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W.A. No.1754 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 1754 of 2023 & C.M.P. No.15466 of 2023

The Executive Director
Bharat Heavy Electricals Ltd.
BAP, Ranipet
Ranipet 632 406

Appellant

v

- 1 The Presiding Officer
Central Government Industrial Tribunal-
cum-Labour Court
Shastri Bhavan
Chennai
- 2 The General Secretary
BAP Employees Union
Regn. No. 373/NAT
BAP/BHEL, Ranipet – 632 406
Respondents

Writ Appeal under Clause 15 of the Letters Patent as against the order
dated 16.02.2023 passed in W.P. No.7394 of 2017.

For appellant Mr. John Zachariah

R1 Court

For R2 Mr. R. Nandhakumar



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JUDGMENT

(delivered by S.Vaidyanathan,J.)

The order dated 16.02.2023 passed by a Single Bench of this Court in W.P.No.7394 of 2017 is under assail in this writ appeal.

2 For the sake of clarity, the appellant, the first respondent and the second respondent will be adverted to as the Management, the Labour Court and the Union, respectively.

3 The succinct facts leading to the filing of this writ appeal run thus:

3.1 One Udayakumar, a workman under the appellant and a member of the Union, was inflicted with a punishment of lowering of time scale of pay by two stages for a period of two years with cumulative effect, *vide* order dated 29.05.2013, on the ground that he was a Co-Trustee and the Founder Trustee of a Trust, which was running a school and he was also actively involved in the activities of the said school.

3.2 Challenging the said punishment, the Union raised an industrial dispute in I.D. No.109 of 2015 before the Labour Court. The Labour Court, *vide* award dated 15.07.2016, by garnering strength from clauses 14 and 15 of the



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trust deed, which go to show that the Trust is only a charitable institution and not a profit-making one, and also from the proviso to Clause 51 of the Standing Orders of the appellant, as per which, an employee need not get prior sanction from the appellant for being a member of a Trust engaged in doing charitable activities, held that there is no justification on the part of the appellant in lowering the time scale of pay of Udayakumar on the ground stated in paragraph 3.1, *supra*. Further, since the very same proviso also states that the employee concerned shall discontinue even the work of social or charitable nature, if so directed by the Managing Director, the Labour Court, finding that the appellant does not approve of the activity of Udayakumar in becoming a Trustee of the Trust, in which, his wife and father are the other Trustees, in order to give a quietus to the issue, answered the reference by holding that Udayakumar's original scale of pay should be restored, provided he ceases to be a Trustee of the Trust within a period of one week.

3.3 Thereagainst, the appellant filed a writ petition being W.P. No.7394 of 2017 and the Single Bench, finding that the appellant had not examined any witness before the Labour Court to substantiate its stand that Udayakumar was actively involved in the activities of the Trust and that the Trust was not a charitable institution, held that the Labour Court is perfectly justified in ordering restoration of the original scale of pay of Udayakumar.



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3.4 The Single Bench, as regards the contention of the appellant that this is not a case of dismissal or any other way of non-employment and hence, the industrial dispute seeking restoration of the original time scale of pay under Section 2-A of the Industrial Disputes Act, 1947, is not maintainable, held that the said contention is untenable, inasmuch as, it was not raised before the Labour Court, that too, when the appellant subjected itself to the entire proceedings under Section 2-A, *ibid.* sans demur.

3.5 Calling into question the legality and validity of the aforesaid order passed by the Single Bench, the Management has preferred this writ appeal.

4 Heard both sides and perused the materials available on record.

5 Before delving into the issue at hand, it would be apropos to advert to Section 2(k), Section 2-A and Section 10(2-A), *ibid.*

Section 2(k):

“industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;



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Section 2-A: Dismissal, etc. of an individual workman to be deemed to be an industrial dispute.-- (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

Section 10. Reference of dispute to Boards, Courts or Tribunals

- 1 ...
- (a) ...
- (b) ...
- (c) ...
- (d) ...

1-A ...

2 ...

(2-A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government.”



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6 The main contention of the appellant is that the industrial dispute

was referred to the Labour Court by the Central Government on 08.07.2015 under Section 2-A, *ibid.*, which provision deals with dismissal, discharge, retrenchment or termination, whereas, the case on hand is one of lowering of scale of pay, and hence, the industrial dispute was not maintainable. We are afraid, the industrial dispute was referred to the Labour Court not under Section 2-A, *ibid.*, as interpreted by the learned counsel for the appellant, but, under sub-section (2-A) of Section 10, *ibid.*, besides under clause (d) of sub-section (1) of Section 10, *ibid.*, as is apparent from the preamble of the award. Further, be it noted, it is only Section 10, *ibid.*, which deals with reference of dispute by the appropriate Government to Boards, Courts or Tribunals, and not Section 2-A, *ibid.*, which succeeds the definition clause of the Industrial Disputes Act. Even assuming but without conceding that the argument of the learned counsel for the appellant is correct, it is to be pointed out that we have gone through the counter statement filed by the appellant before the Labour Court in its entirety and nowhere could we find that this stand was taken by the appellant before the Labour Court. Thus, as rightly observed by the Single Bench, having failed to raise such a ground before the Labour Court and having subjected itself to the entire proceedings before the Labour Court, the appellant is estopped from raising the said ground at the appellate stage. Further, in the case on hand, the industrial dispute has been raised by the Union under Section 2(k), *ibid.* as an



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individual cannot raise a dispute under Section 2-A, *ibid.*, when a punishment of lowering of time scale of pay by two stages for a period of two years with cumulative effect has been imposed.

7 Coming to the charge, no doubt, the fact that Udayakumar was actively involved in the activities of the Trust was admitted by him. But, there is a categorical finding rendered by the Labour Court that he has not derived any benefit by his involvement in the Trust activities, more so, when there is no iota of evidence let in by the appellant to fortify its stand.

8 The next contention of the appellant is that the Labour Court ought not to have pressed into service the proviso to Clause 51 of the Standing Orders when Udayakumar was chargesheeted under Clause 51, *ibid.* Clause 51, *ibid.*, together with its proviso, has been extracted in the award of the Labour Court and hence, we do not want to make this order prolix by extracting the same once again in this judgment. True it is that Udayakumar was chargesheeted under Clause 51, *ibid.* But, be it noted, it is common knowledge that a provision of a statute has to be read as a whole and not in part in order that it is advantageous to one and disadvantageous to the other. When the proviso states unequivocally that sanction need not be obtained from the Managing Director to undertake an honorary work of a social or charitable nature, in the considered opinion of this



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Court, Udayakumar cannot be inflicted with punishment, more so, when the appellant has not proved before the Labour Court that Udayakumar's involvement in the activities of the Trust was detrimental to the discharge of his duties. However, now that the Management does not approve of Udayakumar's involvement in the activities of the Trust, as per the proviso to Section 51, *ibid.*, Udayakumar has to perforce disassociate himself from the activities of the Trust. At this stage, it is worth mentioning that we have been informed by the learned counsel for the Union that Udayakumar is no longer a Trustee of the Trust. Needless to observe, it is open to Udayakumar to associate himself with the Trust after resigning from the employment or after his retirement. Superadded, as rightly observed by the Labour Court in its award, even a perusal of the trust deed annexed to the typed set of papers makes it apparent that the activities of the Trust are only social and charitable in nature and not with any intent to make profits.

9 In view of the above discussion, we find no ground to interfere with the well-merited award of the Labour Court, which has been rightly upheld by the Single Bench.



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As a sequitur, this writ appeal fails and is accordingly dismissed,
however, sans costs. Connected C.M.P. is closed.

(S.V.N.J.) (K.R.S.J.)
17.08.2023

cad

To

The Presiding Officer
Central Government Industrial Tribunal-
cum-Labour Court
Shastri Bhavan
Chennai



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