

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1807 OF 2021**

Danfoss Systems Limited

...Petitioner

Versus

Shri. Johnson Gomes

...Respondent

Mr. Sudhir Talsania, Senior Advocate with Mr. Mihir Beradia i/by.

V.M. Legal, for the Petitioners.

Mr. B.S. Nayak, with Ms. Smita S. Solwat, for the Respondent.

CORAM: Sandeep V. Marne, J.

Reserved On : 15 April 2024

Pronounced On : 19 April 2024

JUDGMENT:-

1. **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, Petition is taken up for hearing and disposal.

2. The Petitioner-Danfoss Systems Ltd. has filed this petition challenging the Award dated 25 November 2019 passed by the Presiding Officer, First Labour Court, Pune in Reference (IDA) No.11/2014. The Labour Court has answered the Reference in the affirmative and has set aside the dismissal order dated 30 July 2013

and has directed Petitioner to reinstate Respondent-Workman with continuity of service and full backwages from the date of dismissal till reinstatement alongwith consequential benefits. Petitioner has been granted liberty to impose punishment other than dismissal on Respondent-workman.

3. Petitioner is engaged in the business of manufacturing of hydraulic pumps and other products and has factory at Pimpri, Pune. Respondent was engaged by the Petitioner in its factory. On allegation of forging of gate pass and missing from the place of work, Petitioner issued chargesheet dated 3 February 2013 to Respondent and after conducting domestic enquiry, terminated his services on 30 July 2013. At Respondent's behest, industrial dispute was referred to the Labour Court, Pune and numbered as Reference (IDA) No.11/2014. Respondent filed his Statement of Claim, which was resisted by Petitioner by filing Written Statement. Labour Court framed preliminary issues about fairness of the enquiry and perversity in the findings. Labour Court rendered Part-I Award dated 17 March 2017 and held that the enquiry held by Petitioner was legal, fair and proper and in accordance with principles of natural justice. It further held that the findings recorded in the enquiry were not perverse. The Labour Court thereafter proceeded to decide the remaining issues relating to proportionality of the penalty and validity of termination order. The Respondent led evidence by examining himself as a witness. Petitioner led evidence of Mr. Sunil Sharad Dalvi. After considering the evidence on record, the Labour Court delivered Part-II Award dated 25 November 2019 and held that the punishment imposed on Respondent was shockingly disproportionate. It therefore set aside the dismissal

order dated 30 July 2013 and has directed Respondent's reinstatement with full backwages with liberty to Petitioner to impose lesser punishment than that of dismissal. Aggrieved by Part-II Award of the Labour Court, Petitioner-employer has filed the present petition.

4. Mr. Talsania, the learned Senior Advocate appearing for Petitioner would submit that Respondent indulged in grave misconduct of forging the Gatepass. That the act of forgery cannot be treated as minor or insignificant. That past record of the Respondent was riddled with various misconducts and that Petitioner gave as many as 15 instances of misconducts committed by him in the past. That the Labour Court has erred in holding the punishment to be shockingly disproportionate only on the ground of non-filing of FIR for act of forgery committed by the Respondent. That Respondent has been paid an amount of Rs.6,53,455/- at the time of termination of his services towards his legal dues. Therefore, direction to reinstate and/or to pay backwages is unwarranted in the facts and circumstances of the present case.

5. *Per-contra*, Mr. Nayak, the learned counsel appearing for the Respondent-Workman would oppose the petition and support the Award passed by the Labour Court. He would submit that Petitioner could not prove in the enquiry that Respondent committed any act for forgery. That the findings recorded in the enquiry are perverse as the same are not based on any evidence on record. Mr. Nayak, would submit that Part-I Award merges into Part-II award and that therefore Respondent is entitled to challenge

the findings recorded in Para-I Award as well. That Respondent merely carried out corrections in the Gatepass with no malafide intention, which act is deliberately branded as forgery with the objective of ensuring Respondent's ouster from service. In support of his submissions, Mr. Nayak would rely upon judgment of the Apex Court in the case of **D.N. Krishnappa Vs. Deputy General Manager**¹. Mr. Nayak would further submit that Respondent is entitled to be paid wages under Section 17-B of the Industrial Disputes Act from the date of the award in the light of pendency of the present petition. In support of this contention, he would rely upon judgment of the Apex Court in **Dena Bank Vs. Kiritikumar T. Patel**² and judgment of the Kerala High Court in **Commandant, Defence Security Vs. Secretary, N.C.C.G.U.P. Association**³. Mr. Nayak would submit that the total amount of backwages to which Respondent is entitled upto June 2022, when he attained the age of superannuation, would be to the tune of Rs.72,15,000/- which includes Provident Fund, Gratuity and Bonus. Mr. Nayak would pray for dismissal of the petition.

6. I have considered the submissions canvassed by the learned counsel appearing for the parties.

7. Part-I Award has been delivered against Respondent by answering the preliminary issues of fairness in the enquiry and perversity in the findings against Respondent. The Labour Court in Part-I Award has held that the enquiry held against Respondent is

¹ 2022 SCC OnLine SC 1709.

² AIR 1998 SCC 511.

³ 2001 II LLJ Kerala 1170.

fair, proper and after following the principles of natural justice. It further held that the finding of guilt recorded in the domestic enquiry is not perverse. Though Mr. Nayak attempted to urge before me that Respondent is entitled to challenge the findings in Part-I Award on the ground of merger of both the Awards, I am not inclined to entertain the said submissions. Respondent has not challenged even Part-II Award in the present case. Part-II Award proceeds on a footing that the enquiry is legal and that Respondent has committed misconduct. This is the reason why the Labour Court has directed imposition of penalty upon him. However, Respondent has chosen not to challenge either Part-I or Part-II Award by filing his own petition. If Respondent was to challenge Part-II Award by filing his own petition, he would have been justified in questioning the findings recorded in Part-I Award. However, in petition filed by employer challenging Part-II Award, the Respondent cannot be permitted to demonstrate that findings recorded by the Labour Court in Part-I Award are illegal. Mr. Nayak's reliance on judgment of the Apex Court in *D. N. Krishnappa* is of little relevance to the present case as the said judgment is on the issue of merger of interim order into the final order.

8. The only issue that is decided by the Labour Court while delivering Part-II Award is about proportionality of penalty. The Labour Court has recorded following findings for holding that punishment imposed on Respondent is shockingly disproportionate and has issued following directions in operative order:

17. It is argued on behalf of second party that Mr. Dalvi- Management witness in his cross-examination has stated that Mr. Aniruddha Moharier is not in service of the first party at this time. He stated that he has no idea who has given report about the erasers/ alterations on the gate pass. He cannot state who was the officer who has drawn the conclusion that Mr. Gomes was responsible to make erasion on the gate pass. Further it is argued that the evidence of Mr. Moharier cannot be taken into consideration as he is not in service. It is argued on behalf of second party that appreciation letter were given to second party. Then for what sake he was given appreciation letter. Therefore, considering the above things, the punishment in question is shockingly disproportionate.

18. In view of the aforesaid discussions, it is seen that there is no provision in respect of forgery. No police complaint is made against the second party in respect of forgery. Second party was given appreciation letters and his work was appreciated by the superiors from time to time. Thus, considering his past record in which only three incidents are there out of which incident of erasures on gate pass is one of them. In view of this position, the long spam of service of 30 years cannot be washed out for such misconduct. Hence, the punishment of dismissal is shockingly disproportionate. It needs to be set aside. But at the same time first party may impose any other punishment than the dismissal for the proved misconduct. Accordingly, Issue No. 4 is answered in affirmative, hence, termination dated 30.07.2013 is illegal. In view of this position second party is entitled to get reinstatement on his previous post with continuity in service, full backwages from date of termination till the date of actual reinstatement along with consequential benefits. Hence, issue Nos. 5 and 6 are answered in the affirmative. In answer to issue No. 7 following order is passed:

ORDER

- 1) The Reference is answered in the affirmative.
- 2) The dismissal order dated 30.07.2013 is illegal, hence, quashed and set aside.
- 3) First party is hereby directed to reinstate second party on his previous post with continuity of service and full back wages from the

date of termination till actual reinstatement along with consequential benefits.

- 4) First party is liberty to impose any other punishment than the dismissal upon the second party for the proved misconduct.

- 5) Parties to bear their own cost.

9. The Respondent faced the charge of making alterations in the Gatepass. It was alleged that on 30 January 2013, Respondent's supervisor did not locate him at his workplace at 12.30 p.m. and upon making enquiries, it was noticed that Respondent had left the company premises for personal reasons and had obtained signature of Mr. Shridhar Shenolikar, AGM on the Gatepass stating the reason of attending funeral. It was also alleged that he made overwriting on the Gatepass by mentioning '*R. S. Enterprises*'. It was alleged that the same was done in order to save his absence from being treated as leave. That he was never instructed to visit R.S. Enterprises by the Manager. In the enquiry proceedings, Respondent did not dispute that he made overwriting on the Gatepass, but he denied any *malafide* intention in doing so. He took a defence that initially the Gatepass was obtained to attend the funeral, but he later discovered that funeral was to take place in the evening and therefore he carried out corrections in the Gatepass and performed Company's work. Thus, the act of making overwriting on the Gatepass by changing the reason of absence from factory premises from '*funeral*' to '*R.S. Enterprises*' is not denied. The only issue is whether Petitioner had any *malafide* intention in doing so and whether this act is so grave so as to attract penalty of dismissal from service.

10. It must be observed that Part-II Award of the Labour Court is not happily worded, especially where it holds that in absence of police complaint, the act of the Respondent cannot be treated as forgery. At the same time, I am of the view that the misconduct committed by the Respondent was not so grave so as to impose harsh penalty of dismissal from service. Even if any *malafide* intention was to be attributed to the act of the Respondent in making overwriting on the Gatepass, the only objective that could be achieved in doing so was to save one day's leave. Thus, this is not a case where any forgery is deliberately committed with an objective of gaining any pecuniary advantage by Respondent. This is an act of overwriting on the Gatepass by changing the reason for absence. Undoubtedly, this is a misconduct and ought to have been visited with penalty. But at the same time, harsh penalty of dismissal from service was not warranted for this kind of misconduct.

11. Undoubtedly, the past service record of the Respondent is full of incidents and Petitioner has relied upon 15 such instances in its Written Statement. However, in respect of most of the incidents, advisory or warning letters are issued. None of the acts highlighted by the Petitioner were of grave nature. Respondent has attained the age of superannuation in June 2022. He was terminated from service on 30 July 2013. Since misconduct is admitted by Respondent, imposition of some penalty on him was definitely warranted. Now there is no question of reinstatement or imposition of substituted penalty on Respondent. In my view, therefore award of lumpsum compensation to Respondent would offer adequate solace to him.

12. Coming to the issue of quantum of compensation to be awarded, the Respondent has computed an amount of Rs.72,15,000/- towards backwages from 31 July 2013 to June 2022, including Provident Fund, Gratuity and Bonus. The figure of Rs. 72,15,000/- has been inflated by taking into consideration the salary of Rs. 90,000/- per month during the years 2021-22 when infact his salary at the time of termination of his services was only Rs.58,800/-. Respondent deserves some punishment for the admitted misconduct of overwriting on gatepass committed by him. He cannot be permitted to walk away with full backwages and retirement benefits. Since imposition of substituted penalty is now not possible due to his retirement, the financial benefits arising from the Award needs to be curtailed so that Respondent does not go scot-free in respect of misconduct committed by him. Respondent has already been paid an amount of Rs.6,53,455/- at the time of termination of his services. In my view, considering the totality of circumstances of the case, award of lumpsum compensation of Rs. 25,00,000/- would be an adequate remedy. This would make the total amount receivable by him at Rs. 31,53,455/-. However beyond this amount, Respondents shall not be entitled to any further financial benefits from Petitioner.

13. I accordingly proceed to pass the following order:

- (i) Award dated 25 November 2019 passed by the Presiding Officer, First Labour Court, Pune in Reference (IDA) No.11/2014 is modified to the extent that Petitioner shall pay to Respondents

lumpsum compensation of Rs. 25,00,000/- over and above the amount already paid to him in lieu of reinstatement and backwages.

- (ii) Beyond the lumpsum compensation so awarded, Respondent shall not be entitled to any further amount from Petitioner.

14. With the above directions, Writ Petition is partly allowed, without any order as to costs. Rule is made partly absolute.

SANDEEP V. MARNE, J.