

ORDERS ON IA.No.I

The second party has filed IA.No.I U/s.11 of I.D. Act to reject this Reference in the interest of justice.

2. It is stated that at the time of making the Reference to this Tribunal, the Government has coined the issues based on failure report of conciliation officer. This Tribunal has to adjudicate the matter on said issues and any other issues which might be incidental to the issues already framed by the Government. As per Section 7 & 7-A of I.D.Act, the issues can be taken up or adjudicated by Labour Court and this Tribunal as per the provisions/matters listed in Second Schedule & Third Schedule respectively. The issue pertaining to transfer of workman or deciding the legality of transfer orders are nowhere covered in Second or Third Schedule. There is no specific mention about the issue pertaining to transfer in Third Schedule. Hence, the said issue has to be adjudicated by the Labour Court specified in item No.6 of Second Schedule. On these grounds, the second party prays to allow the IA.No.I and reject the Reference in the interest of justice.

3. The counsel for first party filed objections to the above application by inter-alia contending that after lapse of 6 years, with malafide intention, the above application has been filed. The evidence is already commenced. The second party slept over the matter for years together and filed the present application with malafide intention. The Government of Karnataka has sent the Reference for adjudication. It cannot be dismissed without adjudication. It has to

be answered by passing an Award. On these grounds, the first party prays to reject the IA.No.I.

4. I have heard the arguments on both sides and perused the materials on record and citation produced by counsel for second party.

5. The only point for consideration is:

Whether the second party has made out sufficient grounds to allow the IA.No.I?

6. My answer to the above point is **in the Negative** for the following-

REASONS

7. The dispute for adjudication in this case is regarding transfer of the first party workman from Mysuru to Gurgaon Depot, Haryana. This is a case of the year 2018, but the second party has filed its counter statement after 4 years, i.e., in the year 2022. On the basis of pleadings of the parties, preliminary issue was framed on the point of espousal and on the claim of the first party as workman U/s.2(s) of I.D.Act. Thereafter, the first party workman tendered himself in witness box as WW.1 on 03.12.2022 and filed his evidence affidavit and got marked 12 documents as per Ex.W.1 to W.12 on preliminary issue. However, from 17.04.2023 till 04.09.2024, the second party did not cross-examine the WW.1. On 04.09.2024, the second party filed the present I.A.No.I for the above relief.

8. The learned counsel for the second party has submitted that this Tribunal has no jurisdiction to take

up the matter as the issue does not come under the Third Schedule of I.D.Act. Hence, it shall be taken up by the Labour Court under item No. 6 of Second Schedule. But the learned counsel for the first party has submitted that the Government has made the Reference to this Tribunal, hence under Third Schedule item No.11 R/w Sec.7-A of I.D.Act, this Tribunal has jurisdiction to entertain this Reference.

9. In the background of above submissions, I have perused the relevant provisions of I.D.Act. Section 2(r) of I.D.Act deals with the Industrial Tribunal constituted U/s.7-A of the I.D. Act. Section 7-A of I.D.Act states that the Industrial Tribunals can adjudicate the industrial disputes specified in Second or Third Schedule and for performing such other functions as may be assigned to them under the I.D.Act.

10. The item No.11 of Third Schedule of I.D.Act states that the Industrial Tribunal can deal with any other matter that may be prescribed. The item No.7 of Fifth Schedule of I.D.Act deals with transfer of a workman malafide from one place to another under the guise of following management policy as Unfair Labour Practice. Section 2 (ra) of I.D.Act defines Unfair Labour Practice as any practices specified in Fifth Schedule.

11. A combined reading of the above provisions make it very clear that in respect of item No.7 in Fifth Schedule (illegal transfer), the Industrial Tribunal has jurisdiction and by invoking item No.11 in Third Schedule, the Government has referred the matter

for adjudication to this Tribunal, hence this Tribunal can entertain and adjudicate the issue.

12. The learned counsel for the second party has relied upon a decision of Hon'ble High Court of Karnataka in **W.P.No.63264/2011 dated 15.02.2023 (Khaja Trading Pvt. Ltd. V/s. General Secretary, Belgaum District Beedi & Tobacco Workers' Union, Nippani)**, wherein, it was held that, **"A decree passed by a Court without jurisdiction is a nullity and its invalidity could be set up whenever and wherever it sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings."** But, the above decision was rendered in a case where the dispute was relating to closure of establishment. The said issue falls under item No.10 in Third Schedule to the I.D. Act and hence, it was held that the Industrial Tribunal is having jurisdiction and not the Labour Court. But in present case, the dispute is with regard to the transfer of first party. In both Second & Third Schedule, the issue 'transfer' is not specifically mentioned. Since the Government has referred the matter for adjudication to this Tribunal, hence it has to be presumed that by invoking item 11 of Third Schedule, the Government has made the Reference to this Tribunal. Therefore, I hold that this Tribunal has jurisdiction to entertain this dispute. Consequently, the IA.No.I filed by the second party does not survive for consideration. With above observations, I record my answer to the above point

in the **Negative** and proceed to pass the following-

ORDER

I.A.No.I filed by the second party U/s.11 of I.D.Act is hereby rejected.

For cross of WW.1 on Preliminary Issue finally, by 02.05.2025.

sd/-
Presiding Officer,
Industrial Tribunal, Mysuru.