "workman" or not within the definition of Section 2(s) of the Industrial Disputes Act, 1947, and whenever such a preliminary issue is raised, it is for the Workman to establish that he is a "Workman". Therefore the finding given by the Labour Court based on presumption is unsustainable and the same is to be treated as perverse finding."

v) Order of this Court in W.P.No.32031 of 2017, dated 19.09.2018, wherein, a learned single Judge of this Court has held in paragraphs 4 to 7 as under:

"4. From the contentions and counter contentions, it is evident that the first and foremost question that is to be decided is the status of the 3rd respondent. Learned counsel

appearing for the petitioner placed decisions before this Court submitting that it is the primary duty of the Labour Court to decide the preliminary issue before proceeding further in the matter.

"5. The above issue is no longer res integra in view of the decision rendered in Management of Tamil Nadu Electricity Board vs. The Presiding Officer, I Additional Labour Court and Anr. (MANU/TN/9555/2006), wherein the ratio laid down by the Supreme Court in Newspapers Ltd. - Vs Industrial Tribunal, U.P. & Ors. (1957 (2) LLJ 1 is taken into account.

"6. In such view of the matter, it is always open to the Management to raise the issue regarding the status of the 3rd respondent and on such issue being raised, the Labour Court shall decide the said preliminary issue as to whether the 3rd respondent was a workman or not, as defined under Section 2 (s) of the Industrial Disputes Act.

"7. Accordingly, the writ petition is disposed of with a direction to the Labour Court to decide the preliminary issue with regard to the status of the 3rd respondent before proceeding further in the matter. The Labour Court shall decide the said issue within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

The learned counsel for the first respondent would therefore submit that it is squarely within the domain of the Industrial Tribunal/Labour Court to decide the issue of the status of workman and the interpretation of Section 2(s) of the Industrial Disputes Act.

9. Heard Mr. A.V.Arun, learned counsel appearing for the petitioner, Mr.R.Sivakumar, learned counsel appearing for the 1st respondent and Mr.J.Madanagopal Rao, learned Senior Central Government Standing Counsel appearing for the 4th respondent and considered the contentions advanced before this Court.

10. This Court, even at the outset, is unable to appreciate as to how the present writ petition could be entertained any further when the 4th respondent has merely referred the matter for adjudication by the 2nd respondent Industrial Tribunal in

regard to the dispute raised by the 1st respondent Union against the Management. It is always open to the Management to raise the issue of maintainability of the dispute on the basis of their contention that the 1st respondent Union was representing a category of staff, who cannot be termed as workers in terms of Section 2 (s) of the Industrial Disputes Act. The Courts have repeatedly held that the Industrial Tribunal or Labour Courts can always go into incidental questions and can render findings thereon.

11. Moreover, whether supervisors belonging to S-1 to S-3 categories are supervisors in terms of the provisions of the Industrial Disputes Act or they are workers has to be established factually on the basis of evidence to be let in in the adjudicatory process. In the absence of evidence from both parties, the status of the employees of the 2nd respondent Union cannot be decided on the basis of averments alone. It is always open to the Management to lead evidence and establish their stand that the supervisors belonging to S-1 to S-3 categories cannot be termed as workman as defined u/s 2 (s) of the Industrial Disputes Act.

12. On the other hand, it is also open to the 1st respondent to establish their version that though designated as supervisors, the members of the 1st respondent are indeed workmen in terms of the provisions of the Industrial Disputes Act. Merely because the conciliatory authority has not given a finding on the above said aspect, which, in the opinion of this Court he cannot give such finding under the scheme of the Industrial Disputes Act, it is not open to the petitioner Management to challenge the very terms of reference for adjudication before the 2nd respondent.

13. As relied upon by the learned counsel appearing for the first respondent, the decisions as aforementioned would point out the legal position in unequivocal terms that it is always open to the Management to raise the issue of status of workmen concerned before the Adjudicating Authority, namely, Industrial Tribunal/Labour Court and it was well within the power of the Industrial Tribunal/Labour Court to consider such issues before proceeding to adjudicate the claims of the parties on merits. This Court is perfectly in agreement with the legal proposition as relied upon by the learned counsel for the first respondent as cited by him supra.

14. On behalf of the petitioner Management, number of points were raised to contend that those supervisors are not workmen and those points were also refuted by the 1st respondent. In view of the disputed questions of fact, this Court is not in

a position to decide one way or the other about the status of the employees, who are the subject matter of the present litigation. Such dispute could be resolved only on the basis of the evidence to be let in by both sides and only then a definite conclusion could be rendered one way or the other.

15. Instead of raising their objections before the 2nd respondent, the petitioner Management has unnecessarily and needlessly approached this Court by challenging the very terms of reference by the 4th respondent by scuttling the process of expeditious industrial adjudication of the dispute raised by the 1st respondent. The writ petition, prima facie, appears to be intended to frustrate the attempts made by the 1st respondent to have their pay grievance redressed before the adjudicatory forum. In any event, the right of the Management to plead their case is not prejudiced at all by participating in the adjudicatory process before the 2nd respondent, since it is always open to the Management to raise a preliminary objection as to the maintainability of the dispute. When such opportunity is available, the present writ petition filed by the Management, at the very threshold, appears to be intended to drag the proceedings and frustrate the attempts by the 1st respondent to have its grievance resolved.

16. For the reasons aforesaid, this Court finds that the writ petition lacks merit and substance and is liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

GLN

To

1. The Presiding Officer
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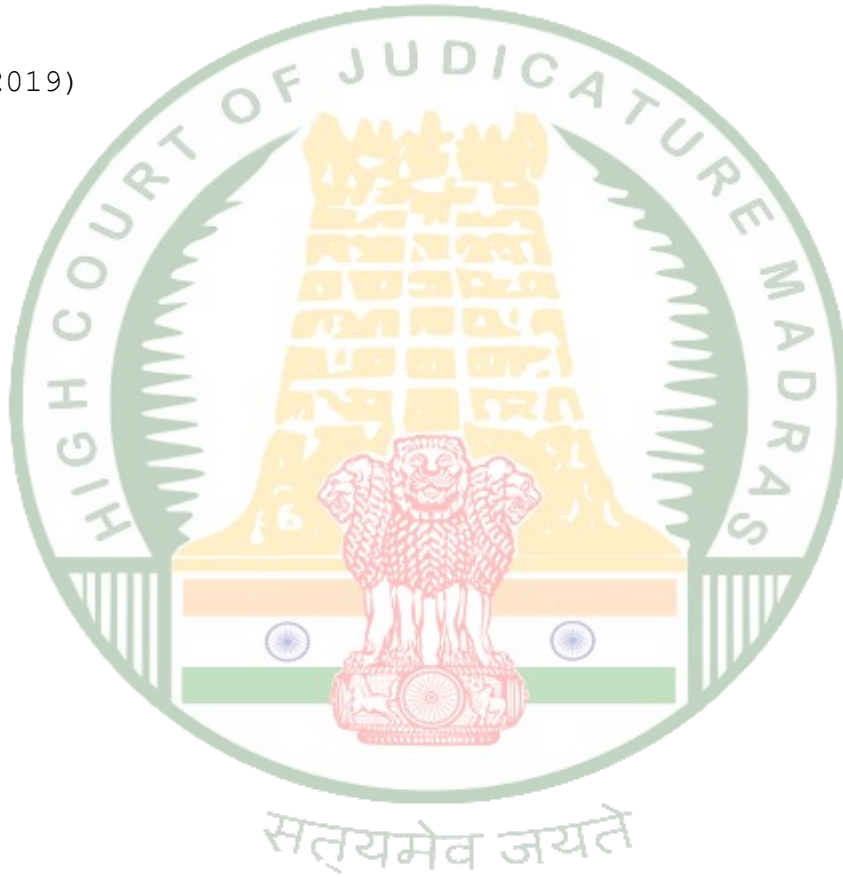
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3. The Secretary
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+1cc to Mr. J.Madanagopal Rao, Advocate, S.R.No. 14177
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+1cc to Mr. R.Sivakumar, Advocate, S.R.No. 14375

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