IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2023

PRESENT

THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT APPEAL NO. 997 OF 2023 (L-TER)

BETWEEN:

M/S SKF INDIA LIMITED
NO.2, BOMMASANDRA INDUSTRIAL AREA,
HOSUR ROAD, BENGALURU-560 099.
REPRESENTED BY ITS PEOPLE BUSINESS ENABLER,
SRI SANKAR GANESH S,
AGED ABOUT 46 YEARS.

...APPELLANT

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

AND:

SRI A V NAGABHUSHANA

...RESPONDENT

(BY SRI.B V VISHWANATH.,ADVOCATE FOR C/R)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO A) SET ASIDE THE ORDER OF THE LEARNED SINGLE JUDGE PASSED IN WP NO.6359/2018 DATED 14/07/2023 AND B)CONSEQUENTLY ISSUE A WRIT OF CERTIORARI AND OR ANY OTHER WRIT OR ORDER AND QUASH

THE IMPUGNED AWARD DATED 20/12/2017 PASSED IN ID NO.49/2012 BY THE HON'BLE SECOND ADDITIONAL LABOUR COURT, BENGALURU AT ANNEXURE-N IN WP AND ETC.,

THIS APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGEMENT

This intra-Court Appeal seeks to lay a challenge to a learned Single Judge's order dated 14.07.2023 whereby, appellant's W.P.No.6359/2018 (L-TER) having been dismissed, the award dated 20.12.2017 rendered by II Additional Labour Court, Bengaluru in I.D No.49/2012 has been affirmed. By the said award, the discretion having been exercised, under Section 11A of the Industrial Disputes Act, 1947, the punishment of dismissal from service has been set at naught.

2. Learned Senior Advocate appearing for the appellant – Management vehemently argues that both the Labour Court award & the impugned order of the learned Single Judge are unsustainable inasmuch as due seriousness which the matter merited, has not been shown when intermittent unauthorised absence of a workman was

involved; condoning lapse of the kind would breed indiscipline in the industrial sphere; absence of a workman on account of health grounds in any industry is understandable; however, intermittent absence on the health grounds of relatives, that too happening repeatedly, cannot be shown leniency. Even otherwise discretion of the Disciplinary Authority in awarding punishment, could not have been interfered with.

3. Having heard the learned counsel for the parties and having perused the appeal papers, we decline indulgence in the matter for the following reasons:

(a) In the appeal memo at paragraph 4, it is specifically admitted "… the respondent was appointed on 15.07.1991 and had put in about 20 years of service…". Even if we were to agree that there were some lapses attributable to the workman in this long span of service, that cannot be a relevant factor for judging the so-called misconduct of his remaining unauthorisedly absent, on the basis of which his

services were terminated by way of dismissal, in our opinion, unjustifiably. The longevity of past service of the workman spurns the contention to the contrary, especially when the charge framed against him related to the period between July 2009 and April 2011, by which time he had already put in 20 years of long service. It hardly needs to be stated that a long service in any industrial establishment, needs to be recognized as something advantageous to the workman, ordinarily.

(b) The appellant in para 8 of the appeal memo specifically states "… In fact, Exs.D7 to D67 medical certificates which are in respect of treatment of his family members were produced for the first time before the Enquiry Officer on 06.04.2011." and that never before they were presented to the Management. It is not uncommon that at times the medical certificates are not submitted to the Management immediately and that they are produced

before the Enquiry Officer. Ideally speaking, such certificate should be produced to the Management which would consider the request of workman for sanctioning leave, may be terms of extant Standing Orders. However, the breach of such a norm cannot be construed as going to the root of matter provided that a plausible explanation is offered for non-compliance of such a norm. The medical certificates produced before the Enquiry Officer/Disciplinary Authority belonged to the spouse & father of the workman. They had remained unconsidered, which aspect the Labour Court having the advantage of accumulated wisdom, in its discretion faltered with. Such a discretion is vested in the Labour Court under the provisions of Section 11A of the 1947 Act, is a settled position in the realm of Labour Law.

(c) Learned Single Judge having examined all aspects of the matter declined indulgence in the challenge made to the award of the Labour Court which had set aside

the penalty of dismissal and reinstatement was ordered *sans* backwages. This again is done in the discretion of the Writ Court which was considering the matter in its limited supervisory jurisdiction constitutionally vested under Article 227, the other provision namely, Article 226 having been ornamentally employed in the pleadings of the appellant-writ petitioner. Ordinarily, such orders do not merit a deeper examination at the hands of Appellate Court vide ***TAMMANNA vs. RENUKA, 2009 SCC OnLine KAR 123***, which happens to be a 7 Judge Bench decision of this Court. No extraordinary circumstances are demonstrated warranting our interference in the view taken by the learned Single Judge confirming the award of the Labour Court.

(d) The passionate submission of learned Senior Advocate appearing for the appellant – Management that the award of the Labour Court and the impugned order of the learned Single Judge may be quoted by

the unscrupulous workmen as precedents in justification of their unauthorised absence at least in matchable circumstances and therefore, they are liable to be voided, does not much impress us. Ordinarily, what punishment should be awarded in which circumstances, is employee – specific; in awarding punishment a host of factors enter the fray and that other employees cannot press into service as a precedent, what is done to their colleagues in the employment. It is said "Labour Law is not a slave of precedent…". Suffice it to say that we have decided this matter in its peculiar fact matrix and therefore, the Management may not have the apprehension that this can be pressed into service as a precedent, by others, even when there are elements of similarity that animate the circumstance in which they are placed.

In the above circumstances, this appeal being devoid of merits is liable to be and accordingly dismissed, costs having been made easy.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Snb,
List No.: 1 Sl No.: 20