



W.P. No. 5840 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

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RESERVED ON : 12.03.2025

PRONOUNCED ON : 30.04.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 5840 of 2020

and

WMP No. 6845 of 2020

1. Bharat Heavy Electricals Limited
Boiler Auxiliaries Plant,
Indira Gandhi Industrial Complex,
Ranipet – 632 406.
Tamil Nadu

Represented by its Additional General Manager (HR).

2. Bharat Heavy Electricals Limited,
Corporate Office,
BHEL House, Siri Fort,
New Delhi – 110 049.

... Petitioners

Vs.

The General Secretary
BAP Mazdoor Sangam (BMS)
BAP / BHEL, BHEL Post,
Ranipet – 632 406.

...Respondent

Prayer in W.P.

To issue a Writ of Certiorari or any other writ or order or direction in the nature of Writ calling for the records relating to the Award dated 11.11.2019 made in



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I.D.No.91 of 2015 on the file of the Central Government Industrial Tribunal -cum-Labour Court, Chennai, and quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.M.P.

To stay the operation of the Award dated 11.11.2019 made in I.D.No.91 of 2015 on the file of the Central Government Industrial Tribunal – cum – Labour Court, Chennai and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Appearance of Parties:

For Petitioners : M/s. A.V.Arun, Ganesh V Arnala and B.Chinnammal,
Advocates
For Respondent : Mr.M.V.Siddharth , Advocate

JUDGMENT

Heard.

2. The Petitioners, being the management of BHEL, have filed the present writ petition challenging the award passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai, in I.D. No. 91 of 2015, dated 11.11.2019, whereby the Tribunal has made the following award: –

“In view of the discussions held in preceding paragraphs, the claim of the First Party petitioners, for extension of enhanced consolidated wages and wage arrears, to the TEA, recruited in a common Employment Notice 1/2007, joined before 01.01.2009



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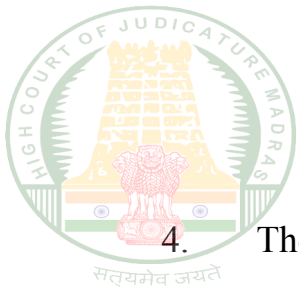
has got every merit as established on the evidence on record. The First Party Union accordingly is entitled to the relief sought for in consonance to the reference. Before parting with the order, it is felt to issue direction to the Second Respondent to take necessary steps for identification of the beneficiaries (members of the First Party Union) who by virtue of the common Employment Notice 1/2007 joined Respondent's establishment before 01.01.2009 for implementation of the enhanced wage revision.

Hence ordered.

The Second Respondent is hereby directed to take necessary steps for rectification of the anomaly crept in the circular 021/IRX/2013 dtd. 04.10.2013 by extending the enhanced consolidated wages of Rs.11,000/- to the identified beneficiaries who were recruited under the common Employment Notice 1/2007 and joined before 01.01.2009. The Respondent Management is further directed to disburse the wage arrears and all consequential allowances / financial benefits applicable to them with effect from their respective date of joining within a period of three months from the date when the Award is executable. The First Respondent is directed to coordinate with the Second Respondent in this regard.

The reference is answered accordingly.”

3. Aggrieved by the aforesaid award, the Petitioners have filed the present writ petition, which was admitted on 05.03.2020, and an interim stay of the operation of the award was also granted on the same day. Pursuant to notice issued by this Court, the contesting respondent union filed a counter affidavit dated 25.02.2025. Both parties have filed their respective written submissions. The original records from the Central Government Industrial Tribunal-cum-Labour Court have also been received by this Court.

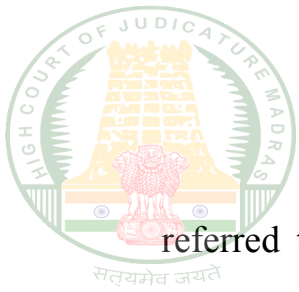


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4. The facts leading to the filing of the present writ petition are as follows.

WEB COPY The respondent union, affiliated to the Bharatiya Mazdoor Sangh (BMS), raised an industrial dispute by their letter dated 26.02.2013 before the Assistant Commissioner of Labour (Central). The dispute pertained to the demand that the consolidated wages paid to temporary employee artisans, recruited against sanctioned vacancies pursuant to Employment Notice No. 1/2007, should be revised and implemented for all such recruits with effect from 01.01.2007. The union further demanded rectification of the anomalies in the payment of Plant Performance Payment (PPP) and Special Incentive Payment (SIP), which had arisen due to the erroneous implementation of the wage revision for temporary employee artisans.

5. Upon notice from the Conciliation Officer, the management submitted a reply dated 29.04.2014, contending that the issue had already been resolved through a Joint Committee Meeting (JCM), in which the respondent union had also participated and signed the minutes. It was therefore asserted that the union was estopped from raising the present dispute. As the Conciliation Officer was unable to effect a settlement, he submitted a failure report dated 31.03.2015 to the Central Government. Thereafter, the Government of India, in exercise of its powers under Section 10(1) of the Industrial Disputes Act, 1947,



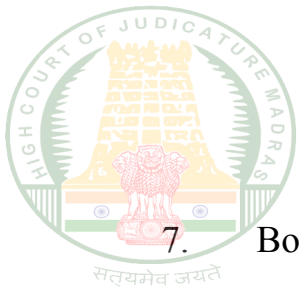
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referred the following issue for adjudication before the Central Government

WEB CGIT Industrial Tribunal-cum-Labour Court (CGIT), Chennai: –

“Whether the action of the management of BHEL Ranipet regarding not extending of arrears arising out of the enhanced consolidated wage of Rs.11000/- to the workers recruited against the same employment notice and joined before 1.1.2009 is justifiable or not? If not, to what relief the workers are entitled to?”

6. Upon receipt of the order of reference, the CGIT took up the dispute on its file as I.D. No. 91 of 2015 and issued notice to both parties. The respondent union filed its claim statement dated 08.07.2015, wherein it demanded that the employees covered by the reference be paid the revised consolidated wages of Rs. 11,000/- from their respective dates of joining and that the anomalies in the payment of Plant Performance Payment (PPP) and Special Incentive Payment (SIP) be rectified. The petitioners management filed its counter statement dated 12.09.2015. Subsequently, the respondent union filed two interim applications, being I.A. Nos. 303 and 304 of 2016, seeking to implead the BHEL Corporate Office, the second petitioner herein, and to reopen the evidence on the side of the petitioners.



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7. Both interim applications were allowed by the CGIT by order dated 07.02.2017. Upon being impleaded, the second petitioner filed a counter statement dated 16.03.2017, to which the respondent union filed a rejoinder dated 05.04.2017. During the proceedings before the CGIT, D. Venkatachalam was examined as WW1 on behalf of the respondent union, and eight documents were filed on their side, marked as Exhibits W1 to W8. On the side of the petitioners management, two witnesses were examined as MW1 and MW2, and twenty-four documents were filed and marked as Exhibits M1 to M24.

8. On behalf of the petitioners management, two specific contentions, among other issues, were raised. The first related to a Memorandum of Agreement signed by all the unions forming part of the Joint Committee for BHEL at New Delhi, dated 30.09.2009. In the said agreement, it was agreed under Paragraphs 4 and 7 as follows: –

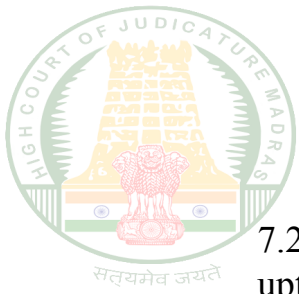
“4. Guaranteed Benefit in the Revised Salary Grades

4.1 The employees covered by this Agreement and who were on the rolls of the Company as on 31.12.2006 will be entitled to a guaranteed benefit of 30% of Basic pay + DA @78.2%.

4.2 In addition, 2 ½ (two and half) increments of @3% i.e. total 7 1/2 % of the revised basic pay will be given to all the employees who were on the rolls of the company as on 31.12.2006.”

7. Employees recruited after 01.01.2007

7.1 The employees who have joined the services of the company in the regular salary grades on or after 01.01.2007 will be deemed to have joined in the new wage structure.



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7.2 Employees who have been regularized between 1.1.2007 and upto 31.12.2009 will also be granted 2 ½ (two and half) increments of 3% i.e. total 7 ½% of revised basic pay w.e.f. the date of their regularization as a special one time dispensation.”

9. The said minutes were marked as Exhibit M21. The petitioners management also produced another award passed by the same Tribunal in I.D. No. 61 of 2014, dated 18.02.2016, in a dispute raised by the same respondent union concerning the Trichy plant, which was marked as Exhibit M20. In that award, identical contentions had been raised and were rejected by the Tribunal. The two issues that are the subject matter of the present case were similarly answered against the workmen in Paragraphs 12, 13, and 14 of the said award, which read as follows: –

"12. In the meeting of the Joint Committee it was decided that it will be payable to those who had joined as temporary employees on or after 01.01.2009. It is stated that this provision was made subject to the condition that this issue stands settled once and for all and it will not be pushed back to any earlier case. It is admitted by the petitioner in the rejoinder that the meeting held on 30th and 31 August, 2013 by which it was agreed to extend the benefit to those who joined on or after 01.01.2009 was attended by the organization to which the petitioner union is affiliated. So as a matter of right the petitioner could not claim extension of the benefit to a further period back. The claim cannot be made on the basis of the wage revision agreement as the same is not applicable to temporary employees. So there is no foundation for the claim made by the petitioner for extending the benefit of consolidated payment further.

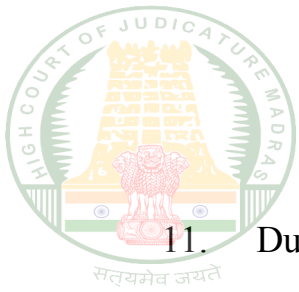


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13. Annexure-4 to Ext.W2 the circular dated 06.02.2010 gives an illustration on pay fixation in respect of employees regularized between 01.01.2007 and up to 31.12.2009. This shows that by payment of 2.5 additional increment they are getting Rs.877.5 each which is almost equal to the enhancement in the consolidated pay that is allowed to those temporary artisans who joined subsequently. So, the case that there is discrimination in the absence of increase in the consolidated amount payable to this section could not be accepted.

14. The settlement is one that is accepted by the Petitioner Union as well and it is binding on them also. The settlement does not provide for any additional benefit of 2.5 increments for the section of workers on whose behalf the claim is made. The agreement being in force also, the claim could not be entertained."

10. The management also marked the depositions of two witnesses examined in I.D. No. 61 of 2014, namely G. Sankar (WW1) and V. Vengatesan (WW2), as Exhibits M23 and M24, respectively. In his proof affidavit, G. Sankar claimed that he was the General Secretary of the BHEL Mazdoor Sangam, Trichy. Similarly, V. Vengatesan, in his proof affidavit, stated that he was the Vice-President of the said trade union. During cross-examination, V. Vengatesan (WW2) admitted that his union was a party to the agreement dated 30.09.2009, marked as Exhibit M21, which continues to remain in force. He further agreed that the long-term settlement was based on a comprehensive total package.

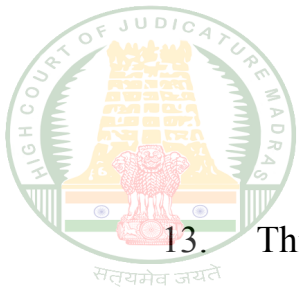


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11. During the trial, the witness for the union, D. Venkatachalam, in his cross-examination, stated that he was the General Secretary of the BMS Union at Ranipet. He further deposed that he was not aware of the dispute raised by the Trichy unit, nor of the award passed in the Trichy case. He also admitted that the representatives of the BMS Union, Ranipet, were not members of the Joint Committee meeting held at Thiruvananthapuram. The wage settlement had been given effect to from 01.01.2007.

12. In the counter affidavit, the first respondent union sought to distinguish between the terms of reference in I.D. No. 61 of 2014, raised by the Trichy union, and those in I.D. No. 91 of 2015, raised by the respondent union. In Paragraph 24 of the counter affidavit, after setting out the two terms of reference, it was contended as follows: –

“It is submitted that, both the disputes are deferent reference. Both are not one and the same equating them is not sustainable. Further, it is submitted that, we, BAP/BMS have not authorized any other union(s) function at any other unit (s) to raise any dispute (s) on our behalf. Moreover, at that point of time of filing the dispute also, both the unions functioning at Ranipet and Tiruchy are affiliated to the same Central Trade Union viz. BMS, BMS was not having Central Union status so far as BHEL Joint Committee is concerned and hence both are supposed to be independent unions only.”



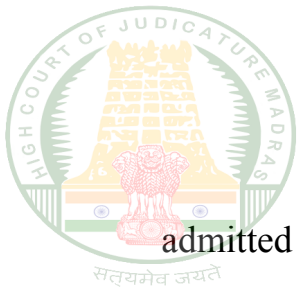
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13. This position was further elaborated in Paragraph 13 of the written

WEB SUBMISSIONS, which reads as follows: –

“The Respondent No.1 strongly disputes the argument of the Petitioner that “a Special Session of the Joint Committee was convened in the year 2013 wherein a BMS Labour Union also participated as one of the unions representing the Respondent No.1.” It is submitted that in that meeting the Respondent No.1 was not a signatory to the agreement. In fact only representative belonging to BMS Labour Union from the Haridwar Unit of BHEL had participated in the said meeting. This Labour Court from Haridwar Unit is an independent union who does actions are binding upon the Respondent No.1 as there is no Central Leader status available to BMS at that point of time as explained in the Counter Affidavit. The decisions and actions of that independent union even though affiliated to Respondent No.1 is not binding on the Respondent No.1. It may also be kindly noted that as aforesaid, the BMS Labour Union of the Haridwar Unit made a “strong plea to pay the enhanced consolidated wages w.e.f. 01.01.2007” only. However, this was not given any consideration and due weightage to the practical difficulties arising out of this issue was not duly considered. Consequently, the date fixed by the Petitioner 01.01.2009 resulted in an arbitrary action causing inequality among the workmen recruited through the same recruitment notice.”

14. However, the contentions advanced by the respondent union do not merit acceptance. When their counterpart trade union at Trichy had raised identical claims and suffered an adverse award in I.D. No. 61 of 2014 (Exhibit M20), the respondent union not only professed ignorance of the said award but also sought to disassociate themselves from the Trichy union. It was further



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admitted that the Haridwar unit had participated in the Joint Committee

Meeting during which the minutes of agreement, marked as Exhibit M21 dated

30.12.2009, were recorded. It was also acknowledged that the benefits under the said agreement had been extended to the employees covered therein.

15. In this context, the contentions raised by the counsel for the Petitioners Management in their Notes of Submissions in Para 13 which sought to make a distinction between the employees covered by the agreement and also the temporary employees which is as follows:-

“It could be seen that those temporary employees who have joined after 01.01.2007 and were regularized before 31.12.2009 have received the benefit of 2.5 increments and so the petitioner could not allege inequality on the ground that the persons who were appointed by the same notifications were discriminated. During examination of WW1, the General Secretary of the Petitioner Union has stated that it is not the case of the petitioner that the workmen who got the benefit of 2.5 in terms of settlement dated 30.04.2009 should also be given the benefit of higher wages of Rs.11,000/- for the period of temporary service. This should be true vice-versa also. Those who got increase in the pay as temporary employees shall not be entitled to 2.5% increments as claimed by the petitioners. This will destroy the parity that was intended. The additional increment was given only to those persons who did not get enhancement in the consolidated pay. Annexure-4 to Ex.W2 the circular dated 06.02.2010 gives an illustration on pay fixation in respect of employees regularized between 01.01.2007 and up to 31.12.2009. This shows that by payment of 2.5 additional increment they are getting Rs.877.5 each which is almost equal to the enhancement in the



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consolidated pay that is allowed to those temporary artisans who joined subsequently.”

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16. It is pertinent to note that although the earlier award in I.D. No. 61 of 2014 (marked as Exhibit M20) was cited as a bar to any further adjudication and was referred to in Paragraph 17 of the impugned award, the CGIT did not undertake any discussion on that issue. With regard to the agreement marked as Exhibit M21, in Paragraph 21 of the impugned award, the CGIT observed that the said agreement had been signed after prolonged negotiations based on the demands raised by the Joint Committee, and that the benefits thereunder had also been received by the employees. In Paragraph 21, the following was recorded: –

“On perusal of Ex.M21, it is found that the previous wage agreement which was effective from 01.01.1997 expired on 31.12.2006 which occasioned to have MoA (Ext.M21). The negotiations on the demands of the Unions commenced from the fourth meeting of the Joint Committee held on 21.01.2009. Since then a series of meeting of Joint Committee were held. After detailed and protracted discussions in as much as in nine meetings resulted in the agreement Ex.M21 dated 30.12.2009 in the Joint Committee Meeting held at Delhi. The revised wage was implemented and arrears paid to the regular employees.”

17. Not only did the CGIT fail to discuss the binding effect of the agreement as final and conclusive upon all parties concerned, but it also glossed over the



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earlier award passed by the same Tribunal in respect of the Trichy unit on identical issues. The Tribunal further overlooked the fact that the respondent union sought to project itself as a distinct entity for the Ranipet unit in an attempt to bypass the earlier proceedings involving the Trichy and Haridwar units, despite all three units being affiliated to the same Central Trade Union Federation, namely the Bharatiya Mazdoor Sangh (BMS). After referring to the agreement, the Tribunal proceeded to rely on certain circulars that purported to address anomalies in pay fixation and, without proper basis, introduced arguments relating to "equal pay for equal work" and alleged unfair labour practices by the petitioners management. Such an exercise of going behind the terms of a duly concluded settlement is beyond the jurisdiction of the Tribunal, as rightly pointed out by the management, particularly in light of the admissions made during cross-examination that the temporary employees concerned were distinct from the permanent employees who had already received the benefits under the settlement.

18. In this context, it is relevant to refer to the judgment of the Hon'ble Supreme Court in **Herbertsons Limited v. Workmen of Herbertsons Limited, reported in (1976) 4 SCC 736**, wherein it was held that once a settlement has been accepted by the workers and the benefits thereunder have



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been received, it is not open for a section of the workers to subsequently

challenge the settlement and seek better benefits, particularly when the

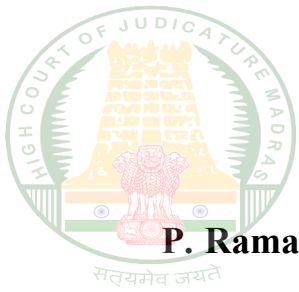
settlement continues to remain in force. The Court observed as follows: –

“It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement”

19. The Hon'ble Supreme Court, in **Tata Engineering & Locomotive Co. Ltd. v. Their Workmen, reported in (1981) 4 SCC 627**, once again reiterated the same principle, holding as follows: –

“A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication.”

20. These two decisions were further followed in a subsequent judgment of the Hon'ble Supreme Court in **Transmission Corporation of A.P. Ltd. v.**



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P. Ramachandra Rao, reported in (2006) 9 SCC 623, wherein it was held as

WEB follows: –

“As observed by this Court in Tata Engineering's case (supra) a settlement cannot weigh in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which comes into play when an industrial dispute is under adjudication. If the settlement had been arrived at by a vast majority of concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference made under the Act merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal was on the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. The decision in Herbertsons Ltd.'s case (supra) was followed.

As noted above there was no challenge to the settlement which was the foundation for the Board's decision.”

21. Although the respondent union was not a direct signatory to the settlement, it is an admitted fact that its representatives participated in the Joint Committee Meeting. The union's witness also acknowledged that the workers had received the benefits flowing from the agreement. Significantly, the respondent union has neither challenged the validity of the settlement nor demonstrated any infirmity in its execution. In any case, they are estopped from asserting a contrary position, in view of the earlier award passed by the same Tribunal in I.D. No. 61 of 2014, in a dispute raised by their Trichy unit.



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WEB 22.01.2025 In view of the foregoing, the writ petition in W.P. No. 5840 of 2020 is allowed, and the award passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai in I.D. No. 91 of 2015 dated 11.11.2019 is hereby quashed. Consequently, the connected writ miscellaneous petition stands dismissed. However, there shall be no order as to costs.

____.04.2025

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Index : Yes / No

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Copy to:

The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
Shastri Bhavan,
Haddows Road,
Chennai – 600 006.
(with records)



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DR. A.D. MARIA CLETE, J

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