



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.149 OF 2022 (L-RES)

C/W

WRIT PETITION NO.52533 OF 2019 (L-RES)

IN W.P.NO.149/2022

BETWEEN:

... PETITIONER

(BY SRI SHASHI B.P., ADVOCATE)

AND:

THE MANAGEMENT OF
SHAKTI PRECISION
COMPONENTS (INDIA) LIMITED,
NO.20-13,
DODANEKUNDI INDUSTRIAL ESTATE,
WHITEFIELD ROAD,
BANGALORE-560 048.
REPRESENTED BY ITS DIRECTOR,
MR. C.R. NARASIMHA MURTHY.

... RESPONDENT

(BY SRI PRASHANTH B.K., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE AWARD DATED 20.11.2019 PASSED BY THE II





NC: 2024:KHC:6682
WP No. 149 of 2022
C/W WP No. 52533 of 2019

ADDL. LABOUR COURT BENGALURU IN IA NO.61/17 IN RESPECT OF NON-CONSIDERING THE BACK WAGES AND OTHER CONSEQUENTIAL BENEFITS VIDE ANNEXURE-A TO THE WRIT PETITION AND ETC.

IN W.P.NO.52533/2019

BETWEEN:

... PETITIONER

AND:

... RESPONDENT

(BY SRI. SHASHI B P., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE AWARD DATED 20.11.2019 IN I.D.61/2017 PASSED BY THE LEARNED II ADDL. INDUSTRIAL TRIBUNAL, BENGALURU ANNEXURE-Q AND THEREBY UPHOLD THE ORDER OF DISMISSAL PASSED BY THE PETITIONER AGAINST THE RESPONDENT AND ETC.



THESE PETITIONS, COMING ON FOR DICTATING ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

WP.No.149/2022 is filed by the workman assailing the impugned award insofar as not awarding back wages and other consequential benefits and W.P.No.52533/2019 is preferred by M/s. Shakthi Precision Components (India) Private Limited by its Director assailing the award directing the petitioner to reinstate the workman, by the award dated 20.11.2019 in I.D.No.61/2017 on the file of the II Additional Labour Court, Bangalore ('the Labour Court' for short).

2. The parties herein are referred to as a petitioner - company and the respondent - workman as per the ranking in W.P.No.52533/2019 for the sake of convenience.

3. Petitioner - company is a company registered under the Companies Act, 1956/2013, and is engaged in the manufacturing of auto components such as fuel



injection pumps, gear boxes, axeles, transmission, case etc., and supplying them to customers like Bosch, TAFE, Husco, Caterpillar, V.S.T, etc., The respondent joined the services of the petitioner on 16.02.2002 and was working as a CNC operator in PE Cell, while in service, for certain acts of misconduct, the respondent was suspended, pending disciplinary proceedings with effect from 14.09.2016, charge sheet was issued, respondent submitted reply, not being satisfied with the reply, departmental enquiry was conducted by Enquiry Officer, the Enquiry Officer conducted enquiry and held that the charges leveled against the respondent are proved, the Disciplinary Authority on considering the material on record and the enquiry report held the respondent is guilty of charges and imposed punishment of dismissal.

4. The respondent - workman raised dispute by filing claim statement under Section 2A read with Section 10(4-A) (Karnataka Amendment) of the Industrial Disputes Act, 1947 ('the ID Act' for short). The petitioner



- company filed counter *inter alia* resisting the claim of the respondent - workman. The Labour Court on the question of fairness of domestic enquiry held that the domestic enquiry conducted by the petitioner against the respondent is not fair and proper.

5. On merits, the petitioner examined M.W.2-Mrs. Shanthi Wilma Pais and Mr. Santhosh Kumar Rai as M.W.3 and got marked documents at Exs.M.1 to M.20. On the other hand, the workman did not examine himself nor adduced any evidence on the question of victimization. The Labour Court by the impugned award set aside the order of dismissal, passed by the Disciplinary Authority and held that the conduct of the management amounts to victimization, unfair labour practice and awarding of punishment of dismissal is extreme to the charges of abuse of some worker or officer and award of punishment is disproportionate while holding so, the Labour Court directed the petitioner to reinstate the workman into service.



6. Heard, Sri. Prashanth B K, learned counsel appearing for the petitioner - company and Sri. Shashi B P, learned counsel appearing for the respondent – workman.

7. Learned counsel for the petitioner would contend that the Labour Court has failed to consider the evidence tendered by M.W.2 and M.W.3 in proper perspective, while M.W.2 is the person against whom the respondent used unparliamentarily and derogatory language and she has categorical stated about the respondent having misbehaved and the aggressive act of the respondent, and M.W.3 has also stated about the incident where the respondent - workman used abusive language and threatened the Enquiry Officer of dire consequences. Learned counsel would contend that the oral evidence of M.W.2 and M.W.3 remained unrebutted and also supplemented by the documentary evidence and the reasoning of the Labour Court to negate their evidence is totally uncalled for. Learned counsel would contend that the discipline at work place/ Industrial Establishment/



Industrial Undertakings are necessary and the employees cannot be allowed to break the discipline in any manner and would contend that terming of misconducts committed by the respondent has not grave and serious, is very casual, and contrary to the settled proposition of law and place reliance on the decision of the Apex court in the case of ***J.K Synthetics Limited v. K.P.Agrawal and Others.***¹(*J.K Synthetics Limited*)

8. *Per contra*, learned counsel appearing for the respondent - workman would justify the order of reinstatement by the Labour Court and would contend that in light of reinstatement of the workman into service to his original post, the Labour Court ought to have awarded back wages with continuity of service and other consequential benefits. Learned counsel would contend that the order of reinstatement and holding that the misconduct and the punishment imposed is

¹ (2007) 2 SCC 433.



disproportionate has rightly directed reinstatement which does not warrant interference by this Court, while on the other hand, would contend that the back wages and continuity of service needs to be awarded and placed reliance on the following decisions:

- 1. WP.No.100649/2021 in the case of Smt. Medha v. The State of Karnataka and others dated 26.07.2021.**
- 2. C.A.No.2393/2022 in the case of Armed Forces Ex Officers Multi Services Co-operative Society Ltd v. Rashtriya Mazdoor Sangh(INTUC) dated 11.08.2022.**
- 3. D.N.Krishnappa v. The Deputy General Manager in C.A.No.9008/2022 dated 12.12.2022.**
- 4. C.A.No.6188/2019 in the case of 2019 0 Supreme (SC) 899 in the case of Jayanthibhai Raojibhai Patel v. Muncipal Council, Narkhed and others dated 21.08.2019.**
- 5. C.A.Nos.632-635/1980 in the case of Surendra Kumar Verma and Others v. Central Government Industrial Tribunal-cum-Labour**



***Court, New Delhi and Another dated
23.09.1980.***

9. Having heard learned counsel for the petitioner and learned counsel for the parties, the point that arises for consideration:

Whether the Labour Court was justified in interfering with the order of the Disciplinary Authority and set aside the order of dismissal in the present facts and circumstances of this case?

10. The charges leveled against the respondent is:

1. On 08.07.2016, while he was working in the first shift hours, at around 1:45 pm, he has left the work spot unauthorizedly and went up to the Manager, HR in the pretext of clarifying his leave balance and when he went to the HR Manager, he got into argument and abused her by shouting in Kannada saying "neenu nalayakku illi kelasa madalikke, yentakke kuthukondidiya illi."



2. On 27.07.2016 at around 12:40 pm, when the workman represented as a co-workman of Mr. Manjunath. N in a domestic enquiry, he shouted and abused at the Management Representative Mrs. Shanthi Wilma Pais, HR Manager(MW2), in a singular language by saying in Kannada "avaligenu maryade koduvudu."
3. On 30.08.2016 at around 10:25 am, when the workman attended the domestic enquiry as a co-workman to Mr. Praveen Kumar T at Hotel Airlines Bangalore, he abused and threatened the Enquiry Officer Mr. A R Ravi, despite the Enquiry Officer's best attempt to prevail upon him to keep calm and follow the rules.
4. On 12.09.2016 at around 9:00 am, when he was representing a co-workman Mr. Manjunath N in a domestic enquiry, he once again abused and shouted at he Management Representative Mrs. Shanthi Wilma Pais, HR Manager (MW2) in



singular and abusive language by saying in Kannada "Ninna hathra mathaduthilla naanu, neenu yaake maathanaaduthiya, ivanu -givanu antha helabeda, naanu ninna mane kelasadavanu alla artha aytha, neenu henge avanu-givanu annutheeya, ninna mane kelasadavana naanu."

5. On 19.09.2016 at 9:30 am when he attended the domestic enquiry as a co-workman to Mr. Manjunath N, he behaved rudely with the Enquiry Officer shouting and abusing him of favouring the Management and threatens to walk out of enquiry.
6. The repeated serious acts of misconducts, the management suspended him by issuing a detailed charge sheet. The charge sheet cum show-cause-notice also indicate that the workman remained absent from work for 38 days between May 2015 to September 2016.



11. Noting the acts on part of the workman having amounted to serious misconduct under the provisions of Model Standing Orders provided under the applicable Karnataka Industrial Employment (Standing Orders) Rules, 1961, namely:

1) 15 (3) (a) Wilful insubordination or disobedience, whether alone or in combination with others to any lawful and reasonable order of his superior;

2) 15 (3) (c) Will full damage to or loss of employer's goods or property;

3) 15 (3) (e) Habitual absence without leave;

4) 15 (3) (g) Habitual breach of any law applicable to the establishment;

5) 15 (3) (h) Riotous or disorderly behaviour during working hours of the establishment or any act of subversive of discipline;

6) 15 (3) (j) Frequent repetition of any act or omission;

7) 15 (3) (l) Threatening or intimidating any employee of the establishment;

12. The Labour Court held that the domestic enquiry to be not fair and proper and the management



examined MW2 and MW3 as management witness on merits. MW2 is Mrs. Shanthi Wilma Pais who was working as HR Manager in the petitioner company. M.W.2 categorically stated about the incident that occurred on 27.07.2016, 12.09.2016 wherein the workman abused and shouted at MW2 by using derogatory remarks in a filthy language. The cross examination on part of the workman is to the effect that the word stated by the workman on 18.07.2016 are not damaging and the language which has been used by the workman nothing but daily using words. The relevant portion of the cross examination of M.W.2 is reads as under:

Cross examination: by Sri. SVS Advocate for I party.

21. Presently I am not working on II party company. I left the job in the month of April 2018. My qualification is MSW. It is true to suggest that presently HR-Manager and other HR people are working in II party. I have not produced any authorization letter issued by the II party to come and depose evidence in this case. If any person scolded loudly in Kannada language I can understand the same. It is not true to suggest that



the II party company has forcibly obtained resignation from me. It is true to suggest that the documents produced in my evidence are all part of documentary evidence produced in Domestic Enquiry.

22. It is true to suggest that whatever the words stated by the I party on 18.07.2016 are not damaging words. I am aware of the fact that the enquiry officer has given findings in respect of the documents produced by me in this case. I am aware of the fact that this court has already given findings on Domestic Enquiry issue. It is not true to suggest that whatever the language used by the I party are nothing but daily using words. It is not true to suggest that though the II party has not authorized me to come and give evidence but by having grudge on the I party I filed false affidavit and deposing false evidence. I have obtained oral permission from my present employer to give evidence in this case."

Emphasis supplied

13. M.W.3 is one Mr. Santhosh Kumar Rai, who was working as a IR consultant for the petitioner company and categorically stated that he has participated in a domestic enquiry held by one Mr. A R Ravi against Mr. Praveen



Kumar T and the incident that has transpired on 02.08.2016 and the subsequent events, categorically stated that the workman was using singular terms despite the Enquiry Officer controlled and try to pacify the workman.

14. The Labour Court holds the evidence of MW2 and MW3 as an interested witness and does not consider the evidence stated by MW2 and MW3, who in categorical terms narrates the incident that has been occurred. The acts of subversive of discipline are as such acts that tend to subverts discipline of tendency over through, upset and destroy discipline in any establishment. Broadly speaking, all acts which tends to destroy discipline would tantamount to "acts subversive of discipline" and which may include misconduct relating to duty, negligence going on illegal strikes, go slow, in subordination and disobedience of orders, riots and disorderly behavior. The following Acts have been treated as acts subversive of discipline:



- a) *Writing a letter to the director of the company containing offensive remarks against him.*
- b) *behaviour insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of employer and employee.*
- c) *abusing a superior officer by using vulgar and filthy language and use of immoderate language.*
- d) *Preferring a false complaint to police against a superior officer knowing it to be false with a view to bringing the management into humiliation.*
- e) *the act of wrongfully restraining and confining the manager by workmen with a view to making him concede to their demands.*
- f) *preventing a superior officer from discharging his duties towards the management.*
- g) *sleeping in office while on duty.*
- h) *rowdy conduct in the course of working hours, or in some cases, even outside the working hours but within the precincts of the concern and directed towards the employees of the concern and*
- i) *constructing a pacca structure in the labour quarters contrary to the directions of the management and subsequent refusal to dismantle*



the same in disobedience to the order of the management.

Emphasis supplied

15. The Apex Court in the case of **Mahindra and Mahindra Limited v. MV Nervary**² (*Mahindra and Mahindra Limited*) observed:

"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

² (2005) 1 LLJ 1129 SC



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 civilized 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 fact or referred to hereinabove."

Emphasis supplied

16. In the later judgment, the Apex Court in JK Synthetics has taken a similar view stated supra has held at para 22 as under:



22. *This takes us to the next question as to whether the Labour Court was justified at all in interfering with the punishment of dismissal. The Labour Court held that one serious charge was proved, another charge was not proved and in regard to the third charge gave 'benefit of doubt' to the employee. The Labour Court also relied on the decisions of this Court in Rama Kant Misra v. State of U.P. MANU/SC/0194/1982: (1982) IILLJ472SC, wherein it was held that the punishment of dismissal was excessive where the employee was found to have uttered indecent words and used abusive language and substituted it by the lesser punishment of stoppage of two annual increments. The said decision depended on its special facts and may not apply to this case. The recent trend in regard to scope of interference with punishment in matters involving discipline at the workplace has been different. We may refer to some of the recent decisions.*

23. *In Hombe Gowda Educational Trust v. State of Karnatak MANU/SC/2522/2005: (2006) ILLJ1004SC, this Court stressed the need to give importance to discipline at the workplace. This Court observed:*

This court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the



earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/ industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity.

24. *In Mahindra and Manhindra Ltd. v. N. B Narawade MANU/SC/0138/2005: (2005) ILLJ1129SC, this Court considered a case where a workman used abusive and filthy language against his superior officer, in the presence of his subordinates. He was terminated after conducting an inquiry. Labour Court found the punishment to be excessive and in exercise of power under Section 11A of the ID Act, imposed a lesser punishment. This Court held that the misconduct cannot be termed to be an indiscipline calling for lesser punishment than termination. A similar view was taken in Orissa Cement v. Adikand Sahu 1960 (1) LLJ 518 and New Shorrock Mills v. Mahesh Bhai T. Rao MANU/SC/0069/1977: (1977)ILLJ1212SC.*

25. *In UP. SRTC v. Subhash Chandra Sharma MANU/SC/0188/2000: (2000) ILLJ1117SC, this*



Court held that the punishment of removal, for abusing and threatening another employee, was not shockingly disproportionate to the gravity of the offence. In that case also, only one among three charges was established and the Labour Court had interfered with the punishment, which was upheld by the High Court. Reversing such decision, this Court held:

The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent, from the service. The charge against the respondent was that he, in drunken state, along with a conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised



by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice."

17. The Apex Court in ***Mahindra and Mahindra Limited*** and ***J.K Synthetics Limited*** has come heavily on such type of acts of employee and to be treated as serious and held, removal/dismissal in such cases are justified. The decision placed reliance by the learned counsel appearing for the respondent - workman is distinguishable and not applicable to the present facts and circumstances of the present case.

18. In the circumstances narrated above and the decisions stated supra, in the instant case the act of the



workman by using abusive language not once, but on several occasions cannot be treated lightly, as held by the Labour Court, the imposition of punishment of dismissal by the Disciplinary Authority to the gravity of misconduct by the workman was justified and the imposition of punishment by way of dismissal cannot be held to be disproportionate, unjust or illegal in any manner and the points framed for consideration is answered in favour of the petitioner –management warranting interference by this Court.

19. Accordingly, this Court pass following:

ORDER

- i. WP.No.52533/2019 is hereby ***allowed***.
- ii. WP.No.149/2022 is hereby ***dismissed***.
- iii. The impugned order award of the Labour Court is hereby ***set aside***.

Sd/-
JUDGE

AM