

COMMON ORDERS ON I.A.NO.4&5

The authorized representative of the first party has filed I.A No.4&5 u/s 11 of I.D.Act, 1947 r/w sec.151 of CPC with a prayer to reopen and recall the case from the stage of evidence of second party to further evidence of first party.

2. In the memorandum of facts, it is contended that, the first party was of the opinion that after cross-examination of WW-2 on 22.01.2025 the matter is posted for further evidence of first party and accordingly, affidavit of WW-3-Sri.Naveena was ready to be produced and the said witness was also present on 29.01.2025. But, on 29.01.2025 during the proceedings before the court it was observed that, the matter is posted for the evidence of second party. The counsel who was present when the cross-examination of WW-2 was completed was not aware about the list of witnesses produced by the first party. The first party has to produced certain documents issued from the department of Labour, Bengluru. Hence, further evidence of first party is required to be adduced. Hence, prays to allow the applications.

3. On the other hand, the second party has filed objections to the said applications contending that, the applications are not maintainable under law, the application have been filed to fill up the lacuna caused during the cross-examination of WW-1. During the course of tendering evidence of WW-2, the counsel appearing

for the first party in reply to the objections raised by the first party submitted that, he will not lead any further evidence in the matter. Considering the submission made by the counsel and after closing their side the matter was posted for the evidence of the second party. The first party has filed the present applications with the deceitful intention of covering up lacunas in the cross-examination of WW-1 and WW-2. If the applications are allowed it would cause great injustice to the second party and it detrimentally affects the merits of the case. Hence, prays to reject the applications.

4. Heard both sides on the applications.

5. The following points do arise for consideration;

1. Whether the first party has made out grounds to reopen and recall the case from the stage of second party evidence to the stage of further evidence of first party as prayed for in the applications?

2. What order?

6. My answer on the above points are as under;

Point No.1: **Affirmative.**

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

REASONS

7. Point No.1: I have heard the learned counsels for the first party and second party. By careful perusal of material on record it can be seen that, the first party is seeking to reopen the case on the

ground that, on the ground that the stage of adducing further evidence on behalf of the first party was closed by the court on account of submission made by the counsel for the first party who was not aware about the list of witnesses produced by the first party.

8. On perusal of the records it reveals that, this is a reference sent to this court for adjudication of the issues involved therein at the instance of 40 workmen alleging refusal of employment by the management. The questions involved in the reference with regard to the 40 workmen will have to be examined by the court on the basis of evidence adduced by them. It is the contention of the first party that, the counsel who was present before the court on 29.01.2025 unknowingly submitted to close the further evidence of the first parties. Thus, it becomes clear that, the further evidence of the first parties was closed unknowingly with regard to the list of witnesses already submitted to the court on behalf of the first parties. Thus, the submission made on 29.01.2025 before the court to close the further evidence was not intentional. It is well settled that, parties should not be made to suffer on account of mistake of counsel. Under these circumstances if the first parties are allowed to adduce further evidence no harm or injustice would cause to the second parties as they would get the opportunity to adduce evidence in rebuttal. In the light of the said reasons there are grounds to permit the first parties to adduce further evidence on their behalf. Hence, the first parties have made out grounds to allow the applications. In the light of the said

reasons, i have answered the point no.1 in the **Affirmative**.

9. Point No.2: Accordingly, I proceed to pass the following;

ORDER

I.A.No.4&5 filed u/o 11 of I.D.Act r/w 151 of CPC are hereby allowed.

The case is reopened.

The first parties are permitted to adduce further evidence as prayed for in the applications.

No order as to cost.

Call on 24.02.2025.

sd/-

**Presiding Officer
Labour Court, Mysuru.**