



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 27TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR
WRIT PETITION NO. 46195 OF 2017 (L-RES)

BETWEEN:

M/S TOYOTA KIRLOSKAR AUTO PARTS (P) LTD
PLOT NO. 21,
KIADB INDUSTRIAL AREA
ABBANAKUPPE VILLAGE,
BIDADI, RAMANAGARA DISTRICT,
RAMANAGARA 562109.
REP BY ITS
VICE PRESIDENT

...PETITIONER

(BY SRI.S.S NAGANAND., SR.ADVOCATE FOR
SRI. B C PRABHAKAR.,ADVOCATE)

AND:

MR. NIRANJANA K P
S/O. PUTTARAJAIAH,
KURUBARAHALLI,
BILAGUMBA POST,
KASABA HOBLI,
RAMANAGARA TALUK AND DISTRICT

...RESPONDENT

(BY MISS.AVANI CHOKSHI.,ADVOCATE)

THIS WP FILED UNDER ARTICLES 226 & 227 OF THE
CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS
LEADING TO THE PASSING OF THE AWARD DATED 18.8.2017
PASSED BY THE III ADDL. LABOUR COURT, BENGALURU, IN
I.D.30/2014 AT ANNEX-N;QUASH THE AWARD DATED
18.8.2017 PASSED BY THE III ADDL. LABOUR COURT,
BENGALURU IN I.D.30/2014 AT ANNEX-N.

THIS PETITION, COMING ON FOR DICTATING ORDERS,
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:





CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This petition is filed by the management challenging the impugned award dated 18.08.2017, passed by III Additional Labour Court, Bengaluru in Industrial Dispute No.30 of 2014, whereby the Labour Court has allowed the claim petition filed by the workman under Section 10 (4A) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'), the termination order dated 27.05.2014 came to be set aside and the management was directed to reinstate the workman to his original place with continuity of service, full back wages and all other consequential benefits within thirty days from the date of the award.

2. Brief facts are as under:

The petitioner is a private limited company, registered under the Companies Act, 1956. It is engaged in the manufacture of automobile components. The company employs approximately 358 workmen in its factory in various activities. The service conditions of the



petitioner's workmen are governed by the certified standing orders of the factory.

3. The respondent has undergone apprenticeship training in the designated trade of fitter from 13.10.2007 to 12.10.2008. Thereafter, more than a year, the respondent was engaged in Temporary Support Member (TSM) vide order dated 08.05.2010. At the time of engagement of the respondent as TSM, it was specifically mentioned that his engagement is only for a period of six months and after which, his period would cease to be TSM. The nature of work, which claims to have been given only on temporary basis, was accepted by the workman. He was relieved from the service on 09.11.2010 after the period of six months.

4. The respondent was again engaged on a fresh contract basis as TSM for another period of six months from 10.11.2010 to 09.05.2011. Again he was enrolled from 08.08.2011 to 07.02.2012. Thereafter, due to



exigencies of work, he was again taken on a fresh contract basis for a period of six months i.e., from 08.02.2012.

5. This being the state of affairs, the respondent orally submitted his candidature to the post of team member trainee. On the same day, he was interviewed, selected as team member trainee and issued an appointment order on 26.05.2012 for a period of one year from 28.05.2012 to 27.05.2013. Upon completion of the training period of one year, the respondent was appointed against the vacancy as team member on 27.05.2013 on probation for a period of one year.

6. The performance of the respondent during the probationary period was found to be not satisfied. Thereafter, issued a caution letter dated 11.01.2014 describing five areas of concern. A reply was submitted regretting the incident and tendered apology. After an overall assessment of the performance of the respondent during the period of probation, it was found to be



unsatisfactory. Hence, the petitioner/management did not confirm the services. Accordingly, the respondent has been relieved from the service from the closing hours of 27.05.2014.

7. The respondent thereafter filed an application under Section 10(4A) of the Industrial Disputes (Karnataka) Act, 1988 before the III Additional Labour Court, Bengaluru alleging that he was illegally terminated and sought for reinstatement along with other benefits.

8. Based on the pleadings of both the parties, i.e., the workman and the management, the Labour Court framed the following issues for consideration:

- "1. Whether the first party proves that his order of termination dated 27.5.2014 is illegal and quite arbitrary?
2. Whether the I party further proves that the said termination is in violation of Sec 33 of I.D. Act?
3. Whether the II party justified the order of termination of the low performance of the I party?
4. Whether the I party is entitled for the relief sought for?
5. What order?"



9. In order to prove the case, evidence was let by both sides. On behalf of the management, one Sri Vijay H.V., the Assistant Manager, HR in the management was examined as M.W.1 and got marked Exs.M.1 to 10. The workman examined himself as W.W.1 and got marked Exs.W.1 to 120. On the basis of the material placed on record by both the parties, the Labour Court set aside the order of termination dated 27.05.2014 passed by the petitioner/management and directed the management to re-instate the respondent to his original place of work with continuity of service, full back wages and all other consequential benefits.

10. It is this award of the Labour Court that is questioned by the petitioner/management of setting aside the termination and re-instating the workman with full back wages and other consequential benefits.



11. It is the vehement contention of the learned Senior Counsel Sri S.S. Nagananda on behalf of learned counsel Sri B.C. Prabhakar for the petitioner/management that the Labour Court has misdirected itself and has come to a wrong decision that the management has dismissed the respondent by way of punishment which is totally contrary to the concept of termination of a probationer for unsatisfactory service. It is further contended that the Labour Court has committed foundational error in the case by totally ignoring that the object of probationary employment is to assess the performance of a probationer during the period of probationary period and non-confirming of a probationer would not amount to punishment. Learned Senior Counsel also contends that the Labour Court has committed a serious error in not taking note of the legal position that the probationer is entitled to confirmation only if his service during the period of probation is satisfactory and he is found suitable for the post. Further, the Labour Court has committed a



HC-KAR

NC: 2026:KHC:12554
WP No. 46195 of 2017

gross error in not considering that the termination so made by the petitioner is simpliciter and by no stretch of imagination, it could be termed as a stigmatic order, which is completely overlooked by the Labour Court. It is also contended that the Labour Court has seriously erred that the non-confirmation of the respondent would amount to retrenchment which is in violation of Section 25-F of the Act of 1956.

12. It is further contended by the learned Senior Counsel that the Labour Court has failed to take into consideration the catena of judgments of the Hon'ble Court. The Hon'ble Apex Court held that termination of a probationer for unsuccessful completion of period of probation would not amount to retrenchment. It is also contended that once it is found by the employer that the probationer is not proper and suitable for the post, on the basis of overall assessment made by the employer, it would not be proper for the Courts to interfere in reinstatement, as the Labour Courts are not sitting over the



assessment of an employee by the employer, which is the error committed by the Labour Court in the present case on hand. It is also contended that non-confirmation of the respondent is in violation of Section 33(2)(b) of the Act of 1956, is totally perverse and is unsustainable for the reason that in the present case, the respondent/workman is not dismissed for misconduct, his termination is simpliciter on the ground of unsuccessful completion of the service period which does not amount to stigmatic order.

13. Learned Senior Counsel further contends that the respondent/workman was appointed provisionally as TSM vide order dated 27.05.2013 on probation for a period of one year. As a probationer, he was liable to be terminated without assigning any reason. Therefore, on the basis of overall assessment, regarding the suitability of the workman, and having found that he was not suitable to the post and performance of the respondent was not satisfactory, caution letter was issued, to which, a reply by



way of apology is tendered to correct himself. Despite giving sufficient opportunity, as no improvement was shown in his performance and on the basis of quarterly assessment, after giving caution notice to the respondent, terminated from the service. It is further contended that the respondent was taken as a probationer on temporary appointment due to exigencies of work and not against the sanctioned vacancies which he was also aware, so also TSM is for a limited period. Therefore, the respondent/workman was always on probation irrespective of a length of service he put in and his engagement cannot be construed as employment against a sanctioned post. The question of victimization or malafides cannot be attached to the management. Therefore, the Labour Court has committed serious illegalities and the award passed by the Labour Court suffers from perversity and serious legal infirmities. Hence, the same requires to be set aside and quashed.



HC-KAR

NC: 2026:KHC:12554
WP No. 46195 of 2017

14. Learned counsel for the petitioner in support of his case, relied on the following judgments:

- i. ***Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another [Air 1993 SC 392];***
- ii. ***Krishnadevraya Education Trust and Another Vs. L.A. Balakrishna [(2001) 9 SCC 319];***
- iii. ***Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and another [(2002) 1 SCC 520],***
- iv. ***M. Venugopal Vs. Divisional Manager, Life Insurance Corporation of India [Laws (SC) 1994 1 56] and***
- v. ***Chandra Prakash Shahi Vs. State of U.P. and Others [(2000) 5 SCC 152]***

15. *Per contra*, learned counsel Ms.Avani Chokshi, appearing for the respondent/workman vehemently contends that there is no illegality, perversity or arbitrariness in the award passed by the Labour Court and in view of the victimization of the respondent/workman and the management found adopting unfair labour practice, terminating the services of the



respondent/workman and the same having been proved and established by way of material evidence, the Labour Court has rightly come to the conclusion that such termination is illegal, unjustified, invalid, unreasonable and improper and consequently, quashed and set aside the same, which does not call for interference.

16. Learned counsel further contends that the reason for termination according to the management was simpliciter termination and there was no stigmatic order, whereas the respondent/workman has taken a contention before the Labour Court that the termination was on the basis of the alleged misconduct as per the caution letter given by the management dated 11.01.2014 and therefore when that being the case, the management ought to have filed an application under Section 33(2)(b) of the Act of 1956. It is also contended by the learned counsel for the respondent that being an employee, there was no alternative remedy except to give an undertaking to the management though the workman had not committed any



misconduct and such a situation was created by the management. It is further contended that the management had not conducted any enquiry with regard to the alleged non-satisfactory work of the respondent/workman but there were various disputes pending before the Conciliation Officer as well as the Labour Court between the workman and the management. Learned counsel further contends that apparently the management has not obtained any permission for approval either under Section 33(1) (b) or 33(2) (b) of the Act of 1956 either from the Conciliation Officer or Tribunal. It is also relevant to take note that the respondent/workman was taking an active role in the lawful agitation for the illegalities committed by the management and in view of the said involvement of the petitioner in such agitation against the management, he has been removed from the service with a malafide intention which is a clear case of victimization and unfair labour practice, and the same is correctly decided and held by the Labour Court in its



award. It is further contended that the petitioner/management had retained the services of the some of the workers who were junior to the respondent herein as per Exs.W.54 and 58. Hence, it is contended that the award passed by the Labour Court directing the management to reinstate the service of the respondent/workman along with continuity of service with full back wages and all other consequential benefits is legal, justified and the same does not call for interference. Hence, she prays to dismiss the petition.

17. Learned counsel for the respondent in support of his case, relied on the following judgments:

- i. ***Mahendra Singh Dhantwal v/s Hidustan Motors Ltd and other 5 reported in (1976) IV SCC, page No.606.***
- ii. ***Gujarat Steel Tubes Ltd. v/s Gujarat Steel Tubes Mazdoor Sabha, reported in 1980 SCC L and S, page No.197.***
- iii. ***Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. v/s Ramgopal Sharma and Others reported in 2002, 1LLJ (SC) page No.834.***
- iv. ***Regional Manager State Bank of India v/s Rajaram reported in 2004 VIII SCC page No.164.***



HC-KAR

NC: 2026:KHC:12554
WP No. 46195 of 2017

- v. ***Harjinder Singh v/s Punjab State Ware Housing Corporation reported in 2010 II LLJ (SC) page No.309.***
- vi. ***Bhilwala Dugdh Utpadak Sahakari S. Ltd. v/s Vinod Kumar Sharma dead by LRs and Others reported in 2011 IV LLJ (SC) Page No.292.***
- vii. ***Tarmbak Rubber Industries Ltd. v/s Nashik Workers Union and others reported in (2003) VI SCC page No.416.***
- viii. ***Durgapur Casual Workers Union and Others v/s Food Corporation of India and Others reported in (2015) V SCC, page No. 786.***
- ix. ***State of Rajasthan v/s Rameshwar Lal reported in 1996 (I) LLJ 888 (S.C).***
- x. ***Ramaprasad v/s State of Rajasthan reported in 1993 (I) LLJ 766 (Division Bench)***
- xi. ***Dipti Prakash Banerjee v/s Sathyendranath Bose National Centre reported in (1999) 3 SCC 60.***

18. I have heard learned counsel for the petitioner and learned counsel for the respondent.

19. The point that arises for consideration before this Court is:

Whether the award passed by the Labour Court is illegal, arbitrary and deserves to be set aside?



20. It is not in dispute that the management had appointed the respondent-workman under designation of Temporary Support Member (TSM) and his services were extended from time to time. It is also not in dispute that respondent-workman having completed training period, the service of the respondent was taken on probation for a period of one year from 28.05.2013. The workman was attending meetings convened against the management with regard to unfair labour practice. The agitation against the management with regard to alleged unfair labour practices was not liked by the management and was not taken in good taste. Pursuant thereto, management got issued a caution letter on 11.01.2014, making certain allegation against the respondent-workman. After having issued letter, obtained a reply apology from the workman, pursuant to which the workman was terminated from the service on the ground of his probation having ended on 27.05.2014 by paying one month salary.



21. It is the case of the management that the termination is simpliciter, as the workman was on probation and therefore his service could be terminated at any time during the period of probation. It is contended that the termination of the workman is a simpliciter termination and does not cause any stigmatic order of termination.

22. On the contrary, the contention taken by respondent-workman is that he was initially taken as an apprentice and underwent training for the trade of Fitter and thereafter appointed as Temporary Support Member (TSM) on the basis of contract and after completion of the training period, as the vacancy existed, the workman was appointed and put on probation. The respondent-workman has taken a plea that the termination order passed on 27.05.2014 is illegal and arbitrary.

23. Apparently, it is seen that the respondent-workman was taken on probation on 28.05.2013 and



appointed as a team member. Thereafter, he ought to have been confirmed, rather his services were terminated. The Labour Court has come to the conclusion that the petitioner-management is involved in unfair labour practice, as the respondent was taken into service and terminated and thereafter, reinducted once again and several times he was appointed after break of service. The Tribunal has also come to the conclusion on the basis of the evidence adduced by the management that the break service of the respondent was artificial one. It is seen that the respondent was taken into service on several occasions and appointed by giving breaks, which is admitted by the management itself as artificial one, would certainly constitute unfair labour practice.

24. The judgment of Hon'ble Apex Court in the case of ***Trambak Rubber Industries*** (*supra*) would be relevant for consideration, which has been relied by the Labour Court while passing the impugned order. In the facts of the present case, it is not in dispute that the



respondent-workman was taken several times into employment by providing appointment order and all these times he was taken as a trainee on probation and thereafter, he was appointed as TSM. In view of his participation in the activities against the management for unlawful activities, he has been terminated, which amounts to unfair labour practice. With regard to non performance of respondent-workman, the caution letter having been issued and thereafter termination of service of the workman, is not satisfactory and not acceptable, in view of the fact that after having taken the workman on several occasions, he has been terminated on the ground of non performance. In my humble opinion, he had actively participated in the agitation by other workman against the management and having participated in the meeting conducted against the management. Therefore, the order of termination by the petitioner-management is not a justifiable order and the Labour Court has rightly come to the conclusion that the said order does not reflect



any reasonableness and any appropriate material having not been placed to sustain the order or termination, the order of Labour Court in my opinion does not call for interference.

25. It is relevant to note that the respondent-workman was taking active role in a lawful agitation against the management and also the services of some of the workmen, who were juniors to the respondent were retained, as per Ex.W-54 to 58. Hence, it is seen that the termination of respondent-workman is for the reason that he had started taking active role in the lawful agitation against the management and the management felt threatened due to the presence of respondent-workman and terminated his service, which is illegal and amounts to unfair labour practice and victimization as rightly held by the Labour Court.



26. It would be relevant to extract paragraph Nos.51 to 52 and 55 in the case of **Gujarat Steel Tubes** (*supra*) wherein Hon'ble Apex Court held as under:

"51. Many situations arise where courts have been puzzled because the manifest language of the termination order is equivocal or misleading and dis-missals have been dressed up as simple termination. And so, judges have dived into distinctions between the motive and the foundation of the order and a variety of other variations to discover the true effect of an order of termination. Rulings are a maze on this question but, in sum, the conclusion is clear. If two factors co-exist, an inference of punishment is reasonable though not inevitable. What are they?

52. If the severance of service is effected, the first condition is fulfilled and if the foundation or causa causans of such severance is the servant's mis-conduct the second is fulfilled. If the basis of foundation for the order of termination is clearly not turpitudinous or stigmatic or rooted in misconduct or visited with evil pecuniary effects, then the inference of dismissal stands negated and vice versa. These canons run right through the disciplinary branch of master and servant jurisprudence, both under Article 311 and in other cases including workmen under managements. The law cannot be stultified by verbal haberdashery because the court will lift the mask and discover the true face. It is true that decisions of this Court and of the High Courts since Dhingra case have been at times obscure, if cited de hors the full facts. In Samsher Singh case the unsatisfactory state of the law was commented upon by one of us, per Krishna Iyer, J., quoting Dr. Tripathi for support: (SCC p. 889, paras 160, 161)

In some cases, the rule of guidance has been stated to be the substance of the matter' and the 'foundation' of the order. When does 'motive' trespass into 'foundation'? When do we lift the veil of 'form' to touch the 'substance'? When the Court says so. These 'Freudian' frontiers obviously fail in the work-a-day world and Dr. Tripathi's observations in this context are not without force. He says:



HC-KAR

**NC: 2026:KHC:12554
WP No. 46195 of 2017**

As already explained, in a situation where the order of termination purports to be a mere order of discharge without stating the stigmatizing results of the departmental enquiry a search for the 'substance of the matter will be indistinguishable from a search for the motive (real, unrevealed object) of the order. Failure to appreciate this relationship between motive (the real, but unrevealed object) and form (the apparent, or officially revealed object) in the present context has led to an unreal interplay of words and phrases wherein symbols like 'motive, 'substance' 'form' or 'direct parade in different combinations without communicating precise situations or entities in the world of facts.

The need, in this branch of jurisprudence, is not so much to reach perfect justice but to lay down a plain test which the administrator and civil servant can understand without subtlety and apply without difficulty. After all, between 'unsuitability' and 'misconduct' thin partitions do their bounds divide'. And, over the years, in the rulings of this Court the accent has shifted, the canons have varied and predictability has proved difficult because the play of legal light and shade has been baffling. The learned Chief Justice has in his judgment, tackled this problem and explained the rule which must govern the determination of the question as to when termination of service of a probationer can be said to amount to discharge simpliciter and when it can be said to amount to punishment so as to attract the inhibition of Article 311.

55. What is decisive is the plain reason for the discharge, not the strategy non-enquiry or clever avoidance of stigmatising epithets. If the basis is not misconduct, the order is saved. In Murugan Mills, this Court observed:

The right of the employer to terminate the services of his work-man under a standing order, like Clause 17(a) in the present case, which amounts to a claim "to hire and fire" an employee as the employer pleases and thus completely negatives security of service which has been secured to industrial employees through industrial adjudication, came up for consideration before the Labour Appellate Tribunal in Buckingham Carnatic Co. Ltd. v. Workers of the Company. The matter then came up before this Court also in Chartered Bank v. Chartered Bank Employees Union, and the Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co. wherein the view taken by the Labour Appellate Tribunal was approved and it was held that even in a case like the present the requirement of bona fides was essential and if the termination of service was a colourable exercise of the



HC-KAR

**NC: 2026:KHC:12554
WP No. 46195 of 2017**

power or as a result of victimisation or unfair labour practice the industrial tribunal would have the jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the tribunal can go behind the order to find the reasons which led to the order and then consider for itself whether the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice. If it came to the conclusion that the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice it would have the jurisdiction to intervene and set aside such termination."

27. Paragraph No.68 of the said judgment, reads as under:

"68. Before we leave this part of the case, a reference to some industrial law aspects and cases may be apposite though a little repetitive. Standing orders certified for an industrial undertaking or the model Standing Orders framed under the Industrial Employment Standing Orders Act provide for discharge simpliciter, a term understood in contradistinction to punitive discharge or discharge by way of penalty. It is not unknown that an employer resorts to camouflage by garbing or cloaking a punitive discharge in the innocuous words of discharge simpliciter. Courts have to interpose in order to ascertain whether the discharge is one simpliciter or a punitive discharge and in doing so, the veil of language is lifted and the realities perceived. In the initial stages controversy raised was whether the Court/tribunal had any jurisdiction to lift such a veil. Prob and penetrate so as to reveal the reality, but this controversy has been shut at rest by the decision in Western India Automobile Association v. Industrial Tribunal, Bombay. The wide scope of the jurisdiction of industrial tribunal/court in this behalf is now well established. If standing orders or the terms of contract permit the employer to terminate the services of his employee by discharge simpliciter without assigning, it would be open to him to take recourse to the said term or condition and terminate the services of his employee. But, when the validity of such termination is challenged in Industrial adjudication it would be competent to the industrial tribunal to enquire whether the impugned discharge has been effected in the bona fide exercise of the power conferred by the terms of employment. If the discharge has been ordered by the employer in bona fide exercise of his power, then the industrial tribunal may not interfere with it; but the words used in the order of discharge and the form which it may have taken are not conclusive in the matter and the industrial tribunal would be



HC-KAR

NC: 2026:KHC:12554
WP No. 46195 of 2017

entitled to go behind the words and form and decide whether the discharge is a discharge simpliciter or not. If it appears that the purported exercise of power to terminate the services of the employee was in fact the result of the misconduct alleged against him, then the tribunal would be justified in dealing with the dispute on the basis that, despite its appearance to the contrary the order of discharge is in effect an order of dismissal. In the exercise of this power, the court/tribunal would be entitled to interfere with the order in question (see Assam Oil Co. v. Its Workmen¹). In the matter of an order discharge of an employee as understood within the meaning of the Industrial Disputes Act the form of the order and the language in which it is couched are not decisive. If the industrial court is satisfied that the order of discharge is punitive or that it amounts to victimisation or unfair labour practice it is competent to the court/tribunal to set aside the order in a proper case and direct reinstatement of the employee (see Tata Oil Mills Co. Ltd. v. Workmen's). The form used for terminating the service is not conclusive and the tribunal has jurisdiction to enquire into the reasons which led to such termination. In the facts of the case it was found that Standing Orders provided that an employee could ask for reasons for discharge in the case of discharge simpliciter. Those reasons were given before the tribunal by the appellant, viz., that the respondent's services were terminated because he deliberately resorted to go-slow and was negligent in the discharge of his duty. It was accordingly held that the services of the employee were terminated for dereliction of duty and go-slow in his work which clearly amounted to punishment for misconduct and, therefore, to pass an order under Clause 17(a) of the Standing Orders permitting discharge simpliciter in such circumstances was clearly a colourable exercise of power to terminate services of a workman under the provisions of the Standing Orders. In these circumstances, the tribunal would be justified in going behind the order and deciding for itself whether the termination of the respondent's services could be sustained (vide Management of Murugan Mills Ltd. v. Industrial Tribunal, Madras). This view was affirmed in Tata Engineering & Locomotive Co. Ltd. v. S. C. Prasad, After approving the ratio in Murugan Mills case, this Court in L. Michael v. M/s. Johnson Pumps India Ltd. observed that the manner of dressing up an order did not matter. The slightly different observation in workman of Sudder Office, Cinnamare v. Management was explained by the Court and it was further affirmed that since the decision of this Court in Chartered Bank v. Chartered Bank Employees' Union' it has taken the consistent view that if the termination of service is a colourable exercise of power vested in the



HC-KAR

NC: 2026:KHC:12554
WP No. 46195 of 2017

*management or is a result of victimisation or unfair labour practice, the court/tribunal would have jurisdiction to intervene and set aside such termination. It was urged that a different view was taken by this Court in *Municipal Corporation of Greater Bombay v. P. S. Malvenkar*. The employee in that case was discharged from service by paying one month's wages in lieu of notice. This action was challenged by the employee before the Labour Court and it was contended that it was a punitive discharge. The Corporation contended that under Standing Order 26 the Corporation had the power to discharge but there was an obligation to give reasons if so demanded by the employee. The Corporation had also the power to discharge by way of punishment. The Court in this connection observed as under:*

Now one thing must be borne in mind that these are two distinct and independent powers and as far as possible neither should be construed so as to emasculate the other or to render it ineffective. One is the power to punish an employee for misconduct while the other is the power to terminate simpliciter the service of an employee without any other adverse consequence. Now, proviso (i) to clause (1) of Standing Order 26 requires that the reason for termination of the employment should be given in writing to the employee when exercising the power of termination of service of the employee under Standing Order 26. Therefore, when the service of an employee is terminated simpliciter under Standing Order 26, the reason for such termination has to be given to the employee and this provision has been made in the Standing Order with a view to ensuring that the management does not act in an arbitrary manner. The management is required to articulate the reason which operated on its mind in terminating the service of the employee. But merely because the reason for terminating the service of the employee is required to be given - and the reason must obviously not be arbitrary, capricious or irrelevant - it would not necessarily in every case make the order of termination punitive in



HC-KAR

NC: 2026:KHC:12554
WP No. 46195 of 2017

character so as to require compliance with the requirement of clause (2) of Standing Order 21 read with Standing Order 23. Otherwise, the power of termination of service of an employee under Standing Order 26 would be rendered meaningless and futile, for in no case it would be possible to exercise it. Of course, if misconduct of the employee constitutes the foundation for terminating his service, then even if the order of termination is purported to be made under Standing Order 26, it may be liable to be regarded as punitive in character attracting the procedure of clause (2) of Standing Order 21 read with Standing Order 23, though even in such a case it may be argued that the management has not punished the employee but has merely terminated his service under Standing Order 26."

28. Paragraph Nos.7 and 8 in the case of **Trambak Rubber Industries** (*supra*) read as under:]

"7. The learned Senior Counsel for the appellant has contended that it was not open to the High Court to appreciate the evidence and take its own view on the crucial factual aspects emerging in the case. The learned counsel also submitted that there is no legal error apparent on the face of the order passed by the Industrial Court and reminded us of the proposition that even a grossly erroneous finding of fact reached by the Tribunal cannot be interfered with by the High Court in exercise of its jurisdiction under Articles 226/227 of the Constitution of India. In this context, the learned counsel has endeavoured to draw support from the observations in Syed Yakoob v. K.S. Radhakrishnan.

8. We are of the view that the High Court has not transgressed the limitations inherent in the grant of the writ of certiorari. The High Court had rightly perceived the patent illegality in the impugned award warranting interference in exercise of its writ jurisdiction. The High Court is right in pointing out that the material evidence, especially the admissions of the witness examined on behalf of the management were not considered at all. Moreover, the conclusions reached are wholly perverse and do not reasonably follow from the evidence on record. For instance, the fact that no appointment letters were issued or filed



HC-KAR

**NC: 2026:KHC:12554
WP No. 46195 of 2017**

does not possibly lead to the conclusion that the management's version must be true. Similarly, if the Workers' Unions had taken the stand that antedated appointment letters were issued describing the employees as trainees after the dispute had arisen, it is difficult to comprehend how that would demolish the case of the Union that the persons concerned were really employed as workmen (helpers) but not as trainees. The Industrial Court makes a bald observation that there was no satisfactory evidence on record to suggest that these persons were employed by the respondents as "regular" employees at any point of time. This bald conclusion/observation, as rightly pointed out by the High Court, ignores the material evidence on record. In fact, the evidence has not been adverted to at all while discussing the issues. There was total non-application of mind on the part of the Tribunal to the crucial evidence. The management's witness categorically stated that the workers concerned were engaged in production of goods and that no other workmen were employed for production of goods. In fact, one of the allegations of the management was that they adopted go-slow tactics and did not turn out sufficient work. According to the Industrial Court, the fact that the "trainees" were employed for performing the regular nature of work would not by itself make them workmen. The question then is, would it lead to an inference that they were trainees? The answer must be clearly in the negative. No evidence whatsoever was adduced on behalf of the management to show that for more than one and half years those persons remained as "trainees" in the true sense of the term. It is pertinent to note the statement of the management's witness that in June-July 1989, the Company did not have any permanent workmen and all the persons employed were trainees. It would be impossible to believe that the entire production activity was being carried on with none other than the so-called trainees. If there were trainees, there should have been trainers too. The management evidently came forward with a false plea dubbing the employees/workmen as trainees so as to resort to summary termination and deny the legitimate benefits. On the facts and evidence brought on record, the conclusion was inescapable that the appellant employer resorted to unfair labour practice. There would have been travesty of justice if the High Court declined to interfere with the findings arbitrarily and without reasonable basis as reached by the Industrial Court."



HC-KAR

NC: 2026:KHC:12554
WP No. 46195 of 2017

Paragraph Nos.23 to 25, 38 and 42 to 47 of **Dipti Prakash Banerjee** (*supra*) read as under:

"23. In the present case before us, the order of termination dated 30-4 1997 is not a simple order of termination but is a lengthy order which we have extracted above. It not only says that performance during probation is not satisfactory but also refers to a letter dated 30-4-1996 by which the period of probation was extended by six months from 2-5-1996, and to letters dated 17-10-1996 and 31-10-1996. It concludes by saying that the appellant's "conduct, performance, ability and capacity during the whole probation" was not satisfactory and that he was considered "unsuitable" for the post for which he was appointed.

24. The contention for the appellant is that if the appellant is to seek employment elsewhere, any new employer will ask the appellant to provide the copies of the letters dated 30-4-1996, 17-10-1996 and 31-10-1996 referred to in the impugned order and that if the said letters contain findings which were arrived at without a full-fledged departmental enquiry, those findings will amount to stigma and will come in the way of his career.

25. In the matter of "stigma", this Court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven-Judge Bench decision in *Samsher Singh v. State of Punjab* Ray, C.J. observed that if a simple order of termination was passed, that would enable the officer to "make good in other walks of life without a stigma". It was also stated in *Bishan Lal Gupta v. State of Haryana* that if the order contained a stigma, the termination would be bad for "the individual concerned must suffer a substantial loss of reputation which may affect his future prospects".

38. Under this point, two aspects of the case fall for consideration, firstly, whether the impugned order is founded on any conclusions arrived at by the employer as to his misconduct or whether the termination was passed because the employer did not want to continue an employee against whom there were some complaints. The second aspect is whether there is any stigma in the order of termination or in the documents referred to in the termination order.

43. As pointed out in *Bishan Lal Gupta v. State of Haryana* an ordinary enquiry by a show-cause might be sufficient for the purpose of deciding whether the probationer could be



continued, but where the findings regarding misconduct are arrived at without conducting a regular departmental enquiry, then the termination order will be vitiated. The learned Senior Counsel for the respondent relied upon Hindustan Paper Corpn. v. Purnendu Chakrobarty where it was held that for termination of a "lien", no detailed enquiry was necessary and that if that be the position, termination of probation stands on a lesser footing. But the case turned upon a special rule in that case which specifically provided that for "termination of a lien", a regular enquiry was not necessary. That case cannot therefore be of any assistance to the respondents.

44. We do not find anything objectionable in the third letter dated 31-10-1996 but the second letter, as stated above, is clearly objectionable.

45. For the aforesaid reasons, the impugned order is liable to be set aside.

46. Learned Senior Counsel for the respondent submitted on the basis of State of Haryana v. Jagdish Chander that merely because an order of termination was set aside on grounds of lack of opportunity, it was not necessary to direct reinstatement and back wages. Reliance in Jagdish Chander case was placed upon Managing Director, ECIL V. B. Karunakar, It is true that such an order not granting reinstatement or back wages was passed in Jagdish Chander case following Karunakar case But it has to be noticed that in Karunakar case there was a regular departmental enquiry but the enquiry report was not given to the officer. This Court directed the report to be given and set aside the proceedings from that stage and stated that no order for reinstatement or back wages need be passed at that stage. But in cases like the present where no departmental enquiry whatsoever was held, Karunakar case in our view, cannot be authority. As to back wages, on facts, the position in the present case is that there is no material to say that the appellant has been gainfully employed, The appellant is, therefore, entitled to reinstatement and back wages till date of reinstatement from the date of termination and to continuity service. Point 4 is decided accordingly.

47. For the aforesaid reasons, the appeal is allowed, the judgments of Division Bench and learned Single Judge of the High Court are set aside, the impugned order of termination is quashed, and the appellant is hereby directed to be reinstated with back wages till the date of reinstatement and continuity of service. It will be open to the respondents to take such action as they may deem fit in accordance with



HC-KAR

NC: 2026:KHC:12554
WP No. 46195 of 2017

law against the appellant. The appeal is allowed as stated above. There will be no order as to costs."

29. It would be relevant to extract paragraph No.9 of the judgment in the case of **Regional Manager, State Bank of India** (*supra*) which reads as under:

"9. It appears that the High Court as well as the Labour Court had proceeded on a fundamental misconception as to the nature of the right available to the respondent. The respondent was employed for a fixed period of 91 days. Assuming that such an employee could be called a temporary employee for the purposes of the Sastry Award, the requirement as to service of notice of 14 days, would, in cases where an employee has been appointed for a fixed tenure, amount to an emargo on the employer terminating the services prior to the expiry of such period without giving a 14 days' notice. The non-giving of the notice would not mean that the employee would thereby continue to serve beyond the period for which he was originally appointed. The exception to this principle is when an employee is appointed temporarily for successive fixed tenures with artificial breaks in between so as to deny the employee the right to claim permanent appointment. This action would be an unfair labour practice within the meaning of the phrase in Section 2(ra) of the Act. Section 2(ra) says that unfair labour practice means any of the practices specified in the Fifth Schedule to the Act. The Fifth Schedule to the Act contains a list of unfair labour practices which have been classified under two heads, namely: (I) on the part of the employer and trade unions of employers, and (II) on the part of the workmen and trade unions of workmen. The principle that we have referred to earlier finds place in Item 10 of Part I under which

"to employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen"

is an unfair labour practice. In other words, before an action can be termed as an unfair labour practice it would be necessary for the Labour Court to come to a conclusion that the badlis, casuals and temporary workmen had been continued for years as badlis, casuals or temporary workmen, with the object of depriving them of the status



HC-KAR

NC: 2026:KHC:12554
WP No. 46195 of 2017

and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workmen would not allow the employer to avoid a charge of unfair labour practice. However, it is the continuity of service of workmen over a period of years which is frowned upon. Besides, it needs to be emphasised that for the practice to amount to unfair labour practice it must be found that the workman had been retained on a casual or temporary basis with the object of depriving the workman of the status and privileges of a permanent workman. There is no such finding in this case. Therefore, Item 10 in List I of the Fifth Schedule to the Act cannot be said to apply at all to the respondent's case and the Labour Court erred in coming to the conclusion that the respondent was, in the circumstances, likely to acquire the status of a permanent employee. Furthermore, both the High Court and the Labour Court appeared to have proceeded on the basis that the appointment of Ram Kumar after the employment of the respondent ceased, also on casual basis, was an unfair labour practice. If this view is to be upheld the respondent's appointment in place of Sooraj would equally be an unfair labour practice and therefore unsustainable."

30. In the case of **Harjinder Singh** (*supra*), where it relied upon the case of **Syed Yakoob v. K. S. Radhakrishnan and Others** reported in **AIR 1964 SC 477**, Hon'ble Supreme Court at paragraph No.12 has held as under:

"12. Another serious error committed by the learned Single Judge is that he deeded the writ petition by erroneously assuming that the appellant was a daily wage employee. This is ex facie contrary to the averments contained in the statement of claim filed by the workman that he was appointed in the scale of Rs. 350-525 and the orders dated October 3, 1986 and February 25, 1987 issued by the concerned Executive Engineer appointing the appellant as Work Munshi in the



pay scale of Rs. 355-525 and then in the scale of Rs. 400-600. This was not even the case of the Corporation that the appellant was employed on daily wages. It seems that attention of the learned Single Judge was not drawn to the relevant records, else he would not have passed the impugned order on a wholly unfounded assumption that the appellant was a daily wager."

31. In the light of the aforementioned judgments and evidence of the management, the workman having been appointed several times by the petitioner and finally as TSM, having participated in active lawful agitation against the management, termination order was issued, though contended to be non stigmatic, cannot be accepted and has rightly not been accepted by the Labour Court, as any exercise of the management to terminate the services of workman in whatsoever manner or form, cannot be accepted, as it is victimization and would attract the unfair labour practice, so also a clear case of colorable exercise of power.

32. Having considered the materials placed on record and evidence adduced by the parties, the same



having been appreciated and well considered by the labour Court, I do not find any good ground or cogent reason to interfere with the award rendered by the Labour Court.

33. Accordingly, I pass the following:

ORDER

- (a) The Writ Petition is ***dismissed***.
- (b) The impugned award dated 18.08.2017, passed by III Additional Labour Court, Bengaluru in Industrial Dispute No.30/2014 is hereby affirmed.

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**

List No.: 19 Sl No.: 1
RSP/NJ