

## **Circular No – 034 / 2023**

Date: 02.03.2023

To  
All Members of The Association

### **EMPLOYEE CANNOT BE EXPECTED TO INITIATE PROCEEDINGS AT TRANSFERRED PLACE: KARNATAKA HIGH COURT**

1. The Hon'ble High Court of Karnataka in its recent decision has held that the employee who has been transferred from one place to another in the event he chooses to challenge the transfer, he may approach the Court having territorial jurisdiction over the area in which the employee was posted prior to transfer.
2. The case relates to an employee of the pharmaceutical company which had offices in different places throughout India with its Head Office at New Delhi. The employee in question was posted at Shivamogga. The Shivamogga headquarters had become unviable from business point of view. The company, therefore, permitted the employee to take transfer to Udupi PSR Headquarters would remain at Shivamogga as the sales representative at Generic Division for Karnataka or take a transfer to Madras as Sales Representative at General Division. The employee did not accept any of the alternatives. He was subsequently asked to report at Bengaluru which was also not adhere to. In this background he was transferred to New Delhi Headquarters. The employee concerned did not report at New Delhi Headquarters. Consequently, his services were terminated.

3. The employee filed application under Section 10(4-A) of the Industrial Disputes Act challenging the termination order before the Labour Court at Mangalore which was having territorial jurisdiction over Shivamogga also. The company in its Statement of Objection raised preliminary objection before the Labour Court and challenged territorial jurisdiction. The Labour Court heard the preliminary issue first and decided in favour of the company and held that the Court had no jurisdiction to determine the lis between the parties and accordingly, Labour Court did not go into the merits of the case.
4. Aggrieved by the decision of the Labour Court, the employee challenged the orders of the Labour Court by filing Writ Petition before the Hon'ble High Court of Karnataka.
5. The Hon'ble High Court in the case of **A.Vishwanatha Shetty Vs. the Management of Jagsonpal** decided on 06.02.2023 in W.P.No.11610/2012 (L-TER) set aside the order of the Labour Court and held that the Labour Court at Mangalore is competent to entertain the application under Section 10(4-A) of ID Act and decide the same on merits. Some of the relevant observations of the Hon'ble High Court are extracted below:

*"7. The submission made by Sri.Joshua Samuel, learned counsel that the territorial aspect could be adjudicated by a labour court as a preliminary issue cannot be disputed. **Whenever any proceedings are filed before any Authority or Court and if one of the party were to raise an objection as regards pecuniary jurisdiction or territorial jurisdiction, the said court could decide the same as preliminary issue. (Emphasis added)***

*8. In the present matter, it is not whether the labour court had the power to decide the issue but whether the decision made by the labour court is proper or not is in question. The said question can only be answered with reference to the facts of the matter. As could be seen from the letter terminating the*

service of the workman dated 08.02.1997, the petitioner had been appointed at Shivamogga, subsequently, opportunity was given for him to take transfer to Udupi, stationed at Shivamogga or to go to Madras later on he was transferred to Bangalore, subsequently to New Delhi.

If the submission of Sri. Joshua Samuel is accepted that the workman would only have to initiate proceedings to the place where he is transferred, **the same in the present matter would give rise to chaos inasmuch as the petitioner could have filed a petition in Udupi, Madras, Bangalore or New Delhi, merely because the employer has transferred him to so many places. (Emphasis added)**

10. Such a submission if accepted could also give rise to a situation which could result in exploitation of the workman inasmuch as the employer could at its whims and fancies transfer a workman to any place in the country and contend that it is in the place of transfer that the dispute has to be raised. The dispute is not as much as the transfer to a particular location but transfer from a particular location. That apart, in the present case, the dispute is as regards termination of services of the petitioner which termination, in my considered opinion, occurred in Shivamogga since the notice of termination which had been issued from New Delhi would be complete only on receipt thereof by the workman at the address shown in the notice which is Shivamogga.

11. In view of the above, I am of the considered opinion that rest of the contentions urged need not be addressed by this Court. Hence, I pass the following:

#### **ORDER**

- i. The writ petition is allowed.
- ii. Impugned order dated 06.08.2011 in I.D.No.15/1997 passed by the Labour Court, Mangalore on the preliminary issue of territorial jurisdiction is set aside.
- iii. It is held that the Labour Court, Mangalore has territorial jurisdiction to decide the matter. The labour court is directed to proceed with the matter on merits.



iv. *This court has not expressed any opinion on merits of the matter and all contentions are left open."*

6. The member establishments may keep the above judgment in view while deciding similar issues which may arise in their establishments.

**For, KARNATAKA EMPLOYERS' ASSOCIATION**

**Sd/  
[B C Prabhakar]  
President**