



W.P.No.7394 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.01.2023
Pronounced on	16.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7394 of 2017
and
W.M.P.No.8050 of 2017

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

...Petitioner

Vs.

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorari, to call for the records connected with I.D.No.109 of 2015 and quash the award dated 15th July, 2016 passed by the 1st respondent.



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For Petitioner : Mr.John Zachariah
for M/s.Fox Mandal and Associates

For Respondents

R1 : Tribunal

R2 : Mr.R.Nandhakumar

ORDER

Heard Mr.John Zachariah, learned counsel for the petitioner and Mr.R.Nandhakumar, learned counsel for the second respondent.

2. Alleging that one V.Udayakumar, member of the second respondent Union, is a co-trustee and founder trustee of a trust that is running a school and that the petitioner was actively involved in the school work, charges came to be framed against him and in the consequential inquiry conducted, the charges were held to be proved. On 29.05.2013, a punishment of reduction of two stage lower in the time scale of pay for a period of two years with cumulative effect was awarded. The appeal preferred by the workman was dismissed on 14.12.2013 by the Appellate Authority. Since the subsequent conciliation proceedings raised by the workman had ended in a failure, a reference was made to the Central Government Industrial Tribunal



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cum Labour Court (CGIT) for adjudication under Section 2(A), read with Section 10 of the Industrial Disputes Act, 1947. In the award dated 15.07.2016, the Labour Court had directed the concerned workman to give up his trusteeship in the trust, with a further direction to the respondent to restore the original time scale of pay of the workman. Challenging this award dated 15.07.2016, the present writ petition has been filed by the management.

3. In the domestic inquiry, the management had examined two witnesses, in which M.W.1 had admitted that the concerned workman was not doing any school work and he had only signed the gate passes in good faith. M.W.2 also had spoke about the passes that were issued for the workman to leave the premises. No other statements were made by these two witnesses with regard to the petitioner's involvement in the trust.

4. In the dispute before the CGIT, the management had not examined any further witness, to substantiate that the petitioner was actively involved in the trust or that the trust was not a charitable institution. Though documents were marked on the management side during the course of the proceedings before the CGIT, no witnesses were examined to prove the



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contents of these documents. The CGIT had taken note of these aspects during the course of inquiry, as well as the proceedings before it and had come to the conclusion that the original time scale of pay should be restored to the concerned workman. In this background, I do not find any infirmity in the award of the Labour Court.

5. The learned counsel appearing for the management stressed upon the ground that since this is not a case of dismissal or any other way of non-employment, the Industrial Dispute seeking for restoration of the original time scale of pay under Section 2(A) of the Industrial Disputes Act is not maintainable. Admittedly, the management had not raised such a ground before the CGIT and had subjected themselves to the entire proceedings conducted under Section 2(A). While that being so, the present ground on the maintainability of the Industrial Dispute itself may not be appropriate. The ground of maintainability ought to have been raised as a preliminary issue before the CGIT. Having failed to raise such a ground therein, it is not now open to the management to question the maintainability at this stage, after the award has been passed.



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6. Thus, there are not merits in the present writ petition. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2023

Index:Yes/No

Neutral Citation:Yes/No

Speaking order/Non-speaking order

hvk

To

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



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M.S.RAMESH,J.

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PRE-DELIVERY ORDER MADE IN

W.P.No.7394 of 2017

16.02.2023