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W.P.No.8975 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8975 of 2017

M.Mani

... Petitioner

Vs.

Bharat Heavy Electricals Limited
(BAP) Ranipet,
Rep. by its Additional Manager (HR),
Ranipet-632 406.
Vellore District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records which culminated in issuing the order in BAP;HR;FS dated 18.02.2017, quash the same and consequently direct the respondent to atleast count half of the service rendered by him on daily wage basis along with the regular service for the purpose of conferment of pensionary benefits within a time limit to be fixed by this Court.



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For Petitioner : Mr.P.Ganesan

For Respondents : Mr.P.Raghunathan
for Mr.T.S.Gopalan & Co.

ORDER

This Writ Petition has been filed to quash the order dated 18.02.2017 and consequently, direct the respondent to atleast count half of the service rendered by him on daily wage basis along with the regular service for the purpose of conferment of pensionary benefits within a time limit to be fixed by this Court.

2.The learned counsel appearing for the petitioner would submit that during the year 1981, the lands belonged to the family of the petitioner were acquired by the Government for the purpose of establishment of Bharat Heavy Electricals Company, Boiler Auxiliary Plant, Ranipet. Subsequently, during the year 1988, the petitioner was offered an employment as a Nominal Muster Roll (NMR) employee in the respondent/Company where he worked in various Departments. Further, the petitioner made repeated



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representations seeking regularisation of employment. Thereafter, the petitioner filed a Writ Petition along with similarly placed persons seeking regularisation of their service and it was only thereafter in April 2006, the service of the petitioner was regularised by absorbing him in a permanent post. At the time. when his service was regularised, the petitioner was 58 years of age. Subsequently, after rendering two years of regular service, during March 2008, he reached the age of superannuation and eventually retired from service. He would further submit that he was only paid the Provident Fund amount by the respondent and he was not paid any other terminal benefits, like, gratuity. leave encashment salary, death -cum- retirement benefit etc., which will be paid to the employees who were on the regular rolls of employment in the respondent/Company for a considerable length of time. In the case of the petitioner, the petitioner was in the regular service only for a period of two years. Thus, even though he rendered 20 years of service in the respondent/Company, his regular service was only for two years and for the remaining 18 years, he was employed in the Non Muster Roll category. He would submit that the respondent ought to have



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taken into account the total service rendered by the petitioner and calculated such service for the purpose of releasing the terminal benefits on par with regular employees, but it was not forthcoming.

3.The learned counsel appearing for the petitioner would submit that the petitioner sent a representation dated 15.03.2013 seeking to disburse all the terminal benefits payable to him by treating him as an employee who had rendered 20 years of regular service for the purpose of payment of terminal benefits alone, however, the said representation has not been considered by the respondent. Hence, the petitioner filed W.P.No.11350 of 2013 seeking for a direction to the respondent to consider the representation dated 15.03.2013 and to grant the terminal benefits due by counting the service rendered in the respondent undertaking with all attendant benefits. This Court by an order dated 08.11.2016 disposed of the Writ Petition with a direction to the respondent to consider his representation dated 15.03.2013 and to pass orders thereon within a period of four weeks. Pursuant to such direction, the respondent passed an order dated 18.02.2017 stating that the



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petitioner is not entitled for payment of gratuity as he did not put in five years of regular service. Similarly, for the grant of pension, it was stated that the employees who have completed fifteen years of service alone are eligible for payment of pensionary benefits. Furthermore, a minimum period of ten years of service is required to become eligible for pension by the Provident Fund Authorities and even that was not fulfilled by the petitioner. In other words, his claim for release of terminal benefits were rejected by the respondent in *toto*. Hence, this Writ Petition.

4.The learned counsel appearing for the respondent/Company would submit that the respondent is a Public Sector Undertaking having its registered office in Tiruvarambur and several plants throughout India including one at Ranipet. As a member of the land giver's family, the petitioner was to be given an opportunity for employment and there are hundreds of such families who have given lands and none of them was given permanent employment. All of them were provided with jobs subject to availability and they were given opportunities to work as manual labour and a wage not less than the minimum rate of wages. Admittedly, the



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petitioner, though not a regular permanent workman, was a workman within the meaning of Sec.2(s) of the Industrial Dispute Act. The claim of the petitioner is that during the year 1988, he was only engaged as an NMR employee and he was absorbed in service in April 2006. The plea of the Petitioner is that he ought to have been regularized much earlier than 2006. This claim cannot be agitated before this Court. The remedy for him is only under the Industrial Dispute Act. Hence the Writ Petition itself is not maintainable. He would submit that the question of whether there was any justification for not having regularized his services earlier than 2006 is a question of fact to be decided on the basis of evidence to be let in by parties. The petitioner cannot ask this Court to go into the question and give a finding in his favour. Further, the petitioner did not have an eligible period of service. There is no such right in his favour nor can he invoke the jurisdiction of this Court under Article 226 to go into the question. The present Writ Petition is filed after nearly 10 years and should not be countenanced on the grounds of delay, laches and inaction. The Writ Petition is misconceived and not maintainable in law.



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5, Heard the learned counsel appearing on either side and perused the material on record.

6. On a perusal of the records, it is seen that during the year 1981, the lands belonged to the family of the petitioner were acquired by the Government for the purpose of establishment of Bharat Heavy Electricals Company at Ranipet. Subsequently, during the year 1988, the petitioner was offered an employment as a Nominal Muster Roll (NMR) employee in the respondent/Company where he worked in various Departments. Thereafter, the petitioner has filed a Writ Petition along with similarly placed persons seeking regularisation of their service and the service of the petitioner was regularised by absorbing him in a permanent post. The petitioner was 58 years of age when his service was regularised, After rendering two years of regular service, he reached the age of superannuation and retired from service and he was not given terminal benefits. There is special enactment for agitating the issues before the Competent Forum.



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Hence, this Writ Petition is not entertainable. This claim cannot be agitated before this Court. The remedy for the petitioner is only under the Industrial Dispute Act. Being efficacious, the petitioner has to exhaust the said remedy. Accordingly, the petitioner is given at liberty to approach the Competent Forum. The period during which the Writ Petition is pending before this Court is to be taken into consideration for the purpose of condoning the delay of filing the Industrial Dispute. The period of pendency of Writ Petition may be excluded in view of Section 14 of the Limitation Act.

Accordingly, this Writ Petition is disposed of with liberty to the petitioner to proceed before the Competent Forum. No costs.

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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To:

The Additional Manager (HR),
Bharat Heavy Electricals Limited
(BAP) Ranipet,
Ranipet-632 406.
Vellore District.



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V.BHAVANI SUBBAROYAN, J,
mps

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