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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2022

PRONOUNCED ON : 29.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.666 of 2015  
and  
M.P.Nos.1 & 2 of 2015

Bharat Heavy Electricals Ltd.,  
Ranipet-632 406  
rep. by its Executive Director.  
Vs.

... Petitioner

1. The Presiding Officer,  
Central Government Industrial Tribunal  
-cum-Labour Court,  
I Floor, 'B' Wing, 26 Haddows Road,  
Shastri Bhavan,  
Chennai-600 006.

2. K. Balu

3. The Executive Director,  
Bharat Heavy Electricals Ltd.,  
Trichirapalli-620 014.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records connected with I.D.No.62 of 2013 dated 12.11.2014, on the file of the Central Government Industrial Tribunal-cum-Labour Court, Shastri Bhavan, Chennai, the first respondent herein and to quash the same.

For Petitioner : Mr.John Zacharia  
for M/s.Fox Mandal & Ass.

For Respondent-2 : Mr. Balan Haridas

For Respondent-3 : Mr.V.Karthick, Sr. Counsel  
for Mr.A.V.Arun



## O R D E R

Heard the learned counsel for the parties.

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2.1. The second respondent herein was initially appointed as a Design Assistant Grade-III on 10.06.1983 by the Bharat Heavy Electricals Limited (BHEL), Ranipet/the petitioner herein. He was subsequently promoted to the level of a Senior Executive Foreman/ Senior Additional Engineer-II.

2.2. On 16.02.2008, the second respondent was transferred from BHEL, Ranipet Unit to BHEL, Tiruchirappalli Unit. Since the second respondent herein did not join the transferred unit, disciplinary action was initiated, which was followed by a minor punishment and ultimately, the second respondent joined the Tiruchirappalli Unit on 22.02.2010.

2.3. Thereafter, it is alleged that the second respondent was on unauthorized absence on several occasions and ultimately, charges came to be framed under the Rules of BHEL Conduct, Discipline and Appeal Rules (CDA), 1975. Pursuant to an inquiry conducted on these charges of unauthorized absence, a punishment of removal from service was imposed under the CDA Rules.

2.4. The conciliation proceedings conducted at the instance of the second respondent, resulted in a failure and on receipt of the failure report of the Conciliation Officer, the Central Government had referred the issue to the Central Government Industrial Tribunal-cum-Labour Court, Chennai (hereinafter referred to as "CGIT"). The terms of reference was as follows:-

"1) Whether the action of the Management of BHEL, Tiruchirappalli in removing Mr.K.Balu from services w.e.f., on 22.05.2012, is legal and justified?

2) To what relief the workman is entitled to?"

2.5. The CGIT took up the Industrial Dispute on file under I.D.No.62 of 2013. A preliminary issue as to "whether the second respondent is governed by the CDA Rules or the Standing Orders of BHEL, Ranipet?", was taken up and by an order of preliminary finding dated 12.11.2014, the CGIT had held that the second respondent is to be treated as a 'workman', since the counsel for the Management did not press their contention that the second respondent is not a 'workman' within the meaning of the Section 2(s) of the Industrial Disputes Act, 1947 [hereinafter referred to as "ID Act"]. Consequently, it was held that since the second respondent was a workman, the CDA Rules were not applicable to him and therefore the order of



termination pursuant to the inquiry conducted under the CDA Rules, was bad in law. In consequence to such a preliminary finding, the Award dated 12.11.2014, came to be passed directing the BHEL to reinstate the second respondent in service at their Ranipet Unit with all consequential benefits. Both these preliminary findings and the Award dated 12.11.2014, are under challenge in the present Writ Petition.

3. Mr. John Zacharia, learned counsel for BHEL, Ranipet/ the petitioner herein submitted that the second respondent herein, though was initially appointed by them on 10.06.1983, was transferred to BHEL, Tiruchirappalli Unit on 16.02.2008, whereby he had also joined therein. Since the reference to the CGIT touches upon the action of BHEL, Tiruchirappalli in removing the second respondent from services and also since the second respondent was not an employee of BHEL, Ranipet when the order of dismissal was passed, the CGIT ought not to have directed the BHEL to reinstate the second respondent at Ranipet Unit, which is the petitioner herein with all consequential benefits. It is also his submission that, when the second respondent had filed application in I.A.No.65 of 2013 in I.D.No.62 of 2013 before CGIT seeking to implead the BHEL, Ranipet, the same was dismissed on 31.01.2014, by finding that BHEL, Ranipet was not a necessary party to the dispute, which order became final and therefore, the Labour Court was not justified in directing BHEL to reinstate the second respondent herein at Ranipet unit.

4. Per contra, the learned counsel appearing for the second respondent submitted that the BHEL by itself is a Separate Corporate Entity and since transfer order of the second respondent from Ranipet to Tiruchirappalli unit was prima-facie illegal and also since the second respondent was governed under the Standing Orders of BHEL, Ranipet, the CGIT was correct in ordering reinstatement at Ranipet Unit.

5. The learned counsel for the second respondent submitted that BHEL is a Separate Corporate Entity and therefore the CGIT was correct in directing BHEL to reinstate the second respondent herein in service at Ranipet Unit.

6. As already observed, neither BHEL, which is a separate Corporate Entity nor their Ranipet Unit, were parties before the CGIT. Furthermore, the terms of reference was restricted to the action initiated by BHEL, Tiruchirappalli alone. When neither "BHEL" nor "BHEL, Ranipet Unit" were parties and the terms of reference was restricted to the action of BHEL, Tiruchirappalli, the preliminary findings, as well as the Award of the CGIT, with a direction to BHEL to reinstate the second respondent herein at Ranipet Unit, cannot be sustained.



7. The terms of reference to the CGIT was as to whether the action of the Management of BHEL, Tiruchirappalli in removing the second respondent from services was illegal or unjustifiable? BHEL, Ranipet was never a party before the CGIT. When the second respondent sought to implead BHEL, Ranipet as a respondent in the Industrial Dispute before it in I.A.No.65 of 2013 in I.D.No.62 of 2013, the same was dismissed vide order dated 31.01.2014, which reads as follows:

"The petitioner was terminated from service while he was working with the first respondent. The only relief claimed in the ID is reinstatement of the petitioner in service. He having been terminated while working with first respondent his reinstatement, if any, could be with first respondent only. The malafides in the transfer of the petitioner to the first respondent if any is not an issue for consideration in the matter of reinstatement, except to prove the circumstances. Apart from this, in the reference, BHEL, Ranipet shown as second respondent in the Claim Statement is not a party also. So there is no necessity to implead second respondent for the adjudication of the dispute in hand."

8. As per the above observations of CGIT, it was felt that since the second respondent was terminated by BHEL, Tiruchirappalli and since BHEL, Ranipet was not a party in the reference also, they were not a necessary party to be impleaded. This order came to be challenged by the second respondent in W.P.No.10556 of 2014. However, the prayer sought for in the Writ Petition had become infructuous, since before the Writ Petition was taken up for final disposal, the CGIT has passed the final Award in I.D.No.62 of 2013 and the second respondent herein had subsequently withdrawn the Writ Petition.

9. The impugned Award which is passed on the preliminary findings dated 12.11.2014, now directs the BHEL to reinstate the second respondent in service at their Ranipet Unit. The Award was passed without hearing BHEL, Ranipet. When the second respondent wanted to implead BHEL, Ranipet, the CGIT rejected their claim by holding that BHEL, Ranipet is not a necessary party, which order has become final in view of the withdrawal of the Writ Petition filed by the second respondent in W.P.No.10556 of 2014.

10. The facts remains that the Industrial Dispute, resulting in the present impugned Award, has been passed without hearing BHEL, Ranipet Unit.

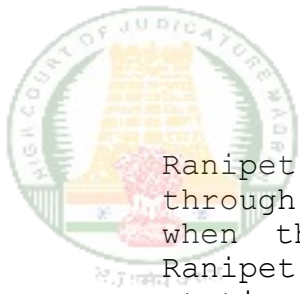


11. The scope of the terms of reference in an Industrial Dispute has been dealt in various decisions of the Hon'ble Supreme Court by holding that the Labour Court/Tribunal having derived its jurisdiction from the reference made by the appropriate Government, was bound to act within the four corners thereof. It is also been held that the Labour Court/Tribunal cannot enlarge the scope of reference nor could deviate therefrom.

12. In the case of Mahendra L. Jain & Others Vs. Indore Development Authority and Others reported in 2005 (1) SCC 639, an identical issue arose when a Municipal Corporation, who was not a party to the dispute was directed by the Labour Court/Tribunal to comply with certain directions, the Hon'ble Supreme Court had depreciated such directions by holding as follows:-

"37. ... As noticed hereinbefore, the High Court's observation remained unchallenged, that the project was to be financed by ODA. The project was indisputably to be executed by the Indore Development Authority; and for the implementation thereof, the appointments had to be made by it. If the Appellants were appointed for the purpose of the project, they would be deemed to have been appointed therefor and only because such appointments had been made by the Respondent would by itself not entitle them to claim permanency. The life of the project came to an end on 30.6.1997. The maintenance job upon completion thereof had been taken over by Indore Municipal Corporation. The Appellants were aware of the said fact and, thus, raised an alternative plea in their statements of claims. The Labour Court could not have granted any relief to them as prayed for, as Indore Municipal Corporation is a separate juristic person having been created under a statute. Such a relief would have been beyond the scope and purport of the reference made to the Labour Court by the State Government. Furthermore, the Indore Municipal Corporation was not a party and, thus, no employee could be thrust upon it without its consent."

13. As held in the above case, neither BHEL, nor their Ranipet Unit were parties in the Industrial Dispute. So also the preliminary findings, as well as the Award implicating BHEL,



Ranipet Unit was not within the scope of terms of reference, through which the CGIT had derived its jurisdiction. Moreover, when the second respondent himself sought to implead BHEL, Ranipet as a party respondent, the CGIT had rejected his claim stating that since he was terminated by BHEL, Tiruchirappalli, impleadment of BHEL, Ranipet was unnecessary. Having held so and without giving an opportunity to BHEL, Ranipet to put forth their objections in the Industrial Dispute, the CGIT was not justified in directing BHEL to reinstate the second respondent herein in service at Ranipet Unit.

14. This apart, it is not in dispute that the second respondent herein was transferred from BHEL, Ranipet to BHEL, Tiruchirappalli on 16.02.2008. Though initially he did not join the transferred unit, disciplinary action was initiated, which is came to be followed by a minor punishment. Ultimately, the records produced before this Court evidences that the second respondent had joined the BHEL, Tiruchirappalli on 22.02.2010. The subsequent charges for unauthorized absence was followed by an inquiry conducted by BHEL, Tiruchirappalli and the punishment of dismissal from service with effect from 22.05.2012 was also imposed by BHEL, Tiruchirappalli. Thus, the submission of the learned counsel appearing for the second respondent that BHEL is a Separate Corporate Entity, which is entitled to reinstate him in service at Ranipet Unit, is not substantiated. In these backgrounds, the ultimate direction of the CGIT in the impugned Award to BHEL for reinstating the second respondent in service at Ranipet Unit, is without any basis. Accordingly, the preliminary findings, as well as the final Award passed in I.D.No.62 of 2013 dated 12.11.2014, insofar as it directs the BHEL to reinstate the second respondent at Ranipet Unit, cannot be sustained.

15. Mr.Karthick, learned Senior Counsel appearing for the third respondent predominantly stressed upon the ground that the counsel for BHEL, Tiruchirappalli was not authorized by the third respondent herein to give up their contention that the second respondent was not a 'workman' and therefore such a statement made by him that, 'he is not pressing this contention' before the CGIT, is a 'concession' given by the counsel, which is not binding on the Management of BHEL, Tiruchirappalli. According to the learned Senior counsel, their counter statements to the claims before the CGIT clearly stresses on the aspect that the second respondent herein is not a 'workman' within the meaning of Section 2(s) of the ID Act and thus, he is governed by the CDA Rules only. While that being so, the unilateral statement made by the counsel for the Management/BHEL, Tiruchirappalli, is deemed to be a 'concession' which is not binding on them and therefore sought for quashing of both these impugned orders with a request to remand the



matter back to the CGIT for reconsideration. The learned Senior counsel further ratified that the service of the second respondent was transferred from Ranipet to Tiruchirappalli Unit, where he had joined and that the disciplinary proceedings were also conducted by them.

16. Incidentally, this Court had passed final orders in W.P.Nos.913 & 914 of 2015 today, which was filed by BHEL, Tiruchirappalli, challenging the preliminary findings, as well as the Award passed in I.D.No.62 of 2013 dated 12.11.2014 and it was held therein that the submission of the counsel for BHEL, Tiruchirappalli that the second respondent was not a 'workman', is not a 'concession' by the counsel, but rather a 'conscious decision' and thereby dismissed the Writ Petitions. Thus, the portion of the Award of the CGIT holding that the second respondent herein is a 'workman' and not governed by the CDA Rules was upheld.

17. In the result, the impugned preliminary findings and the Award passed by the CGIT in I.D.No.62 of 2013 dated 12.11.2014, insofar it fixes the liability on BHEL, Ranipet Unit for reinstating the second respondent herein, together with the consequential benefits and back wages, is modified, with a direction to BHEL, Tiruchirappalli to reinstate the second respondent herein in service at their Unit with all consequential benefits, within a period of four weeks from the date of receipt of a copy of this order. The back wages payable to the second respondent is restricted to 50% and the same shall be payable within a month from the date of receipt of a copy of this order. In default of the payment within the time, the second respondent would be entitled for interest at the rate of 9% p.a.

18. With the above observations and directions, the Writ Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-  
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

DP



To

1. The Presiding Officer,  
The Central Government Industrial Tribunal  
cum Labour Court, I Floor Buildings,  
26, Haddows Road,  
Shastri Bhavan,  
Chennai-600 006.
2. The Executive Director,  
Bharat Heavy Electricals Ltd.,  
Tiruchirappalli-620 014.
3. The Executive Director,  
Bharat Heavy Electricals Ltd.,  
Ranipet-632 406.

+1cc to M/s.Fox Mandal & Associates, Advocate, S.R.No.30131

W.P.No.666 of 2015  
and  
M.P.Nos.1 & 2 of 2015

AD(CO)  
CT(11/05/2022)