

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS Nos.22767, 22769 & 22783 OF 2004

COMMON ORDER:

1. Since the issue involved in all the writ petitions is one and the same, they are heard together and are being disposed of by this common order.

2. The above three writ petitions are filed seeking to issue writ of Certiorari calling for the records relating to and connected with I.D.Nos.7, 9 and 8 of 2001 on the file of the 1st respondent-Labour Court respectively, and to quash the awards dated 28.6.2004 passed therein.

3. For the sake of convenience, the facts in W.P.No.22767 of 2004 are discussed hereunder.

4. Heard Sri Vedula Srinivas, learned Counsel for the petitioner and Sri S. Ravindranath, learned Counsel for the respondents-workmen.

5. It is the case of the petitioner that it is a registered company and is doing business in the manufacture of Twin Edge Blades and Shaving Systems and its factory is located at Jeedimetla, Hyderabad. The workmen, who are arrayed as 2nd respondent in all the writ petitions, were employed in the petitioner-company as operators. The petitioner-company

found missing of stocks of blades manufactured in the factory in the course of verification. On noticing the missing of stock, the petitioner-company lodged a complaint in Jeedimetla Police Station, upon which, a case in Crime No.73 of 1993 was registered. During the course of investigation, the police arrested the workmen on 15.6.1993 on the suspicion that they were holding stock of blades stolen from the petitioner-company and they were trying to sell them in the market. The petitioner-company immediately placed the workmen under suspension pending criminal case in C.C.No.577 of 1993 on the file of the Judicial First Class Magistrate, Medchal and the workmen were tried in criminal case and they were acquitted vide judgment dated 23.12.1995. The State carried the matter in revision before this Court by filing Crl.R.C.No.143 of 1996. This Court dismissed the said Crl.R.C. vide judgment dated 6.3.1997. Thereafter, the workmen requested the petitioner to reinstate them into service in view of their acquittal in criminal case. The petitioner instead of reinstating them had pursued disciplinary proceedings vide charge sheets to the workmen on 11.1.1996 with the charges of dishonesty with the property of the company and also for committing acts subversive. The workmen submitted explanation on 23.1.1996 denying the charges. Being not satisfied with the explanations, the petitioner conducted detailed enquiry. After conducting enquiry, the enquiry officer submitted a report on 28.1.1997 holding that

the charges levelled against the workmen were proved. Basing on the enquiry report, show cause notices were served to the workmen by enclosing copy of enquiry officer's report. Then, the petitioner passed orders dated 21.11.2000 removing the workmen from service for the proven misconduct in the enquiry. The workmen challenged the orders of removal before the Labour Court by filing the above I.Ds under Section 2-A(2) of the Industrial Disputes Act. The Labour Court initially held that the domestic enquiry was vitiated. The petitioner assailed the finding of the Labor Court by filing W.P.Nos.3424, 3425 and 3426 of 2003 before this Court and the said writ petitions were allowed by this Court on 12.8.2003. Thereafter, the 1st respondent-Labour Court upheld the enquiry conducted by the Management, but however, passed orders in favour of the workmen vide awards dated 28.6.2004 directing that the workmen shall be reinstated into service with 50% of back wages and continuity of service, without appreciating any of the contentions raised by the petitioner. Challenging the same, the present writ petitions are filed.

6. The learned Counsel for the petitioner contends that the Labour Court erroneously allowed the I.Ds preferred by the workmen by directing reinstatement and that the petitioner has lost confidence in the workmen, and whenever the management loses confidence in the workmen, the Labour

Court cannot by force order reinstatement of the workmen. The learned Counsel for the petitioner relied upon the judgment rendered by the Hon'ble Supreme Court in ***Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao***¹, wherein the Hon'ble Supreme Court held as under:

“Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed. (Vide: *Air India Corporation v. V.A. Ravell* AIR 1972 SC 1343; *Francis Kalein & Co. Pvt. Ltd. V. Their Workmen* AIR 1971 SC 2414; and *Bharat Heavy Electricals Ltd. V. M. Chandrasekhar Reddy & Ors.*, AIR 2005 SC 2769).

In *Kanhaiyalal Agrawal v. Gwalior Sugar Co.Ltd.*, AIR 2001 SC 3645, this Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (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. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved. (See also: *Sudhir Vishnu Panvalkar v. Bank of India*. AIR 1997 SC 2249).

The instant case requires to be examined in the light of the aforesaid settled legal proposition and keeping in view that judicial review is concerned primarily with the decision making process and not the decision itself. More so, it is a settled legal proposition that in a case of misconduct of grave nature like corruption, theft, no punishment other than the dismissal may be appropriate. (Vide: *Pandiyan Roadways Corpn. Ltd v. N. Balakrishnan* ((2007) 9 SCC 755); and *U.P. State Road Transport Corporation v. Suresh Chand Sharma* (2010)6 SCC 555.

Relying upon the above settled legal proposition, the learned Counsel for the petitioner contends that the Labour Court was not right in setting aside the order of removal and in directing the petitioner to reinstate the workmen.

¹ (2012) 1 SCC 442

7. The learned Counsel for the workmen contends that the stand taken by the petitioner that they have lost confidence in the workmen, is totally incorrect and false, because in the enquiry, no where it was projected that the petitioner lost confidence in the workmen and that the charges levelled against the workmen would not also disclose that the petitioner lost confidence in the workmen. Further, it has been contended by the learned Counsel for the workmen that the workmen were arrested in June, 1993, and the disciplinary proceedings were initiated after acquittal by the competent Criminal Court and the workmen are the victims of circumstances and they were erroneously arrested by the police, and that the description of charges levelled against the workmen is nothing but reiterating the facts narrated in the FIR, and merely because, the workmen were arrested by the police, it cannot be presumed that the workmen indulged in theft of stock, and that initiation of disciplinary proceedings against the workmen by the petitioner is totally unwarranted and the basis of the charge is the arrest made by the police. The learned Counsel appearing for the workmen further contended that the Labour Court has rightly passed awards in favour of the workmen in exercise of powers under Section 11-A of the Industrial Disputes Act, and that since no illegality or irregularity has been pointed out by the petitioner in the awards passed by the Labour Court, the Court

should not normally interfere with the awards passed by the Labour Court and that there are no merits in these writ petitions.

8. This Court having considered the rival submissions made by the parties is of the view that the Labour Court has rightly passed awards in favour of the workmen in exercise of powers under Section 11-A of the Industrial Disputes Act. The contention of the petitioner that the petitioner lost confidence is only an after thought. No where in the enquiry or in the charges, the expression 'lost confidence' has been used by the petitioner. In the orders of removal also, the said expression of loss of confidence was not used. The said stand was taken by the petitioner only when the workmen challenged the orders of removal before the Labour Court under Section 2-A(2) of the Industrial Disputes Act. Further, the said stand was taken by the petitioner only to deny reinstatement. No illegality or irregularity has been pointed out by the petitioner in the awards passed by the Labour Court. Therefore, this Court is not inclined to interfere with the awards impugned.

9. Accordingly, the above three Writ Petitions are dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 28th December, 2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS Nos.22767, 22769 & 22783 OF 2004



28/12/2018

Nn.