IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 19.01.2022

DELIVERED ON: 28.01.2022

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.9346 of 2014

The National Confederation of
BHEL Retired Employees Associations
Rep. By its General Secretary,
Door No.14, Plot No.1, BHEL Sakthi Nagar,
Vijaya Nagar, Velacherry,
Chennai-600 042. ..Petitioner

vs.

1. The Chairman and Managing Director,
Bharat Heavy Electricals Limited,
BHEL House, SIRI Fort,
New Delhi – 110 049.

2. Government of India,
Ministry of Heavy Industries and Public Enterprises,
Rep by its Secretary,
Department of Heavy Industries,
Udyag Bhawan, New Delhi. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to corporate HR Circular No.16/WLX/2012 AA-HR WLX (BHEL PS) dated 07.06.2012 BHEL Employees Pension Scheme introduced to the retired BHEL Employees retired on or after 01.01.2007 and corporate HR Circular No.012/WLX/2013 AA:HR:WLX (BHEL PS) dated 10.07.2013 on BHEL ENMS introduced to the employees retired dated 10.07.2013 and quash the cut off date classifying the retired employees prior and after 01.01.2007 as violative to Article 14 of the Constitution of India and consequently direct the respondents to pay uniform pension to all the retired employees of the BHEL and their families irrespective of their date of retirement by fixing scale of pay notionally with effect from 01.01.2007 with interest at the rate of 9% p.a.

For Petitioner : Mr.D.Govindareddy

For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co. for R1 and R2

O R D E R

The present writ petition has been filed challenging the impugned Circular of the Government of India dated 01.01.2007 and the consequent Circular issued by Bharat Heavy Electricals Limited [BHEL] dated 10.07.2013, fixing the cut off date as 01.01.2007 as violative of Articles 14 and 16 of the Constitution of India and for a consequential direction to the respondents to consider the representation made by the petitioner Federation and fix the pay scale notionally and pay the pension with effect from 01.01.2007 with interest.

2.The short facts of the case is that the petitioner federation is a registered association consisting of nine Retired Employees Association and BHEL is a Government of India Undertaking. The Government of India have passed official memorandum fixing the pay scale for the retired employees who were on rolls from 01.01.2007. On that basis BHEL, by its corporate HR Circular No.16/WL/X 2012 dated 07.06.2012, introduced BHEL Employees Pension Scheme, applicable to those who are on rolls of the company as on 01.01.2007 and onwards. BHEL also passed another Corporate HR Circular No.12/WLX/2013 dated 10.07.2013 introducing BHEL Emergency Needs Mitigation Scheme [ENMS Scheme] applicable to employees who have retired from the company prior to 01.01.2007 and employees who were not covered by BHEL Employees Pension Scheme, which is applicable to only those employees who were on the rolls of the company as on 01.01.2007 and onwards. Challenging the above circulars in and by which the BHEL retired employees were categorized into two groups based on cut off date as 01.01.2007 and granting pension to those who retired after the cut off date and denying pension to those retired prior to the cut off date, the petitioner Association has filed the present writ petition.

3.Mr.D.Govinda Reddy, learned counsel for the petitioner contended that BHEL, by introducing the Pension Scheme only to those who were on rolls on 01.01.2007, has created a class within a class and all BHEL retirees, irrespective of the date of retirement, belong to one single, homogeneous, identifiable category/class/group and the date of retirement is purely incidental and it should not confer some benefit to one and deprive the other of the same benefit. It is also contended that pension is a social security measure, providing a safety net to those contributed to the growth of the company and who need support at their elderly age and the classification made by BHEL, vide order dated 07.06.2012, as pre and post 2007 retirees is arbitrary, discriminatory, unreasonable, irrational and unsustainable and violative of Articles 14 and 16 of the Constitution of India and also contrary to the judgment of the Hon'ble Supreme Court in D.S.Nakara and Others v. Union of India reported in AIR 1983 SC 130.

4.Mr.Anand Gopalan, learned Standing Counsel for the respondents has drawn the attention of this Court to the counter affidavit filed by the first respondent wherein it has been stated that a careful reading of the ENMS Scheme would show that a part of the current wage increase due to the concerned categories of employees as from 01.01.2007 is kept in deposit with the Pension Fund and after retirement, along with the accumulation standing to the credit of the member, an annuity is purchased which will provide for pension to the retirees and in respect of past retirees i.e., prior to 01.01.2007, they were not entitled to any wage increase and consequently, there is no question of making any contribution to pension fund in respect of them, nor can they make any contribution for the past service. It is further contended that in respect of Pre-2007 retirees, the respondent has no obligation towards them, nor can they have any right against the respondent to make a claim and therefore, prays for dismissal of this writ petition. The learned Standing Counsel for the respondents, in support of his submissions, has relied on the following decisions:

(i)Government of Andhra Pradesh & Others v. N.Subbarayudhu and Others [(2008) 14 SCC 702]
(ii) R.Vijayakumar and Others v. Govt. Of TamilNadu and Others [Order dated 06.02.2013 in W.P.No.2470 of 2013]
(iii)A.Jegan v. State of Tamil Nadu [Order dated 25.04.2017 in W.P.(MD)Nos.2982 of 2017 etc.,]
(iv)State Bank of India v. L.Kannaiah and Others [(2003) 10 SCC 499]

5.This Court has considered the submissions made and also perused the materials placed before it.

6.The issue to be decided is whether any cut off date can be introduced among Government servants in the matter of applying different pension scheme.

7.The issue raised herein has already been decided by the Hon'ble Supreme Court in the decision in Government of Andhra Pradesh and Others v. N.Subbarayudu and Others [(2008) 14 SCC 702] wherein it was held as under:

> "5.In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation

of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab v. Amar Nath Goyal (2005) 6 SCC 754)

6.No doubt in D.S. Nakara v. Union of India [(1983) 1 SCC 305] this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara case as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal.

7.There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8.In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide State of Bihar v. Ramjee Prasad [(1990) 3 SCC 368], Union of India v. Sudhir Kumar Jaiswa [(1994) 4 SCC 212] (vide SCC para 5), Ramrao v. All India Backward Class Bank Employees Welfare Assn. [(2004) 2 SCC 76] (vide SCC para 31), University Grants Commission v. Sadhana Chaudhary [(1996) 10 SCC 536], etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.

(emphasis supplied)

9.As has been held by this Court in Aravali Golf Club v. Chander Hass and in Govt. of A.P. v. P. Laxmi Devi the court must maintain judicial restraint in matters relating to the legislative or executive domain."

The decision cited supra squarely applies to the case on hand. The above decision lays down the proposition that "cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary ; There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection".

8.In the case on hand, petitioner contends that the classification made by BHEL, vide order dated 07.06.2012, as pre and post 2007 retirees is arbitrary, discriminatory, unreasonable, irrational and unsustainable and also violative of Articles 14 and 16 of the Constitution of India and contrary to the judgment of the Hon'ble Supreme Court in D.S.Nakara and Others v. Union of India reported in AIR 1983 SC 130. However, it is the stand of the respondents that in respect of Pre-2007 retirees, the respondent has no obligation towards them, nor can they have any right against the respondent to make a claim.

9.Keeping in mind the ratio laid down in the above cited decision, this Court is of the view that the decision of the Government and BHEL in categorizing the employees into Pre and Post 2007 retirees for conferring pensionary benefits is purely a policy decision of the executive authority taking into account the financial, administrative or other considerations and this Court cannot interfere over the same unless the same appears to be on the face of it blatantly discriminatory and arbitrary and therefore, the challenge made by the petitioner Association cannot be countenanced by this Court.

10.The writ petition stands dismissed accordingly. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Chairman and Managing Director,
   Bharat Heavy Electricals Limited,
   BHEL House, SIRI Fort, New Delhi - 110 049.

2. The Secretary,
   Government of India,
   Ministry of Heavy Industries and Public Enterprises,
   Department of Heavy Industries,
   Udyag Bhawan, New Delhi.

+2cc to M/s.D.Govinda Reddy, Advocate, S.R.No.5280
+1cc to M/s.T.S.Gopalan & Co, Advocate, S.R.No.5003

W.P.No.9346 of 2014

BP(CO)
RGA(14/02/2022)