



W.P.Nos. 4673 and 7413 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2024

PRONOUNCED ON : 19.08.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.Nos. 4673 and 7413 of 2015

W.P.No.4673 of 2015

The Management,
Bharat Heavy Electrical Ltd,
Rep by its Senior Deputy General Manager (HRM)
Boiler Auxiliaries Plant,
Ranipet 632 406

...Petitioner

-VS

1. The Presiding Officer,
Central Government Industrial Tribunal,
Cum Labour Court, Shastri Bhavan,
Chennaiu

2. BAP Employees Union,
Rep by its General Secretary,



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Regn.No.373/NATR
(Participative Union)
Bharat Heavy Electrical Limited,
Ranipet 632 406

...Respondents

Prayer in W.P.No.4673 of 2015: Writ Petition is filed to issue a Writ of Certiorari to call for the records connected with I.D.No.38 of 2013 on the file of the first respondent and quash the award dated 28.11.2014.

W.P.No.7413 of 2015

The General Manager,
M/s. Bharat Heavy Electrical Ltd,
Trichy 620 014

...Petitioner

-v-

1. BHEL Mazdoor
Sangam / BMS,
Rep by its General Secretary,
C2/109, Kilasapuram,
BHEL Township,
Trichy 620 014.

2. BHEL Desia Thozhilalar Sangam/DTS,
Rep. by its General Secretary, A3/75,
Township, BHEL, Trichy-620014.



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3. BHEL Labour Liberation Front
Rep by its General Secretary, B2/429,
BHEL Town Ship Kilasapuram, Trichy-620014.
4. BHEL PriyarThozhilalar Nala UrimaiSangam,
Rep by its General Secretary, 166, RVS Nagar,
Vengur Trichy-620013.
5. BHEL Marumalarchi Employees Progressive Union/MLF,
Rep by its General Secretary,
B3/348F, BHEL Town Ship Kilasapuram,
Trichy-620014.
6. BHEL Democratic Trade Union/AITUC,
Rep. by its General Secretary, 334/4,
Ezhilnagar, Boiler Project(post), Trichy-624014.
7. Boiler Plant Workers Union,
Rep. by its General Secretary, 3/343, Thirunagar,
Pappakuruchy, Kattur Post, Trichy – 620019.
8. BHEL all Technicians Union
Rep. by its General Secretary, E2/372,
BHEL Township, Kailasapuram, Trichy-620014
9. Boiler Plant Anna Workers Union
Rep. by its General Secretary, 14A,
South Street, Kattaipar, Trichy-620013.



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10. Boiler Plant Dr. Ambedkar Employees Union,
Rep by its General Secretary, B3/268-F, BHEL Township,
Kailasapuram, Trichy-620012

11. BHEL Employees Progressive Union/LPF,
Rep by its General Secretary, B3/352,
BHEL Township, Kailasapuram, Trichy-620012

12. Boiler Plant Employees Union/INTUC,
Rep. by its General Secretary, 2&4,
Building BHEL, Trichy-620014.

13. BHEL workers Union/CITU,
Rep by its General Secretary, C2/678F,
Kailasapuram, Trichy.

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

...Respondents

Prayer in W.P.No.7413 of 2015: Writ Petition is filed to issue a Writ of Certiorari to call for the records connected with I.D.No.24 of 2012 and quash the award dated 28.11.2014 passed by the 14th respondent, i.e, The Presiding Officer, Central Government Industrial



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Tribunal cum Labour Court, Chennai.

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W.P.No.4673 of 2015

For Petitioner : Mr.Vijaya Narayanan, senior counsel

for Mr.John Jachariah

For Respondent-1: Tribunal

For respondent-2 : Mr.Balan Haridas

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For Petitioner : Mr.Vijay Narayanan, Senior counsel

for Mr.Sanjay Mohan

for M/s.Ramasubramanian and Asso.

For Respondents 1 to 3

5 to 7, 9 to 13 : Mr.V.Ajay Khose

For Respondents 4 and 8: Served -No Appearance

For Respondent 14 : Tribunal



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COMMON ORDER

A common judgment is being pronounced in these writ petitions since the issues involved in both the writ petitions are more or less the same and the facts overlap.

2. These writ petitions have preferred against the common award passed in I.D.Nos.24 of 2012 and I.D.No.38 of 2013.

3. I.D.No.24 of 2012 is in respect of the petitioner's factory at Trichy and I.D.No.38 of 2013 is in respect of their factory at Ranipet.

4. W.P.No.7413 of 2015 is filed to quash the award in I.D.No.24 of 2012 and W.No.4673 of 2015 is filed to quash the award in I.D.No.38 of 2013.



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FACTS OF THE CASE AND THE ORDER OF THE FIRST

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RESPONDENT:

5. The facts giving rise to these Writ Petitions are herein below set out:

W.P.No.7413 of 2015 as already stated is filed for issuance of certiorari to quash the Award dated 28.11.2014 in I.D.No.24 of 2012 passed by the first respondent. The facts of the Ranipet Unit is also identical except for the fact that the Failure Report had not been despatched to the appropriate Government.

6. In the affidavit filed in support of the petition, the petitioner would submit that it is a Central Public Sector Enterprise and having manufacturing units at various locations throughout India including



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one at Trichy and two other Units at Ranipet. W.P.No.7413 of 2015 relates to the factory at Trichy and W.P.No.4673 of 2015 relates to the factories at Ranipet. The petitioner would submit that the petitioner is bound to implement the guidelines issued by the Department of Public Enterprises with reference to areas like revision of pay / allowances, incentives and bonus, implementation of presidential directives on reservation policy, recruitment policy, Deputation Rules for employees from Central Government to PSUs' besides other service related benefits. Since the petitioner is a multi-locational Government Company, all the policy issues are formulated centrally at the Corporate Office at New Delhi and thereafter forwarded to the Units / Offices across the country for implementation.

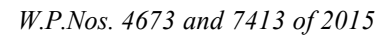
7. It is the contention of the petitioner that their employees including those in the workmen category are paid on a monthly basis



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irrespective of the number of days they work in a month. The weekly holiday is granted in terms of the statutory provisions. As per Section 41 of the BHEL standing orders, every employee is entitled to holiday with wages for a whole day of any week. In cases of unauthorized absence /extra ordinary leave, salary is deducted on the basis of 30% calculation on a month. The petitioner company would submit that the Unions cannot dissent to this deduction as it pertains to the encashment of Earned Leave (E.L.) and Half-Pay Leave (H.P.L.). The gratuity is payable as per the statutory provisions.

8. It is the case of the petitioner that leave encashment rules of the petitioner company provides the extent of leave encashment, accumulation limit etc., however the method of calculation of leave encashment is given in Establishment Accounts Manual. This manual was silent about the number of days in a month that had to be taken



9. A proposal on the above lines was approved by the management and on 30.01.2004, a circular to this effect had been notified. The effective date of such calculation was to be 24.01.2004 and an interoffice memo dated 06.02.2004 was issued. However, on 03.06.2005 the Resident Audit Officer raised an objection to this circular dated 30.01.2004 as the same had huge financial implications



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in the cash outgo and it was significant deviation from long established practice.

10. The audit objection further stated that the Judgement of the Hon'ble Supreme Court was with reference to payment of gratuity and drawing its parallel to leave encashment was absolutely erroneous. The leave encashment being a cash equivalent of a leave salary comparison can only be made with salary since gratuity is payment given in recognition of service rendered by an employee.

11. The audit objection was also to the effect that the practice of 30 days to constitute a month for the purpose of leave encashment was being followed in a majority of the public sector enterprises and Government organizations. They therefore held the circular dated 30.01.2004 to be bad as it had resulted in excess expenditure of 13.14



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crores.

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12. In the light of the above, the petitioner was advised once again to amend the rules for calculating encashment of leave on the basis of 30 days a month. Since the change of computation formula would amount to change in service condition it was felt that notice under Section 9 A of the Industrial Dispute Act, herein after called the Act, had to be given by way of abundant caution.

13. On 07.04.2007, the petitioner had issued a notice under Section 9 A of the Act, informing the workmen that the computation of leave encashment would be on a 30 day basis. Immediately, the respondents had raised a dispute on 17.04.2007 before the Labour Officer, Vellore regarding the above as per the provisions of the Act to which the petitioner had also filed their objections.



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14.The petitioner would submit that meanwhile the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises had once again issued an office memo dated 11.12.2008 directing all Central Public Sector Enterprises including BHEL to follow 30 days basis to compute leave encashment. Thereafter, since the parties were unable to reach the settlement, the Assistant Commissioner of Labour sent a failure report to the Government on 31.10.2007 in respect of the Trichy Unit and as regards the Ranipet unit the failure report was recorded on 17.03.2009.

15. In view of this direction from the department of public enterprises the corporate office of the petitioner company has issued a circular dated 30.12.2009 bearing Ref.No.037/PPX/2009 informing



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their employees that the 30 day rule would be applicable to recruits who have joined the Rolls of petitioner company on or after 01.01.2010 and in respect of employees appointed earlier, leave would be calculated on the basis of 26 days as per the earlier circular until further orders.

16. In the mean time the appropriate Government became the Government of India by virtue of an amendment to the Act. Therefore, with effect from that date, the Government of Tamil Nadu ceased to be the appropriate authority. By virtue of this amendment, despite receipt of the failure report, no reference under Section 10 of the Act was made by the Government of the Tamil Nadu. In the case of Trichy Unit the failure report had been dispatched to the appropriate authority which then was the Government of Tamil Nadu whereas in the case of the Ranipet unit the failure report was only recorded and



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there is nothing to show that the report of the Conciliation officer had been forwarded to the appropriate authority. However, on 01.09.2011, the petitioner had issued a circular informing the workman that the 30 days period would be extended to all the employees.

17. By reason of this change in the service conditions brought about on 01.01.2011, the Units both at Trichy and Ranipet had raised a dispute against the circular before the Assistant Labour Commissioner (Central) vide their letter dated 04.11.2011 which was followed by another letter dated 22.12.2011.

18. The respondent Unions had also filed Writ Petition No.30157 of 2011 before this Court challenging the method of calculating the leave encashment on the basis of 30 days instead of 26 days. This Court was pleased to pass the interim orders. The



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petitioner was ordered to deposit the differential amount of leave encashment of 30 days a month and 26 days a month into a fixed deposit in a nationalised bank in the name of the employee. This was modified by order dated 23.12.2012 made in MP.No.1 of 2015 in W.P.No.4673 of 2015 in and by which the differential amount in respect of the employees was directed to be placed in a fixed deposit in the name of the petitioner. The Government had referred the following issue for adjudication to the 1st respondent.

“Whether the action of BHEL changing 26 days formula into 30days for computation of EL encashment in violation of Section 9A is legal and justified? If not, to what relief the employees are entitled?” (Trichy Unit).

Whether the action of the management in respect of changing service condition without issuing notice under



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Section 9A of the Act is justified or not? If not to what relief the workmen (Ranipet Union) are entitled to?

19. Before the Tribunal, a joint trial was conducted in respect of both I.D.No.24 of 2012 and I.D.No.38 of 2013. The respondent did not examine any witnesses and by way of consent, Exs.W1 to W28 were marked. On the side of the petitioner in respect of their Ranipet Union, one Selvam was examined as M.W1, Melvin Bennet Roy was examined as M.W2 and V.K.Natarajan was examined as M.W3 and Exs.M1 to M38 were marked on the side of the management. After hearing the parties, the Tribunal had answered the reference in favour of the respondent/workman. Aggrieved by the same, the Management is before this Court.

SUBMISSIONS:

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20. The arguments advanced by the learned counsel appearing on behalf of the learned counsel for the petitioner which has been set out in the form of written arguments would contend that it is only the Units at Trichy and Ranipet where the petitioner's have been unable to implement the circular dated 17.04.2007 with respect to the calculation of leave encashment from 26 days to 30 days as set out in Section 9A. The Bangalore Unit had challenged the same in I.D.No.232 of 2009 which has gone in favour of the management. The Unions at Haridwar and Hyderabad had also challenged the change of the calculation before the High Court at Nainital and the High Court at Hyderabad. The writ petitions filed by them were dismissed. The calculation of earned leave divided by 30 days has been implemented in the rest of India. It is their contention that this leads to a disparity between the similarly placed employees.



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21.He would argue that the finding of the Tribunal that Section 9A notice had not been issued is perse erroneous since the notice had already been issued on 17.04.2007 which has been marked as W3 and M.18. Therefore, once a notice has been issued, there cannot be another notice with reference to the very same proceedings. The notice dated 17.04.2007 has been kept in limbo and it is neither nullified, withdrawn nor cancelled. The circular dated 30.12.2009 had been issued only on the basis of the earlier Section 9A notice dated 17.04.2007.

22.The learned senior counsel would submit that the Conciliation Officer had submitted a failure report on 31.10.2007 and had forwarded the same to the Secretary to the Government through the Labour Commissioner, Chennai in respect of the Trichy Unit. The learned senior counsel fairly admitted that the failure report insofar as



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the Ranipet Unit was not forwarded to the Government. He would further submit that the Tribunal has only relied upon the documents filed in the case of the Ranipet and has not considered the fact that in the case of the Trichy Unit, the failure report has reached the Government and therefore, it cannot be treated in the same manner as the Renipet Unit.

23.The learned senior counsel would further submit that as per Rule 12(4) of the Industrial Disputes Act, the failure report has sent to the Secretary to Government through the proper channel, i.e., Labour Commissioner for ensuring compliance of the statutory provisions by the Government. He would submit that once the failure report has been recorded the petitioner company was under the genuine belief that the Conciliation officer has complied with the provisions of Section 12 (4) of the Act.



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24. The learned senior counsel would further submit that the circular dated 30.12.2009 (Ex.M23) had been partially implemented i.e changes were implemented for those joining after 01.01.2010 while keeping the changes pending in respect of those who had been recruited prior to 01.01.2010. Thereafter, on 01.09.2011, under Ex.M24, the 30 day formula was implemented in respect of all the employees. This is only pursuant to the earlier notice dated 17.04.2007-Ex.W3-M18. Therefore, the finding of the Tribunal that a fresh notice was required is totally erroneous.

25.The learned senior counsel would further submit that the Tribunal by coming to the conclusion that there has been a violation of the provisions of Section 33 (2) of the Act has contradicted the above finding by stating that notice ought to have been given under the



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amended law of 2010. By taking such a contradictory stand the Tribunal has admitted that the Conciliation initiated earlier had come to an end by reason of the amendment and therefore there was no Conciliation. He would further submit that once the 1st respondent had come to the conclusion that the notice was issued under the said rules the findings of the 1st respondent that Conciliation would come to an end only on the receipt of the failure report by the government is erroneous.

26. In support of this contention he has chosen to rely upon the Judgement reported in ***1985 (1) LLJ 340 – EID Parry Staffs Association and others Vs. DCL***, which is the Judgement of the Andhra Pradesh High Court. The petitioner therein were the employees of Parry and Company Limited which is a subsidiary of E.I.D parry (I) Ltd. The challenge was to the seniority list prepared



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for effective retrenchment. This was challenged by the union before the Conciliation officer and the same was admitted for Conciliation. The petitioners had also filed a Writ Petition on 12.09.1983 and the retrenchment was given effect from 14.09.1983.

27.The learned Judge has made this observation as he was of the opinion that once the failure report has been despatched by the Conciliation officer to the Government it would be fairly reasonable to presume that the Government had received the report. The same would apply in the instant case with reference to the case of Trichy. That apart he would submit that the management cannot be made to await indefinitely to implement the change.

28.In the Judgement reported in **1989 (1) MLJ 425 – Gordon Woodroffe Employees Union Vs. State of Tamil Nadu**, the learned



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Judge has observed that once the management complies with the provisions of the Act it cannot be said that the management owes public duty or statutory duty to await the reference which could be made at the instance of the workers. Therefore, it is the contention that there was no necessity for the petitioner to issue the second notice as no reference had been made by the appropriate authority.

29.It is also the contention that the respondent union cannot as a matter of right claim calculation of wages encashment of leave on 26 days a month since the position prior to 30.01.2004 was that encashment was calculated on 30 days a month and the Management was only reverting to the original petition. He would therefore pray that the Writ Petitions to be allowed.



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30.The sum and substance of the argument of Mr.Balan Haridas, learned counsel appearing for the second respondent in W.P.No.4673 of 2015 is that bilateration is the fulcrum of the industrial movement and this is evident from the fact that Section 9A notice has been incorporated into the Act. It is the contention of the respondent that on 30.01.2004 the workmen were given the benefit of a month being calculated as 26 days which benefit they have enjoyed for nearly 3 years. Thereafter, the change was sought to be made by Section 9A notice on 17.04.2007. Pending these proceedings and after the failure report the petitioner had sought to implement the encashment of leave by calculating it as a 30 days period and not a period of 26 days.

31.After the failure report the petitioner by the circular dated 30.12.2009 had informed the employees that the change in formula computation and leave encashment would be applicable to new



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recruits who have joined the petitioner company on or after 01.01.2010 and with reference to employees who had joined prior to 01.01.2010 the same was kept in abeyance.

32.In the interregnum the appropriate authority had been changed from the State Government to the Central Government by an amendment in the Act and on 01.09.2011 the circular effecting the change in computation and leave encashment has been made applicable to all employees. It is the contention of the learned counsel that in the circular dated 30.12.2009 the petitioner had informed that the change in formula would be applicable only to new recruits and not to old recruits and this service condition continued till 01.09.2011 in so far as the method of calculating the leave encashment salary.

33.The learned counsel would further submit that from 2007 the



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service condition with reference to the calculation of the leave encashment salary was 26 days and this benefit has been made available to all the workmen till 30.12.2009. Thereafter they came to understand that the change in the number of days from 26 to 30 days would become effective only with reference to new recruits and nearly 2 years thereafter i.e., 4 years after the period of leave encashment had been made effective as 26 days, the petitioner had brought about a change in the service condition by introducing 30 days leave encashment system to all employees. Therefore, there was a necessity for compliance of the provisions of Section 33 (1) of the Act as the Conciliation proceedings was still on.

34.The learned counsel would submit that the appropriate authority had not received the failure report and therefore under Section 20 (2) (b) of the Act the Conciliation had not concluded. It is



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their contention that the circular dated 01.09.2011 is a fresh cause of action. The learned counsel would submit that this circular is a change in service condition which requires the issue of notice under Section 9 A Act. Since by efflux of time the payment of wage under the head of leave encashment had become a condition of service, even if the State Government continued to be the same a notice under Section 9A was mandatory.

35.Mr.V.Ajay Khose, learned counsel appearing for the respondents 5 to 7 and 9 to 13 in W.P.No.7413 of 2015 would add to the above arguments by stating that there is no question of presumption since the provisions of Section 20 (2) (b) is mandatory. He would submit that even if the appropriate authority continued to be the State Government the failure report in the case of Trichy unit had not been received by the Government before the change had been



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introduced as the failure report has been forwarded only on 25.05.2012, whereas the change has been effected on 01.09.2011.

36.It is also his contention that before implementing the change no steps have been taken by the petitioner company to verify as to whether the failure report had been received by the appropriate authority. Therefore, taking note of the fact that the failure report had been forwarded only after 25.05.2012 (though this document has not been marked at the Trial before the 1st respondent the same is a Government document which is not seriously objected to by the petitioner, this Court is referring to the same), it is clear that the Conciliation proceedings had not concluded as contemplated by Section 20 (1) (b) of the Act.

37.He would rely upon the followig Judgements:



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(i) **1999 (6) SCC 275** – Lokmat Newspapers Pvt. Ltd., Vs. Shankarprasad with particular reference to paragraph No.37.

(ii) **2000 (4) SCC 245** – Indian Overseas Bank Vs. I.O.B Staff Canteen Workers' Union and another, with particular reference to paragraph No.17.

(iii) **2018 (6) SCC 195** – Paradeep Phosphates Limited Vs. State of Orissa and others, with particular reference to paragraph No.21.

(iv) **2022 (3) SCC 803** – Indian Overseas Bank and others Vs. Om Prakash Lal Srivastava, with particular reference to paragraph No.83.

DISCUSSION:

38. Heard the extensive arguments of both sides. Before discussing the issue on hand it would be useful to extract the following provisions of the Act, which are relevant for the discussion.



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Section 9A. Notice of change.

- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any [settlement or award] [Substituted by Act [46 of 1982](#), Section 6, for certain words (w.e.f. 21.8.1984).]; or



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(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

Section 12. Duties of conciliation officers.—

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice



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under section 22 has been given, shall hold conciliation proceedings in the prescribed manner. (2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. (3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government 2 [or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute. (4) If no



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such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. (5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, 3 [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to



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the parties concerned its reasons therefor. (6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: 1 [Provided that, 2 [subject to the approval of the conciliation officer,] the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.]

Section 20. Commencement and conclusion of proceedings.—*(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.*



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(2) A conciliation proceeding shall be deemed to have concluded—

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under section 17, as the case may be; or

(c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal under section 10 during the pendency of conciliation proceedings.

(3) Proceedings before an arbitrator under section 10A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date



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or the reference of the dispute for arbitration or adjudication, as the case may be and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under section 17A.

Section 33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—*(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—*

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such



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proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that



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workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—



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(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or (b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

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39.The following are the dates and events which are relevant for the discussion:

Date	Description
30.01.2004	Inter office memorandum issued by the Corporate Office, approving calculation of leave encashment at 26 days as a month with effect from 24-1-2004.
03.06.2005	Objections raised by the Resident Audit Officer to the



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Date	Description
	inter office memorandum dated 30-01-2004 as follows: • The Circular dated 30.01.2004 had huge financial impact in cash outgo and was a significant deviation from the long running practice. Implementation of the revised methodology should have been approved by the Board of Directors and not merely by the Committee of Directors. • One of the reasons given for implementation of the Circular dated 30.01.2004 was a judgment of the Supreme Court with regard to the Payment of Gratuity Act. Drawing parallels with leave encashment was erroneous. Leave encashment is actually cash equivalent of leave salary and logical comparison can only be made with salary. All employees get salary on a monthly basis irrespective of the number of days they worked in a month and not 26 days. Gratuity is a payment given in recognition of the services rendered by an employee which is the reason for taking into account the actual number of days which an employee worked in a month. • The paractice of treating 30 days to constitute a month for the purpose of leave encashment is followed by a manority of public sector enterpises, government and other organizations. • The decision of BHEL to treat 26 days to constitute a month for leave encashment is therefore irregular and has resulted in excess expenditure of Rs.13.14 crores.



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Date	Description
07.04.2007	BHEL Corporate Office Unit advised all the units including the Petitioner to issue Sec 9A Notice and then effect the change.
17.04.2007	Petitioner issued notice under section 9A. At relevant time the State Government was the appropriate authority for the Petitioner Company
18.10.2007	Petitioner submitted reply to the objections of the Union stating, that prior to 2004 the leave encashment was calculated on the basis of 30 days and that there had been an audit objection and hence the change, before the Labour officer, Vellore.
11.12.2008	Department of Public Enterprises issued an office memorandum directing all Public Sector Units including the Petitioner to compute the leave encashment on the basis of 30 days and has stated as follows: Many CPSEs are following 30 days month for the purpose of leave encashment. The adoptions of 26 days month calculation of leave encashment by some CPSEs have attracted avoidable audit paras. In order to bring about uniformity on the above issues across the CPSEs, it has been decided after careful consideration that CPSEs should adopt 30 days' month for the purpose of calculating leave encashment." Therefore, it directed the Petitioner Unit that: "All the administrative Ministries/ Departments concerned with the CPSEs are requested to issue Suitable directions to the CPSEs under their



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Date	Description
	administrative control in this regard."
18.12.2008	Letter sent by the Petitioner to the Labour Officer, Vellore, to reopen the case for further hearing.
17.03.2009	Failure of conciliation was recorded by the Labour Officer, Vellore.
30.12.2009	Petitioner informed the employees of the change in formula of the computation of encashment of earned leave/half-a-day leave and that it would be applicable for new recruits from 01-01-2010 and change for employees who joined prior to 01-01-2010, the circular was kept in abeyance.
15.09.2010	By an amendment to the ID Act, the Central Government became the appropriate Authority for the Petitioner
01.09.2011	The Corporate issued a circular bringing it effect the change in computation of the leave encashment policy.
17.09.2011	Dispute raised before the Assistant Labour Commissioner (Central 1) by the respondent union.

40. The entire dispute between the petitioner management and the respondent workmen revolves around the question as to whether a fresh notice under Section 9A was required in order to implement the



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change in the number of days in a month for calculating the leave encashment for 26 days as implement by IOM dated 30.01.2004 to the 30 days period originally notified by way of Section 9A notice dated 17.04.2007 and ultimately implemented by a circular dated 01.09.2011. A reading of Section 9A makes it very clear that an employer cannot effect any change in the service condition of any workmen without giving the workmen, who are likely to be effected by change, a 21 days notice. This Court has to therefore analyse if the subsequent circular on 01.09.2011 would amount to a change in service. The above narration of the dates and events would show that on and from 24.01.2004 the workmen had been receiving leave encashment salary calculated by treating a month to be 26 days. This service condition continued right upto 17.04.2007 i.e., for over 3½ years until the petitioner had issued the Sec 9A notice informing the workmen about the following changes:



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“The computation of a day’s wage for the purpose of leave encashment was aiculated by dividing the monthly wage by 30. However, vide Circular dated .01.2004 an amendment to the Establishment Accounts Manual was carried out providing that while computing a day’s wage for leave encashment amount, the rate of encashment per day of leave shall be first arrived at and for this nurpose the monthly rate of Basic Pay including special pay, personal pay, Welding Allowance, Non-practicing Allowance, if any, and Dearness Allowance shall be added and the sum so arrived at, would be divided by 26. It was provided that the resultant figure shall be the rate of encashment per day of leave. Amendment to this effect was carried out on 30.01.2004 fer the purpose of encashment of Earned Leave.



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Similar amendment was carried out in para 7.14 of the Establishment Accounts Manual on 21.08.2006, to provide same computation formula for the purpose of encashment of HPL.

The matter has been reconsidered. It is found that aforesaid computation formula is not in consonance with the DPE's instructions as also in consonance with practices in other Public Sector Undertakings.

It is, therefore, proposed to revert back to the earlier computation formula for calculating a day's wage by dividing the monthly wage by 30° days instead of 26 days.



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*On expiry of the notice under Section 9-A the
change will be brought into effect.*

41. This notice was immediately challenged by the union by raising a dispute and the matter was pending before the Conciliation officer. The Conciliation officer in respect of both the units had given their failure report. As regards the Trichy unit the Conciliation officer has forwarded the failure report to the Government. However, there is nothing to show that this notice has been received by the Government and from the document that has been filed by the respondent union in the course of the arguments it is seen that the same had been forwarded to the Government only on 25.05.2012. In the case of Ranipet unit there is no evidence to show that the notice has even



been forwarded to the appropriate authority.

42. Therefore, in the light of the provisions of Section 20 (2) (b) the Conciliation proceeding has not concluded as Section 20 (2) (b) makes it clear that the Conciliation proceedings will be deemed to have concluded only when the report of the Conciliation officer is received by the appropriate government. In the meanwhile there has been an amendment to the act in and by which the appropriate government has become the central government.

43. Further, the respondents would also show that on 30.12.2009 the petitioners had taken a conscious decision that the change in the formula of computation of leave encashment salary would be calculated on the 30 days period for new recruits who have been employed from 01.01.2010. In the case of employees who have



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joined prior to 01.01.2010 the computation would continue to be as intimated by the Inter Office Memorandum dated 06.02.2004 till further orders. Therefore, after the failure of the Conciliation proceedings the workmen of these units who had joined prior to 01.01.2010 were informed that their service condition in so far as it related to the encashment of leave would be of 26 days formula. Thereafter, all of a sudden on 01.09.2011, nearly 7 years and 7 months after the initially implementation of the 26 days period ie., 24.01.2004, the following circular has been issued:

“1. Presently, 26 days month is taken from computation of encashment amount of leave as per the Establishment Accounts Manual (Edition III, Chapter VII). However, vide corporate HR circular No.037/PPX/2009, the computation of encashment amount of Leave was changed from 26 days month to 30



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days month for new recruits joining BHEL on or after 01.01.2010.

2.In view of specific instructions issued by DPE on the subject which states as “In order to bring about uniformity on the issue, it has been decided after careful consideration that CPSEs should adopt 30 days month for the purpose of calculating leave encashment”, the formular for computation of encashment of leave in BHEL has been reviewed.

3.Accordingly, it has been decided to adopt 30 days month for the purpose of calculation of leave encashment for all employees who joined BHEL before 01.01.2010.

44. A mere reading of this circular would clearly indicate that



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the decision has been arrived at pursuant to a review undertaken by the DPE. The circular clearly indicates that on a review it has been decided to bring about the change in the service condition. The circular does not state that the notice dated 17.04.2007 was being given effect to. Therefore, it was mandatory that the petitioner issues a notice under Section 9 A informing the workmen of the decision taken by the DPE to review service condition. Therefore, this circular is clearly a change in the service condition of the workman. That apart, the circular seeks to change service condition that had been in the practice for over 7 years. The management had made it service condition and therefore the same could not be withdrawn unilaterally. This view finds support in the Judgement of the Hon'ble Supreme Court reported in **1999 (6) SCC 275 – Lokmat Newspapers Pvt. Ltd., Vs. Shankar Prasad**, the Judges had observed as follows:

“In view of the aforesaid settled legal position,



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there is no escape from the conclusion that the impugned notice dated 25th March, 1982 under [Section 9-A](#) which was issued long after the actual installation of the photo composing machine had fallen foul on the touchstone of [Section 9-A](#) read with Schedule IV item no.10. Such a notice in order to become valid and legal must have preceded introduction of such a machine and could not have followed the actual installation and effective commission of such a machine. The decision rendered by the Division Bench in this connection is found to be perfectly justified both on facts and in law. It must, therefore, be held that the impugned termination or discharge of the respondent was violative of the provisions of [Section 9-A](#) of the I.D. Act and he was discharged from service without the appellant's following



the mandatory requirements of [Section 9-A](#) of the I.D.

Act. Effect of non-compliance of [Section 9-A](#) of the I.D.

Act renders the change in conditions of service void ab initio”

45. In another Judgement of the Hon'ble Supreme Court reported in **2018 (6) SCC 195 – Paradeep Phosphates Limited Vs. State of Orissa and others**, the learned Judges were dealing with an issue relating to the enhancement of retirement age where an earlier decision was taken to enhance the retirement age of Central Public Sector employees from 58 years to 60 years which was later decided to roll back. Aggrieved by the same the trade union had raised a dispute stating that the rolling back of retirement age from 60 years to 58 years has been made without issuing Section 9 A notice. The learned Judges after considering the facts had observed as follows:



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20. Undoubtedly, it is a cardinal principle of law that beneficial laws should be construed liberally. *The Industrial Dispute Act, 1947* is one of the welfare legislations which intends to provide and protect the benefits of the employees. Hence, it shall be interpreted in a liberal and broad manner so that maximum benefits could reach to the employees. Any attempt to do strict interpretation would undermine the intention of the legislature. In a catena of cases, this Court has held that the welfare legislation shall be interpreted in a liberal way.

21. The grievance of the appellant-Company before this Court is that the increase in the superannuation age of the employees was temporary in nature in order to combat the losses and in no circumstances, it can be said that withdrawal of it amounts to withdrawal of customary concession or privilege or change in usage. Eighth clause of the Fourth Schedule says “withdrawal of any customary concession or privilege or change in usage”.



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The whole dispute revolves around the interpretation of the terms customary concession, privilege or change in usage.

22.In the instant case, we are mainly concerned with the term ‘privilege’. The word “privilege” as such is not defined in the Act. In the absence of statutory definition, we have to take recourse of the dictionary or general meaning of the term “privilege”. The Dictionary meaning of the word privilege means a “special right, advantage or immunity granted or available only to a particular person or ground”. In other words, a particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of others.

23.It is admitted position that the Board of Directors took the decision of enhancement of age of retirement and it came into force with retrospective effect from 27.05.1998 as mentioned in the order dated



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19.11.1998. Though, this decision implemented without the amendment in the Standing Orders and Rules, yet impliedly it got the force as a service condition since it directly relates with the service condition of the employees. Age of superannuation is an integral part of the service condition of the employee. Also, enhancement of superannuation age would impliedly amount to a privilege since it was provided particularly for the central public sector employees.

27.To sum up, we are of the view that at the very moment when the order of enhancement of superannuation of the employees came into force though temporary in nature, it would amount to privilege to employees since it is a special right granted to them. Hence, any unilateral withdrawal of such privilege amounts to contravention of [Section 9A](#) of the Act and such act of the employer is bad in the eyes of law.



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28. In view of above detailed discussion, we are of the considered view that there is no error in the impugned judgment of the High Court, hence, we are not inclined to interfere in it. Accordingly, these appeals are hereby dismissed leaving parties to bear their own cost.

46. Therefore, in the light of the above decisions, the order of the first respondent is correct and cannot be called into question. Accordingly, the Writ Petitions stand dismissed. Considering the fact that the Writ Petitions have been dismissed, the petitioner Management is directed to disburse the differential amount that is kept in deposit by them within a period of four weeks from the date of receipt of a copy of this order. No costs.

Index : Yes/No
Speaking order/non-speaking order

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