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W.A. No. 2029 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2023

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THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

W.A. No. 2029 of 2019

&

C.M.P. No. 13653 of 2019

The Management of Bharat
Heavy Electricals Limited,
Ranipet, Vellore – 632 406
repted by its Executive Director

..Appellant

Vs.

1. The Secretary,
Union of India,
Ministry of Labour
& Employment,
Shram Shakthi Bhawan,
Rafi Marg, New Delhi 110 001.
2. The Regional Labour Commissioner,
Central/Conciliation Officer,
Ministry of Labour & Employment,



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No.26, Shastri Bhavan,
Haddows Road, Nungambakkam,
Chennai – 600 006.

3. Supervisors Union BHEL/BAP/Ranipet,
BHEL Post, Ranipet,
Vellore – 632 406,
rep. by its General Secretary. ..Respondents

Prayer: Writ Appeal as against the order dated 25.03.2019 passed in
W.P. No. 22471 of 2018.

For Appellants :: Mr.A.V. Arun

For Respondents :: Mr.B.Sudhirkumar
Senior Panel Counsel for R1 & R2
No appearance for R3

J U D G M E N T

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present writ appeal has been filed challenging the order dated
25.03.2019 passed in W.P. No. 22471 of 2018.



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2. Notice has been served on the 3rd respondent, but there is no representation on their behalf.

3. The 3rd respondent Union had filed the writ petition for a mandamus directing the 1st respondent herein to forthwith refer the existing dispute regarding discriminative promotion policy in the appellant Management on the basis of the Failure Report dated 19.10.2016 submitted by the 2nd respondent herein.

4. When the writ petition was taken up for hearing, the Court was informed that the 1st respondent herein had already referred the issue whether the claim of the Management of BHEL, Ranipet that the members of Supervisors Union were not workmen as defined in Section 2(s) of Industrial Disputes Act, 1947 was correct and if not, whether the demand of the Supervisors Union of BHEL-BAP, Ranipet for wage upgradation to S1 to S3 Grade Supervisors was legal and justified. Further, it was submitted that as the terms of reference, stated above, had been referred for



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adjudication before the Industrial Tribunal/Labour Court, nothing remains for adjudication in the writ petition.

5. However, it was submitted on behalf of the Supervisors Union that the dispute which was raised before the authority concerned was with regard to the promotion policy of the appellant Management and that the terms of reference for adjudication were completely different and do not pertain to promotion policy at all.

6. In the aforesaid circumstance and after considering the submissions made on behalf of the Union, the learned Single Judge disposed of the writ petition with the following directions:

"4. Considering the submissions made on behalf of the learned counsel for the petitioner as well as the subsequent development, as aforementioned, this Court is of the view that if the petitioner is aggrieved by the terms of reference, it is always open to the petitioner to approach the 1st respondent to suitable modify the terms of reference or seek for additional terms of reference on the



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basis of the dispute raised by them before the conciliation authority.

This Court is of the considered view that it would be suffice to direct the Government to consider the representation/objection dated 12.1.2018, submitted by the petitioner and pass orders within a particular time frame.

5. *In the above circumstances, the 1st respondent is directed to consider the objection/representation of the petitioner, as projected in their letter dated 12.01.2018 and pass appropriate orders on merits and in accordance with law. The 1st respondent is also directed to consider the issue of modifying the terms of reference, already made, in line with the requirement of the petitioner Union or may refer additional terms of reference in regard to the promotion policy adopted by the 2nd respondent, which is the subject matter of dispute raised by the petitioner Union. The 1st respondent is directed to consider the above and pass appropriate orders on the representation/objection dated 12.01.2018 within a period of eight weeks from the date of receipt of a copy of this order."*



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Challenging the said order, the Management has preferred this writ appeal.

7. When the matter is taken up, it is brought to the notice of this Court that the terms of reference sent for adjudication vide order dated 30.10.2018 by the Ministry of Labour was taken up in I.D. No. 9 of 2010 by the Industrial Tribunal. As there was no representation on behalf of the Supervisors Union, the said I.D. was dismissed on 07.02.2020 and the said order had become final.

8. Once the matter had been referred for adjudication, the relief sought in the writ petition had become infructuous and nothing survived for adjudication. In such circumstance, the directions issued by the learned Single Judge, extracted supra, were uncalled for. Hence, the order passed in W.P. No. 22471 of 2019 is set aside and the writ appeal stands allowed. No costs.

nv
To

(S.V.N.J.) (R.K.M.J.)
11.04.2023

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The Secretary,
Union of India,
Ministry of Labour
& Employment,
Shram Shakthi Bhawan,
Rafi Marg, New Delhi 110 001.



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