

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2017

BEFORE

THE HON'BLE MR.JUSTICE G.NARENDAR

W. P. No.29508/2014 (L-TER)

BETWEEN

THE CHIEF EXECUTIVE
DIGANATHA MUDRANA LTD.,
REPRESENTED BY GENERAL MANAGER
SRI A S MITHUN
S/O A T SIDDAPPA GOWDA
AGED ABOUT 26 YEARS
REGISTERED OFFICE AT 5-184/185
INDUSTRIAL ESTATE, YEYYADI
MANGALORE ... PETITIONER

(BY SRI. BIMBADHAR M.GOUDAR – ADV.
FOR SRI. HARISH KUMAR M S-ADV)

AND

MR GANGADHAR
S/O SESHU,
AGED ABOUT 52 YEARS,
R/O 3-443, ADYAR PADAVU
ADYAR, MANGALORE ... RESPONDENT

(BY SMT. DEEPTHI R KOTIAN-ADV)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO. QUASH THE
ORDER DTD.25.2.2014 PASSED BY THE PRESIDING
OFFICER, LABOUR COURT, D.K., MANGALORE IN
IDA.NO.7/2011 VIDE ANNEX-R.

THIS WRIT PETITION COMING ON FOR PRELIMINARY
HEARING “B-GROUP” THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

Heard the learned counsel for the petitioner/Management.

2. The petitioner is before this Court calling in question the order passed by the Presiding Officer, Labour Court, Dakshina Kannada, Mangalore, in I.D.No.7/2011 at Annexure-R.

3. It is the case of the petitioner that vide Annexure-C, charge memo, came to be issued with a specific allegation that the respondent/employee on the intervening night of 14.4.2011 had attempted to steal four web plates and that he was caught red handed while making preparation for stealing/removing the web plates.

4. On the said allegation the petitioner appointed a counsel as the Enquiry Officer. The Enquiry Officer after conducting the enquiry held the charges as proved. On the said report the petitioner deemed it fit to impose the punishment of termination of the workman from service. Aggrieved, the workman approached the Labour Court vide

I.D.A No.7/2011. The Labour Court vide its award dated 25.2.2014 was pleased to frame the following issues :-

- 1) *Whether D.E. held is fair and proper?*
- 2) *Whether the applicant proves that termination order passed against him is illegal and arbitrary?*
- 3) *Whether the applicant proves that punishment imposed against him is disproportionate to the offence alleged?*
- 4) *Whether applicant is entitled for reinstatement with continuity of service, full back wages and other consequential benefits?*
- 5) *What order?*

5. The Labour Court held issue No.1, i.e. with regard to the fairness of the enquiry, in the affirmative. It also held that the applicant proved that the termination order is illegal and arbitrary. Further, held that the punishment imposed is disproportionate to the offence alleged. After apprising the material on record, the Labour Court found that the value of the web plates was Rs.160/- only. It also found that the petitioner-company used to permit its employees to take the used web plates to its employees on

receipt of cost of the said web plates and in this regard delivery challan would be prepared by the Stores Branch. It also relied upon the judicial pronouncement by the Hon'ble High Court of Andhra Pradesh reported in 2002-IV-LLY-Suppl-WOC 947 and others and thereafter it concluded that in view of the finding therein, the applicant was entitled to reinstatement to his original post with continuity of service and other consequential benefits. Further regarding the issue of payment of backwages, the Labour Court was of the opinion that as no work was extracted, ends of justice would be met if 50% of the backwages is awarded from the date of termination till the date of reinstatement and accordingly partly allowed the application.

6. Learned counsel for the petitioner would submit that the Labour Court seriously erred in concluding that the petitioner-company was in the habit of selling used web plates for consideration. He would further contend that the Labour Court erred in not appreciating the fact that a serious charge of theft was alleged against the

employee and hence he would submit that the impugned award suffers from serious infirmities and improper appreciation of the material on record. Hence, he would submit that the impugned award warrants interference at the ends of this Court.

7. This Court is unable to appreciate the contentions of the petitioner for the following reasons :-

Firstly, it is seen that the petitioner has placed reliance on the so called letter of apology which is dated 16.4.2011, produced as Annexure-A to the writ petition. In the said letter, employee has clearly stated that he has taken the web plates on previous occasions with the permission of his superiors after payment of the value of the same and the said web plates were required to block the leakages over the roof of his house. The value of the used web plates is also not in dispute. Secondly, the Management witness viz. MW1 in the course of his cross examination categorically admitted as under :-

ಪ್ರ: ವೆಬ್ ಪ್ಲೇಟನ್ನು ನಿಮ್ಮ ಸಂಸ್ಥೆಯಿಂದ ನೌಕರರು ತೆಗೆದುಕೊಂಡು ಹೋಗುವ ಪದ್ಧತಿ ಇದೆಯಲ್ಲವೇ?

ಉ: ಸ್ಟೋರ್ ಮೇಲ್ವಿಚಾರಕರಲ್ಲಿ ಸಂಜೆ 5.00ಗಂಟೆಯ ಒಳಗಾಗಿ ಡೆಲಿವರಿ ಚಲನ್ ಮಾಡಿಸಿದ ನಂತರ ನೌಕರರಿಗೆ ಬೇಕಾದ ವೆಬ್ ಪೇಟನ್ನು ಅವರೇ ಪ್ಯಾಕ್ ಮಾಡಿಟ್ಟಿರುತ್ತಾರೆ. ಅನಂತರ ನೌಕರರು ಕೊಂಡುಹೋಗಬಹುದು.

A reading of the admission would probabalize the case of the defence set up by the employee at the earliest point of time i.e. 16.4.2011. The further omission on the part of the management to report the commission of a criminal offence would also enure to the benefit of the employee. If the petitioner was of the opinion that the employee had indeed attempted to indulge in an act of theft, prudence would require that such an act shall be reported to the concerned authorities. The reason why it was not reported to the police authorities is also not placed on record. It can be safely deduced that as the petitioner/Company was in the habit of selling used web sheets to its employees, the petitioner did not deem it to be an act of theft committed by the respondent/employee. Further it is an undisputed fact that the employee was, on the relevant date, working during the night shift and it is not the case of the petitioner that Stores Section of the said Company was functioning and that had the employee

approached the Stores Incharge, he would have issued challan. In the circumstances, this Court does not find any perversity in the appreciation of the evidence or any unreasonableness in the reasons ascribed in the order of the Labour Court and it has been passed after proper appreciation of the pleadings and material placed before it.

Hence, the petition being devoid of merits is accordingly rejected.

Sd/-
JUDGE

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