

**BEFORE THE LABOUR COURT AT MYSORE**

**PRESENT:**

**Sri.B K RAVIKANTHA** B.A. L.L.B.,  
District Judge and Presiding Officer,  
Labour Court, Mysore.

**Dated: This the 2<sup>nd</sup> day of July 2024.**

**Ref.NO.09 OF 2022**

**First Party** : **1. Mahadeva R.**  
**2. Chidanadha Murthy M.**  
**3. Devaraja T.**  
**4. Javara N.**  
**5. Jayappa.**  
**6. Krishna D S.**  
**7. Krishna K M.**  
**8. Krishna Shetty H C.**  
**9. Krishna T M.**  
**10. Lokesh B.**  
**11. Madhu H C.**  
**12. Mahadeva.**  
**13. Mahadeva Prasad G.**  
**14. Bhaskar Raje Aras.**  
**15. Mahadevappa M.**  
**16. Mahadevaswamy N M.**  
**17. Mahendra H G.**  
**18. Mahesh M.**  
**19. Mahesh M.**  
**20. Mahesh M.**  
**21. Manikanta G N.**  
**22. Manju S.**  
**23. Mariswamy M.**  
**24. Muddumahadeva.**  
**25. Nagaraju R.**  
**26. Nagaraju H A.**  
**27. Nagendraswamy N.**  
**28. Nagesh N.**

- 29. Nanjundaswamy N.**
- 30. Naveen V.**
- 31. Ningaraju S.**
- 32. Prahallad Rao S R.**
- 33. Rajesh S.**
- 34. Rathna.**
- 35. Siddaraju H M.**
- 36. Siddaraju K M.**
- 37. Somanna H R.**
- 38. Suresh M.**
- 39. Swamy M.**
- 40. Varadesha M B.**
- 41. Venkataramana.**
- 42. Krishnamurthy.**

Represented by;  
President,  
Zenith Textiles Employees Association,  
No.2682, 1<sup>st</sup> Cross, 1<sup>st</sup> Main,  
Medarakeri Nanjugalige Circle,  
Manandavadi Road,  
Mysore-570004.

(By **Sri.L Murulidhar Peshwa** -Authorized  
Representative)

**V/s**

**Second Party** : **M/s Zenith Textiles,**  
Nanjangudu Industrial Area,  
Nanjangud,  
Mysore.

(By Sri. **A.C.Narendra.**, Advocate)

**ORDERS ON I.A.NO.3**

The second party has filed present application U/Sec.11 of Industrial Disputes Act, 1947 seeking rejection of reference of Government of Karnataka.

2. In the memorandum of facts annexed to the application it is contended that, since there are similar disputes pending before this court and Hon'ble Industrial Tribunal, Mysore, wherein the same parties have applied for conciliation records of the Assistant Labour Commissioner, Mysore and Deputy Labour Commissioner, Bengaluru. Further, it is contended that the Government has made two references. One reference has been sent to this court while the other has been sent to the Hon'ble Industrial Tribunal, Mysore. In the present reference, the management has been called upon to justify the action of removal of 42 workers from the service. Similarly, on 25.02.2020 the Government has referred a dispute to the Hon'ble Industrial Tribunal, Mysore, calling upon the management to justify the action of retrenchment of 42 workers, referring the same batch of workmen. The first party have filed claim statement in both the matters, alleging common grounds. Based on the above ground, the second party had filed a memo dated:05.04.2023 along with the order

of reference made to the Hon'ble Industrial Tribunal, Mysore, stating that there cannot be two parallel proceedings and the present reference would not be maintainable on this ground. Since, there was no counter statement of second party on record, hence, the memo filed before this court was kept in abeyance. Even, in the chief examination affidavit filed in the present case, the first party has raised identical grounds which are raised in Reference No.14/2022. Hence, prayed to allow the application.

3. On the other hand, the first party has filed objections to the said application contending that the application has been filed without any basis, it is misleading one and meant to drag on the proceedings and frustrate the workmen who are already suffering due to illegal actions by the second party. That the reference in the above matter before this court is about refusal of employment and not removal of employment as falsely claiming by the second party. The cause of actions are different in the case pending before the Hon'ble Industrial Tribunal, Mysore and this court. If the second party is aggrieved by the reference made by the Government, they are at liberty to approach the appropriate forum for the remedy. Hence, prays to reject the application.

4. The following point arises for consideration,

*1. Weather the Second party/respondent is made out grounds for rejection of reference as sought for?*

*2. What Order ?*

5. I have heard both counsels on I.A.No.3.

6. My findings on the above Points are as follows;

**Point No.1: "Negative"**

**Point No.2:** As per final order for the following;

**:: REASONS ::**

7. I have heard both learned counsels appearing on behalf of first party and second party. At the time of arguments the learned counsel for the second party submits that earlier he had filed a memo dated:25.03.2023 before this court along with order copy of the Government regarding retrenchment of 42 workers, seeking not to continue with the present reference as the same doesn't survive under law. Later, he filed an application u/s 11 of the Industrial Disputes Act, 1947 before this court seeking to reject the present reference. Since, the Government has made two references, one to the Labour

Court and another one to the Industrial Tribunal, Mysore with respect to the same workmen, for refusal of employment and retrenchment of workmen respectively. Therefore, the parallel proceedings with respect to the same subject matter cannot be continued to be proceeded with. Hence, prays for rejection of the reference.

8. On the other hand, the learned counsel for the first party submits that retrenchment is a different issue which is pending for adjudication in an appropriate forum. The cause of action involved in the present petition is entirely different from the one involved in the Industrial Tribunal. Hence, prays for rejection of the application.

9. Thus, it can be understood from the above that, there are two references by State Government in respect of same set of workmen, one sent to this court along with the issues set out in the order regarding refusal of employment to the workmen and another dispute sent to the Industrial Tribunal, Mysore along with the issues set out therein regarding issue of retrenchment, for adjudication. Thus, it becomes clear that the dispute which has been referred to this court by the Government is with regard to refusal of employment and the dispute referred to the Industrial Tribunal, Mysore is with regard to the retrenchment of services of the workmen. Admittedly, both the disputes are pending in the respective courts for adjudication.

10. From a perusal of para no.10, 12, 13 &14 of the claim statement presented by the first party, it is their specific case that they have been illegally terminated from the services by the second party to the utter violations of the provisions of the Industrial Disputes Act, 1947 and that the second party management with utter disregard to a settlement signed u/s 18(3) of Industrial Disputes Act, 1947, refused to implement the terms of the settlement, which amounted to serious unfair labour practice and that the illegal termination of the first party workmen have deprived them of their employment and that the second party is illegally refused employment of the workmen. By asserting the said facts in the pleadings, the first party workmen have sought their reliefs regarding issue of direction to the second party to provide employment to 39 workmen with continuity of services, full back wages and other consequential benefits.

11. On the other hand, the second party/management has filed counter statement, wherein apart from denying the averments made in the claim statement, they have specifically contended that the present reference and claim statement is not maintainable in view of another reference of lay-off and retrenchment dispute pending before Industrial Tribunal, Mysore.

12. Based on the pleadings of both the parties, this court has framed 5 issues in addition to the points of reference provided by the Government of Karnataka. As per the pleadings of the parties, this court has laid burden on the first party to prove as to whether the second party has illegally denied or refused the employment and that act of it is unlawful and unjust and further this court has also called the second party to prove as to whether the claim statement is not maintainable in view of another reference of lay-off and retrenchment dispute pending in Industrial Tribunal, Mysore.

13. Admittedly, the second party/management has produced the order of the State Government dated:25.02.2022, along with the application at hand. On perusal of the said document makes it clear that Government of Karnataka while making reference of an Industrial Dispute to the Industrial Tribunal, Mysore for adjudication, has framed issue casting burden upon the management to prove as to whether the action of retrenchment dated:19.08.2020 of 42 workmen is legal or not? Whereas, while referring a dispute to this court Government of Karnataka framed an issue casting burden upon the management to prove as to whether the refusal of employment of 42 workmen is legal or not?

14. Thus on going through undisputed facts available on record makes it abundantly clear that the issues and cause of action involved in both of the disputes referred by Government, are not similar or identical. To put it in other words, the issues and question of law involved in both the disputes seems to be altogether different.

15. It is well settled that, the Labour Court or Industrial Tribunal should not construe the order of reference too technically or in a pedantic manner. But, it should construe the points of dispute with reference to the pleadings and material evidence on record fairly and reasonably. In case of a reference u/s 10 of Industrial Disputes Act, 1947, the Labour Court is not empowered to travel beyond the terms of reference.

16. With regard to matters within the jurisdiction of Labour Courts and Industrial Tribunals, the Second Schedule and Third Schedule of the Industrial Disputes Act, 1947, are reproduced below for the convenient sake

### **THE SECOND SCHEDULE**

Matters within the jurisdiction of Labour Courts

*1. The propriety or legality of an order passed by an employer under the standing orders;*

*2. The application and interpretation of standing orders;*

3. *Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;*
4. *Withdrawal of any customary concession or privilege;*
5. *Illegality or otherwise of a strike or lock-out; and*
6. *All matters other than those specified in the Third Schedule.*

### **THE THIRD SCHEDULE**

Matters within the jurisdiction of Industrial Tribunals

1. *Wages, including the period and mode of payment;*
2. *Compensatory and other allowances;*
3. *Hours of work and rest intervals;*
4. *Leave with wages and holidays;*
5. *Bonus, profit-sharing, provident fund and gratuity;*
6. *Shift working otherwise than in accordance with standing orders;*
7. *Classification by grades;*
8. *Rules of discipline;*
9. *Rationalisation;*
10. *Retrenchment of workmen and closure of establishment;*  
*and*
11. *Any other matter that may be prescribed.*

Thus, on going through the Second Schedule and Third Schedule of the Industrial Disputes Act, 1947, it crystal clearly goes to shows that, an action of management/employer regarding discharge or dismissal of workmen including reinstatement of or grant of relief to workmen wrongfully dismissed, falls within the jurisdiction of Labour Court. Thus, Labour Court has got jurisdiction to grant reliefs in cases falling in the Second Schedule excluding the matters specified in the Third Schedule. Therefore, jurisdiction of labour is ousted in so far as matters specified in the Third Schedule concerned, the retrenchment of workmen and closure of establishment is a matter which exclusively falls within the jurisdiction of Industrial Tribunal. As per sec.2(oo) of the Industrial Disputes Act, 1947 the word retrenchment means "the termination of the service of a workman by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action". Thus, though the definition of retrenchment comprehends termination of service, it is not that every termination of service is retrenchment. In other words, every case of discharge simplicitor may not be a case of retrenchment. Thus keeping in view the definition of the word retrenchment, if pleadings of claim statement are considered, makes it clear that there is nothing as such regarding the attraction of the meaning of retrenchment. Therefore,

in view of the reasons stated supra, it becomes clear that the second party has not made out any grounds for rejection of the reference made by the Government. For the above reasons I have answered point No.1 in the **Negative**.

17. **Point No.2:** In view of my findings on Point No.1, I proceed to pass the following:-

**ORDER**

I.A.No.3 filed under Section  
11 of Industrial Disputes Act,  
1947 is hereby rejected.

No order as to cost.

*(Dictated to the Stenographer on computer, revised, corrected and then pronounced by me in the open court on this the 2<sup>nd</sup> day of July, 2024)*

sd/-

**(B K RAVIKANTHA)**  
District judge and Presiding Officer  
Labour court, Mysore.