

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.1474/2020 (L-TER)

BETWEEN:

THE TAJ WEST END HOTEL
RACE COURSE ROAD
BENGALURU – 560 001
REPRESENTED BY ITS
AREA-DIRECTOR-KARNATAKA,
GENERAL MANAGER, BENGALURU
SRI SOMNATH MUKHERJEE.

... PETITIONER

(BY SRI S.N. MURTHY, SENIOR COUNSEL FOR
SRI SOMASHEKAR, ADVOCATE)

AND:

SRI K. VENKATESH
S/O. SRI KARI GOWDA
AGED ABOUT 50 YEARS,
RESIDING AT NO.35, 1ST CROSS,
CHOWDESWARINAGARA
POLICE COWKI, LAGGERE,
BENGALURU – 560 058.

... RESPONDENT

(BY SRI K. SRINIVASA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE AWARD DATED 30.09.2019 PASSED IN I.D.NO.22/2016 BY THE PRINCIPAL LABOUR COURT, BENGALURU AT ANNEXURE-P.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01/10/2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM HON'BLE MRS JUSTICE K.S. HEMALEKHA
:

CAV O R D E R

The question that falls for consideration is :

"Whether, on facts and circumstances, the Labour Court was justified in interfering with the punishment of dismissal?"

2. Respondent was appointed in the kitchen of the petitioner, on acts of theft, misappropriation and fraud, articles of charges were issued, the said charges were based on an incident that occurred on 03.10.2015, when the respondent was on duty and post completion of his shift duties, he had punched at 12.00 hours on 04th October, 2015 early hours, and during that time i.e., about 12.05 hours, while duty security guard at that time Mr. Ranganath

carried out check on the respondent and his Suzuki motor cycle bearing Reg. No.KA-02-EE-7958, a Safal brand one litre oil sachet was found hidden on the tank bag of his two wheeler, when the security took oil packet from the tank bag of the two wheeler and questioned, the respondent requested to forgive him and pleaded not to inform or report about the same to anyone and tried to snatch the packet from the security, the respondent held on to the packet and pulled it hard, as a result of which the packet opened spilling the oil over the wireless set held by the security guard, this resulted in malfunctioning of wireless set, preventing him from calling the duty security officer, when the security guard went to the land line to make a call and intimate the duty security officer, the workman got on to his vehicle and sped away from the scene, the said incident was informed by Ranganath, Security Guard by way of a complaint and Neeta, Assistant Security Officer also reported the incident in this regard on 04.10.2015.

3. Charge-sheet-cum-suspension pending enquiry was issued to the respondent, respondent submitted his explanation admitting that "when the security guard taken out the oil sachet from the pouch of my vehicle, all of a sudden, I was surprised and shocked to know that. At that point of time, in order to ascertain the truth, I tried to take the sachet from the security guard who resisted it, thereby leading to break open of the oil sachet." The respondent, denied the other charge of speeding away from the place, not being satisfied with the explanation offered, the enquiry was held, one B.K. Guruprasad was appointed as an Enquiry Officer, conducted enquiry and management examined six witnesses and the respondent was assisted by the co-employee, the Enquiry Officer, arrived at a conclusion that the respondent was the guilty of charges leveled against him and second show-cause notice was issued as to why the report of the enquiry officer should not be accepted and acted upon, before the Disciplinary Authority on considering the enquiry report and material placed, passed an order of

dismissal, the respondent challenged the dismissal order by raising a dispute under Section 10(4-A) of the Industrial Disputes Act, 1947 ('the ID Act' for short).

4. Before the Labour Court, the respondent filed a memo conceding the fairness of domestic enquiry, and in light of the memo, the domestic enquiry was held to be fair and proper and the matter was posted for leading evidence on victimization. The Labour Court by the final award, set aside the order of dismissal and reinstated the respondent with continuity of service and full backwages.

5. Heard Sri S.N. Murthy, learned senior counsel for Sri Somashekar, learned counsel appearing for the petitioner and Sri K. Srinivasa, learned counsel appearing for the respondent.

6. Learned senior counsel appearing for the petitioner would contend:

- i. That the proved act of misconduct of theft deserves only dismissal from service and nothing else, as the respondent has admitted in his explanation that an oil sachet was found from the pouch of his motor cycle by the security guard and the CCTV footage clearly reveals the presence of the oil sachet and the respondent speeding away on the vehicle when the security guard went to call the officer on the land line, as the wireless set had got spoiled due to the spilling of oil on account of breakage of packet.
- ii. That the Labour Court could not have substituted the order of punishment by exercising the powers under Section 11A of the ID Act and directing reinstatement with full backwages, when the misconduct is about theft and in such cases, the punishment imposed by the disciplinary authority could not have been interfered with, by the Labour Court.

- iii. Learned senior counsel submits that the observation of the Labour Court to the effect that the petitioner had not filed a police complaint about the incident, the observation is unwarranted and unjustified as not in every case of theft or any misconduct of an employee within the premises, a police complaint has to be lodged. Just because the police complaint is not lodged, the charge of theft against the respondent cannot be held as not proved, moreover, when the explanation of the employee is about admitting the presence of oil sachet in his motor cycle pouch and the CCTV footage which clearly reveals the theft committed by the respondent and that the Labour Court was not justified in setting aside the order of dismissal on the ground that the police complaint was not filed and therefore, the charges are not proved.
- iv. The discretion which was exercised under Section 11A of the ID Act is available only when the punishment is disproportionate to the gravity of misconduct and that

in the instant case, it is a case of theft and losing of trust by the employer, which cannot be substituted by a lesser punishment and that the Labour Court order warrants interference. In support of his contention, learned senior counsel has placed reliance on the following decisions:

- a. ***Hind Construction & Engineering Co. Ltd., Vs. Their Workmen***¹ (*Hind Construction*)
- b. ***Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and others Vs. Secretary, Sahakari Noukarara Sangha and others***² (*Janatha Bazar*)
- c. ***New Victoria Mills Co. Ltd. Vs. Presiding Officer, Labour Court and others***³ (*New Victoria Mills*)
- d. ***Gulab Chand Agrawal Vs. State of Bihar and others***⁴ (*Gulab Chand Agrawal*)

¹ 1965 (10) FLR 65

² (2000) 7 SCC 517

³ AIR 1970 ALL 210

⁴ 2007 (112) FLR 702

- e. **West Bokaro Colliery (Tisco Ltd) Vs. Ram Parvesh Singh⁵** (West Bokaro)
- f. **M/s. Mangalam Timber Products Ltd. Vs. Sailesh Kumar Gantayat⁶** (Mangalam Timber)
- g. **B.C. Chaturvedi vs. Union of India and others⁷** (B.C. Chaturvedi)
- h. **U.P. State Road Transport Corporation vs. Mohan Lal Gupta and others⁸** (Mohan Lal Gupta)
- i. **Lalit Popli vs. Canara Bank and others⁹** (Lalit Popli)
- j. **Mahindra and Mahindra Ltd. vs. N.B. Narawade¹⁰** (Mahindra and Mahindra Ltd.)
- k. **A.P. SRTC vs. Raghuda Siva Sankar Prasad¹¹** (Raghuda Siva Sankar Prasad)
- l. **Lupin Ltd. vs. Melsingh Bhagvansinh Parmar¹²** (Melsingh Bhagvansinh Parmar)

⁵ (2008) 3 SCC 729

⁶ 2009 (121) FLR 1039

⁷ (1995) 6 SCC 749

⁸ (2000) 9 SCC 521

⁹ (2003) 3 SCC 583

¹⁰ (2005) 3 SCC 134

¹¹ (2007) 1 SCC 222

- m. ***Bharat Heavy Electricals Ltd. vs. M. Chandrasekhar Reddy and others***¹³ (*M. Chandrasekhar Reddy*)
- n. ***Christian Medical College Hospital Employees' Union and another vs. Christian Medical College Vellore Association and others***¹⁴ (*Christian Medical College Hospital Employees' Union*)

7. Learned counsel appearing for the respondent would contend that:

- i. The Tribunal is been given with a wide power under Section 11A of the ID Act, a discretion which is vested only with the Tribunal to make appropriate award and the Labour Court having found that the workman was not wrong is entitled for reinstatement and the full backwages.

¹² 2022 LLR 609

¹³ (2002) 2 SCC 481

¹⁴ (1987) 4 SCC 691

- ii. That the Labour Court has rightly held that the alleged misconduct and its gravity is concerned, the punishment to the respondent was disproportionate.

- iii. Learned counsel submits that even if the Tribunal was of the view that the domestic enquiry against the respondent was just and proper, yet it did not debar the Tribunal from considering whether the particular findings was supported by evidence and whether the punishment was disproportionate to the misconduct and the Tribunal interference with the punishment was within the powers under Section 11A of the ID Act and reinstatement ordered by the Labour Court is justified and proper and in light of reinstatement, awarding of backwages is the entitlement of the employee.

- iv. The award of the Labour Court does not warrant any interference in the present facts and circumstances of the case. In support of his contention, learned counsel has placed reliance on the following decisions:

- a. ***Jitendra Singh Rathor vs. Shri Baidyanath Ayurved Bhawan Ltd. and another***¹⁵ (*Jitendra Singh Rathor*)
- b. ***J.K. Synthetics Ltd. vs. K.P. Agrawal and another***¹⁶ (*K.P. Agrawal*)
- c. ***Mavji C. Lakum vs. Central Bank of India***¹⁷ (*Mavji C. Lakum*)
- d. ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and others***¹⁸ (*Deepali Gundu Surwase*)

8. The charges leveled against the respondent is a charge of theft, misappropriation, dishonesty, breach of trust, commission of act of subversive, and after holding an enquiry, the management dismissed the respondent from service. The Labour Court in the impugned award failed to consider the explanation to the charge sheet at Annexure-D submitted by the respondent, wherein the respondent

¹⁵ (1984) 3 SCC 5

¹⁶ (2007) 2 SCC 433

¹⁷ (2008) 12 SCC 726

¹⁸ (2013) 10 SCC 324

admitted that the oil sachet was found from the pouch of his vehicle and he tried to take the sachet from the security guard who resisted it and thereby, there was break open of the oil sachet. Before the Enquiry Officer, on part of the management, M.W.1-Sandip Narang the Executive Chef, M.W.2-Mandipudi Sathish, HR Assistant, M.W.3-Chandan Taneja, M.W.4-Neetha Chengappa, who reported the incident and about the CD contents, M.W.5-Narayan D.M., M.W.6-Ranganath, Security Guard have deposed about the incident. M.W.6-Ranganath, Security Guard before the Enquiry Officer after the CD started playing (M.O.1) gave the following comments:

"I am standing at the Boom Barrier gate. Firstly, the Milk van is seen coming to the Security Staff Gate and when he was lifting the Boom barrier gate, Mr. Venkatesh went to Time Office to Punch Out. Then M.W.6 did the physical search after which the CSO moved from that point to the other side where CSO's Two Wheeler was parked. The altercation between M.W.6 and CSO Mr. Venkatesh was explained by M.W.6.

When Mr. Ranganath was holding the Safal Oil Packet, it is observed that he was jostling with Mr. Venkatesh. Then, Mr. Ranganath went to Time Office to pick up landline phone. Few minutes later, Mr. Venkatesh was seen moving out of the hotel on his two wheeler and moving away from the scene."

9. M.W.6-Security Guard is the eye witness to the incident, who categorically stated about the incident that occurred supporting his complaint. It is fairly well settled law that an approach and objective in criminal proceedings and in disciplinary proceedings are altogether distinct. Preponderance of probabilities and some materials on record are necessary to arrive at a conclusion whether or not the delinquent has committed misconduct. In the disciplinary proceedings, the preliminary question is whether the employee is guilty of such misconduct which would merit action against him, whereas, in criminal proceedings, the question is whether the offence registered against him are

established and if established, what sentence is to be imposed.

10. It is also well settled that while exercising the power under Article 226 of the Constitution, the High Court does not act as an Appellate Authority. Its discretion is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. Judicial review has been observed in **B.C. Chaturvedi** observing that *Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the law. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of*

natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor the proof of fact or evidence as defined therein, apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the principles of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no

evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

11. In the instant case, the disciplinary authority on enquiry and by following strict proof of legal evidence to arrive at a conclusion that the respondent was guilty of charges, the evidence reached by the disciplinary authority was after looking into all the evidence and there was no perversity or suffered from any apparent error on the face of record, as the conclusion arrived was based on the evidence let-in by the parties. In the decision **B.C. Chaturvedi**, the Apex Court further held that where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment.

12. In the present case, the case is of misappropriation, theft, where the charges are serious in

nature. The act of theft / misappropriation once proved, either it be a small or large or a small thing, the question is mistrust by the employer, wherein in such cases, it is uncalled for by way of sympathy to reinstate the employee into service. The misconduct is stated by the Security Guard who is an eye witness and the incident is recorded in the CCTV Footage as per CD at M.O.1, which is categorically spoken to by M.W.6-the Security Guard. The respondent having admitted in his explanation that the oil sachet was found from the pouch of his motor cycle and the CCTV Footage clearly revealed the presence of the oil sachet and the respondent speeding away on the vehicle when the security guard had been to call on landline, the Labour Court ought to have held that the charges are proved and the respondent deserves punishment of dismissal.

13. The Apex Court in the case of ***Mahindra and Mahindra Ltd.***, has held at paragraph No.20 as under:

"20. It is no doubt true that after introduction of Section 11-A in the Industrial

Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. and New Shorrock Mills this Court held: "Punishment of dismissal for

using of abusive language cannot be held to be disproportionate.” In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.”

14. The Labour Court could not on the sympathy alone while exercising the power under Section 11A of ID Act, direct reinstatement and backwages, when the material on record was sufficient to hold the respondent was guilty of charges, the punishment of dismissal for the misconduct cannot be said to be disproportionate, the Labour Court was not justified in substituting the order of dismissal to its own judgment, when it involved a serious case of theft, the nature of work which was entrusted to the respondent was a work of trust, the Labour Court could not have assumed that

false charges are made in order to remove him from service, when there is no pleading or evidence whatsoever in this regard either in explanation to the charge-sheet or in the claim statement or in the evidence of the respondent, the Labour Court has marshled the evidence as though it is criminal trial and on assumption, has come to erroneous conclusion that the charges were falsely framed against the respondent and the respondent has been discriminated and dismissal is highly disproportionate, which is totally contrary to the material on record, the Labour Court was not justified in interfering with the punishment of dismissal, the decisions placed reliance by the learned counsel appearing for the respondent are distinguishable and not applicable to the present facts and this Court pass the following:

ORDER

- i. Writ petition is hereby ***allowed.***

- ii. Impugned order passed by the Labour Court is hereby ***set aside***, the order of the disciplinary authority is hereby ***confirmed***.

Sd/-

(JUSTICE K.S. HEMALEKHA)

MBM