

**IN THE COURT OF PRINCIPAL DISTRICT AND SESSIONS JUDGE/
PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
AT BALLARI.**

PRESENT

S.H.PUSHPANJALI DEVI, B.A. LL.B

Principal District and Sessions Judge/
Presiding Officer, Industrial Tribunal/
Labour Court, Ballari.

DATED THIS 18TH DAY OF FEBRUARY, 2021

KID No.8/2017

First Party/Claimant : **U.Nataraj** (Since deceased
by his LRs.)

(1) **Smt.Nagaratna,
W/o late U.Nataraj,
Aged about 45 years,
Household,**

(2) **U.Vinayak,
S/o late U.Nataraj,
Aged about 17 years,
Student,**

(3) **U.Kishor,
S/o late U.Nataraj,
Aged about 14 years,
Student,**

**All are R/o
Near Vadakaryana Temple,
34th Ward, Maddikatte,
Hospet, Ballari District.**

(Rep. by Sri.M.H.Bhat, Advocate)

..Vs..

**Second Party/ :
Management**

**The Management of NEKRTC,
Hospet Division,
Represented by
Divisional Controller,
Hospet Division,
Hospet,
Ballari District.**

(Rep. by Sri.C.Adi Basappa, Advocate)

I.A.No.IV

**Respondent/
Appellant**

**: The Management of NEKRTC,
Hospet Division,
Represented by
Divisional Controller,
Hospet Division,
Hospet,
Ballari District.**

Vs.

**Claimants/
Opponent**

**: Sri.U.Nataraj.
(Since deceased by his Lrs.)
Smt.Nagarthna & Others.**

ORDER ON I.A.No.IV

This application is filed under Section 10 (8) of Industrial Disputes Act R/w 151 of CPC to dismiss the

claim petition filed by the claimants as it is not tenable in the interest of justice.

2. The brief facts stated in the memorandum of facts are that the present petition filed by the claimants under Section 10 (4-A) R/w 10(8) of Industrial Disputes Karnataka Amendment Act, 1987 to set aside the order of dismissal passed against late U.Nataraj, the Ex-driver of the respondent. The present dispute is not referred by the Government to this Court for adjudication. Section 10(8) of Industrial Disputes Act, during the pendency of proceedings, if the workman dies it will not be abated and can be continued by the legal heirs of the workman. But, in the present case, the workman died on 29.08.2017 and the claim petition is filed on 30.10.2017, therefore, the petition itself is not maintainable under the said Act. Section 2(A)(2) of the Act is not complied, therefore the claim petition is not maintainable. Hence, prayed to dismiss the petition in the interest of justice.

3. The objection filed by the claimants that the application is not tenable in the eye of law. The legal heirs have every right to file the case before this Court. It is not necessary the legal heirs to go for reference under the provisions of Industrial Dispute Act, 1947. The legal heirs have right to challenge the order of dismissal passed by the respondent under Sections 2(A) and 10(8) of Industrial Disputes Act. They are having right over the amount due from the respondent towards the deceased employee. There is no bar in the Industrial Disputes Act, 1947 to challenge the orders passed by the employer before the Labour Court. The Labour Law is a social legislation to protect the interest, benefit and welfare of the employer and employees respectively. Therefore, prayed to dismiss the application in the interest of justice.

4. Heard the arguments of learned counsel for the respondent and learned counsel for claimants on I.A.No.IV.

5. The Points for consideration are ;

1. **Whether the I.A.No.IV filed under Section 10(8) of Industrial Disputes Act R/w Section 151 of CPC is to be allowed ?**
2. **What order ?**

6. My answers to the above points are ;

Point No.1 In the affirmative.

Point No.2 As per final for the following;

REASONS

7. **Point No.1 :-** The present claim petition is filed by the legal heirs of deceased U.Nataraj under Section 10(4-A) R/w 10(8) of Industrial Disputes Karnataka Amendment Act, 1987. The claimants prayed for setting aside the order of dismissal of deceased U.Nataraj dated 31.05.2017 passed by the respondent,

direction to pay full back-wages from the date of dismissal till the date of his death, all monitory benefits to the claimants and to provide employment to one of the legal heirs and cost of the proceedings.

8. According to the claimants, the claimant No.1 is the wife of deceased, who was an employee in the respondent Corporation said to be illegally dismissed from service on 31.05.2017. He was permanent employee under the respondent and expired on 29.08.2017. The respondent Management ordered for an enquiry by appointing an Enquiry Officer. The charge sheet was issued to the workman before the commencement of enquiry. However, as per the charge sheet the workman remained absent for his duties from 12.04.2016 till 16.01.2017 without any prior sanction of leave. Though the workman has produced the medical certificate to the concerned authorities, the management committee without considering the documents in proper manner

ordered for enquiry and dismissed him from the service against the principals of natural justice and Violation of Regulation 23 of C & D Regulations, 1971.

9. However, the Disciplinary Authority has not applied its mind properly before imposing major punishment to workman, who had not been employed anywhere from the date of dismissal till the date of his death. Therefore, the claimants alleged that as per the Amendment to Industrial Dispute Act. The present dispute filed before this Court directly as if without reference is made by the Government under Section 10(1-C) of Industrial Dispute Act, 1947. Therefore, this Court has got jurisdiction to dispose the matter as per the notification on the same ground they sought for above mentioned reliefs by this Court.

10. This Court has framed issues after the objections filed by the respondent. The present application is filed by the respondent on the ground that the petition under

Section 10(4-A) R/w 10(8) of Industrial Dispute Karnataka Amendment Act, 1987 is not applicable to the legal heirs of workman who was deceased prior to filing the petition after order of his dismissal.

11. It is important to point out **Section 10(4-A) of Industrial Disputes Act**, reads as follows ;

"Notwithstanding anything contained in Section 9-C and in this section, in the case of a dispute falling within the scope of section 2-A, the individual workman concerned may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disciplinary (Karnataka Amendment) Act, 1987, whichever is later, apply, in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under such section (1).

Further Section 10(8) of Industrial Disputes Act, reads as follows;

Section 10(8) No proceedings pending before Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse mere by reason of death or any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government)".

12. After perusal of the above Section 10(4-A) of Industrial Dispute Act, it is very clear that the dispute falling within the scope of Section 2-A relates to discharge, dismissal, retrenchment or otherwise terminates, the service of an individual workman, though shall be deemed to be an Industrial Dispute. The workman who aggrieved by the said order within six months from the date of communication of the order apply in the prescribed manner to the Labour Court for

adjudication dispute, which shall be disposed of as per Section (1) Section 10 of Industrial Dispute Act.

13. However, the present claim petition admittedly filed by the legal heirs of late U.Nataraj, who was an employee in the respondent Corporation was dismissed from service on 31.05.2017. Though he was a permanent employee expired on 29.08.2017, within the specified period of six months from the date of his dismissal during his life-time did not apply to the Labour Court against the order of his dismissal from the service. Therefore, the claimants though alleged to be legal heirs of the deceased cannot file claim petition without any reference by the Government to set aside the order of dismissal dated 31.05.2017, for back-wages and employment to one of the legal heirs.

14. No doubt, during the pendency of any reference petition, if the workman dies, then his legal heirs can proceed with the proceedings as provided under

Section 10(4-A) of Industrial Dispute Act. Therefore, the objection raised by the respondent Corporation that petition is not maintainable under the provisions of Industrial Disputes Act.

15. Therefore, after perusal of relevant provision of law, I am of the opinion that there are sufficient grounds to allow the application as no necessity to proceed with the case on merits, when the claim petition filed by the claimants as legal heirs of deceased workman U.Nataraj itself is not maintainable. Hence, answer **Point No.1 in the affirmative.**

16. Point No.2 :- In the result, I proceed to pass the following ;

ORDER

The I.A.No.IV filed by the respondent under Section 10(8) of Industrial Disputes Act R/w 151 of CPC is hereby allowed.

Consequently, the claim petition filed by the claimants under Section 10(4-A) R/w 10(8) of Industrial Disputes Karnataka Amendment Act, 1987 is hereby dismissed as not maintainable in law.

(Dictated to the Stenographer, transcribed by him, corrected, initialed and then pronounced by me in the open Court on this **18th day of February 2021**)

(S.H.Pushpanjali Devi)
Principal District and Sessions Judge,
Ballari.

kgr/-