

Karnataka High Court Workmen Of Bharat Fritz Werner ... vs M/S. Bharat Fritz Werner Limited on 3 June, 2013 Author: Dilip B.Bhosale -1-

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3rd DAY OF JUNE, 2013

BEFORE

THE HON'BLE MR.JUSTICE DILIP B. BHOSALE

WRIT PETITION No.20848/2013 (L-RES)

BETWEEN:

WORKMEN OF BHARAT FRITZ WERNER LIMITED, REPRESENTED BY BHARAT FRITZ WERNER KARMIKA SANGHA (REGD.), BY ITS GENERAL SECRETARY, A REGISTERED TRADE UNION REGISTERED UNDER THE INDIAN TRADE UNIONS ACT, HAVING ITS OFFICE AT NO.25, 4TH CROSS ROAD, BYRAPPA LAYOUT, NAGASETTIHALLI, BANGALORE - 560 094. ... PETITIONER

(BY SRI. SUBBARAO SR. ADV. FOR M/S. SUBBARAO & CO., ADVS.)

AND:

M/S. BHARAT FRITZ WERNER LIMITED, A COMPANY REGISTERED UNDER THE INDIAN COMPANIES ACT, REPRESENTED BY ITS DIRECTOR, HAVING ITS OFFICE AT PEENYA, YESHWANTHPUR POST, BANGALORE-560 022. ... RESPONDENT

(BY SRI. K. KASTURI, SR. COUNSEL FOR SRI. A.Y.N. GUPTA, ADV.) -2-

THIS WRIT PETITION FILED UNDER ARTICLES 226

AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE RECORDS IN CASE NO.ASOA/CR/20/12-13 ON THE FILE OF THE ADDL. COMMISSIONER & APPELLATE AUTHORITY UNDER THE INDUSTRIAL EMPLOYMENT STANDING ORDERS ACT & GRANT THE PETITIONER.

QUASH THE ORDER DT.23.11.12, PRODUCED AS

ANNEXURE-S, AS THE SAID ORDER SUFFERS FROM ERROR APPARENT ON THE FACE OF THE RECORD & CONSEQUENTLY, RESTORE THE ORDER DT.21.8.12, PRODUCED AS ANNEXURE-P BY MODIFYING THE AGE OF SUPERANNUATION FROM 58 YEARS TO 60 YEARS.

THIS PETITION COMING ON FOR ORDERS THIS DAY,

THE COURT MADE THE FOLLOWING:

ORDER

Heard learned Senior Advocates appearing for the parties. This Writ Petition is basically directed against the order dated 23.11.2012 (Annexure-S) passed by the Additional Labour Commissioner (Administration) and Appellate Authority under the Industrial Employment (Standing Orders) Act, 1946, (for short "the Act"). By this order, the order dated 21.8.2012 passed by the Deputy Labour Commissioner and Certifying Officer under standing orders, whereby he modified the age of superannuation from 58 to 60 years, has been set aside. 2. Learned Senior Advocates appearing for the parties do not dispute that the Certifying Officer while modifying the age of retirement from 58 to 60 years, did not either personally inspect the factory or assessed the nature of work. Though, they do not dispute that the Certifying Officer ought to have inspected the factory personally, they have agreed for remand to the Appellate Authority instead of Certifying Officer, in view of the provisions contained in Section 4 of the Act. They have fairly submitted that, I need not record reasons for setting aside the order passed by the Appellate Authority and have agreed for the following orders: (a) The order dated 23.11.2012 passed by the Additional Labour Commissioner (Administration) and Appellate Authority under the Act (Annexure-S) is set aside and the matter is remanded to the said authority with the following directions: (i) The Appellate Authority in terms of the Judgment of the Supreme Court in Jeevanlal 1929 Vs. The Workman and another, 1972(i) (LLJ)-472 (SC) (DB), shall appoint a Deputy Labour Commissioner to visit and inspect the factory and assess the nature of work so as to find out whether it is possible to modify the age of superannuation from 58 to 60 years. It is open to the Appellate Authority, if it so desires, to personally visit the factory for the said purpose. (ii) The Appellate Authority or Deputy Labour Commissioner, as the case may be, while carrying out the inspection shall give notice to both the parties to enable them to remain present at the time of inspection. (iii) It is made clear that only after actually assessing the nature of work by the Appellate Authority itself or on the basis of the report submitted by the Deputy Labour Commissioner, if so deputed to inspect the factory, shall consider the appeal afresh on the basis thereof and the other material/evidence on record. (iv) It is needless to mention that the Appellate Authority while deciding the appeal afresh shall bear in mind the judgments of the Supreme Court relied upon by the parties including the judgment in Jeevanlal. (v) The Appellate Authority shall complete the exercise and decide the matter afresh on merits in accordance with law after giving an opportunity of being heard to the parties as expeditiously as possible and preferably within a period of four months from the date of receipt of this order. It is open to the petitioner to furnish a copy of this order along with copy of the writ petition and Annexures before the Appellate

Authority within a period of three weeks from today. 3. At this stage, this court is informed that during the pendency of this writ petition one of the workmen has retired and one or two more workmen are likely to be retired within next three to six months. In view thereof, it is made clear that whatever rights are accrued to all the workmen, who were in the employment as on the date of the order of the Appellate Authority dated 23.11.2012, shall not be effected. In other words they will be entitled for all benefits in accordance with law including reinstatement, if they ultimately succeed in these proceedings. Writ petition is disposed of. Sd/- JUDGE ap/-