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W.A.No.769 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>18.07.2025</i>
<i>Delivered on</i>	<i>16.09.2025</i>

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN
W.A.No.769 of 2022

The National Confederation of BHEL
Retired Employees Associations.
Rep.By Its General Secretary, Door
No.14, Plot No.1, BHEL Sakthi Nagar,
Vijaya Nagar, Velacherry,
Chennai-600 042.

.... Appellant

Versus

1. The Chairman and Managing Director
Bharat Heavy Electricals Ltd., BHEL House,
SIRI Fort, New Delhi-110049

2. Government of India
Ministry Of Heavy Industries And Public Enterprises,
Rep.By Its Secretary,
Department Of Heavy Industries,
Udyag Bhawan, New Delhi

.... Respondents



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Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order dated 28.01.2022 made in W.P.No.9346 of 2014.

For appellant(s): Mr.S.Gopinathan

For Respondent(s): Mr. Raghunathan for
M/s.T.S.Gopalan & Co. for R1
Mrs.A.Anuradha, CGSC for R2

JUDGMENT

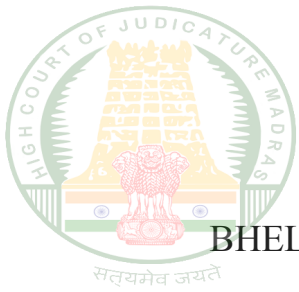
(By J.Nisha Banu,J.)

This Writ Appeal has been directed against the order dated 28.01.2022 passed by a learned single Judge of this Court in W.P.No.9346 of 2014.

2. The brief facts, which led to the filing of the present appeal are as follows:

2.1 The National Confederation of BHEL Retired Employees Association, the Appellant herein was constituted for the welfare of the Retired BHEL Employees. The BHEL is the Government of India undertaking.

2.2 The case of the Appellant is that the retired employees of the



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BHEL have made representations seeking for sanction of the pension since prior from the year 2000. The Government of India have appointed the pay revision committee and based on its Report, an official Memorandum dated 26.11.2008 was issued, wherein superannuation benefits were also prescribed. The only condition imposed in the said Memorandum that 15 years minimum service in the CPSE prior to superannuation should have been completed. However, the BHEL by its Circular, dated 07.06.2012 introduced BHEL Employees Pension Scheme applicable to those who are on rolls of the company as on 01.01.2007 and onwards, without following the Govt. of India's Memorandum dated 26/11/2008. The BHEL also passed another Circular dated 10.07.2013 introduced BHEL Emergency Needs Mitigation Scheme (ENMS) applicable to the employees who retired from the company prior to 01.01.2007, though it was not financially beneficial to the retirees and further it is not in vogue as on date.

2.3 It is further case of the appellant that the BHEL have issued two different schemes, fixing the cut-off date of retirement as 01.01.2007 which is arbitrary illegal against law. Therefore, challenging the above said Circular, the Appellant Association filed W.P.No.9346 of 2014 on the



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ground that fixing the cut-off date classifying the retired employees prior and after 01.01.2007 is violative of Article 14 of the Constitution of India and for consequential direction to the respondents to consider the representation made by the Appellant Association and to pay uniform pension to all the retired employees by fixing the scale of pay notionally with effect from 01.01.2007 with interest.

2.4 Before the learned Judge, it was argued on behalf of the appellant that by introducing the Pension Scheme only to those who were on rolls on 01.01.2007, has created a class within a class and all BHEL retirees, irrespective of the date of retirement, belong to one single, homogeneous, identifiable category/class/group and the date of retirement is purely incidental and it should not confer some benefit to one and deprive the other of the same benefit and the classification made by the BHEL vide order dated 07.06.2012, as pre and post 2007 retirees is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

2.5 On behalf of the BHEL, it was argued that BHEL introduced a scheme which provides that a part of the current wage increase due to the concerned categories of employees as from 01.01.2007 would be kept in



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deposit with the Pension Fund and after retirement, along with accumulation standing to the credit of the member, an annuity is purchased which will provide for pension to the retirees, while the past retirees, viz., prior to 01.01.2007, they were not entitled to any wage increase and consequently, there is no question of making any contribution to pension fund in respect of them nor they can make any contribution for the past service.

3. On consideration of the contentions put forth by both sides, the learned Judge, following the ratio laid down by the Hon'ble Supreme Court reported in "*Government of Andhra Pradesh and others Versus N.Subbarayudu and others*" reported in (2008) 14 SCC 702, has observed that fixing the cut off date is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut-off date unless such fixation appears to be on the fact of it blatantly discriminatory and arbitrary and that the decision of the BHEL in categorizing the employees into pre and post 2007 retirees for conferring pensionary benefits is purely a policy decision of the executive authority taking into account the



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financial, administrative or other considerations and accordingly, dismissed

the Writ Petition.

4. Questioning the order of the learned Judge, the Appellant has come forward with the present Writ Appeal.

5. Mr.S.Gopinathan, learned counsel appearing for the appellant would contend that appellant challenged the Scheme of the BHEL in No.16/WLX/2012, dated 07.06.2012 and HR Circular No.012/WLX/2013, dated 10/07/2013 introducing the pension scheme, by fixing the crucial date of 01.01.2007 is arbitrary and discriminatory, which denies the pension for the employees who retired prior to 01.01.2007 leading to creation of two section of employees, viz., pensioners and non-pensioners. Further, BHEL Employees Pension Scheme dated 07.06.2012 was based on the Office Memorandum of Department of Public Enterprises (DPE) dated 26.11.2008 by which, the superannuation benefits including pension benefits, has laid down a condition that only those who have rendered 15 years of service in

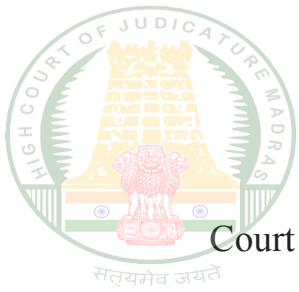


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CPSE are entitled for pension whereas in the Pension Scheme introduced by the BHEL dated 07.06.2012 fixing the cut off date without any basis.

6. He would contend that the learned Judge has failed to deal with core issue regarding denial of pension to those employees who retired prior to 01.01.2007 and the validity of certain provisions of the Pension Scheme which divided the employees into two sets, viz., as pensions and non-pensions, who are mutually exclusive categories of employees. But the learned Judge, has erroneously compared with Emergency Needs Mitigation Scheme (ENMS) which is factually incorrect as per the first respondent's circular dated 10.07.2013 and the BHEL Pension scheme is funded 100% by BHEL and it is not based on the contribution from the employees.

7. The learned counsel would rely upon a decision of the Hon'ble Apex Court reported in "*D.S.Nakara and others versus Union of India* (1983) 1 SCC 305, wherein, it was held that dividing an otherwise homogeneous class of beneficiaries by choice of date or eligibility criteria wholly unrelated to the object sought to be achieved. However, the learned Judge has relied upon the subsequent decision of the Hon'ble Supreme



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Court in “Government of Andhara Pradesh and Others versus N.Subbarayudu and others” (2008) 4 14 SCC 702 and erroneously held that

the decision of BHEL is a policy decision and fixing the cut-off date is within the domain of the executive authority and Courts should not normally interfere with the same unless such fixing appears to be blatantly discriminatory and arbitrary. The learned counsel would submit that fixing cutoff date is arbitrary and discriminatory which is creating an irrational classification within a homogeneous group and it is violative of Article 14 of the Constitution. Therefore, the learned counsel would urge this Court to set aside the order of the learned single Judge.

8. On the other hand, Mr.Raghunathan, learned counsel for M/s.T.S.Gopalan appearing for the first respondent would submit that the question of discrimination does not arise in the present case since the employees who retired on reaching the age of superannuation prior to 1.1.2007 after a period of 15 years cannot be compared with the employees who were in service as on 1.1.2007 and it does not create two set of employees. He would submit that taking into consideration the grievance



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that no pensionary benefits are available for those who retired prior to 01.01.2007, the respondent created a corpus to meet out the cost of a special scheme, called BHEL Emergency Needs Mitigation Scheme (ENMS) which came into effect in the year 2013 and it is a benevolent gesture shown by the 1st respondent. He would also submit that the pension scheme was made applicable to the employees who retired on or after 01.01.2007, by making a defined contribution to pension fund along with the pay revision, which is absent in respect of the employees who retired prior to 01.01.2007. Further the employees who retired before 01.01.2007 were governed by different pay scales and are covered by different scheme, viz., BHEL ENMS scheme and therefore, the question of treating all the employees who retired on reaching the age of superannuation after 15 years of service between 1952 and 2007 as one single homogeneous group, does not arise and hence, uniform applicability of schemes to all category of employees would certainly not possible. In other words, the learned counsel would submit that the classification of employees is permissible, however, such classification should be reasonable and should have nexus to the object sought to be achieved. He pointed out that in the present case, the classification resorted



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to by the 1st respondent by fixing the cut off dated as 01.01.2007 is a reasonable one and it is not arbitrary or discriminatory. The learned Judge has rightly dealt with the issue, which requires no interference. With these submissions, the learned counsel sought for dismissal of the Writ Appeal.

9. Heard the learned counsel for the appellant and the respondents and perused the entire materials available on record.

10. The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to



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lead to a conclusion of a violation of Article 14 of the Constitution.

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11. In “**State of Bihar versus Ramjee Prasad**” reported in (1990) 3 SCC 368, the State issued advertisements for the post of Assistant Professors and prescribed 31 January 1988 as the last date for the receipt of applications. Applicants must have had three years of experience. Contending that applicants could not meet the prescribed requirement of experience by the date prescribed, the cut-off date was challenged as being arbitrary and *ultra vires* Article 14 of the Constitution. A two judge Bench of the Hon'ble Supreme Court upheld the cut-off date and held thus:

“8. It is obvious that in fixing the last date as January 31, 1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. **As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no**



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particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc. It is not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from January 31, 1988 to June 30, 1988 is no reason for dubbing the earlier date as arbitrary or irrational.” (Emphasis supplied)

12. In “*Council of Scientific and Industrial Research v Ramesh Chandra Agarwal*” reported in (2009) 3 SCC 35, it has been held by the Hon'ble Supreme Court as under:

“29. “State” is entitled to fix a cut-off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. 02-05-1997 was the date



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fixed as the cut-off date in terms of the Scheme. The reason assigned therefore was that this was the date when this Court directed the appellants to consider framing of a regularisation scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. As rightly contended by Mr Patwalia, by choosing 2-5-1997 as the cut-off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary. 30. The High Court, however, proceeded on the basis that the cut-off date should have been the date of issuance of the notification. The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. 14 In law it was not necessary. The Court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut-off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by



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itself be a good ground for directing fixation of another cut-off date.” (Emphasis supplied)

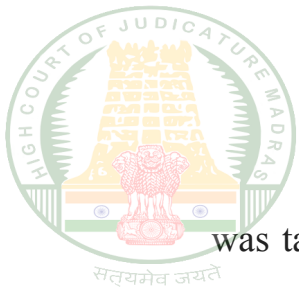
13. Coming to the case on hand, the 1st respondent notified the Pension scheme by issuing a Circular, dated 07.06.2012, which will cover the regular employees of the BHEL, who were/are on the rolls of the company as on 01.01.2007. This scheme is applicable to regular employees of the company who superannuate from service on or after 01.01.2007 with minimum 15 years of service. As per the scheme, a part of the current wage increase due to the concerned categories of employees as from 01.01.2007 is being kept in deposit with the Pension Fund and after retirement along with the accumulation standing to the credit of the member, an annuity is purchased which will provide for pension to the retirees. However, in respect of the past retirees, viz., those who retired prior to 01.01.2007 are not entitled to any wage increase and consequently, there is no question of making any contribution to pension fund nor can they make any contribution for the past service. Therefore, the employees who retired prior to 01.01.2007 cannot be treated equally with that of the employees who were in service as on 01.01.2007 and therefore, this Court does not



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find any force in the contention raised by the learned counsel for the appellant that *fixing cut off date 01.01.2007 making the pension scheme available only to those who were on rolls as on 01.01.2007 has created a class within a class among all BHEL retirees who belong to one single, homogeneous group.* The reason for fixing the cut off date as 01.01.2007 is that following the Sixth Pay Commission's recommendations the Government of India set up a second pay Revision Committee, which recommended revision of scales of pay with effect from 01.01.2007 by issuing certain guidelines, one of which is that the superannuation benefits for Central Public Sector Enterprises (CPSE) be allowed upto 30% of the basic pay and DA which may include Contributory PF, Gratuity, Pension and Post Superannuation medical benefits. Consequently, the 1st respondent issued Circular dated 06.02.2010 regarding wage revision to the employees with effect from 01.01.2007. It has been specifically spelt out in the said Circular that pension benefit will be part of the wage revision due on 01.01.2007 and therefore, obviously a new pension scheme had to be evolved giving effect to it from 01.01.2007. Therefore, it was in that context, when first pension scheme was introduced and a policy decision

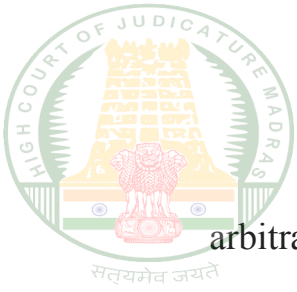


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was taken by the respondents, to give effect the Scheme from 01.01.2007.

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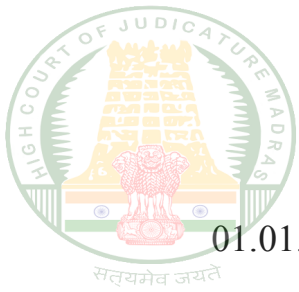
In other words, the pension scheme was meant to be applied only to those who were entitled to the benefit of revision of wages and allowances in terms of the recommendations of the Revision Committee. This cannot be made applicable to those who retired prior to 01.01.2007. Therefore, the employees who were in service prior to 01.01.2007 cannot be said to be on the same footing as those who were in service as on 01.01.2007. This, in the considered view of this Court is a reasonable classification. As such, fixing the cut off date as 01.01.2007 making a reasonable classification between the pre-retirees and post retirees, would certainly satisfy the test of reasonableness and it has a rational nexus to the object sought to be achieved when the new pension scheme is introduced and it would no way violate the Article 14 of the Constitution. Hence, the contention raised on behalf of the appellant that while all the retired employees form a homogeneous class, the retired employees prior to 01.01.2007 were being discriminated against the employees who are now in service on and from 01.01.2007 and they were denied equality, cannot be sustained and fixation of the date in the circumstances stated supra, cannot be held as irrational or



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arbitrary or had no rational basis. The reliance placed on the decision of the Hon'ble Apex Court in “**D.S.Nakara versus Union of India**” reported in

(1983) 1 SCC 305 by the learned counsel for the appellant, is not applicable to the facts of the present case. In fact, in the said decision, it has been held that *Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being found on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have rational nexus to the object sought to be achieved by the statute in question.* In fact, no scheme can be held to be foolproof, as to cover and keep in view all persons who were at one time in active service. As such, the concern of the Court should be, while examining any such grievance, to see, as to whether a particular date for introducing pension scheme, has been fixed, on objective and rational consideration. In the present case, as already held above that the employees who retired on reaching the age of superannuation prior to 01.01.2007 after a period of 15 years of service, cannot be compared with that of the employees who were in service as on



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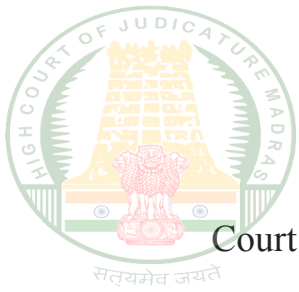
01.01.2007 and thereby, fixing the cut off date as 01.01.2007 distinguishing

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two set of persons that were grouped together before introducing the pension scheme and this classification is reasonable one and satisfies the test of reasonableness having rational nexus to the object sought to be achieved when the new pension scheme is introduced.

14. In fact, rigid interpretation made in the D.S. Nakara case, which struck down cut-off dates for pension benefits, has been significantly "watered down" by subsequent judgments. In "*State of Punjab v. Amar Nath Goyal*" reported in (2005) 6 SCC 754, the Supreme Court has held that the State can fix cut-off dates for benefits, provided they are not arbitrary or capricious, allowing for different treatment of retirees based on their retirement dates.

15. Judicial Review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration. In a catena of decisions of this

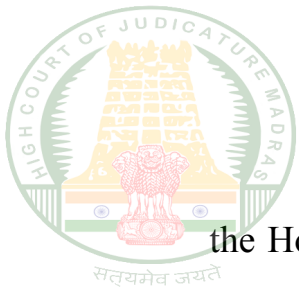


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Court and the Hon'ble Apex Court, it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the firm view that fixing cut-off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut-off date by the executive authority unless such fixation appears to be on the face of it blatantly discriminatory and arbitrary.

16. In the present case, cogent reasons have been provided as to why the cut off date has been fixed while introducing the pension scheme for the first time, which this Court has observed in the foregoing paragraphs that such fixation by distinguishing two sets of persons that were grouped together before introducing the pension scheme, is reasonable one and satisfies the test of reasonableness having rational nexus to the object sought to be achieved when the new pension scheme is introduced. Therefore, it is neither arbitrary or capricious allowing for different treatment of retirees based on their retirement dates. As has been held by



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the Hon'ble Supreme Court in “*Arvali Golf Club versus V.Chander Hass*”

reported in (2008) 1 SCC 683 and in “*Govt. of A.P. Versus P.Laxmi Devi*”

reported in (2008) 4 SCC 720, the Courts must maintain judicial restraining in matters relating to the legislative or executive domain.

17. In the light of the above discussion, we see no reason or justification to interfere with the order of the learned single Judge. Accordingly, the Writ Appeal fails and it is dismissed. No costs.

(J.N.B.J.) (M.J.R,J.)
.09.2025

Index: Yes / No

Internet: Yes / No

Speaking Order / Non Speaking Order
suk

To

1. The Chairman and Managing Director
Bharat Heavy Electricals Ltd., BHEL House,
SIRI Fort, New Delhi-110049

2.Government of India
Ministry Of Heavy Industries And Public Enterprises,
Rep.By Its Secretary,
Department Of Heavy Industries,
Udyag Bhawan, New Delhi



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J.NISHA BANU, J.
and
M.JOTHIRAMAN,J.
suk

**Pre delivery Judgment
in W.A.No.769 of 2022**

16.09.2025