

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. 13011 OF 2020 (L-RES)

BETWEEN:

THE MANAGEMENT OF
M/S ZENITH TEXTILES
13/A TO 13/C, NANJANGUD INDUSTRIAL AREA,
NANJANGUD,
REPRESENTED BY ITS MILL MANAGER.

...PETITIONER

(BY SRI VASUKI K N, ADVOCATE FOR
SRI B C PRABHAKAR, ADVOCATE)

AND:

SRI T M LOKESH,
AGED ABOUT 43 YEARS,
S/O SRI. MUNDARAMAIAH,
NO. 105, TIRUMAGONDANA
VILLAGE, ADANAHALLI POST,
TUBUGEREHOBLI,
DODDABALLAPURA TALUK.

...RESPONDENT

(BY SRI L MURALIDHAR PESHWA A/W
MAITREYI KRISHNAN, ADVOCATES)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL
FOR RECORDS LEADING TO THE PASSING OF THE AWARD
DATED 27.01.2020 PASSED BY THE LABOUR COURT, MYSURU
IN REF.NO.15/2017 I.E., (ANNEXURE-J) AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 17TH 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-Company has assailed the award dated 27.01.2020 in Reference No.15/2017 on the file of the Labour Court, Mysuru, directing reinstatement of the respondent-workman, whereby the penalty of dismissal from service dated 16.11.2006 has been set aside.

2. The award also directs reinstatement without back wages and allowances from the date of dismissal till reinstatement. However, the award directs continuity of service. The respondent-workman has accepted the award. In other words, the finding on misconduct is accepted by the workman.

3. The petitioner-employer is before this Court assailing the award primarily on the premise that the dispute is raised 10 years after the date of dismissal, and the Labour Court could not have interfered with the punishment when the misconduct is established.

4. The respondent-workman joined the petitioner Company as an Operator in the year 1995. The petitioner-Company issued a charge memo dated 07.04.2006 to the

respondent alleging certain misconducts from 03.02.2006 to 11.02.2006.

5. The charge memo dated 07.04.2006 contains the following charges:

- (a) Unauthorized absence from the workplace during working hours;
- (b) Causing damage or loss to the company's property;
- (c) Deliberate slowing down of work and instigating or coercing other workmen to slow down the work;
- (d) Refusal to accept the charge sheet, notices, suspension orders, warning letters, show-cause notices, or any other communications offered for service by the Company.
- (e) Slowdown or enticing workmen to slow down any performance of work; and
- (f) Tampering with or sabotaging the Company's property.

6. The respondent-workman did not submit any explanation to the said charge memo. The petitioner appointed an Enquiry Officer to enquire into the charges. The respondent did not participate in the enquiry. After considering the

evidence, the Enquiry Officer, vide report dated 12.07.2006, held that the charges against the respondent are proved.

7. A copy of the enquiry report was sent to the respondent along with a memo dated 16.08.2006, calling upon the respondent to submit his reply, both on the findings of the Enquiry Officer and on the proposed punishment of dismissal from service. The notice sent along with the report is said to have been returned with an endorsement 'not claimed'. Thereafter, the petitioner-Company dismissed the respondent vide order dated 16.11.2006.

8. The petitioner-Company contends that one more dispute concerning the respondent, not connected to the misconducts alleged, was pending consideration before the Industrial Tribunal, Mysuru (Tribunal) in Reference No.111/2004. Therefore, the petitioner filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 ("Act, 1947") seeking approval for the penalty of dismissal, and one month's salary was also paid to the respondent as required under Section 33(2)(b).

9. The Tribunal, by order dated 12.04.2013, allowed the said application under Section 33(2)(b) of the Act, 1947,

holding that the domestic enquiry was fair and proper, and granted approval to the order of dismissal. The respondent has not challenged the said order.

10. The respondent filed a complaint under Section 33-A of the Act, 1947, alleging that the provisions of the Act, 1947 were not complied with. The Labour Court, vide order dated 05.05.2016, dismissed the said application seeking to prosecute the petitioner.

11. The respondent challenged the order of dismissal from employment by raising an industrial dispute. The Government referred the dispute for adjudication to the Labour Court, whereupon the following points were framed for consideration:

- (a) *Whether the workman is justified in raising a dispute questioning the order of dismissal dated 16.11.2006, 10 years after the order?*
- (b) *Whether the management is justified in dismissing the workman from service vide order dated 16.11.2006?*

12. The employer filed objections to the claim statement and contended that the claim is hit by delay and

laches and that the misconducts are duly established and the penalty of dismissal is justified.

13. Learned counsel for the petitioner relied on the following judgments:-

- (a) *Zenith Textiles vs Jagadeesh D R*¹**
- (b) *Usha Breco Mazdoor Sangh Vs Management of Usha Breco Ltd. and others*²**
- (c) *Mahindra and Mahindra Ltd. Vs N.B Naravade and others*³**
- (d) *Dharamraj Kumar Singh Vs Union of India and ors*⁴**
- (e) *Union of India Vs P. Gunasekaran*⁵**

14. Learned counsel for the respondent has relied on the following judgments:-

- (a) *Blue Star Employees' Union Vs Ex Off. Principal Secy. to Govt. and another*⁶**
- (b) *John D' Souza vs Karnataka State Road Transport Corporation*⁷**
- (c) *Ajaib Singh Vs Sirhind Co-Operative Marketing-cum-Processing Service Society Ltd. and another*⁸**

¹ W.P 14223/2020, High Court of Karnataka

² (2008) 5 SCC 554

³ (2005) 3 SCC 134

⁴ MANU/GH/0308/2007

⁵ (2015) 2 SCC 610

⁶ (2000) 8 SCC 94

⁷ (2019) 18 SCC 47

(d) *Jasmer Singh Vs State of Haryana and another*⁹

(e) *Mavji C. Lakum Vs Central Bank of India*¹⁰

(f) *Nicholas Piramal India Ltd. Vs Harisingh*¹¹

15. The Court has considered the judgments cited and has kept in mind the principles laid down.

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

17. The Labour Court has concluded that the finding on the fairness of the enquiry has attained finality in view of the earlier finding in the proceedings under Section 33(2)(b) of the Act, 1947. The Court also held that the dispute raised is not hit by delay and laches, as the workman was prosecuting the proceedings under Section 33-A of the Act, 1947.

18. The respondent-workman did not participate in the domestic enquiry and there is no rebuttal evidence against the evidence led on behalf of the Establishment relating to the misconduct. Hence, the charges are proved.

⁸ (1999) 6 SCC 82

⁹ (2015) 4 SCC 458

¹⁰ (2008) 12 SCC 726

¹¹ Civil Appeal No. 4436/2010

19. The Labour Court found that the charges proved did not warrant a penalty of dismissal and, accordingly, modified the penalty, directed reinstatement, and denied backwages from the date of dismissal to the date of reinstatement. However, the Labour Court directed continuity of service.

20. Learned counsel appearing for the petitioner-employer would urge that the dispute is raised 10 years after the order of dismissal, and no explanation is found to condone the delay and laches. The workman, being a party to the proceedings under Section 33(2)(b) of the Act, 1947, did not challenge the said order granting approval. Being aware that the employer has obtained necessary approval under Section 33(2)(b) for the order of dismissal, the workman has filed a complaint under Section 33-A of the Act, 1947, and in that situation, the Court could not have condoned the delay of 10 years in raising the dispute.

21. In addition, it is also urged that the misconducts proved are grave and warranted a penalty of dismissal, and the petitioner-Establishment is justified in imposing the penalty of dismissal, and the Labour Court could not have exercised

jurisdiction under Section 11A of the Act, 1947 to set aside the penalty of dismissal.

22. It is noticed that the judgment in ***M/s. Zenith Textiles (Supra)***, is pertaining to the misconduct of a workman of the petitioner Company between 13.07.2005 to 14.11.2005. In the instant case, the conduct alleged against the respondent is not connected to the misconduct alleged against the respondent in ***W.P. No.14223/2020 [M/s. Zenith Textiles (supra)]***. Hence, the facts in the said case are different from the facts in the present case.

23. The learned counsel appearing for the respondent would urge that the Labour Court is justified in holding that the dispute raised is not hit by delay and laches. The petitioner was prosecuting the matter under Section 33-A of the Act, 1947 under an impression that the said prosecution also amounted to a challenge to the order of dismissal, and only after dismissal of the application under Section 33-A in 2016, and approval granted under Section 33(2)(b) in 2013, the workman raised a dispute under Section 10 of the Act, 1947 within a reasonable time. As such, there is no delay on the part of the respondent-workman.

24. In addition, it is also urged that the charges, even if held to be proved, are minor and did not warrant the penalty of dismissal, more so in a situation where there is no allegation of past misconduct against the respondent-workman.

25. The admitted factual position is that the respondent-workman was issued with a show-cause notice alleging certain misconducts between 03.02.2006 and 11.02.2006. The respondent-workman did not respond to the charge memo. An enquiry was conducted into the charges levelled against the respondent-workman. The workman did not participate in the proceedings. Based on the evidence led before him, the Enquiry Officer held that the charges are proved.

26. To the second show-cause notice issued to the respondent based on the findings of the Enquiry Officer's report, the respondent-workman did not respond. Further, the Disciplinary Authority dismissed the respondent from service. There was a pending dispute concerning the same respondent-workman; as such, an application was filed under Section 33(2)(b) of the Act, 1947 seeking approval of dismissal. The said application was allowed in the year 2013, and in the said

proceedings, the respondent-workman was a party. The Government referred the dispute for adjudication in May 2016. Hence, it is not a case to hold that the dispute is raised after 10 years. The proceedings under Section 33(2)(b) were pending till 2013.

27. As already noticed, the finding on misconduct is accepted by the respondent. Thus, the Court is also of the view that the charges are established.

28. Now the question is, "whether the Labour Court is justified in interfering with the penalty of dismissal from service?"

29. Learned counsel for the petitioner has relied on the judgment of ***Usha Breco Mazdoor Sangh (Supra)***, to contend that the penalty should not be lightly be interfered in exercise of jurisdiction under Section 11A of the Act, 1947. It is true that under Section 11A the Labour Court will not have unbridled discretion to interfere with the penalty. Same is the law laid down in ***Mahindra and Mahindra (Supra)***. At the same time, it is also settled position of law that the Court can look into the mitigating circumstances like nature of the job, nature of the misconduct, the past conduct of the workman.

30. The charges leveled against the respondent-workman relate to inefficiency, slowdown, and insubordination between 03.02.2006 and 11.02.2006. It is not the case of the petitioner-Establishment that there were proven past misconducts against the respondent. Taking into consideration the nature of the charges proved against the respondent-workman, the Labour Court held that the penalty of dismissal is disproportionate and, in exercise of the power under Section 11A of the Act, 1947, directed reinstatement of the respondent.

31. It is also relevant to notice that the Labour Court has denied backwages and allowances from the date of dismissal to the date of reinstatement, which is effectively denial for 10 years. It is possible to contend that in those 10 years, the respondent did not work and, applying the principle of 'no pay for no work', the denial of back wages is not a punishment.

32. Though the said contention appears logical, it is also required to be noticed that the Labour Court has concluded that the penalty of dismissal is disproportionate to the proven misconduct, and this Court also agrees with the said view, given the fact that the charges proved certainly called for a

lesser punishment, particularly in a situation where there is no allegation of past misconduct. Hence, it is also possible to hold that employment was denied from the date of dismissal, though a lesser penalty ought to have been imposed. Had the respondent been allowed to work, he would have earned wages for the work discharged by him. Thus, the denial of back wages for 10 years in a way also operates as a penalty.

33. Considering the material on record, the Court is of the view that, in the facts and circumstances of the case, the exercise of discretion by the Labour Court is within well-established parameters.

34. However, the Labour Court has granted continuity of service from the date of dismissal in the year 2006 till reinstatement. The respondent was opposing the application under Section 33(2)(b) of the Act, 1947, and in 2013, the penalty of dismissal was approved. The respondent later filed an application under Section 33-A to prosecute the petitioner for alleged non-compliance with the requirements of Section 33(2)(b). However, it was rejected in 2016.

35. It is indeed true that the proceedings initiated to prosecute the petitioner were wholly untenable, given the fact

that the respondent was a party to the proceedings under Section 33(2)(b) of the Act, 1947. Thus, the Court is of the view that the cause of action to raise the dispute arose in the year 2013 after the application for approval under Section 33(2)(b) of the Act, 1947 was allowed by the Tribunal.

36. In such a situation, the Court is of the view that there is delay on the part of the respondent in raising the dispute from 2013 to 2016, and the respondent was prosecuting a wholly untenable application under Section 33-A of the Act, 1947.

37. The Court is of the view that continuity of service from the date of grant of approval under Section 33(2)(b) till the date of dismissal of the application under Section 33-A is to be denied.

38. The remaining part of the award is confirmed.

ORDER

(i) Writ Petition is ***allowed-in-part***

(ii) The Award dated 27.01.2020 in Ref.No. 15/2017 on the file of Labour Court, Mysuru is modified.

- (iii) Respondent is not entitled to benefit of continuity of service from 12.04.2013 i.e. date of order in S.A No.07/2006 till 05.05.2016 i.e. the date of dismissal of Section 33-A application.

**Sd/-
(ANANT RAMANATH HEGDE)
JUDGE**

BRN/CHS