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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.Nos.913 & 914 of 2015
and
M.P.No.1, 1 of 2015

In W.P.No.913 of 2015

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

... Petitioner

Vs.

1. The Central Government Industrial Tribunal
cum Labour Court,
Shastri Bhavan,
Chennai-600 006.

2. K. Balu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the order dated 12.11.2014 made in Preliminary Point in I.D.No.62 of 2013 on the file of the Central Government Industrial Tribunal-cum-Labour Court, Shastri Bhavan, Chennai-600 006, the first respondent herein and to quash the same.

For Petitioner : Mr.V. Karthick, Sr. Counsel
for Mr.A.V.Arun

For Respondent-2 : Mr. Balan Haridas

In W.P.No.914 of 2015

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

... Petitioner

Vs.



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1. The Central Government Industrial Tribunal
-cum-Labour Court,
Shastri Bhavan,
Chennai-600 006.

2. K. Balu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to and connected with the 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.V.Karthick, Sr. Counsel
for Mr.A.V.Arun

For Respondent-2 : Mr. Balan Haridas

C O M M O N O R D E R

Heard the learned counsel for the parties.

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. 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



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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 finding and the Award dated 12.11.2014, are under challenge in the present Writ Petitions.

3. Mr.Karthick, learned Senior Counsel predominantly stressed upon the ground that the counsel for BHEL, Tiruchirappalli was not authorized by the petitioner 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. To further substantiate his contention, the learned Senior counsel relied upon few decisions of the Hon'ble Supreme Court on the point that, such unilateral concessions made by the counsel, are not binding on his client.



4. Per contra, Mr. Balan Haridas, learned counsel appearing for the second respondent submitted that though the petitioner had initially taken such a stand in their counter statements before the CGIT, they have eventually given up such a contention that the second respondent is not a 'workman' after the second respondent had let in oral evidence and established that he is a 'workman' as defined under Section 2(s) of the ID Act and the petitioner had not let in satisfactory evidence in the cross examination to the contrary. Thus, he submitted that the statement of the counsel before the CGIT that he is not pressing the contention that the second respondent is not a 'workman', is not a concession as such. The learned counsel also relied on certain decisions of the Hon'ble Supreme Court to substantiate that concessions involving questions of facts are binding on parties and that if a party considers a concession as a mistake, the remedy available to them is only by way of a review and when such a right is not exercised, the statement made by the counsel before the Court becomes conclusive.

5. I have given careful consideration to the submissions made by the respective counsels.

6. Pursuant to the reference made by the Central Government on 27.05.2013, the second respondent herein had filed his claim statement before the CGIT on 24.06.2013. In the claim statement, as well as the additional claim statement filed by the second respondent, he had taken a stand that the CDA Rules is not applicable to him. In the counter statement, as well as the supplementary statement filed by the petitioner before the CGIT, the petitioner had taken the stand that the second respondent is not a 'workman' within the meaning of Section 2(s) of the ID Act and that he was governed only by the CDA Rules. The CGIT took up the plea as to whether the second respondent is governed under the CDA Rules or the Standing Orders of BHEL, Ranipet as a preliminary issue and had permitted the second respondent to let his oral evidence. In the proof affidavit filed by the second respondent in lieu of chief examination, the second respondent stated that he was a workman as defined under Section 2(s) of the ID Act. During the course of cross examination, no suggestions were put forth by the petitioner to disprove the second respondent's claim of being a 'workman'.

7. In this background, during the course of the final arguments to the preliminary issue, the counsel for the petitioner/Management had stated that though the petitioner had raised a contention in the counter affidavit statement that the second respondent is not a 'workman' within the meaning of Section 2(s) of the ID Act, "he is not pressing his contention". Recording such a statement, the CGIT had treated the second



respondent as a 'workman', by observing that he had not been working on an administrative or managerial capacity. In view of such a finding, the CGIT had held that the CDA Rules will not be applicable to the second respondent, who is a workman and thereby, set aside the order of dismissal, which was preceded by an inquiry conducted under the CDA Rules.

8. According to the learned Senior counsel for the petitioner, the aforesaid statement of the counsel for BHEL, Tiruchirappalli is a 'concession' and the statement made by the learned counsel of a party across the bar cannot be treated as an 'admission' of the party, in view of Section 18 of the Indian Evidence Act, 1872, as held in Krishnanand Govindanand Vs. M.D. Oswal Hosier reported in AIR 2002 SC 1162. Likewise, placing reliance on the decision of the Hon'ble Supreme Court in the case of Himalayan Coop. Group Housing Society Vs. Balwan Singh and Others reported in 2015 (7) SCC 373, he submitted that counsel appearing for the Management cannot make a concession on behalf of the Management, without any express instructions or authorization in that regard and that the concerned party nor the Court is bound by such statements or admissions by their lawyer. He also placed reliance on the decisions in Bharat Heavy Electricals Ltd., Vs. Mahendra Prasad Jakhmola and others reported in 2019 (13) SCC 82 and The Employees' State Insurance Corporation Vs. Union of India and Others reported in 2022 (2) Scale 72, for the proposition that the concessions on the question of law is binding on the parties and that where the question is a mixed question of fact and law, a concession made by a lawyer or his authorized representative at the stage of arguments cannot preclude the party for whom such person appears for re-agitating the point in appeal.

9. The aforesaid legal ratios relied upon by the learned Senior counsel for the petitioner may hold good, if and only if, the statement made by his counsel before CGIT was indeed a 'concession' by itself. In other words, the crucial issue that arises for consideration is as to whether the submission of the counsel for the Management before CGIT was a 'concession' or a 'conscious decision'?

10. The learned counsel for the second respondent submitted that though the Management had initially pleaded in their counter statements that the second respondent was not a 'workman' and that he was governed under the CDA Rules, they have changed their stance after the workman had let in oral evidence establishing that, he was a 'workman' and not governed by the CDA Rules.

11. In order to appreciate as to whether the statement of the Management's counsel before CGIT was a 'concession' or a



'conscious decision', the surrounding factors leading to such a submission made by the Management counsel were looked into. When the second respondent had filed his proof affidavit dated 17.09.2014, he had asserted that he was a 'workman' and that he was governed as per the terms and conditions of the appointment order issued by BHEL, Ranipet. During cross examination there was not a single suggestion from the Management that the second respondent was neither a workman nor that he was governed by the CDA Rules. Even assuming that the cross examination conducted by the counsel for the Management was an unilateral decision without express authorization of his client, the Management had not thereafter taken any steps to go before CGIT seeking for review of the order by claiming that their counsel's concession was not at their authorization.

12. In Bhavnagar University V. Palitana Sugar Mills Private Ltd., reported in 2003 (2) SCC 111, it was held that if a party is of the view that the recordings in a judgment are wrong, it is incumbent upon such party to address the mistakes before the same Judge. Placing reliance on this decision in Bhavnagar University's case (supra), the Hon'ble Supreme Court in the case of Sankar K Mandal Vs. State of Bihar & Others reported in 2003 (9) SCC 519, reiterated the ratio and held that, such concessions requires to be redressed by the aggrieved party by filing an application for review or clarification. The relevant portion of the order reads as follows:

"11. If really there was no concession, or a different stand was taken, the only course open to the appellant was to move the High Court in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak and Anr. (1982 (2) SCC 463). In a recent decision Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and Ors. (2002 AIR SCW 4939) the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before



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this Court to the contrary.

12. It is also not open to contend that a plea raised was not considered. In *Daman Singh and others, etc. vs. State of Punjab and others, etc.* (AIR 1985 SC 973) it was observed (in para 13) as follows:

"The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memorandum of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in enquiring into the question whether a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not?"

13. The aforesaid extract is self explanatory. Thus, it is seen that in cases of this character where a litigant feels aggrieved when a statement with an admission has been made without their express approval, the most appropriate course would be to apply to the same Judge for rectification or review. In this background, when it is found that though the initial pleadings suggested the second respondent to be a 'workman', there was every possibility that the stand of the petitioner Management had changed, after he had established he was a 'workman' in the inquiry.

14. What transpired before CGIT cannot be probed into by



this Court, exercising its powers under Article 226 of the Constitution of India. In the State of Maharashtra Vs., Ramdas Shrinivas Nayak and Another reported in 1982 (2) SCC 463, the Hon'ble Supreme Court had held that, the statement of facts recorded in the judgment are conclusive of such facts and the same cannot be contradicted by affidavit or other evidences. The relevant portion of the order reads as follows:

"4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". (Per Lord Atkinson in Somasundaran v. Subramanian, A.I.R 1926 P.C. 136.) We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (Per Lord Buckmaster in Madhusudan v. Chanderwati, A.I.R. 1917 P.C. 30.) That is the only way to have the record corrected. If no such step is taken, the matter



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must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

....

9. On the invitation of Mr. Sen, we have also perused the written submissions made by him before the High Court. We have two comments to make: First, oral submissions do not always conform to written submissions. In the course of argument, counsel, often, wisely and fairly, make concessions which may not find a place in the written submissions. Discussion draws out many a concession. Second, there are some significant sentences in the written submissions which probabilise the concession. They are: "If in the existing case, the entire Council of Ministers becomes interested in the use of the statutory power one way or the other, the doctrine of necessity will fill up the gap by enabling the Governor by dispensing with the advice of His Council of Ministers and take a decision of his own on the merits of the case. Such a discretion of the Governor must be implied as inherent in his constitutional powers.. The doctrine of necessity will supply the necessary power to the Governor to act without the advice of the Council of Ministers in such a case where the entire Council of Ministers is biased. In fact, it will be contrary to the Constitution and the principles of democratic Government which it enshrines if the Governor was obliged not to act and to decline to perform his statutory duties because his Ministers had become involved personally. For the interest of democratic Government and its functioning, the Governor must act in such a case on his own. Otherwise, he will become an instrument for serving the personal and selfish interest of his Ministers." We wish to say no more. As we said, we cannot and we will not embark upon an enquiry. We will go by the judges' record."

15. I have not come to a conclusive inference, not only on the basis of the oral evidence let in by the second respondent herein and the cross examination by the counsel for the Management, or on the ground that the Management had not



attempted to go before the CGIT seeking for review or rectification of the order. On the other hand, my views that the statements made by the Management's counsel before the CGIT is not a 'concession', but rather a 'conscious decision', is adequately substantiated by the further conduct of the Management at the time of filing these Writ Petitions. If the only grievance of the Management was that, their counsel before the CGIT had made a concession, the same would have been reflected in many words in the 17 pages of the duly sworn affidavit of by the Executive Director, BHEL, Tiruchirappalli dated 08.01.2015, filed in support of the present Writ Petitions. On the contrary, there is not a single sentence or even a phrase suggesting that their counsel had unilaterally represented before the CGIT without express authorization from them. Thus, in these circumstances, there is a clear indication that the Management did not have any grievance on the submission made by their counsel before the CGIT, in these background, the present stand taken in these Writ Petitions at the stage of final arguments seems to be an invention of a point, that was never a ground in the minds of the petitioner, when the present Writ Petitions are filed.

16. On a cumulative appreciation of the manner in which the Management had handled the case before the CGIT, till the filing of these Writ Petitions, this Court is of the affirmed view that there was a 'conscious decision' on the part of the Management in giving up their claim that the second respondent herein was not a 'workman' and accordingly, their counsel before the CGIT had made a contention in this regard, which aspect is further fortified by their inaction to file a review application and their omission to raise such grounds in the present Writ Petitions. Thus, this ground of "concession" by their counsel, has not been established by the Management beyond reasonable doubt.

17. For all the foregoing reasons, I do not find any merits in these Writ Petitions. Accordingly, both the Writ Petitions stands dismissed. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

DP



To

1. The Central Government Industrial Tribunal
cum Labour Court,
Shastri Bhavan,
Chennai-600 006.
2. The Executive Director,
Bharat Heavy Electricals Ltd.,
Tiruchirapalli-620 014.

+2ccs to Mr.A.V.Arun, Advocate, S.R.No.30343 & 30344

W.P.Nos.913 & 914 of 2015
and
M.P.No.1, 1 of 2015

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