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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.1048 of 2022 and CMP No.6613 of 2022

Tempel Precision Metal Product (I) Pvt. Ltd.,
No.7, Gudapakkam village,
Puducharam Post,
Poonamallee Taluk,
Thiruvallur - 600 124.

.. Appellant

Versus

E.Palaniswamy,
No.32/54, 2nd Pillaiyar Koil Street,
Lakshmipuram,
Chrompet, Chennai - 600 044.

.. Respondent

Prayer : Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order, dated 24.01.2022 in W.P.No.11094 of 2017.

Prayer in W.P.No.11094 of 2017 : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the award of the 1st respondent dated 04.07.2016 in ID.NO.189 of 2013 and quash the same in so far as it has not granted the normal relief of reinstatement with back wages and continuity of service with other benefits and to substitute the above relief in the award.

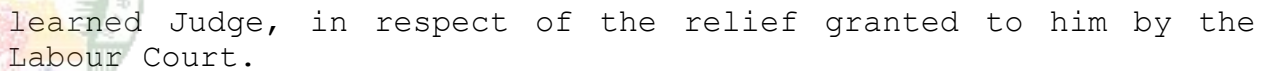
For Appellant : Mr.M.Vijayan
for King and Partridge

For Respondent : Mr.N.G.R.Prasad
for Row and Reddy

JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

This is an appeal against the judgment of the learned Judge, dated 24.01.2022 in W.P.No.11094 of 2017, whereby, the Writ Petition filed by the respondent/workman was allowed by the



3. After receipt thereof, on 02.02.2011, the workman submitted his explanation. It is his explanation that even though he was a Driver, upon being asked to supervise the job of lifting of scraps from May, 2010, he was performing the same. While so, on 19.08.2010, even during the working hours, false complaint was given against him and he was sent to the Police Station and thereafter, he was sent on leave and then the HR personnel had negotiated with him for ending his employment, but he did not accept. Thereafter, vindictively, this action has been taken. The receipt for proof of sending the said explanation by way of registered post is also produced. Again on 08.02.2011, he made a further representation that he is being victimised by the management, in which, he has specifically asked for a copy of the Police complaint given against him. The said representation is also sent by the registered post and receipt for sending the same is also produced. Again on 10.03.2011, he made a further representation requesting the management to drop its vindictive proceedings and give him employment and the arrears. On 12.02.2011, an order of discharge from service of the company is passed stating that inspite of the charge-memo, he did not submit any explanation and has only been delaying the matters and therefore, the management has lost confidence for stealing the company's property and therefore, decided to discharge the workman from 12.02.2011.



4. Aggrieved by the same, the workman raised a dispute and conciliation proceedings were held before the Special Deputy Commissioner of Labour, Chennai - 6 and since the same ended in failure, the workman thereafter approached the Labour Court, Chennai under Section 2 - A (2) of the Industrial Disputes Act, 1947.

5. The claim was taken on file as I.D.No.189 of 2013 and it was the case of the workman that suddenly he was refused work and a false charge was made against him and absolutely no enquiry was conducted and therefore, the workman prayed for an award holding that the order dated 12.02.2011, issued by the management discharging the workman from service, as illegal and unjustified and direct the management to reinstate the workman in service with continuity of service, full back-wages and all other attendant benefits.

6. The management filed a counter statement in which it was contended that the respondent herein was a Supervisor, drawing a salary of Rs.7500/- and therefore, he was not a workman. On 19.08.2010, the incident as mentioned in the charge-sheet happened and the respondent herein, after taking money from the scrap dealers at Rs.1500/- per load, is an accomplice to theft of valuable scrap materials worth Rs.3,00,000/-. Therefore, the charge-memorandum was issued. The workman neither submitted explanation nor attended office and therefore, the order of discharge was issued. In paragraph No.15 of the counter affidavit, it is pleaded that in the event of the Labour Court deciding that the respondent herein is not a Supervisor and is entitled to invoke the provisions of Industrial Disputes Act, 1947 the management may be permitted to adduce evidence before the Court to substantiate the charges leveled against the workman and justify the order of dismissal.

7. Before the Labour Court, the workman examined himself as W.W.1 and marked Exs.W-1 to W-22. On behalf of the management, one Amaladoss was examined as M.W.1 and one Sandeep Chitharanjan was examined as M.W.2 and Exs.M-1 to M-18 were marked. The Labour Court found that there was no specific order appointing the workman as Supervisor or assigning supervisory functions. He was appointed as a Driver, he was also doing cleaning work and he did not act as Supervisor and hence a workman within the meaning of the Industrial Disputes Act, 1947. Thereafter, the Labour Court found that since it is an admitted case where the workman was dismissed without any enquiry, adverted to the evidence on record where the management had attempted to prove the charges before the Labour Court. The Labour Court found that as per the case of the management, one Vemanathan was the one who made a surprise visit and found the valuable scrap materials being loaded into the lorry. It is the further case



of the management that the Human Resource Manager, namely Srinivasan, also visited the place and Vemanathan submitted a written statement. The management miserably failed to examine both of them and the two witnesses examined by the management had absolutely no personal knowledge about the occurrence. The Labour Court also found that after making a complaint of theft, neither the management pursued the same nor Police registered any First Information Report and even though in a case of theft, the case ought to have been registered. Therefore, held that the management failed to prove the misconduct of the petitioner therein.

8. Thereafter, the Labour Court considered the plea of the workman that the management has victimised him for his alleged involvement in trade union activities and concluded that the workman had failed to prove that he was victimised and since the management has lost faith in the workman, in lieu of reinstatement into service, ordered a sum of Rs.1,00,000/- as compensation to the workman.

9. Aggrieved by the same, the workman preferred the above Writ Petition. After hearing both the sides and analysing the materials on record, the learned Judge took note of the principles laid down by the Hon'ble Supreme Court whereby normally when the management fails to prove the charges or when there is a wrongful termination, reinstatement with continuity of service and back-wages is the normal rule and in exceptional cases compensation can be awarded. After taking note of the said principles, applying them on the facts of the case, the learned Judge found that firstly, after lodging a Police complaint, by considering past good record of the workman, it is stated by the management that it had not pressed the Police complaint. Secondly, when the workman has given valid explanation and without even adverting to the explanation, the impugned order of discharge from service was passed stating that there is loss of confidence. When no enquiry at all was conducted, the management has made a mere statement that there is loss of confidence, the learned Judge came to the conclusion that there is no exceptional circumstance to deviate from the normal rule of reinstatement with the back-wages and allowed the Writ Petition by modifying award passed by the Labour Court inasmuch as it ordered compensation and directed that the workman should be reinstated into service with continuity of service with full back-wages and all other attended benefits. Aggrieved by the same, the present Writ Appeal is filed.

10. Heard Mr.M.Vijayan, learned Counsel for the management and Mr.N.G.R.Prasad, learned Counsel for the workman.



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11. It is the contention of the learned Counsel appearing on behalf of the management that even though the charges against the workman was not proved, still it is a case where the management pleaded and proved that it has lost confidence on the workman and therefore, the reinstatement ought not to have been ordered and the Labour Court was right in awarding compensation of Rs.1,00,000/-. The learned Counsel relied upon the judgment of the Hon'ble Supreme Court of India in Uttar pradesh State Road Transport Corporation Vs. Gajadhar Nath¹, whereby, the Hon'ble Supreme Court of India, in paragraph No.4, quoted the principles laid down in the judgment of Workmen Vs. Firestone Tyre & Rubber Co. of India (P) Ltd.² and thus pleaded that the order of the learned Judge is erroneous in law. The learned Counsel further placed reliance on the judgment of the Hon'ble Supreme Court of India in Air-India Corporation, Bombay Vs. V.A.Rebellow and Another³, more specifically on paragraph No.16 that once the loss of confidence is bona fide then reinstatement ought not to have been granted.

12. Per contra, Mr.N.G.R.Prasad, learned Counsel appearing for the workman would contend that this is a case where the management has admitted even in the charge-sheet that petitioner therein is a Driver but pleaded that he is a Supervisor and not a workman, before the Labour Court. Admittedly, this is a case of no enquiry. Apart from not conducting enquiry, the management did not even mention about the explanation of the workman to the charges nor looked at it before discharging him from service. Therefore, he would contend that there was no occasion for the management to even plead loss of confidence. He would submit that as per the counter affidavit, if third parties had taken away valuable scrap materials worth Rs.3,00,000/- and the same was caught red-handed, there was no justification on the part of the management in withdrawing the complaint particularly by citing the past good conduct of the workman. He would therefore submit that the Labour Court, after giving all the findings on merits in favour of the workman, ought not to have denied him the relief of reinstatement on the ground that he has further failed to prove victimisation.

13. We have considered the submissions made on either side and the material records of the case. This is a case where even in the counter filed to the claim statement, the management pleaded that it may be given an opportunity to adduce evidence on merits of the charges in the event of the Labour Court concluding that the workman was not a Supervisor. Accordingly, once the Labour Court found that the respondent was a workman and admittedly there being no enquiry, the Labour Court

1 (2022) 3 SCC 190

2 (1973) 1 SCC 813 : 1793 SCC (L&S) 341

3 (1972) 1 SCC 814



proceeded to consider the evidence on merits let in by the management to prove the charges. It had found that the persons who are alleged to have found out the act of theft were never examined. Therefore, the Labour Court had rightly held that the charge against the workman is not proved and the findings upto this stage is not questioned by both the sides.

14. The grievance of the management is in respect of the consequential relief which has to be granted to the workman. It is their case that they have expressed loss of confidence and therefore, the learned Single Judge ought not to have granted the relief of reinstatement with back-wages. In this regard, it is pertinent to reproduce paragraph No.4 of the latest ruling of the Hon'ble Supreme Court of India in Uttar Pradesh State Road Transport Corporation Vs. Gajadhar Nath⁴:

" 4. The scope of an adjudicator under the Industrial Disputes Act, 1947 (for short "the Act") may be noticed. The domestic inquiry conducted can be permitted to be disputed before the Tribunal in terms of Section 11-A of the Act. This Court in a judgment reported as Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. [Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813 : 1973 SCC (L&S) 341] held that in terms of Section 11-A of the Act, if a domestic inquiry has been held and finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under: (SCC pp. 827-29, para 32)

"32. From those decisions, the following principles broadly emerge:

'(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in

4 Refer Footnote No.1



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accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.



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(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *Panitole Tea Estate v. Workmen* [Panitole Tea Estate v. Workmen, (1971) 1 SCC 742] within the



judicial decision of a Labour Court or Tribunal.' ""

Thus, even as per this judgment, the Hon'ble Supreme Court of India had mentioned that whether the workman has to be reinstated or paid compensation is to be as per the principles held in Management of Panitole Tea Estate Vs. Workmen⁵. It is essential to quote paragraph Nos.5 and 6 of the said judgment in Panitole Tea Estate, which is as follows:

" 5. In our opinion the present case is not one in which we would be justified in interfering on appeal under Article 136 of the Constitution with the order of the Tribunal. The question whether on setting aside the wrongful dismissal of a workman he should be reinstated or directed to be paid compensation is a matter within the judicial discretion of the Labour Court or the Tribunal, dealing with the industrial dispute, the general rule in the absence of any special circumstances being of reinstatement. In exercising this discretion, fairplay towards the employee on the one hand and interest of the employer, including considerations of discipline in the establishment, on the other, require to be duly safeguarded. This is necessary in the interest both of security of tenure of the employee and of smooth and harmonious working of the establishment. Legitimate interests of both of them have to be kept in view if the order is expected to promote the desired objective of industrial peace and maximum possible production. The past record of the employee, the nature of the alleged conduct for which action was taken against him, the grounds on which the order of the employer is set aside, the nature of the duties performed by the employee concerned and the nature of the industrial establishment are some of the broad relevant factors which require to be taken into consideration. The factors just stated are merely illustrative and it is not possible to exhaustively enumerate them. Each case has to be decided on its own facts and no hard and fast rule can be laid down to cover generally all conceivable contingencies. Proper balance has to be maintained between the conflicting claims of the employer and

5 (1971) 1 SCC 742



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the employee without jeopardising the larger interests of industrial peace and progress. In Hindustan Steels Ltd. case this Court substituted the order of reinstatement by an order of payment of compensation on the ground that the police report and the security officer's recommendation to the company showed that it was not desirable for reasons of security to reinstate the employee. In that case it was observed:

"As exceptions to the general rule of reinstatement, there have been cases where reinstatement has not been considered as either desirable or expedient. These were the cases where there had been strained relations between the employer and the employee, where the post held by the aggrieved employee had been one of trust and confidence or where, though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive of or prejudicial to the interests of the industry. These cases are to be found in Assam Oil Co. Ltd. v. Workmen, [(1960) 3 SCR 457] Workmen of Charottar Gramodhar Sahakari Mandali Ltd. v. Charottar Gramodhar Sahakari Mandali Ltd. [CA 382/66, decided on 14-8-1967 : (1967) 15 FLR 395] Doomur Dulung Tea Estate v. Workmen [CA 516/1966, decided on 26-10-1967] and Ruby General Insurance Co. Ltd. v. P.P. Chopra. These are, however, illustrative cases where an exception was made to the general rule. No hard and fast rule as to which circumstances would in a given case constitute an exception to the general rule can possibly be laid down as the Tribunal in each case, keeping the objectives of industrial adjudication in mind, must in a spirit of fairness and justice confront the question whether the circumstances of the case require



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that an exception should be made and compensation would meet the ends of justice."

The general rule of reinstatement in the absence of special circumstances was also recognised in the case of Workmen of Assam Match Co. Ltd. v. Presiding Officer, Labour Court, Assam [CAs 1970-1971 of 1963, decided on 27-10-1964] and has again been affirmed recently in Tulsidas Paul v. Second Labour Court, W.B. [CA 1607 of 1966, decided on 3-2-1971 : 1971 (22) FLR 148] In Tulsidas Paul it has been emphasised that no hard and fast rule as to which circumstances would establish an exception to the general rule could be laid down and the Tribunal must in each case decide the question in a spirit of fairness and justice in keeping with the objectives of industrial adjudication.

6. In the present case Shri Chagla has laid main stress on the submission that the management has lost confidence in Bhagavati's integrity and it would be wholly improper to force his reinstatement on the management. The store of which this workman was in charge, according to the learned counsel, contains goods worth lakhs of rupees and in the absence of the requisite confidence in his integrity the order of reinstatement is likely to harm the cause of industrial peace in the appellant concern. The appellant has expressed willingness to pay any reasonable amount by way of compensation. We have in support of the plea of want of confidence been taken through the correspondence between the management and Bhagavati. From that correspondence we are unable to conclude that the management lost confidence in Bhagavati because of the lapses mentioned therein. It appears that it was only when the management suspected Bhagavati's collusion with Borgohain that the management felt that his integrity was questionable. That chit having been found not to be in Bhagavati's handwriting and Bhagavati's dismissal having been held to be wrongful we are unable to sustain the plea of want of confidence raised by Shri Chagla. It is significant that no such plea was



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sought to be substantiated before the Labour Court. It is undoubtedly true that the store of the Tea Estate would contain goods of substantial value and a person really suspected of being untrustworthy may not justifiably be forced on the unwilling employer, but that aspect requires determination on facts which should have been properly placed before the Labour Court and a finding secured after appropriate trial. The suggestion that having regard to the nature of the proceedings against Bhagavati, the management has lost confidence is unacceptable. A similar argument was repelled in the case of Assam Match Co. If the workman is entitled as a general rule to be reinstated after his wrongful dismissal is set aside and on the facts it is not possible to find cogent material on which the establishment can genuinely be considered to have lost confidence in the integrity of the workman he is entitled to be reinstated. The next argument that Bhagavati should not be forced on the management after a lapse of ten years is equally unacceptable because if his dismissal was wrongful then merely because proceedings for adjudication of the industrial dispute have taken a long time is by itself no reason for not directing his reinstatement if it is otherwise justified being in accordance with normal rule. A similar contention was also repelled in the case of Assam Match Co.. In Swadesmitran case also this Court observed that in the case of wrongful dismissal, discharge or retrenchment a claim for reinstatement cannot be defeated merely because time has elapsed or that the employer has engaged fresh hands. We are, therefore, unable on the existing record to sustain the appellant's submission that the order of reinstatement made by the Labour Court suffers from any legal infirmity justifying its substitution by an order of payment of compensation to the workman. A suggestion has been thrown by Shri Chagla that in all probability the employee must have secured employment elsewhere as he could not have remained idle all these years and payment of



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compensation in place of reinstatement would, therefore, cause him no prejudice. On behalf of the employee it is denied that he had been employed anywhere else during this period. In our opinion, this matter being controversial should have been raised before the Labour Court and we are not in a position to express any opinion on it in the present proceedings."

Therefore, the question of awarding compensation in lieu of reinstatement is considered to be an exception while the normal rule is reinstatement with back-wages and continuity of service.

15. The instances of exceptions such as the workman occupying a post of trust, recurrent conducts leading to doubtful integrity; or the dismissal and discharge being unsustainable owing to some infirmity in the order; or the action of the employee is found to be an activity subversive to the interest of the society; though held are indicative, it is also held that no hard and fast rule can be laid down and it has to be decided in each case in the spirit of fairness and keeping with the objects of industrial adjudication. In this context, a perusal of paragraph No.9 of the award of the Labour Court, it would be clear that the Labour Court had, after finding that there was no enquiry and procedure is unfair, after finding that the evidence let in by the management, the charges against him were not at all proved, held as if the workman has to further prove victimisation to earn the relief of reinstatement with back-wages. The said finding and approach are against the tenets and objects of industrial adjudication. On the other hand, the learned Single Judge had considered in detail that once the management decided not to press the Police complaint, considering past action of the employee, it cannot even factually contend that it has lost confidence in the employee and secondly, when there was no iota of evidence on the merits of charge and the order of termination expressing loss of confidence was passed without even considering the explanation submitted by the workman, considering the nature of the duties of the workman, has rightly, in the spirit of fairness and justice, concluded that this is a case where the workman is entitled to reinstatement with back-wages and continuity of service.

16. The learned Counsel for the appellant further relied upon the judgment in *Air-India Corporation, Bombay Vs. V.A.Rebellow and Another*⁶, in which, after suspecting misconduct against workman by invoking Regulation 48 of the Air India Corporation, whereby, without expressing any misconduct or causing stigma, the management relieved the workman from

⁶ Refer Footnote No.3



service, by way of termination simpliciter. In that context, the Hon'ble Supreme Court of India upheld the action that as when the management has bona fide lost confidence and when they have invoked Regulation 48, such legitimate opinion need not be interfered with. It is useful to extract paragraph No.16 of the said judgment which is relied upon by the learned Counsel for the appellant, which is as hereunder:-

" 16. Regulation 48 which has been set out earlier as its plain language shows does not lay down or contemplate any defined essential pre-requisite for invoking its operation. Action under this Regulation can be validly taken by the employer at his sweet will without assigning any reason. He is not bound to disclose why he does not want to continue in service the employee concerned. It may be conceded that an employer must always have some reason for terminating the services of his employee. Such reasons apart from misconduct may, inter alia, be want of full satisfaction with his overall suitability in the job assigned to the employee concerned. The fact that the employer is not fully satisfied with the overall result of the performance of his duties by his employee does not necessarily imply misconduct on his part. The only thing that remains to be seen is if in this case the impugned order is mala fide. The record merely discloses that the appellant had suspicion about the complainant's suitability for the job in which he was employed and this led to loss of confidence in him with the result that his services were terminated under Regulation 48. In our view, loss of confidence in such circumstances cannot be considered to be mala fide. We are unable to conceive of any rational challenge to the bona fides of the employer in making the impugned order in the above background. The complainant, it may be remembered had to deal with Air Hostesses in the performance of his duties and if the appellant was not fully satisfied beyond suspicion about his general conduct and behaviour while dealing with them it cannot be said that loss of confidence was not bona fide. Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from



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challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, if bona fide, is in our opinion final and not subject to review by the industrial adjudication. Such opinion may legitimately induce the employer to terminate the employee's services; but such termination can on no rational grounds be considered to be for misconduct and must, therefore, be held to be permissible and immune from challenge."

Thus, it may be seen that the principles laid down in the said judgment can have no application at all in the facts and circumstances of the instant case.

17. Thus, we find no merits in the contention of the appellant and the Writ Appeal is without any merits and is dismissed. However, there shall be no orders as to costs. Consequently, C.M.P.No.6613 of 2022 is closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

grs

+1cc to M/s.King and Partridge, Advocate SR.No.29638

+1cc to M/sRow and Reddy, Advocate SR.No.30275

W.A.No.1048 of 2022

and

CMP No.6613 of 2022

JPL (CO)

GMV (09/06/2022)