

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.NO.228 OF 2010
AND
M.P.NO.1 OF 2010

Bharat Heavy Electricals Limited
rep. by its Manager,
Administration/Estate Office,
Tiruchy-620 014.

... Appellant

-vs-

1. Supervisors Union
(Regd. No.1022/TRI)
Rep.by its President,
BHEL, Trichy.

2. A.K.Karthikeyan

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 24.11.2009 passed in W.P.No.1127/1996 by
a learned Single Judge of this Court.

W.P.No.1127 of 1996:-

This Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of certiorari calling for the
records pertaining to the circular No.BHE EORR, dated 06.12.1985
of the Respondent/Bharat Heavy Electricals Limited, Trichy.

For Appellant : Mr.S.Shyam Kumar
for Mr.K.Prabhakar

For Respondents : ...

R1 : Served (NA)

R2 : Dispensed with

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA,J.)

The Writ Appeal has been preferred against the order dated 24.11.2009 passed in W.P.No.1127/1996 by a learned Single Judge of this Court.

2. Learned Counsel appearing for the appellant assailing the impugned order pleaded that the appellant BHEL is a Government of India Undertaking, engaged in the manufacture of High Pressure Boilers, Boiler Components, Valves, Soot Blowers, Fans and other equipments which are necessary for Nuclear and Thermal Power Stations for generating electricity and also undertakes the work of defence service. Since the employees working in the company are required welfare schemes for their stay, the appellant BHEL company has constructed various types of quarters. The appellant company after constructing thousands of quarters by granting them licenses, they were allowed to stay in the quarters. The license fee is also being revised from time to time based on the directions of the Corporate Office as well as the Government of India Guidelines. While so, due to the increase in the maintenance and administration expenses, the Government of India issued Official Memorandums dated 28.06.1991 and 26.07.1993 informing the appellant company to revise the rate of license fee to be charged for various types of quarters. By virtue of the Government of India Guidelines, the appellant Corporate Office vide Circular No.22 of 1994 dated 27.07.1994 informed the occupants of the various quarters to pay the license fees at the revised rate. Only after this issue was discussed with the four Participating Unions of the appellant company deliberately, the appellant company has issued the impugned Circular dated 6.12.1995.

3. Learned Counsel for the appellant further pleaded that as the employees occupying the appellant's quarters are subject to the rules and regulations enumerated in the House Allotment Rules, they are charged with prescribed occupancy charges which are fixed by the appellant's Management from time to time. Therefore, in terms of the House Allotment Order issued to them, allottees are liable to pay the occupancy charges, water and conservancy charges per month as applicable at such rate that may be fixed by the appellant Management including the house rent which is also accepted by every employee/Officer. After accepting the quarters allotment subject to the terms and conditions imposed under the House Allotment Rules and House Allotment Order, the members of the 1st respondent Union who are all falling under the separate category of Supervisory (Technical) SAI to SAVII and not being covered by any agreement whatsoever wrongly filed the W.P.No.1127/1996, challenging the

correctness of the impugned Circular dated 06.12.1995, which is nothing to do with the supervisory category.

4. A detailed counter affidavit has been filed by the appellant company making it clear that the Memorandum of Agreement dated 30.06.1995 entered into with the workmen has no relevancy on the members of the 1st respondent Union and that the members of the 1st respondent Union are supervisors, hence, the terms and conditions of the above settlement has no binding effect on them, therefore, the question of revision of license fee made by the appellant cannot be said to have any impact on them. But, learned Single Judge of this Court overlooking the said crucial aspect that the supervisors are not covered under the agreement has proceeded to allow the Writ Petition, setting aside the impugned Circular dated 06.12.1985.

5. Learned Counsel for the appellant further drawing our notice to the Allotment Order issued by the BHEL-appellant herein categorising various employees explained this Court that SAI, SAII, JE, SAIII, SAIV, SAV, SAVI and SAVII categories are covered under the Supervisory (Technical) Cadre. Again to make his point clear, he has taken us to Clause 5.1.1.(c) of the Memorandum of Agreement dated 05.04.1989 which was effective from 01.09.1982 to 31.08.1986 that the emoluments of Senior Artisans/equivalent categories will be at par with the Supervisors after the wages of the Supervisors are finalised. Learned Counsel also drawing our notice to Clause 1.1 of yet another Memorandum of Agreement dated 10.06.1995 effective from 1.9.1986 till 31.12.1991 stating that all regular employees in grades upto A6/B6 who were on the rolls of the company as on 31.12.1991 would be covered by that agreement contended that the said agreement failed to say anything about the Supervisory (Technical) Cadre, namely, SAI to SAVII Categories, hence, the writ petition would not be maintainable at all but this was overlooked by the learned Single Judge.

6. Learned Counsel for the appellant also pleaded that when the members of the 1st respondent Supervisors Union are not covered either by the 1st agreement dated 05.04.1989 or by the subsequent Memorandum of Agreement dated 10.06.1995, the learned Single Judge ought to have considered the argument advanced by the learned Counsel for the appellant to disallow the Writ Petition as the learned Single Judge has not even referred to the coverage Clause mentioned in both the Memorandums of Agreements dated 05.04.1989 and 10.06.1995 respectively, the impugned order is unsustainable in law.

7. We are also unable to find any justification to uphold the said impugned order. As a matter of fact, when we took up the matter on 07.04.2021, no one appeared for the Writ Petitioner/1st respondent herein. Therefore, to give them a chance, we directed the Registry to list this matter today i.e. on 16.04.2021. Even today, no one appears for the 1st respondent. However, we are able to see that the notice issued by this Court was served upon them and their names were also printed. In view of their continuous absence, we are inclined to proceed with the matter with the available records in accordance with practice and procedure.

8. At the outset, though several grounds have been raised by the learned Counsel for the appellant, he impressed upon us by relying on the Clause 5.1.1.(c) of the Memorandum of Agreement dated 05.04.1989 which was effective from 01.09.1982 to 31.08.1986 and Clause 1.1 of yet another Memorandum of Agreement dated 10.06.1995 which was effective from 1.9.1986 till 31.12.1991. In this regard, it is useful to extract the same here under:

' ' Clause 5.1.1.(c) of the Memorandum of Agreement dated 05.04.1989 :

The emoluments of Senior Artisans/Equivalent categories will be at par with the Supervisors after the wages of the Supervisors are finalised. ' '

Likewise, Clause 1.1 in yet another Memorandum of Agreement dated 10.06.1995 reads as follows:

' '1. Coverage:

1.1. All regular employees in grades upto A6/B6 who were on the rolls of the company as on 31.12.1991 will be covered by this Agreement. ' '

A cursory reading of the above coverage clause in both the agreements would clearly go to show that the members of the 1st respondent, namely, Supervisors (Technical) Category, are not falling under these agreements.

9. Now, in order to give a quietus to this issue, it has to be found out whether the members of the 1st respondent Supervisors Union are also covered under the above said agreements. In this regard, it is useful to reproduce the relevant portion in the Allotment Order of the appellant BHEL here under:

''Category- Supervisory (Technical)

SAI	Rs.520-760 (1.9.73) Rs.580-21-622-25-947 (1.9.78) Rs.800-32-864-37-1345 (1.9.82) Rs.1875-60-1995-70-2905 (1.1.87) Rs.3000-105-3735-110-5055(1.1.92)	Chargeman Technical Gr.III Technical Assistant Gr.III Design Assistant Gr.III Scientific Asstt. Gr.III Store Holder Gr.III Chargeman (Purchase) Lecturer Gr.III Chargeman (Civil) Fire Supervisor Gr.III Inspector Gr.III (Sanitation) Supervisor Horticulture Gr.III
SAII	Rs.610-910 (1.9.73) Rs.665-27-719-30-1049 (1.9.78) Rs.880-42-964-48-1492 (1.9.82) Rs.2075-70-2215-80-3255 (1.1.87) Rs.3200-110-3970-120-5290 (1.1.92)	Assistant Foreman Technical Gr.II Technical Asst. Gr.II Design Asst. Gr.II Scientific Asst. Gr.II Store Holder Gr.II Assistant Foreman (Purchase) Lecturer Gr.II Assistant Foreman (Civil) Fire Supervisor Gr.II Inspector Gr.II (Sanitation) Supervisor Horticulture Gr.II
JE	Rs.600-1100 (1.9.73) Rs.650-35-1105 (1.9.78) Rs.875-52-1135-55-1575 (1.9.82) Rs.2060-80-2460-100-3460 (1.1.87) Rs.3185-120-4145-140-5545 (1.1.92)	Junior Executive

SAIII	Rs.700-1100 (1.9.73) Rs.750-35-1205 (1.9.78) Rs.965-52-1225-55-1665 (1.9.82) Rs.2300-80-2700-100-3700 (1.1.87) Rs.3375-120-4335-140-5735 (1.1.92)	Foreman Technician Gr.I Technical Asst. Gr.I Design Asst. Gr.I Scientific Assistant Gr.I Store Holder Gr.I Foreman (Purchase) Lecturer Gr.I Foreman (Civil) Fire Supervisor Gr.I Inspector Gr.I (Sanitation) Supervisor Horticulture Gr.I
SAIV	Rs.725-1325 (1.973) Rs.775-40-1375 (1.9.78) Rs.1100-60-1940 (1.8.82) Rs.2500-120-4300 (1.1.87) Rs.4000-175-7150 (1.1.92)	General Foreman
SAV	Rs.1050-1650 (1.9.73) Rs.1075-50-1675 (1.9.78) Rs.1450-60-1750-70-2240 (1.8.82) Rs.3450-140-4570-150-5470 (1.1.87) Rs.4800-200-5800-250-8300 (1.1.92)	Executive Foreman
SAVI	Rs.3700-14-4400-150-5900 (25.6.91) Rs.5400-225-6300-250-9050 (1.1.92)	Sr. Executive Foreman
SAVII	Rs.6500-25-7500-275-9425 (25.6.95)	General Executive Foreman

Therefore, when the Supervisory (Technical) Category consisting of SAI to SAVII is not covered by either of the Memorandum of Agreement dated 05.04.1989 or the Memorandum of Agreement dated 10.06.1995 mentioned supra, in our considered

opinion, the learned Single Judge giving a finding that it is not possible to do something which would have the effect of violating the terms of agreements as though the terms of Memorandum of Agreements are covering the members of the supervisory (Technical) Category is unsustainable in law.

10. Secondly, when the employees working in the appellant's company are all provided with the official quarters for their stay, the occupants of the quarters are granted license, based on the same, they are also paying the license fees for the quarters in their occupation. When the license fee is also being revised from time to time based on the directions of the Corporate Office as well as the Government of India Guidelines due to the increase in the maintenance and administrative expenses, it is an admitted fact that the members of the 1st respondent Union who have been paying license fees for the past 30 years ago cannot refuse to pay the marginal increase. It is also an admitted case of the 1st respondent that while occupying the quarters, 30 years ago, the appellant company has not even revised the license fee for the last 30 years. Therefore, for the first time, when the impugned Circular dated 06.12.1995 has been issued revising the license fee, the members of the 1st respondent taking an objection that they have been paying the license fee for the past 30 years and that they will continue to pay what was charged 30 years ago towards the license fee for their occupation in the official quarters cannot stand to any logic or reason.

11. Thirdly, yet another contention taken by the 1st respondent before the learned Single Judge that even though they have been paying the rents, there was no additional facility provided by the appellant except for the basic amenity, also is liable to be rejected. It is common knowledge that the House Rent Allowance payable to the employee which is linked to basic pay is deducted from the salaries of the employees those who are in occupation of the Official Quarters and if the members of the 1st respondent Union choose to vacate the company quarters, they will be paid the HRA as per the rules. Therefore, when the appellant company has fixed the rent, it has become a condition of service and not enhancing the license fee for a long time is a concession given to them and therefore, the same cannot be claimed as a matter of right that the appellant company cannot revise the license fee. Hence, as already canvassed by the learned Counsel for the appellant, since the members of the 1st respondent Union are working in supervisory (Technical) category on the date of issuance of the impugned Circular dated 06.12.1995, the terms and conditions of the Memorandum of Agreements are applicable only to the Non-Supervisory Category. Therefore, the terms and conditions of the above two Agreements mentioned supra are having no binding effect on the members of

the 1st respondent Union, they ought not to have come to this Court with the above Writ Petition since the coverage clause in both the Memorandum of Agreement dated 05.04.1989 and 10.06.1995 respectively have been completely overlooked. In view of our aforesaid reasons, we are unable to support the conclusion reached by the learned Single Judge of this Court.

12. In the result, the Writ Appeal is allowed and the impugned order of the learned Single Judge dated 24.11.2009 passed in W.P.No.1127/1996 is set aside. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Supervisors Union,
Represented by its President,
BHEL, Trichy.
2. The Manager,
Bharat Heavy Electricals Ltd.,
Rep.By its Manager,
Administration/Estate Office,
Trichy-620 014.

+2cc to Mr.K.Prabhakar, Advocate, S.R.No.23577

W.A.No.228 of 2010

RLD(CO)
CS/16/06/2021

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