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BEFORE THE INDUSTRIAL TRIBUNAL AT MYSURU

Dated this the 16th day of December 2024

Present:- Sri.RUDOLPH PEREIRA B.Com., LL.M.,
Presiding Officer,

Sl. Appl. No.80/2021

APPLICANT: **M/s.Mitsubishi Heavy Industries**
VST Diesel Engines Pvt.Ltd.,
Plot No.305,
Hebbal Industrial Area,
Metagalli, Mysuru.
Represented by its Controller
Mr.Shinsuke Umehara.
[By Sri J.Purushotham, Advocate]

-Vs-

OPPOSITE PARTY: Mr. Nagendra N.
C/o. Shivappa,
#558/2, 2nd Floor,
2nd Cross, Guthalu,
Mandya-571401.
[By Sri. L.Muralidhar Peshwa, Advocate]

ORDERS ON MAINTAINABILITY OF IA No.I FILED BY
THE RESPONDENT AND ORDERS ON MEMO Dt.
4.11.2024 FILED ON BEHALF OF THE APPLICANT

The respondent has filed IA.No.I U/s.11 of I.D.Act, R/w.
Section 151 of CPC to direct the applicant to pay arrears of
salary from the date of termination till today and continue to pay

the monthly salary till the disposal of the main application on merits and direct the applicant to pay wages till the disposal of this IA and to pass such other reliefs as deem fit in the interest of justice.

2. Case of the Respondent in IA No. 1:-

The respondent was rendering service with the applicant since 2018 and due to some minor dispute, the management of applicant terminated the employment of respondent illegally and without giving sufficient opportunity as per principles of natural justice. Since from the date of termination, the respondent is unemployed and suffering physically and mentally. He is facing family problems regularly. He is depending upon his mother, who is also having health issues. He is unable to sustain and maintain his family. He is suffering from mental tension and stress. He has aged parents. He has no other source of income and having financial debt. Currently, he has made efforts to do street business, but he is not getting income to lead his life. On these grounds, the respondent prays to allow the IA.No.I.

3. The applicant filed objections to the above IA.No.I by inter-alia contending that for the acts of misconduct committed by the

respondent as enumerated in show cause notice-cum-chargesheet, a domestic enquiry was conducted by appointing an independent enquiry officer. He has given all reasonable opportunities to the respondent to present his case. Based on the findings of the enquiry officer, once again a show cause notice was issued to the respondent asking for his explanations. Accordingly, the explanations were filed. But the explanations were unacceptable to the applicant-management. Therefore, he was terminated from the service on 30.11.2021. Mere hardship is not a ground to claim interim relief. The action was taken against the respondent for his acts of misconduct. The action of the applicant against the respondent is valid, legal and justifiable. Hence, the question of paying interim relief, arrears of salary, monthly salary, etc do not arise at all. Moreover, the respondent is gainfully employed. The respondent is no more in service of the applicant-company. Unless the right of respondent to collect his wages are established, the question of granting interim relief does not arise at all. The respondent should establish his prima-facie case. Great hardship would be caused to the applicant, if interim relief is granted. If the respondent succeeds in present proceedings, then he will be entitled for

past, present and future wages. It is incumbent upon the Tribunal to discuss the relevant facts and find out a prima-facie case as to what way the stand of employer is unjustified and the demand of relief is justified. The scope of the present proceedings is very limited. If this IA.No.I is allowed, it amounts to giving double benefits to the respondent. On these grounds, the applicant prays to reject the IA.No.I.

4. Pending disposal of the IA.No.I, on 04.11.2024, the applicant-company has filed a memo to permit the applicant to adduce the evidence on domestic enquiry conducted against the respondent before his termination from the service. It is stated that when the matter was set out for evidence on domestic enquiry, the respondent with an ulterior motive, filed the IA.No.I. The said application is not maintainable and there is no scope for seeking such order. Since the IA.No.I for wages was pending, the evidence on domestic enquiry was not taken up. Now the applicant-company is ready and willing to adduce evidence on domestic enquiry. On these grounds, the applicant prays to allow the memo.

5. The respondent has filed objections to the above memo by contending that the IA.No.I was filed even before the applicant had to adduce evidence on merits. The applicant has taken number of adjournments for filing objections to the IA.No.I and for cross-examination of respondent (RW.1) in IA.No.I. The applicant has been abusing the process of law without cross-examining the RW.1. The memo is untenable. On these grounds, the respondent prays to reject the memo and allow the IA.No.I to meet the ends of justice.

6. At the request of the respondent's counsel, my predecessor in office has permitted the respondent to adduce evidence on IA.No.I. Accordingly, he was examined in chief as RW.1 and 4 documents were marked through him as per Ex.R.1 to R.4. At this stage, the learned counsel for the applicant has raised an issue regarding maintainability of the IA.No.I by contending that in the event of allowing the IA.No.I, it will amount to reinstatement of the respondent to the service, that under such circumstances, the relief claimed in the main application will become infructuous. Further, if the claim of the respondent is

considered on merits, then automatically the respondent will be entitled for all benefits claimed in the present application.

7. I have heard the arguments on both sides and perused the materials on record.

8. From the above facts/pleadings, the following points arise for my consideration:

1. Whether the respondent proves that the IA.No.I filed by him for payment of arrears of salary from the date of termination till the disposal of the main application on merits is maintainable?

2. Whether the applicant-company proves that it is entitled for the relief claimed in the memo dated 04.11.2024?

3. To what Order?

9. My findings on the above Points are as follows:

Point No.1: In the Negative,

Point No.2: In the Affirmative,

Point No.3: As per final Order,

for the following-

REASONS

10. **Points No.1 and 2:** Both points are inter-connected. Hence to avoid repetition, they are taken up together for determination.

Herein, it is not in dispute that the respondent was a workman under the applicant-company and he was terminated from the service on 30.11.2021, pending disposal of Ref.54/2020 on the file of this Tribunal. Further, the main application was filed on very same day U/s.33(2)(b) of Industrial Disputes Act, 1947 R/w. Industrial Disputes (Karnataka) Rules, 1957. According to the applicant, it has complied all the requirements of Section 33(2)(b) of Industrial Disputes Act at the time of filing the main application.

11. In present IA No.I, the respondent is seeking arrears of salary from the applicant-company from the date of termination till the disposal of the main application on merits. Of course, the respondent has already tendered himself in the witness box as RW.1 and exhibited 4 documents as per Ex.R.1 to R.4. But the question is whether enquiry on IA.No.I needs to be continued and the relief claimed in IA.No.I is maintainable at this stage. It is relevant to note that as per the allegations of the applicant, for the misconduct of the respondent, after holding domestic enquiry through an independent person, after following the principles of natural justice, the respondent was terminated from the service. Hence, it is for this Tribunal to adjudicate the issue regarding

legality of the order of termination passed by the applicant on merits. If this Tribunal comes to the conclusion that the very termination of respondent from service is illegal, then automatically the respondent will be reinstated to the service with such monetary benefits to be determined by this Tribunal. Per contra, if the IA.No.I is allowed without determining the main application on merits, then the main application will become infructuous and the opportunity of the applicant to substantiate the allegations against the respondent will be deprived of and automatically the respondent will be entitled for the benefits claimed in his objections statement. Since the allegations made against the respondent are serious in nature, moreover, he is already terminated from the service, hence, at this stage the question of considering his hardship does not arise at all. As the relief claimed in IA. No.I touches the merits of the case, this Tribunal is of the view that the IA.No.I is premature one and is not maintainable at this stage.

12. During the course of arguments, the learned counsel for the applicant has submitted that he will cooperate with this Tribunal for speedy disposal of the case on merits in view of the interim

relief claimed by the respondent on IA.No.I. Therefore, this Tribunal is of the view that by fixing a time frame, the application could be decided on merits, so that both parties will be benefited and the orders passed by this Tribunal on main application would be enforced immediately in accordance with law.

13. Now let me consider the memo filed by the applicant dt.04.11.2024. It is the burden on the applicant to prove that there was fair, proper and valid domestic enquiry against the respondent before his termination from the service. Therefore, an opportunity will have to be given to the applicant to adduce evidence on domestic enquiry before recording the evidence on merits. The objections raised by respondent could be considered on merits. Hence, the memo filed on behalf of the applicant deserves to be allowed. With above observations, Point No.1 is answered in the **Negative** and Point No.2 is answered in the **Affirmative**.

14. **Point No.3:** In the result, I proceed to pass the following-

ORDER

**The IA.No.I filed by the
respondent U/s.11 of I.D.Act, R/w.**

Section 151 of CPC is hereby rejected as not maintainable at this stage.

No Order as to costs.

The Memo filed by the applicant on 4.11.2024 is allowed. Accordingly, the applicant is permitted to adduce evidence on domestic enquiry conducted against the respondent.

The applicant is directed to conclude its side of evidence on domestic enquiry within 30 days from today and evidence on merits within next 15 days from the date of passing orders on domestic enquiry.

If the applicant fails to conclude its evidence within the above said time frame, then it should pay 50% of last drawn salary to the respondent towards his wages from the date of default till the disposal of main application on merits.

*(Dictated to the Stenographer on Computer and computerized by her, corrected, and print out taken and then signed by me on this the **16th day of December, 2024**)*

sd/-
(RUDOLPH PEREIRA)
Presiding Officer,
Industrial Tribunal, Mysuru

ANNEXURE**LIST OF WITNESSES EXAMINED AND DOCUMENTS MARKED ON BEHALF OF THE APPLICANT:**

Nil.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE RESPONDENT:

RW.1 Nagendra.N

LIST OF DOCUMENTS MARKED ON BEHALF OF THE RESPONDENT:

- Ex.R.1: True copy of the order dated 26.03.2019 passed by the Asst. Labour Commissioner & Conciliation Officer, Mysuru on the status of protected workman of the respondent-workman
- Ex.R.2: True copy of the order dated 27.02.2020 passed by the Asst. Labour Commissioner & Conciliation Officer, Mysuru on the status of protected workman of the respondent-workman
- Ex.R.3: True copy of the order dated 23.02.2021 passed by the Asst. Labour Commissioner & Conciliation Officer, Mysuru on the status of protected workman of the respondent-workman
- Ex.R.4: True copy of the order dated 28.03.2022 passed by the Asst. Labour Commissioner & Conciliation Officer, Mysuru on the status of protected workman of the respondent-workman

Presiding Officer,
Industrial Tribunal, Mysuru.