Circular No – 004/2025

Date: 06.01.2025

To
All Members of The Association

EFFECT OF NONCOMPLIANCE OF SECTION 33(2)(B) OF THE I.D. ACT.

1. The Hon'ble High Court of Karnataka in its Judgment dated 19.12.2024 WA 550/2022 has held that when the Labour Court upholds the termination of a workman on merits in a petition filed under Section 10(4)(A) of the Industrial Disputes Act, 1947, the plea of noncompliance of section 33(2)(b) is not maintainable.

2. Brief facts of the case are:

    - The workman was working in the Company as a Medical Representative at Bengaluru from 02.05.2005 He joined the Company in June 1995 at Villupuram, Tamil Nadu. He was later transferred to Pondicherry in 2002 and later to Bhatinda in 2005.

    - While he was working in Bengaluru, a charge sheet was issued to him on 30.05.2007 which was replied to on 06.06.2007. A departmental enquiry was initiated which resulted in his termination.

    - The workman challenged his termination by filing a petition under Section 10(4-A) of the Industrial Dispute Act, 1947 before the Labour Court, which came to be rejected.

    - Against the order of the Labour Court the workman filed Writ Petition WP No.8568/2013, contending that despite there being several

industrial disputes pending at the time of termination, the company has not filed Application under Section 33(2)(b) of the Act of 1947 seeking post-facto approval of order of termination and therefore the termination is non-est in the eyes of law.

- The Learned Single Judge vide Judgment dated 12.05.2022 in WP No.8568/2013 dismissed the Writ Petition holding that the Workman, in his petition under Section 10(4-A) has not pleaded the violation of Section 33(2)(b) of the I.D Act and if indeed there was a violation of section 33(2)(b), it ought to have been specifically pleaded. The Learned Judge held that once the application was filed by the Workman challenging the legality of termination under Section 10(4-A) of the I.D Act, the Labour Court is duty bound to decide the legality of the termination and if the termination is held to be justified, the allegation of violation of non-compliance of section 33(2)(b) of the I.D Act is of no consequence. The Labour Court is not precluded from deciding the dispute on merits even if there is violation of Section 33(2)(b) of the I.D Act when the termination is justified.

- The order of the Learned Single Judge was challenged in WA 550/2022 before the Division Bench of the Hon'ble High Court of Karnataka which delivered its judgment on 19.12.2024. The Division Bench held that the learned Single Judge is justified in dismissing the writ petition, more so on a finding that there is no pleading with regard to non-compliance of Section 33(2)(b) of the Act of 1947 and the Court cannot travel beyond the pleadings.

- The Division Bench also clarified that the scope of jurisdiction of the Labour Court under Section 33(2)(b) is only to oversee the dismissal to ensure that no unfair labour practice or victimization has been practiced. If the procedure of fair hearing has been observed and a prima-facie case for dismissal is made out; approval has to be granted. When the Labour Court itself has upheld the termination for misconduct on merits, the plea based on Section 33(2)(b) of the Act of 1947 would become inconsequential.

- The Division Bench concluded that the jurisdiction of the Labour Court under Section 33(2)(b) cannot be wider than the reference.

3. The judgment of the Division Bench of the Hon'ble High Court of Karnataka is significant because it has brought much needed clarity vis-à-vis the scope of proceedings under section 33(2)(b) and proceedings under section 10(4)(A) or under section 10(1)(c) of (d). This Judgment is also likely to have a bearing on the multiplicity of proceedings before the Labour Court owing to parallel proceedings both under section 33(2)(b) and under section 10(4)(A) or under section 10(1)(c) of (d).

4. A copy of the Judgment dated 19.12.2024 is attached.

For KARNATAKA EMPLOYERS' ASSOCIATION
Sd/
[B C Prabhakar]
President