

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MAY 2022

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

WRIT PETITION No.8149/2021 (L-RES)

BETWEEN:

VMWARE SOFTWARE INDIA PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT
KALYANI VISTA
SY.NO.165/1 & 165/7
DORAISANIPALYA, J.P.NAGAR
BANGALORE - 560076
REP. BY ITS AUTHORISED REPRESENTATIVE
SUNITHA GOVINDAIAH ...PETITIONER

(BY SRI DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SMT.LAVANYA B ANANTH, ADVOCATE)

AND:

ASHIS KUMAR NATH
RESIDING AT FLAT NO.F-301
ASHISH J.K. APARTMENT
TUBARAHALLI EXTENSION
BANGALORE - 560 066 ...RESPONDENT

(BY SRI.K.SUBBA RAO, SENIOR ADVOCATE FOR
SMT.ANUPARNA BORDOLOI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH
AND SET ASIDE THE AWARD DATED 26.02.2021
(ANNEXURE-A) PASSED BY THE III ADDITIONAL LABOUR
COURT, BENGALURU REF.NO.46/2018.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 21ST APRIL 2022, COMING ON
FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT
MADE THE FOLLOWING:

ORDER

The above petition is filed by the Management seeking quashing of award Annexure-A dated 26.02.2021 in Reference No.46/2018 passed by the III-Additional Labour Court, Bengaluru. By the impugned award the Labour Court set aside the order of the petitioner terminating the respondent from service, directed the petitioner to reinstate the respondent with full back wages and continuity of service.

2. For the purpose of convenience the petitioner and respondent will be referred to henceforth as Management and Workman respectively.

3. The Management is a company being part of VM Ware group of companies having its head quarters at California United States of America. Management is engaged in the business of providing software services. On 04.02.2015 the Management appointed the workman as NSX Senior quality engineering developer

in its Bengaluru office on annual pay package of Rs,24,75,000/- on probation of six months. His primary work was that of network testing/testing engineer. Admittedly, the workman represented to the Management before his recruitment that he has 11 years' work experience in the field.

4. On his induction in the service the Management provided him 3 weeks training in July-August 2015 in U.S.A. After his return from U.S.A he was given 4 weeks training during September-October 2015. Thereafter he was posted to work in Bengaluru. One Dharsak Patel was his mentor and his immediate higher officer.

5. In November 2015 he was paid bonus. Under the letter dated 09.12.2015 on completion of the probation his service was confirmed. The management directed the workman to undergo Performance Improvement Program (for short 'PIP') as per Annexure-E2 claiming that his performance is not satisfactory. The workman declined the same. The

workman claimed that PIP is a strategy to terminate his services.

6. Some difference arose between the parties on the issue of undergoing the PIP. Ultimately, the Management under Annexure-J notice dated 28.12.2015 terminated the services of the workman on the ground that he declined to undergo PIP. The Management also offered him one month's pay etc.,

7. Thereafter the differences between the parties were aggravated. On 05.01.2016 the Management filed complaint before J.P Nagar police against the workman alleging that the workman employed violence against the Management's staff. On 13.06.2016 the workman also filed complaint before the very same police against the H.R managers of Management alleging that they criminally intimidated him at their office. In that regard First Information Report in Crime No.272/2016 as per Annexure-K8 was registered. The management filed CrI.P.No.5594/2016 for quashing that First Information Report. This Court

vide order Annexure-M quashed the said First Information Report.

8. The workman raised dispute against his termination which was registered in Reference No.46/2018 before the Labour Court Bengaluru. The Management contested the said Reference and the parties adduced evidence. The Labour Court by the impugned award set aside the order of termination and directed for reinstatement and back wages etc., as aforesaid.

Submissions of Sri. Dhyan Chinnappa, learned Senior Counsel for advocate on record for the petitioner

9. There was sufficient material to show that despite sufficient training the workman was underperforming, non-cooperative, belligerent and violent. That was evident by his admitted E-Mails. The impugned award was passed without analyzing the evidence and assigning reasons on the same. There was clear evidence of loss of confidence between the parties. Under such circumstances the Labour Court committed grave error in ordering for reinstatement. The impugned

award suffers perversity and contrary to the judicial precedents.

10. In support of his submissions, he relies upon the following judgments:

1. ***National Gandhi Museum v. Sudhir Sharma***¹
2. ***The Divisional Controller, KSRTC vs. M.G.Vittal Rao***²
3. ***Air-India Corporation, Bombay vs. V.A.Rebellow & Ors.***³
4. ***Francis Klein & Co. (P) Ltd. v. Their Workmen & Ors.***⁴
5. ***U.P.State Road Transport Corporation v. Mohan Lal gupta & Ors.***⁵
6. ***Chandu Lal v. Pan American World Airways***⁶
7. ***U.P.State Brassware Corpn. Ltd. v. Uday Narain Pandey***⁷
8. ***Indian Railway Construction Co.Ltd. v. Ajay Kumari***⁸
9. ***Assam Oil Company Ltd., New Delhi v. Workmen***⁹
10. ***Jagbir Singh v. Haryana State Agriculture Marketing Board***¹⁰

¹ 2021 LLR 1040

² (2012) 1 SCC 442

³ AIR 1972 SC 1343

⁴ AIR 1971 SC 2414

⁵ (2000) 9 SCC 521

⁶ (1985) 2 SCC 727

⁷ (2006) 1 SCC 479

⁸ (2003) 4 SCC 579

⁹ AIR 1960 SC 1264

¹⁰ (2009) 15 SCC 327

11. ***M/s.Ruby General Insurance Co. Ltd. vs. Shri P.P.Chopra***¹¹
12. ***Sita Ram v. Moti Lal Nehru Farmers Training Institute***¹²
13. ***Ashok Kumar Sharma v. Oberoi Flight Services***¹³
14. ***Madhya Pradesh Administration v. Tribhuban***¹⁴
15. ***Mahboob Deepak v. Nagar Panchayat Gajraula & Ors.***¹⁵
16. ***U.P.State Sugar Corporation Ltd. v. Kaushal Kumar Sinha***¹⁶

Submissions of Sri. K.Subba Rao, learned Senior Counsel for advocate on record for the respondent.

11. The Management itself has issued certificates Ex.M.40 saying that the workman was a successful participant in the work. That itself belied the contention that workman was underperforming. The termination was contrary to the principles of natural justice. There was no pleading about loss of mutual confidence. When the workman did not yield to the

¹¹ (1969) 3 SCC 653

¹² (2008) 5 SCC 75

¹³ AIR 2010 SC 502

¹⁴ (2007) 9 SCC 748

¹⁵ (2008) 1 SCC 575

¹⁶ 2017 LLR 673

pressure of signing the PIP, the management employed 3rd degree force against him. The First Information Report registered on the basis of complaint of the workman was quashed on the technical grounds and not the merits. High Court cannot substitute its order to the award of the Labour Court only on the ground that the award is erroneous. Even assuming that there was loss of confidence, the management has several offices all over the world employing more than ten thousand workers. Therefore the workman can be posted in some other station. The judgment relied on by the learned Counsel for the Management are not applicable.

12. In support of his submissions, he relied on the following judgments:

1. ***L.Michael and Anr. vs. Ms.Johnson Pumps Ltd.***¹⁷
2. ***Assam Oil Company Ltd., New Delhi v. Workmen***¹⁸
3. ***Air-India Corporation, Bombay vs. V.A.Rebellow & Ors.***¹⁹

¹⁷ (1975) 1 SCC 574

¹⁸ AIR 1960 SC 1264

¹⁹ AIR 1972 SC 1343

4. ***Harjinder Singh v. Punjab State Warehousing Corporation***²⁰
5. ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya***²¹
6. ***Union of India v. Namit Sharma***²²

Analysis:

13. Though both side relied upon multiple judgments the sum and substance of the ratio in all those judgments is as follows:

(i) The scope for judicial review under Article 226 and 227 of the Constitution of India in an award of the Labour Court is limited. Unless it is shown that the award is perverse, contrary to the settled law or precedents same cannot be interfered.

(ii) An order of dismissal/termination without giving an opportunity of hearing or conducting domestic enquiry is unsustainable in law. Even if the order of dismissal/termination is unsustainable, the reinstatement or full back wages are not automatic. If there is lack of mutual confidence, to balance the

²⁰ (2010) 3 SCC 192

²¹ (2013) 10 SCC 324

²² (2013) 10 SCC 359

conflicting interests the Court instead of passing order for reinstatement has to grant compensation or such other relief as found appropriate. But the lack of confidence should be objective one and not malafide.

14. In the light of the summary of the ratio of the judgments relied on by both side this Court does not find it necessary to discuss each of those judgments individually.

15. Though the impugned award runs into 109 pages, out of that page 1 to 93 (para 1 to 53) is only the verbatim reproduction of pleadings and depositions of the parties. Page 93 to 103 (para 54 to 67) is again the summary of depositions/contentions of the parties. The reasoning of the Labour Court is only in para 68 of the award which does not state why the evidence shall be accepted or rejected. It only says that the evidence and material placed is not sufficient to justify the action of the management and the workman has rebutted the case of the Management.

16. Without discussing the ratio of the judgments relied by the parties the Labour Court in single stroke says that case law relied on by the workman are aptly applicable and relied by the management are not applicable to the facts of the case.

17. The basic requirements of the award is that the same shall be based on some reasoning. The impugned award does not even in scant words says how the evidence of the parties supports or negatives their case. Thereby the labour Court failed to exercise the jurisdiction vested in it. However, having regard to the fact that the parties are fighting since about five years this Court does not find it just to remand the matters on such ground. It would be appropriate to consider the matter in the light of the admitted material available on record.

18. In the case on hand the workman worked hardly for ten months with the Management. After the confirmation of his service his employment was terminated without holding any domestic enquiry or

-serving a charge sheet. Therefore the said order was violative of principle natural justice and industrial jurisprudence. Therefore the impugned award so far it relates to setting aside the dismissal/termination order does not call for any interference.

19. Then the next question is 'whether it was fit case to grant reinstatement, full back wages continuity of service etc'.

20. The Management claimed that it had to terminate the services of the workman as he declined to undergo PIP though he required the same. The Management further claimed that as it did not respond to the workman's sole interest of being placed in U.S.A office he became hostile.

21. At one breath the workman claimed that he was put on job without sufficient training. At another breath he claimed that his work was upto the mark he did not require PIP. W.W.1 himself in his cross-examination states that the training taken by him was

sufficient for working in the company. In his admitted mail he states that the training given to him was not sufficient. His mails show that he was more keen in getting a position in U.S.A office. He also admitted in his cross-examination a mentor in person was not required.

22. The Management in sub para i to o of para No.2 of its statement of objections before the Labour Court, on referring to the overt acts of the workman clearly pleaded that the workman's behavior/conduct both prior to termination and post termination has resulted irretrievable break down of trust between the parties. It has also pleaded that the workman's relentless attempts threatening its employees has put it in high alert and led to improving its security measures. The management in its pleading contended that continuation of the workman in service is not safe and secure for it.

23. In the judgment in the ***Division Controller, KSRTC*** referred to supra the Hon'ble Supreme Court laid down the following test to find out whether there was bonafide loss of confidence.

- i) the workman is holding the position of trust and confidence;
- ii) by abusing such position, he commits act which results in forfeiting the same; and
- iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment.

24. The workman being in the position of Quality Engineer and developer was in a position of trust and confidence of the employer. Secondly, he admitted the threatening mails sent by him. Admittedly in those E-mail he threatened the management employees having one gun 8 bombs and 2 swords. At another instance he has attempted to terrorize saying that his father being an advocate possesses the people with criminal background and his uncle was a MLA thereby he is capable of indulging in destructive activities against the Management's employees. That shows that the workman posed serious threats of

adopting extra legal methods citing arms, weapons and his political and legal back ground prowess against the management. That is sufficient to prove that the management's perception of loss of mutual confidence was not subjective but that was objective. Under such circumstances and in the light of the judgment of the Hon'ble Supreme Court referred to supra the order of reinstatement is not sustainable. Having regard to the such conduct of workman and that he had not worked after his termination, even the order of back wages is not sustainable in law.

25. Since the workman was terminated from service without holding the disciplinary enquiry, to mitigate that loss he can be awarded compensation. What would be the reasonable compensation is the question. As already pointed out the workman worked with the management hardly for ten months. Management also spent money for his U.S.A training.

26. In ***U.P. State Sugar Corporation Ltd.,*** case referred to supra in the similar circumstance the Hon'ble

Supreme Court awarded compensation of Rs.2.5 lakhs where the employee had worked for one year and two months. Considering over all aspects of the case, it would be appropriate to award compensation of Rs.10 lakhs. Accordingly the following :

ORDER

The petition is partly allowed. The impugned award for reinstatement, back wages, continuity and all other consequential benefits is hereby set aside. The petitioner is hereby directed to pay a sum of Rs. Ten lakhs to the respondent within 30 days from the date of receipt of copy of the this order.

The petitioner shall deposit the said amount before the Labour court within the aforesaid period, failing which the said amount shall carry interest @ 10% per annum from the said period of 30 days till the date of its deposit.

**Sd/-
JUDGE**

Akc