

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 28911 OF 2019 (L-RES)

BETWEEN:

KUMAR.K,
S/O LATE O KANNAN,
AGED ABOUT 46 YEARS,
NO.22, 2ND CROSS,
SHIVASHANKAR BLOCK,
HEBBAL, BANGALORE-560024.

...PETITIONER

(BY SRI SRINIVASA K, ADVOCATE)

AND:

THE HOTEL MANAGER,
BHARATH HOTELS LIMITED,
THE LALITH ASHOK
KUMARAKRUPA ROAD,
BANGALORE-560001.

...RESPONDENT

(BY SRI K PRABHAKAR RAO, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS FROM THE PRINCIPAL LABOUR COURT, BANGALORE, PERTAINING TO THE AWARD PASSED IN ID NO.16/2015, DTD.30.04.2019. QUASH THE IMPUGNED ORDER DTD.23.08.2018 PASSED ON THE VALIDITY OF THE DOMESTIC ENQUIRY VIDE ANNEX-H AND THE FINAL AWARD DTD.30.04.2019 PASSED BY THE PRINCIPAL LABOUR COURT, BANGALORE, IN ID NO.16/2015 VIDE ANNEX-J TO THE W.P. AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03RD FEBRUARY 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

The petitioner has approached this Court under Articles 226 and 227 of the Constitution of India, assailing the order dated 23.08.2018 and the award dated 30.04.2019 passed in Industrial Dispute No. 16/2015 by the Principal Labour Court, Bengaluru ("Labour Court").

2. By the said order, the Labour Court held that the domestic enquiry conducted against the petitioner was fair and proper. Further, the petitioner challenges the award dated 30.04.2019, whereby the Labour Court rejected the petitioner's claim statement and upheld the order of dismissal.

3. The petitioner was employed as a Kitchen Steward in the respondent. The genesis of the dispute lies in an alleged incident dated 12.01.2013. It is the case of the respondent-management that the petitioner entered the chamber of the HR Manager, Ms.Vandana Jha, refused to accept a suspension order, and threatened her with dire consequences once she came out of the office.

4. A charge sheet dated 24.04.2013 was issued. In the charge sheet, it is alleged that the petitioner threatened the HR

Manager as follows: *"You are the HR Manager in this hotel I will show you what you are outside."* Following a domestic enquiry, the petitioner was dismissed from service.

5. The petitioner raised an industrial dispute challenging the order dated 23.08.2018 holding the domestic enquiry as fair and the award dated 30.04.2019, which rejected the challenge to the penalty of dismissal.

6. The learned counsel for the petitioner would urge that the petitioner, having studied only up to the 6th Standard and possessing no proficiency in English, was served with a charge memo in a language he did not understand, without supporting documents. Furthermore, his requests to engage a defence assistant and to summon material witnesses, such as Senior Manager K.Satheesh Kumar, were summarily rejected.

7. The petitioner contends that he was on sanctioned leave from 12.01.2013 to 22.01.2013 to attend functions at his native place. The petitioner further contends that he was not present on the premises on the date of the alleged incident (12.01.2013).

8. It is urged that the respondent-management's case rests solely on the uncorroborated testimony of the complainant, Ms.Vandana Jha. Other witnesses did not substantiate the alleged threat by the petitioner.

9. The petitioner submits that the findings are based on no legally acceptable evidence and suffer from perversity, warranting interference by this Court under its supervisory jurisdiction.

10. Learned counsel for the respondent-establishment would urge that the Labour Court has rightly concluded that the domestic enquiry was fair, proper, and conducted in accordance with law. No material has been placed to prove otherwise.

11. In a domestic enquiry, the standard of proof is the "preponderance of probabilities" rather than "beyond reasonable doubt." The testimony of Ms.Vandana Jha, coupled with her prompt police complaint on the day of the incident, sufficiently establishes the charges.

12. The scope of interference by the High Court is extremely limited. Once an enquiry is held to be fair, the Court should not substitute its own view for that of the Enquiry

Officer merely because a different view is possible, it is submitted.

13. The learned counsel for the respondent urged that the tenor of the petitioner's own claim statement—wherein he allegedly stated that, had the incident occurred, he "would have done something" to the HR Manager—effectively establishes that the incident took place.

14. The petitioner failed to produce the actual order sanctioning his leave for the period in question and did not lead independent evidence relating to defence of alibi. Therefore, his plea of alibi was rightly rejected by the Labour Court, it is submitted.

15. The witnesses examined on behalf of the respondent-establishment have spoken about the petitioner's presence in the cabin of Ms.Vandana Jha, and thus, the alleged incident is duly established by applying the test of preponderance of probability.

16. The learned counsel for the respondent-Establishment would urge that the Enquiry Officer has considered all the materials on record. Ms.Vandana Jha, to

whom the petitioner allegedly issued the threat, has unequivocally stated that the petitioner refused to receive the suspension order and also issued a threat.

17. Before the Labour Court, though it was urged that the enquiry was not fair and proper, upon appreciation of all the materials placed before the Enquiry Officer, the Labour Court concluded that the enquiry was proper, and no material has been placed before this Court to hold that the enquiry was not conducted in accordance with law.

18. In addition, it is urged that the workman lodged a false complaint on 14.07.2014 against the Enquiry Officer as well as the HR Manager, Ms.Vandana Jha, alleging caste-based abuse. It is urged that the said complaint is not established. By referring to the tenor of the statement of objections filed by the petitioner, it is further urged that the incident has taken place.

19. It is further urged that, in a case of this nature, the scope for interference by the Labour Court and the High Court is very limited, and once the enquiry is held to be fair and proper, the case has to be decided based on preponderance of probabilities. Merely because two views are possible, it is not permissible to take a different view.

20. Learned counsel for the respondent has relied on the following judgments in support of his contentions:-

(a) *Muriadih Colliery of Bharat Coking Coal Ltd.*

***Vs Bihar Colliery Kamgar Union*¹.**

(b) *Pravin Kumar Vs. Union of India*²

21. Learned counsel for the petitioner, by way of reply, contended that when specific evidence such as CCTV footage and the register at the security gate were not produced, an adverse inference ought to have been drawn against the respondent-establishment. The non-production of such crucial evidence, which could have conclusively established the presence or absence of the petitioner on the premises on 12.01.2013, renders the findings of the Enquiry Officer unsustainable.

22. The petitioner also contends that the Labour Court erred in rejecting the defence of alibi on the ground that the bus ticket does not contain the date and no other evidence was led. It is urged that the petitioner could not have been expected to retain evidence relating to his travel on 11.01.2013 when the enquiry was conducted many months later and he

¹ **(2005) 3 SCC 331**

² **(2020) 9 SCC 471**

was unaware that he would face an enquiry relating to the disputed incident dated 12.01.2013.

23. The Court has considered the contentions raised at the Bar and perused the records.

24. The charge sheet is dated 24.04.2013. In the said charge sheet, it is alleged that the petitioner-workman, on 12.01.2013, abused the Human Resources Manager, Ms.Vandana Jha, by stating: "You are the HR Manager in this hotel; I will show you what you are outside." The petitioner-workman claims that though the charge sheet is dated 24.04.2013, it was served on him only in June 2013. He has disputed the charges levelled against him. He has taken a specific defence that on 01.01.2013, he had applied for leave from 12.01.2013 to 22.01.2013, and the leave was sanctioned on 01.01.2013. In this background, the petitioner contends that on 11.01.2013, he travelled to his native place to attend certain functions. Thus, his specific defence is that on 12.01.2013, he was not present at the premises where the alleged incident took place.

25. The Labour Court has concluded that the alleged leave is not established. The petitioner-workman has not produced the order sanctioning leave.

26. One of the witnesses on behalf of the management, namely Deepti Nhattiala, examined as MW1, has stated that CCTV cameras were installed at prime locations, particularly at the security gate. However, in her examination-in-chief, she has not stated anything about the alleged abusive language said to have been used by the petitioner.

27. The remaining witnesses examined on behalf of the respondent-management, other than Ms.Vandana Jha, who allegedly lodged the complaint, have not stated anything about the alleged threats by the petitioner.

28. From the evidence placed before the Labour Court, it is evident that the petitioner has not produced any material to substantiate his contention that he was on leave from 12.01.2013 to 22.01.2013. However, it is not in dispute that the petitioner had been placed under suspension on 11.01.2013 in connection with a prior complaint allegedly lodged by another employee of the respondent-Establishment.

29. The present proceeding does not arise out of the said prior complaint. Significantly, the alleged prior complaint has not been produced either before the Enquiry Officer or before the Labour Court.

30. The admitted factual position is that the petitioner stood suspended as on 11.01.2013. It is to be noticed that MW.1 has not deposed that she witnessed the petitioner threatening the Human Resources Manager. She has only stated that she saw the petitioner entering the chamber of Ms.Vandana Jha.

31. The petitioner, on the other hand, has categorically denied having entered the premises, much less the chamber of Ms.Vandana Jha, on 12.01.2013.

32. MW1 has admitted that CCTV cameras were installed at prominent places within the Establishment. However, no CCTV footage has been produced to establish the presence of the petitioner on the premises on the date of the alleged incident.

33. Equally, the attendance register maintained at the entrance has not been produced. Though it is contended that a

suspended employee is not required to mark attendance, it has emerged in the evidence that employees are required to punch a card, and the names of others entering the premises are recorded and entry passes are issued.

34. The evidence on record, including the depositions of MW.1 and MW.3, indicates that CCTV cameras were installed at least at prominent locations such as entry points. An attempt is made to contend that CCTV cameras were not installed in 2013. Considering the nature of the establishment (a five-star hotel), it is difficult to accept that basic surveillance infrastructure was not available, especially when witnesses admitted the presence of CCTV cameras.

35. In the admitted circumstance that the petitioner was under suspension from 11.01.2013, the non-production of materials such as CCTV footage or entries in the register maintained at the entrance to demonstrate that he entered the premises on 12.01.2013 strengthens the petitioner's case that he did not enter the premises.

36. It is also relevant to note that the complainant, Ms.Vandana Jha, lodged a police complaint on 12.01.2013. The petitioner asserts that despite repeated calls, the complainant

did not attend the police station. The outcome of the said complaint is not explained.

37. Though an alternative contention is raised that CCTV footage is retained only for four days, in a situation where a police complaint is filed on the same day of the alleged incident, the footage ought to have been preserved and produced. This was not done.

38. In the aforesaid factual matrix, it is clear that the best evidence to establish the petitioner's presence on 12.01.2013—namely, CCTV footage and the entry register—has been withheld. An adverse inference must therefore be drawn against the respondent.

39. Without prejudice to the above, the Court has also considered whether the alleged incident in the chamber of the HR Manager is independently established.

40. The evidence adduced, apart from the statement of the complainant, Ms.Vandana Jha, does not establish that the petitioner threatened Ms.Vandana Jha as alleged.

41. Both MW.1 and MW.2 have not stated anything about the alleged threat. MW.1 has only stated that the petitioner refused to accept the memo from the HR Manager.

42. While it is true that disciplinary proceedings are to be decided on the touchstone of preponderance of probabilities, even on such a standard, the finding of misconduct cannot be sustained in the present case.

43. The Labour Court has failed to consider these material aspects and has erroneously proceeded on the footing that the burden lies on the petitioner to prove that he was elsewhere on the date of the incident.

44. It is true that the petitioner was required to establish his defence of alibi. It is also true that the order sanctioning leave has not been produced.

45. However, even according to the respondent, the petitioner was under suspension from 11.01.2013. It is not the case of the respondent that, despite suspension, the petitioner was required to attend the premises.

46. Thus, even if the petitioner fails to establish his defence of alibi, it does not follow that the respondent's burden to establish misconduct stands discharged.

47. Even assuming that the petitioner had entered the premises on the said date, there is no cogent evidence to conclude that he threatened the Human Resources Manager in the manner alleged.

48. It is further to be noticed that no past major misconduct has been established against the petitioner. Even if the charge were to be taken as proved, the penalty of dismissal would, in the facts of the case, be wholly disproportionate.

49. The Labour Court in paragraph No.32 of the Award has assigned reasons for not accepting the plea of alibi by the workman. The failure on the part of the workman to establish the plea of alibi by itself will not establish the misconduct. The further finding that the workman has not challenged the finding in the domestic enquiry is untenable as the petitioner has raised the dispute challenging the penalty of dismissal.

50. In ***Muriadih Colliery*** (*supra*), the Apex Court has dealt with the scope of Section 11A of the Act of 1947 and has

held that using abusive language against the senior officials of the Management amounts to a grave misconduct and calls for severe punishment. In the instant case, the Court has concluded that the charges are not proved. That being the position, the ratio in the aforementioned judgment does not apply to the facts of the case.

51. In **Pravin Kumar** (*supra*), the Apex Court in paragraph No.28 of the judgment has reiterated the well established position relating to judicial review by Constitutional Courts, as under:

"(28.) It is thus well settled that the Constitutional Courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority."

52. The Court has kept the said principle in mind. It is to be noticed that in the instant case, hardly there is any consideration by the Labour Court, of the defence put forth by the petitioner. And the Court has discussed the materials on

record which established the fact that the charges are not proved and there are no legally acceptable materials to hold that charges are proved. In such a situation, the Court in exercise of jurisdiction under Article 227 of the Constitution of India can certainly set-aside the Award which is perverse and not supported by legally acceptable materials.

53. For the foregoing reasons, this Court holds that the finding of misconduct recorded by the Labour Court is perverse, being based on an erroneous appreciation of evidence.

54. The petitioner has stated that he is not gainfully employed after termination. The respondent has not placed any materials to hold that the petitioner is gainfully employed. Given the fact that the petitioner was a steward in a restaurant, the Court is of the view that the petitioner with his experience must have been self employed or must have worked elsewhere. But nevertheless is entitled to 50% back wages, if not full back wages. The petitioner is entitled to all other consequential benefits.

55. Consequently, the impugned award cannot be sustained.

56. Hence, the following:

ORDER

- (i) The Writ Petition is ***allowed in part.***
- (ii) The impugned Award dated 30.04.2019 in I.D. No.16/2015 on the file of Principal Labour Court, Bengaluru is set-aside.
- (iii) The order dated 23.08.2018 passed by the Disciplinary Authority is set-aside.
- (iv) The respondent shall reinstate the petitioner.
- (v) The petitioner is entitled to 50% back wages with continuity of service and consequential benefits.
- (vi) The monetary benefits shall be paid within 45 days from the date of receipt of the copy of this order.

Sd/-

**(ANANT RAMANATH HEGDE)
JUDGE**

BRN/CHS