

(2004) 03 KAR CK 0042
In the Karnataka High Court
Case No : W.A. No's. 149 of 2001 etc.

The Management of Manipal Power Press and Others	APPELLANT
Vs	
Sadananda Devadiga and Others	RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 10 (2), 6 (1)

Citation : (2004) 102 FLR 175 : (2004) ILR (Kar) 2096 : (2004) 4 KarLJ 143 : (2004) 3 KCCR 242 SN : (2004) 3 LLJ 400

Hon'ble Judges : Chandrashekaraiyah, J;A.C. Kabbin, J

Bench : Division Bench

Advocate : K. Gopal Hegde, for Sri Raj and Reddy, M.L.N. Reddy and M.C. Narasimhan, for the Appellant; M.C. Narasimhan, for Workmen and R1 in W.A. 937-938/2001 and R1 to 3 in W.A. No. 939-941/2001, B.N. Prasad, HCGP for R1 and R3, K. Gopal Hegde and M.L.N. Reddy for R2, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiyah, J.—These Writ appeals are by the workmen and the management challenging the orders of the learned Single Judge in W.P. Nos. 42704-708/99, 765-66/99, 15383/99, 40297-299/1999 & 2778/2000 & 2778/2000 & 2920/2000 dated 15-11-2000 and W.P.No. 35364/2000 c/w 18322/2000 and 7466-7468/2000 dated 4.1.2001.

2. The workmen made an application for amendment of the standing orders of the year 1968 by making an application under Sub Section (2) of Section 10 of the Industrial Employment (Standing Orders) Act, 1946 (for short, "the Act"). The said application was allowed by the Certifying Officer by fixing the age of retirement of the workmen at 58 years. This order was challenged by both the workmen and the management by way of an appeal before the Appellate Authority. The Appellate Authority by order dated 6.1.99 set aside the order of the Certifying Officer on the ground that the principles of natural justice had not been followed, and remanded the matter to the Certifying officer for fresh

consideration. This order was challenged both by the management and the workmen by way of filing Writ Petitions before this Court. The learned Single Judge clubbed all cases and passed a common order dated 15.11.2000. The learned Single judge disposed of the Writ Petitions by quashing the orders of the Certifying Officer and the Appellate Authority and remitted the matter back to the Certifying Officer to reconsider the matter afresh keeping the order of the Certifying Officer in force till a fresh decision is taken. Aggrieved by the direction issued by the learned single Judge keep the order of the Certifying Officer alive till the matter is disposed of by him, the Management has filed these Writ Appeal Nos. 149/2001 and 937/ 2001 to 941/2001 and 693/2001 to 704/2001. The workmen have also filed the appeals challenging the order of, the learned Single Judge (W.A. Nos. 945-951/2001).

3. Sri M.C. Narasimhan, the learned Counsel appearing for the workmen submits that the learned Single Judge has not noticed that the Appellate Authority has no power to remand the matter for fresh consideration to the Certifying Officer. In support of his contention, he has drawn our attention to Sub-section (1) of Section 6 of the Act, which reads as under:

"6(1) Any employer, workmen, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer under Sub-section (2) of Section 5 may, within thirty days from the date on which copies are sent under Sub-section (3) of that Section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act."

4. From the reading of the above said Section, it is clear that the Appellate Authority has the power either to confirm the order of the Certifying officer or alter in the form certified by the Certifying Officer amending the said standing order by making modification thereto as he thinks necessary.

5. The learned Counsel Sri. K. Gopal Hegde appearing for the management submits that the Appellate Authority has an incidental power to remand by setting aside the order of Certifying Officer if it feels that natural justice has not been followed. In the case of KERALA AGRO MACHINERY CORPN. LIMITED v. INDUSTRIAL TRIBUNAL AND ORS. 1988 LLJ it is held as follows:

"The powers of the Appellate Authority are specified in Clause (1) of Section 6 of the Act. The Appellate Authority has the power to confirm the standing orders certified by the Certifying Officer, or to amend or modify and add to the standing orders as it thinks necessary to make the standing orders certifiable under the Act. This power of the Appellate Authority includes the power to adjudicate the fairness or reasonableness of the standing orders also. Under the first part of Clause (1) of Section 6, right is given to any person aggrieved by the order of

the Certifying Officer to challenge the same by preferring an appeal. The power of the Appellate Authority is to confirm the standing orders either in the form certified by the officer or by amending the same or by making such modification or additions as it thinks necessary to render the standing orders certifiable under the Act. The Appellate Authority can exercise only those powers conferred on it u/s 6(1). The Appellate Authority has no power to cancel the standing orders or set aside the order passed by the Certifying Officer. Therefore, the Appellate Authority has no power to set aside the orders of the Certifying officer and remand the matter for fresh disposal. The power to remand is not a procedural one."

6. Section 6 specifically specifies the powers to be exercised by the Appellate Authority. In the instant case, the Appellate Authority has remanded the matter for fresh consideration. This power of remand is not available to it because Section 6 confers the power either to confirm or modify the order as it deems fit. Since these aspect of the matter has not been considered by the learned Single Judge, we are of the view that the order of the learned Single Judge and the order of the Appellate Authority are to be set aside and the matter has to be sent back to the Appellate Authority to reconsider the matter afresh in the light of the observation made above. In the result, we pass the following order:

1. The order of the Appellate Authority dated 6.1.99 in S.O.A. Nos. 1/98 and 2/98 are quashed.
2. The order of the learned Single Judge impugned in these Writ appeals is set aside.
3. The matter is remitted to the Appellate Authority to reconsider the matter afresh after notice to all the parties concerned including notice to the Manipal Printing Press Employees Union and Udupi Taluk Press Workers Union,

All other contentions raised in these appeals are kept open.