
(2016) 08 KAR CK 0106

In the Karnataka High Court

Case No : Writ Petition No. 81407 of 2012 (L-Ref)

ALSTOM Projects India Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, Section 2A

Citation : (2017) 1 CLR 202 : (2017) 153 FLR 285 : (2016) ILRKarnataka 4784 : (2016) 4 KCCR 3446

Hon'ble Judges : Mr. Vineet Kothari, J.

Bench : Single Bench

Advocate : Ashok S. Kinaga, Advocate, for the Petitioner; P. Vilaskumar, Advocate, for the Respondent No. 3; A. Syed Habeeb, AGA, for the Respondents No. 1 and 2

Final Decision : Dismissed

Judgement

Vineet Kothari, J. - The employer-ALSTOM Projects India Limited is aggrieved by the impugned endorsement Annexure-B dated 17.1.2012 passed by the Deputy Labour Commissioner and Conciliation Officer, Gulbarga, holding that in view of the amendment of the Industrial Disputes Act, 1947, by inserting Section 2A therein by the Act No.24 of 2010 (w.e.f., 15.9.2010), the respondent-workman - Gurudatta could raise a dispute before the Labour Court with respect to his dismissal with effect from 1.6.2010.

2. The learned counsel for the employee referring to Rule 10 of the Industrial Disputes (Karnataka) Rules, 1957, which is quoted below, urged that without a formal intimation to the employer and the parties concerned, the Conciliation Officer could not refer the dispute to the Labour Court and in the present case, the impugned order Annexure-B dated 17.1.2012 has been passed without giving any prior intimation to the petitioner-employer. He submits that, in view of this, the employer has been deprived of its opportunity to submit its case in regard to

the dispute to the Conciliation Officer and therefore, the impugned endorsement dated 17.1.2012 Annexure-B deserves to be quashed by this Court.

"10. Conciliation Proceedings in non-public utility service.- Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, [at such place and at such time as he deems fit] he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein."

3. On the other hand, learned counsel appearing for the workman urged that in view of the amended Section 2A of the Industrial Disputes Act, 1947, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer with regard to such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute requiring a reference to the Labour Court and thus, the conciliation proceedings in such cases are not mandatorily required to be held. Therefore, the alleged breach of principles of natural justice in the present case by the employer at the conciliation stage which is a stage prior to reference of dispute to the Labour Court is of no consequence and by Annexure-B dated 17.1.2012, the learned Deputy Labour Commissioner-has only directed the workman to approach the Labour Court, which cannot be challenged by the employer on the aforesaid ground, as the employer still has the full opportunity to defend its case before the Labour Court.

4. The provision of Section. 2A of the Industrial Disputes Act, 1947, reads as under:

"[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute

2{(1)] Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply

in relation to an industrial dispute referred to it by the appropriate Government.]

[(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]"

(S.2A numbered as sub-section (1) thereof by Act 24 of 2010, Section 3 (15.9.2010)

5. Having heard the learned counsel for the parties, this Court is of the opinion that the alleged failure to hold the conciliation proceedings in this case after giving a formal intimation or notice to the employer, does not vitiate the impugned Endorsement Annexure-R dated 17.1.2012 in any manner, by which the Labour Commissioner has only directed the workman to approach the Labour Court. In view of the clear provisions of Section 2A of the Industrial Disputes Act, 1947, in the cases of the dismissal, discharge, retrenchment or termination of any kind be it of casual employee or the workman or otherwise, it is not mandatory to first to approach the Conciliation Officer nor it is mandatory for the Conciliation Officer to hold such conciliation talks between the employer and the employee/workman and then only make a reference, if considered appropriate by him because in these events, deemed to be an industrial dispute by fiction of law requiring adjudication by the competent Labour Court or Tribunal. In view of this, there is no miscarriage of justice in the present case and the Employer-company is not entitled to assail the impugned endorsement on the alleged ground of not giving notice by the Conciliation Officer to it as per Rule 10 of Industrial Disputes (Karnataka) Rules, 1957. it has opportunity to defend its case before the Labour Court.

6. The writ petition filed by the employer is thus found to be devoid of merit and is liable to be dismissed. Accordingly, the petition is dismissed. No costs.