

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 10<sup>TH</sup> DAY OF APRIL, 2026**

**PRESENT**

**THE HON'BLE MRS. JUSTICE ANU SIVARAMAN**

**AND**

**THE HON'BLE MR. JUSTICE T.M.NADAF**

**WRIT APPEAL No. 331 OF 2023 (S-RES)**

**BETWEEN:**

1. M/S MANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED (MESCOM)  
A GOVERNMENT OF INDIA UNDERTAKING  
ATTAVAR, MANGALORE - 575 001  
DAKSHINA KANNADA DISTRICT  
REPRESENTED BY THE MANAGING DIRECTOR.
2. THE EXECUTIVE ENGINEER (ELECTRICAL)  
DIVISIONAL OFFICE  
MANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED (MESCOM)  
BANTWAL-574 219.  
DAKSHINA KANNADA DISTRICT.

...APPELLANTS

(BY SRI BHARATH S, ADVOCATE FOR  
SRI BADRI VISHAL, ADVOCATE)

**AND:**

1. SRI K GOPALKRISHNA  
S/O LATE GANAPATHI @ GANES HARAYA  
AGED ABOUT 36 YEARS.
2. SRI K ASHOK KUMAR  
S/O LATE GANAPATHI @ GANES HARAYA  
AGED ABOUT 35 YEARS.

BOTH RESPONDENTS No.1 AND 2 ARE  
RESIDING AT KUNTALE HOUSE  
UVETTA VILLAGE, GURUVAYANAKERE POST  
BELTHANGADI TALUK-574 217  
DAKSHINA KANNADA DISTRICT.

3. M/S. KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
A GOVERNMENT OF INDIA UNDERTAKING  
CAUVERY BHAVAN, K.G.ROAD  
BENGALURU - 560 009.  
REPRESENTED BY THE  
MANAGING DIRECTOR-  
RESPONDENT No.1.

...RESPONDENTS

(BY SRI L MURALIDHAR PESHWA, ADVOCATE FOR R1 & R2  
SRI B L SANJEEV, ADVOCATE FOR R3)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT, 1961 PRAYING TO QUASH AND  
SET ASIDE THE JUDGMENT AND FINAL ORDER PASSED BY THE  
SINGLE JUDGE OF THIS HON'BLE COURT IN W.P.No.38516/2013  
DATED 14.07.2022 AND DISMISS THE W.P.No.38516/2023.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED  
FOR JUDGMENT ON 05.03.2026 AND COMING ON FOR  
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN  
J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN  
and  
HON'BLE MR. JUSTICE T.M.NADAF

**CAV JUDGMENT****(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This Writ Appeal is filed challenging the Order dated 14.07.2022 passed by the learned Single Judge in Writ Petition No.38516/2013 (S-RES).

2. We have heard Shri. Bharath S, learned counsel appearing for the appellants as well as Shri. L. Muralidhar Peshwa, learned counsel appearing for respondents No.1 and 2 and Shri. B. L Sanjeev, learned counsel appearing for respondent No.3.

3. It is submitted that respondents No.1 and 2 were appointed as temporary gangmen on 17.10.1998 in the Belthangady Sub-Division under the erstwhile Karnataka Electricity Board. Their appointments were initially on a temporary basis until 31.12.1998 and their services were subsequently extended from time to time. Respondent No.2 remained continuously absent from 25.10.2004 to 30.11.2004, hence a notice was issued by the appellants on 30.11.2004 cautioning him that continued absence would attract appropriate action. In response, respondent No.2 by

reply dated 01.12.2004, admitted his absence and requested that leave be retrospectively sanctioned for the period between 25.10.2004 and 30.11.2004.

4. Subsequently, respondent No.2 again remained absent from 02.01.2005 without explanation, hence the appellants issued another notice on 22.01.2005. On the same date, a notice was also issued to respondent No.1 for remaining absent from duty from 02.01.2005. Despite issuance of these notices, both respondents No.1 and 2 neither submitted a reply nor reported for duty. In the meanwhile, the appellants published a provisional list of temporary gangmen absorbed into the Probationary Mazdoor category with effect from 01.04.2005, in which, the names of respondents No.1 and 2 appeared at Sl.No.10 and 31, respectively. After more than six months, respondent No.2 submitted a reply dated 01.06.2005 admitting his continued absence from 02.01.2005 to 31.05.2005, explaining that he had been in judicial custody in connection with the investigation into the murder of one Mr. Dhanya Kumar and was therefore unable to attend work. Respondent No.1 also

submitted a reply dated 17.06.2005 stating that he would not remain absent from work in the future.

5. However, in view of their prolonged and unexplained absence, the appellants terminated the services of respondents No.1 and 2 on 12.07.2005 and 29.06.2005, respectively. Thereafter, respondent No.2 issued a legal notice on 31.01.2007 seeking withdrawal of his termination on the ground that no proper notice had been issued and that his absence was due to judicial custody. The appellants replied on 21.02.2007 stating that the termination was on account of repeated absence and in accordance with the Recruitment and Service Conditions of Probationary Mazdoors Regulations, 1997 ('Regulations, 1997' for short). Subsequently, despite their termination, respondents No.1 and 2 submitted representations on 21.01.2010 to the Chief Minister and the District In-charge Minister alleging that their termination was wrongful and that their dues had not been paid. This representation was forwarded to the appellants on 03.02.2010. The appellants responded on 24.02.2010 reiterating that respondents No.1 and 2 had

been terminated due to continuous absence from duty. It was also stated that the salary for December 2004 had been deposited, but as respondents No.1 and 2 remained absent from January 2005 onwards, the deposited amount was reverted and would be paid upon appropriate representation.

6. Subsequently, respondents No.1 and 2 were acquitted by the Sessions Court. Following their acquittal, they issued a legal notice dated 10.04.2013 seeking reinstatement with back wages and consequential benefits. The appellants, by reply dated 19.07.2013, rejected the claim on the ground that respondents No.1 and 2 had been terminated for continuous absence in violation of the applicable regulations, and therefore their request for reinstatement and monetary benefits could not be granted.

7. Thereafter, the Writ Petition was filed by the petitioners/respondents No.1 and 2 herein seeking a direction to declare that the removal of the petitioners from service is violative of the principles of natural justice and not

in accordance with the procedure prescribed by law under the Regulations, 1997.

8. The learned Single Judge observed that Regulation 12 of the Regulations, 1997 mandates that no workmen can be discharged for misconduct unless the charge is proved through an oral enquiry conducted by the Divisional Officer, making such enquiry a *sine qua non* for taking disciplinary action. It was held that the termination order passed under Regulation 11(a)(vi) of the Regulations, 1997 there has to be an enquiry and that is the only manner for harmonizing Regulations 11 and 12 of the Regulations, 1997. Consequently, the termination order was set aside and the respondents were directed to reinstate the petitioners with continuity of service with 50% back wages from the date of their release on bail until the date of actual reinstatement.

9. The learned counsel appearing for the appellants contends that the termination of respondents No.1 and 2 was lawful and in compliance with Regulation 11(vi) of the Regulations, 1997, which permits termination in cases of

continued absence from work. Since respondents No.1 and 2 remained continuously absent from 02.01.2005, their services were terminated after issuance of the notice dated 22.01.2005, following the procedure prescribed under the Regulations, 1997. It is submitted that Regulation 11 of the Regulations, 1997 does not contemplate the holding of an enquiry prior to termination for continued absence and therefore the finding of the learned Single Judge that an enquiry was mandatory is contrary to the scheme of the Regulations, 1997.

10. It is further contended that the learned Single Judge erred in holding that Regulations 11 and 12 of the Regulations, 1997 must be read together so as to require an enquiry prior to termination. Regulation 12 of the Regulations, 1997 applies to disciplinary proceedings for misconduct and requires an oral enquiry only in respect of the instances of misconduct enumerated under Regulation 12(b) of the Regulations, 1997. Since the termination in the present case was based on continuous absence and not misconduct, Regulation 12 of the Regulations, 1997 is

inapplicable and the action falls within Regulation 11 of the Regulations, 1997.

11. Placing reliance on the note appended to Regulation 11 of the Regulations, 1997, it is submitted that the procedure prescribed does not apply to cases involving misconduct, for which Regulation 12 of the Regulations, 1997 provides a separate mechanism. Thus, the conclusion of the learned Single Judge that Regulations 11 and 12 of the Regulations, 1997 must be harmoniously read so as to mandate an enquiry prior to termination is contrary to the express provisions of the Regulations, 1997.

12. Further, it is also contended that the writ petition suffers from delay and laches. The termination orders were passed in June 2005 whereas the writ petition was filed only in the year 2013 without satisfactory explanation. Although an earlier legal notice dated 31.01.2007 was rejected, no further action was taken until after respondents No.1 and 2's acquittal in Sessions Case No.42/2005. It is further submitted that respondents No.1 and 2 have sought to create a cause of action on the basis of the subsequent

acquittal and have challenged the termination after an unexplained delay of more than eight years.

13. The learned counsel appearing for the appellants has placed reliance on the following decisions:-

- ***S.P. Singh and Projects and Development India Ltd., Noida, U.P. and Others*** reported in **2009 SCC OnLine Jhar 2091;**
- ***Mahabali v. Central Administrative Tribunal and Others*** reported in **2006 (1) L.L.N.813,** and
- ***Chief Engineer (Construction) v. Keshava Rao (Dead) by LRs*** reported in **(2005) 11 SCC 229.**

14. The learned counsel appearing for respondents No.1 and 2 contended that respondents No.1 and 2 had continuously worked until their arrest in January, 2005 in a criminal case registered by the Belthangady Police. During the pendency of the case, they were in judicial custody as under trial prisoners. Respondent No.1 was released on bail after four months while respondent No.2 was released after one year and six months. Upon release, both the respondents approached the appellants seeking reinstatement. Though respondent No.1 was taken on duty

and worked for a period of one month, subsequently he was prevented from work and his attendance was tampered by changing his attendance from present to absent. However, respondent No.2 was denied work altogether. After a trial of over 10 years, respondents No.1 and 2 were acquitted on 14.08.2012. Their subsequent requests for reinstatement with consequential benefits were not acted upon.

15. It is further contended that the appellants had prepared a provisional list of gangmen for continuation as Probationary Mazdoors as on 01.04.2005. In the said list, the name of respondent No.1 appeared at Sl.No.10 and the name of respondent No.2 at Sl.No.31. This clearly indicates that respondent No.1 had continuously worked for more than ten years and respondent No.2 for about nine years. It is also contended that the appellants were aware that respondents No.1 and 2's absence from duty was due to their implication in a criminal case allegedly filed out of spite and revenge.

16. It is further contended that as the criminal proceedings were pending before the Sessions Court,

respondents No.1 and 2 had to await the conclusion of the trial before approaching the appropriate authorities for relief. After their acquittal, they pursued remedies, culminating in filing of the writ petition in the year 2013. It is contended that the appellants had arbitrarily removed respondents No.1 and 2 from service without following the procedure established by law and failed to reinstate them thereafter. Respondents No.1 and 2 have been deprived of employment and wages since 2005. Despite several representations made by respondents No.1 and 2 after the order of the learned Single Judge, the appellants failed to comply with the directions and allegedly continued to evade implementation of the order for nearly a year before filing the present writ appeal.

17. We have considered the contentions advanced. It is an admitted fact that respondents No.1 and 2 have been in service from 17.10.1998. It was only on account of a criminal case being registered against them and they being arrested and placed in police custody and later judicial custody that respondents No.1 and 2 could not attend to

their duties as temporary gangmen. It is also an admitted fact that respondents No.1 and 2 were terminated from service in the year 2005, without holding any enquiry as against them. Therefore, the question whether their absence from work was unauthorised and wilful has never been considered by any of the Authorities of the appellants. It is also an admitted fact that criminal case has been registered as against respondents No.1 and 2 and they were acquitted in the criminal case only in the year 2015. It is clear that respondents No.1 and 2 had approached the appellants seeking reinstatement into service in the interregnum, but the said request was rejected by the appellants. Thereafter, after their acquittal, they had again approached the appellants but their request was again rejected. The learned Single Judge therefore considered Regulation 12 of the Regulations, 1997 and had held that a workman could not be discharged from service for any act of misconduct unless and until the said act of misconduct is proved in an oral enquiry conducted by a judicial officer.

18. The learned counsel appearing for the appellants submits that the provisions of Regulation 11 of the very same Regulations have been completely lost sight of by the learned Single Judge. It is further contended that there having been admittedly orders of termination of service issued in the year 2005, the writ petitions filed in the year 2013 were totally belated and could not have been considered.

19. We notice that it is an undisputed fact that the respondents No.1 and 2 had continued in service till they were apprehended in Crime No.1/2005 and were placed under arrest. It is also clear that the criminal case was ended in acquittal only by Annexure-A Judgment dated 14.08.2012. The appeal filed as Crl.A.No.814/2013 was disposed of only on 27.09.2019. Soon after the criminal case ended in their acquittal, respondents No.1 and 2 had approached the appellants seeking reinstatement in service. However, the said request was rejected. It is as against the rejection of their request that they had approached this

Court by filing the writ petition. Therefore, the contention that the writ petition was belated cannot be accepted.

20. We notice that Regulations 11 and 12 of the Regulations, 1997 specifically read as under:-

**"11. TERMINATION OF SERVICES:**

- (a) *The services of a workman may also be terminated for any of the following reasons:*
  - (i) *Total or partial disablement arising out of accident.*
  - (ii) *Physical or mental disability.*
  - (iii) *Continued ill-health.*
  - (iv) *Retrenchment for want of work*
  - (v) *Misconduct*
  - (vi) *Continued absence from work*
  - (vii) *Abandonment of services*
- (b) *For terminating the employment of a workman, a notice in writing indicating the reasons shall be given by the Jurisdictional Divisional Officer, or Sub-Divisional Officer, as detailed hereunder:*
  - (i) *ONE month's notice in the case of those who have put in 240 DAYS or more of service in a span of continuous 12 months;*
  - (ii) *TWO week's notice in the case of others;*
  - (iii) *ONE month's remuneration or half month's remuneration as the case may be, be paid in lieu of notice.*

*NOTE: This, however, will not apply to those workman removed from service for misconduct"*

- (c) *The services of workmen who have put in ONE year of continuous service as defined in Section 258 of the Industrial Disputes Act 1947 shall not be terminated unless they are retrenched in accordance with the procedure laid down in Chapter V-A of I.D. Act, 1947, and paid retrenchment compensation in accordance with Section 25 (f) of the said Act."*

**12. DISCIPLINARY ACTION FOR MISCONDUCT:**

- (a) *No workmen shall be discharged from service for any act of misconduct committed by him unless and until it is proved in an oral enquiry conducted by the Divisional Officer. Pending such enquiry, he may be placed under suspension by the Executive Subordinate in charge. The enquiry Officer shall decide whether or not the workman should be paid remuneration during the period of suspension.*
- (b) *The following acts and omissions shall be treated as MISCONDUCT.*
- (1) *Wilful insubordination or disobedience whether alone or in combination with others to any lawful and reasonable order of his superior;*
  - (2) *Theft, Fraud or Dishonesty in connection with Board's business or property;*
  - (3) *Wilful damage to or loss of Board's goods or property;*
  - (4) *Taking or giving bribes or any illegal gratification;*

- (5) *Riotous or Disorderly behaviour during working hours of the establishment or any Act subversive of discipline;*
- (6) *A Criminal charge leading to police arrest;*
- (7) *Habitual negligence or neglect of work;*
- (8) *Found drunk and intoxicated while on duty;*
- (9) *Any other acts or omissions as may be decided by the Board."*

21. After considering the contentions advanced and the provisions of the Regulations, 1997, we are of the opinion that the question whether a continued absence amounts to abandonment of service or not requires a specific consideration on the facts and circumstances of individual cases. In the case on hand, respondents No.1 and 2 were obviously prevented from attending work for the reason that they were involved in a criminal case and were arrested and were in police or judicial custody during the period of alleged unauthorised absence. As soon as they were released from custody, they had approached the appellants and sought permission to rejoin duty, which was rejected and their services stood terminated. The question before the learned Single Judge was therefore whether the

alleged termination of service would stand in the way of the request made by respondents No.1 and 2 for reinstatement and regularisation.

22. Having considered the contentions advanced, the learned Single Judge came to the conclusion that the question whether respondents No.1 and 2 had remained unauthorised absent willfully had never been examined by the appellants. It is in the above circumstances that the learned Single Judge had passed the order.

23. The Apex Court in ***Krushnakant B. Parmar v. The Union of India and another*** reported in **(2012) 3 SCC 178**, has specifically held that for sustaining allegations of unauthorised absence it must be proved that the unauthorised absence was wilful. The Apex Court has held at paragraphs No.16 to 18, which read as follows:-

**"16.** *In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant*

*cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.*

**17.** *If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.*

**18.** *In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."*

24. It is also settled position that where a termination from service is on the ground of a specific misconduct including unauthorised absence, then, the termination can only be after conducting an enquiry in which the allegation of misconduct is proved. The only exemption would be in a case of voluntary abandonment of service.

25. The decisions relied on by the learned counsel appearing for the appellants have no application in the instant case since the said decisions considered instances of voluntary abandonment of service. In the facts of the instant case, there is obviously no question of voluntary abandonment since the writ petitioners had sought reinstatement and regularisation in service on being released from custody. The said request was rejected on the ground that orders of termination had already been issued in the year 2005. The said orders only state that the writ petitioners had remained unauthorisedly absent continuously. None of the mandatory conditions of notice or notice pay had been complied with. It is clear that there was no finding as to abandonment of service or even wilful unauthorised absence recorded against the writ petitioners after putting them on notice. The learned Single Judge has considered the factual and legal contentions and has come to a conclusion that the termination was unsustainable.

26. Having considered the contentions advanced and considering the pleadings and materials on record, we find

no error in the exercise of the jurisdiction by the learned Single Judge, which requires interference under Section 4 of the Karnataka High Court Act, 1961.

27. In the above view of the matter, we find no ground to allow the appeal. The appeal fails and the same is accordingly ***dismissed.***

All pending interlocutory applications shall stand *disposed of.*

**Sd/-  
(ANU SIVARAMAN)  
JUDGE**

**Sd/-  
(T.M.NADAF)  
JUDGE**

PN/cp\*