

(2000) 10 DEL CK 0063
In the Delhi High Court
Case No : Civil Writ No. 7161 of 1999

Brhampal and Others

APPELLANT

Vs

Bharat Heavy Electrical Ltd. and Others

RESPONDENT

Date of Decision : 18-10-2000

Acts Referred:

Citation : (2000) 7 AD 1111 : (2001) 88 FLR 951

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Mr. R.K. Saini, for the Appellant; Mr. J.C. Seth and Mr. Amiet Andley, for the Respondent

Judgement

N.G. Nandi, J.—In this petition under Article 226 of the Constitution of India, the petitioners have been praying for relief of commanding respondent no.1 to regularise services of the petitioners w.e.f. the date of their joining and grant them all consequential benefits arising there from.

2. Mr. J.C. Seth, learned counsel for respondent nos.1 to 3 has objected to the maintainability of the present writ petition.

3. It is submitted by the learned counsel for respondent nos.1 to 3 that the petitioner through their union had earlier filed C.W.P.No.2202/91 wherein the petitioners had prayed for regularisation of their services; that vide order dated 3.3.1992, the Division Bench of this High Court has dismissed the writ petition as the reference under the Industrial Act then was pending before the Industrial Tribunal for regularisation of services of the employees of BHEL; that the petitioners did not go to the Tribunal and did not join the said reference pending and have filed the present writ petition; that the Industrial Tribunal dismissed I.D.No.159/91 and that in the award, the Industrial Tribunal has held that the workers are not entitled to any relief and passed award accordingly; that the said award has been published u/s 17(1) of the Industrial Disputes Act and in view of subsection 2 of Section 17 of the said Act, the award has become final and

cannot be called in question by court in any manner whatsoever. It is further submitted that in view of the order passed in C.W.P.No.2202/91, this petition is not maintainable.

4. It is submitted by Mr. R. K. Saini, learned counsel for the petitioners that the present writ petition is filed on a different ground, on a different cause of action inasmuch as the petitioners pray for relief of regularisation on the basis of judgment by the Supreme Court in the case of B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others, and the consequential benefits of Supreme Court Judgment be extended to the petitioners; that these petitioners earlier approached the Division Bench in C.W.P. No. 3407/94 filed by some of the workers of respondent-BHEL but the petitioners were not impleaded in the said writ petition by the Division Bench and directed the petitioners to file petition before the Single Judge and that is how the petitioners are here before this court; that these petitioners are identically placed as the petitioners in C.W.P.No.3407/94 which is pending before the Division Bench and were also the parties in C.W.P.No.2202/91 and that only prayer in this petition is of regularisation of their services.

5. It is not in dispute that these petitioners along with petitioners in C.W.P.No.3407/94 were petitioners in C.W.P.No.2202/91. I have called for the file of C.W.P.No.2202/91 decided on 3.3.1992 by the Division Bench of this court. The prayers in the said writ petition read as follows:-

"(i) Issue a writ of mandamus directing 3rd respondent to dispose of the pending industrial dispute between the workmen and Bharat Heavy Electricals Ltd. and other respondents expeditiously;

(ii) Issue a writ, order or direction calling upon the 2nd respondent not to dispense with the services of the represented workmen till the disposal of the pending industrial dispute"

(iii) Pass such other order or orders as this Hon"ble Court may deem fit and proper in the interest of the justice."

Vide order dated 3.3.1992, the Division Bench passed the following order in C.W.P.No.2202/91:-

"The petitioner in this writ petition is essentially asking for regularisation of services of some employees. The contention is that they should be regularised by BHEL. A reference in this behalf has already been made under the Industrial Disputes Act and is pending before the Industrial Tribunal. In view of that we see no reason as to why this Court should interfere under Article 226 of the Constitution.

It is then contended by the learned counsel for the petitioner that the services of these employees will be terminated which will amount to violation of Section 33 of the Industrial Disputes Act.

At the present moment no such action has been taken against anyone. It and when such action is taken the aggrieved employees will of course have remedies in accordance with law.

This writ petition is dismissed. Interim Orders vacated."

6. Admittedly, the petitioners did not approach the Industrial Tribunal in the I.D. No.159/91 then pending. The copy of the order in I.D. No.159/91 has been placed on record at page 31. It is suggested there from that following were the terms of references:-

"Whether the workmen whose names appear in Annexure-"A" are entitled to be regularised by M/s. Bharat Heavy Electricals Ltd. and if so, what directions are necessary in this respect?"

The Industrial Tribunal further observed "Even statement of claim has not been filed by the workmen so far. Even direction given by the Secretary (Labour) to the Union on 10.12.91 to file statement of claim Along with relevant documents and list of witnesses within 15 days thereof has not been complied with. This shows that the workmen are not interested in this reference. They are not entitled to any relief. I pass my award accordingly."

7. Learned counsel for respondent nos.1 to 3 has relied on the decision in the case of State of U.P. and another Vs. Labh Chand, and contended that the petitioners had alternative remedy and the Division Bench for the said reason dismissed C.W.P.No.2202/91 and that the second writ petition on the same grounds before the Single Judge of the same High Court is not maintainable.

Learned counsel for respondent nos.1 to 3 has also relied on the judgment rendered by me in C.W.P.No.5866/99 wherein following the judgment in the case of State of U.P. Vs. Labh Chand & Others (Supra), the petition was found not maintainable and hence dismissed.

8. The question posed in this petition is whether the petitioners can maintain the present writ petition in view of the order passed in C.W.P.No.2202/91 by the Division Bench of this Court.

9. As observed by the Division Bench in C.W.P. No. 2202/91, the dispute raised before the Division Bench was essentially for regularisation of services of employees of BHEL. The industrial Tribunal found the workers not entitled to any relief in the reference for regularisation of workers of M/s. Bharat Heavy Electricals Ltd. and passed the award accordingly.

10. In the case of State of U.P. & Another Vs. Labh Chand , (supra), the Supreme Court considering the decision in the case of Daryao Vs. State of U.P., has held :-

"It is a well-established salutary rule of judicial practice and procedure that an order of a Single Judge Bench or of a larger Bench of the same High Court dismissing the writ petition either on the ground of laches or non-exhaustion of alternative remedy, as well, shall not be by-passed by Single Judge Bench or

Judges of a larger Bench except in exercise of review or appellate powers possessed by it.....Second writ petition cannot be, so entertained not because the Single Judge has no jurisdiction to entertain the same, but because entertaining of such a second writ petition would render the order of the same court dismissing the earlier writ petition redundant and nugatory, although not reviewed by it in exercise of the recognised power. Besides, if a Single Judge could entertain a second writ petition of a person respecting a matter on which his first writ petition was dismissed in limine by another Single Judge or a Division Bench of the same court, it would encourage an unsuccessful writ petitioner to go on filing writ petition after writ petition in the same matter in the same High Court, and have it brought up for consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full scope and encouragement to an unscrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under Article 226 in that any order of any order of any Bench of such court refusing to entertain a writ petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh writ petition. This would only lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court for there could be no finality for an order of the court refusing to entertain a writ petition. It is why, the salutary rule of judicial practice and procedure has come to be accepted and followed as salutary rule in exercise of writ jurisdiction of courts....."

11. In the present writ petition, the say of the petitioners is that the petitioners have been working with respondent no.1-BHEL continuously for the last more than 15-20 years and that they are called contract workers and respondent Nos. 4 to 6 are the contractors through whom the petitioners are shown to be employed at present but the reality is that several contractors have come and gone yet petitioners have continued with their job and service with respondent No.1-BHEL.

12. In the case of B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others, , the Supreme Court while considering the writ petition under Article 32 of the Constitution of India directed the Government to decide whether the employment on contract labour in any process or operation or any work in the establishment should be abolished or not having regard to the relevant factors u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970. The Supreme Court also directed the Chief Labour Commissioner to inquire u/s 25(ii) (c)(a) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 whether the work done by workmen employed by the contractors was of the same type as that done by the workmen directly employed by employer.

13. The Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the "Act") is an act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. Clause b of sub-section 5 of Section 1 of

the said Act provides "If a question arises whether the work performed in an establishment is intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or as the case may be, the State Board and its decision shall be final." Clause a of sub-section (1) of Section 2 deals with definition of appropriate Government. Sub-section (i) reads "in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 is Central Government." Chapter 2 of the said Act deals with the Advisory Boards. Section 3 deals with Central Advisory Board. Section 4 deals with State Advisory Board. Section 5 deals with power to constitute committees of the Central or State Board as the case may be. Section 10 deals with prohibition of employment on contract labour.

In view of the provisions contained in the said Act and the decision in the case of BHEL Workers Association (Supra), the question of regularisation, if any, of the contract labour falls within the purview of the Act and the question can be decided only in the manner provided in the Act.

14. It may be appreciated that in I.D. No.159/91, the Industrial Tribunal did not consider the provisions contained in the said Act and the award came to be passed as there was no statement of claim filed by the workers nor list of witnesses given by the workers and Therefore found that the workmen were not interested in the reference and that is why workers were found not entitled to any relief.

I do not make any observation, as it is not necessary for the present purpose, as to whether order in I.D. No.159/91 can be said to be an award within the meaning of I.D. Act as there is no adjudication of reference on merits.

15. Learned counsel for respondent nos.1 to 3 relying on the decision in the case of Ashok Kumar Srivastav Vs. National Insurance Company Limited and Others, , has submitted that bar of res judicata contained in Section 11 of CPC will apply to the writ petition under Article 226 of the Constitution of India and that decision rendered in the writ petition would operate as res judicata in subsequent judicial proceedings.

Learned counsel for respondent nos.1 to 3 has also placed reliance on the decision in the case of Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, and contended that the bar contained in Rule 1 of Order 23 C.P.C. would apply to fresh petition under Article 226 in respect of same cause of action and fresh petition would not be maintainable when the earlier writ petition under Article 226 of the Constitution of India has been withdrawn without permission to institute fresh petition.

16. In the present petition, the petitioners through their union had earlier filed C.W.P.No.2202/91. The Division Bench passed the order in the said writ petition as reproduced above. It may be seen from the Division Bench order that the relief claimed in C.W.P.No.2202/91 was essentially for regularisation of services of the workers. The petition came to be dismissed as alternative remedy was

available to the workers and reference for regularisation of services of the workers was then pending before the Industrial Tribunal by way of I.D.No.159/91. The petitioners admittedly did not approach the Industrial Tribunal and join the pending reference nor carried the order passed by D.B. any further and the order refusing relief to the workmen came to be passed in I.D.No.159/91.

If the workers/petitioners were in any manner aggrieved with the order passed by the Division Bench then the remedy for the petitioners/workers was to pursue the matter further before the higher forum which is admittedly not been done. In the present petition, the relief is for regularisation of services of BHEL workers. Even under Order 23 Rule 1 CPC, the present petition would be barred since on the same subject matter, the second writ petition under Article 226 of the Constitution of India would not be maintainable in view of the judgment in the case of Sarguja Transport Service (Supra). The subject matter in C.W.P.No.2202/91 and the present writ petition is "Regularisation of services of BHEL workers" and what is required to be seen is whether the subject matter in the fresh petition is same as the subject matter in the previously instituted writ petition or not.

17. Even otherwise also in view of the principle laid down in the case of State of U.P. Vs. Labh Chand (Supra), the present writ petition cannot be entertained following the salutary rule of judicial practice and procedure in exercise of writ jurisdiction of courts under Article 226 of the Constitution of India.

18. In view of the above, writ petition is liable to be dismissed as not maintainable. Order accordingly.