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W.P.No.8861 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2025

PRONOUNCED ON : 26.08.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.8861 of 2021

and

W.M.P.Nos.9398, 26258 & 26260 of 2021

1.M/s.NSK Bearings India Pvt Ltd
2nd Floor, Block I, TVH Beliciaa Towers,
NO. 71/1, MRC Nagar Main Road,
MRC Nagar, Chennai- 600 028.
Rep by its Authorised Signatory Natarajan.L

Formerly Known as.
NSK India Sales Company Pvt Ltd,
6th floor, Bannari Amman Towers,
29, Dr.Radhakrishnan salai, Mylapore, Chennai- 600 004.

2.M/s. NSK Ltd,
1-6-3 Ohsaki,
Shingawa-Ku,
Tokyo 141- 8560
Japan.

... Petitioners

Vs.

1.The Special Joint Commissioner of Labour
(The Appellate Authority
under the Tamil Nadu Shops and Establishments Act, 1947),
Teynampet Chennai- 600 006.



2.S.Nivas

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records and quash the order dated 14.12.2020 passed in TNSE- I/ 4/ 2015 on the file of the 1st Respondent, The Special Joint Commissioner of Labour, (Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947), Chennai-6.

For Petitioner	:M/s.S.Ravi, Senior Counsel for M/s. Gupta and Ravi
For Respondents (for R1)	: : M/s.M.Murali, Govt. Advocate
(for R2)	: M/s.K.Sridhar for M/s.K. Sridhar Associates

ORDER

Challenging the order passed by the 1st respondent in his proceedings dated 14.12.2020 in TNSE-I/4/2015 the petitioner company is before this Court.

Facts of the Case:-



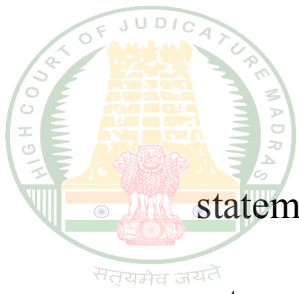
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2. The short facts as narrated in the affidavit filed in support of the Writ Petition are as follows:-

3. The 1st petitioner company is engaged in the manufacturing and selling/trading in all types of bearings for automotive and industrial applications. The 2nd petitioner company is incorporated in Japan and is the parent company of the 1st petitioner company.

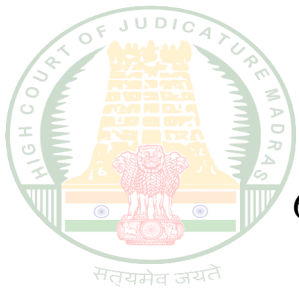
4. The petitioner would submit that the 2nd respondent was employed as an Engineer Sales Support on probation under an offer of employment dated 19.04.2011. After the successful completion of his probation period his services were confirmed on 15.07.2011. He was deputed to undergo training for a period of 2 years in the Fujisawa Technical Centre in Japan in March 2012.

5. On 19.04.2013, an anonymous mail was received by 29 employees of the 1st petitioner company including the 2nd respondent in its official e-mail ID. This mail was sent out from an e-mail ID called niscounions@gmail.com. The e-mail contained a single



statement “this is the fair appraisal from the Management” and had the

1st petitioner’s confidential file named “salary revision - April 2013 xls.” as an attachment. This attachment has been taken from the NSK file server in Japan using an NSK e-mail ID. Since there was every likelihood of the misuse causing disharmony amongst the employees an investigation was conducted and from out of this investigation it came to light that the 2nd respondent had transmitted the file containing the confidential and sensitive information from the 2nd petitioner’s server onto another server (Gmail) from his official e-mail account `nivas@nsk.com` to his personal e-mail account `mecnivas@gmail.com`. The investigation would further reveal that the the 2nd respondent had accessed the confidential and sensitive information, transferred it to his personal e-mail account and thereafter forwarded it to the employees of the 1st petitioner company using an anonymous e-mail. The petitioner would submit that at this relevant point in time the 2nd respondent was undergoing training at NSK’s Fujisawa Technical Centre in Japan.



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6. By an e-mail dated 22.04.2013, addressed to his Manager Mr.Imamura, who was stationed at Chennai, the 2nd respondent had complained that his salary was not commensurate to his qualification and experience whereas the employees who were joined the services of the company much later and who are less qualified were earning a higher salary package. He had also referred to the anonymous e-mail.

7. It is the case of the 1st petitioner that the 2nd respondent had accessed the confidential and sensitive information, transferred it to his personal e-mail account and thereafter forwarded it to the employees of the 1st petitioner company using an anonymous e-mail. In fact, the petitioners had set out in para.no.7 of the affidavit filed in support of this Writ Petition, the manner in which their server could be accessed. It is their case that the confidential information of NSK Group is stored in the main server in Japan. This information can be accessed by all the authorized constituents throughout the world which includes the employees who are provided with individual terminals. The heart of the information system is located in Japan where it houses its “server based data centre” one of which is NSK e-mail



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8. The petitioners would submit that all their employees used this server enabled e-mail system to communicate and they are supported with a centralized network access file server for storing the information. Every employee is authorized to access this file server by using uniquely allocated user ID's and passwords and by using this unique ID password the file server located in Japan can be accessed from any part of the world.

9. It is the contention of the petitioners that the information stored in this file server is confidential and is the exclusive property of the petitioner company. Though the employees could use the same for official purposes during the tenure of their employment, they are strictly prohibited from downloading/copying/transferring the information to any server and system which does not belong to NSK Groups. All the files related to NSK's intellectual properties and files related to their official business are stored on the NSK network server. As part of the NSK information security, details of all the transactions



that happen within the file server and e-mail server can be archived and retrieved at any moment of need thereby ensuring that misuse/unauthorized downloading or transferring NSK confidential information can be traced back with details of exact time of transmission along with e-mail ID to which the data has been transmitted.

10. The petitioners would submit that when accosted the 2nd respondent had admitted the act and he was asked to resign. However, he refused to do so. Therefore, he was served with a show cause notice dated 29.04.2013 and with effect from the said date he was exempted from duty with a right to receive full wages and other benefits so as to enable him to look out for an alternate employment and to enable him to voluntarily leave the services of the petitioner company before 31.07.2013. The 2nd respondent, in his reply dated 02.05.2013, made false insinuations against his superiors and also alleged that he was being forced to resign. The reply was found to be unsatisfactory and consequently by order dated 26.07.2013, his services were terminated by paying him salary for the notice period i.e. up to 30.09.2013. By a



letter dated 30.07.2018, the 2nd respondent sought time to explain himself and after the opportunity was granted and his explanation received, the same was found unsatisfactory. Therefore, the termination was confirmed.

11. Challenging the order of termination dated 26.07.2013, the 2nd respondent had preferred an appeal before the 1st respondent under Section 41(2) of the Tamil Nadu Shops and Establishment Act. In the said appeal, the petitioner has impleaded the 2nd petitioner who is an unnecessary party to the proceedings. In the said appeal a detailed counter was also filed by the 1st petitioner denying the allegations made by the 2nd respondent.

12. Thereafter, the 2nd respondent had filed I.A. No. 3 of 2016, seeking to refer certain issues to the Forensic Sciences Department of the Government of Tamil Nadu for their expert opinion. This IA was allowed by order dated 19.07.2016. Pursuant to which, the Forensic Sciences Department had submitted its report dated 30.09.2016



expressing an opinion that the contents of the compact disc (filed by the petitioners containing digital e-mail exchange recorded on 17 and 18 April 2013 through the official e-mail ID of the 2nd respondent) were reported to have shown that on 17.04.2013 the 2nd respondent had downloaded from his official e-mail to his personal e-mail and again on 19.04.2013 the said e-mail was forwarded to 29 official e-mails of other employees.

13. The petitioners would submit that though the Forensic Sciences Department had not given a direct answer, however, their reply was sufficient to establish a nexus between the 2nd respondent and the petitioner company's server conveying the salary particulars to the official e-mails of the 29 employees.

14. Ultimately, by order dated 16.05.2018, the 1st respondent without giving any opportunity to the petitioners, closed the evidence and passed an order setting aside the order of termination and directing reinstatement of the 2nd respondent with full back wages and



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continuity of service. Challenging the same, the petitioners had filed

WP.No.2758 of 2019 before this Court and by order dated 28.08.2019,

the Writ Petition was allowed and the order passed by the 1st respondent dated 16.05.2018 was set aside and the matter was remanded back to the 1st respondent for fresh consideration after providing an opportunity to both parties.

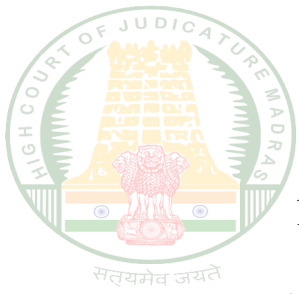
15. After the remand, since the incumbent authority is the husband of the previous authority who had passed the order dated 16.05.2018, which was set aside by this Hon'ble Court, the petitioners had filed a memo dated 12.09.2020 before the Commissioner of Labour for transferring the appeal to the file of any other Joint Commissioner of Labour which was objected to by the 2nd respondent. The 1st respondent by order dated 29.09.2020 conveyed the decision of the Commissioner of Labour that the proceedings could be continued before the incumbent the 1st respondent himself.

16. On 14.12.2020, after examining the witnesses and



considering the evidence available on record, the 1st respondent had ultimately, passed an order directing reinstatement with backwages and continuity of service. Challenging the same, the petitioners are before this Court.

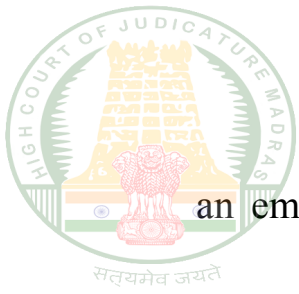
17. The 2nd respondent had filed a detailed counter denying the allegation that he had clandestinely disclosed confidential information relating to the salaries of 29 employees of the 1st petitioner company. He would also submit that on 20.10.2013 he has been summarily thrown out of employment without affording an opportunity. The 2nd respondent would further submit that by letter dated 28.10.2013 he had informed the petitioner company that he was seeking legal redressal through Court. In response, by letter dated 31.10.2013, the petitioner company stated that, irrespective of the outcome, they would not permit the 2nd respondent to continue in service. The 2nd respondent would also contend that the body of the e-mail which is alleged to be the offending one has not been displayed and therefore there is nothing to show the source.



18. The 2nd respondent would further submit that even the expert witness has not given any material finding. That apart, the compact disc which is an electronic record is not admissible in evidence unless it fully complies with the conditions prescribed under Section 65 B of the India Evidence Act and should be accompanied with the mandatory Certificate prescribed for that purpose. The expert witness has deposed that he cannot comment as to whether the e-mail has been forwarded to the 29 e-mail addresses. He would contend that in the absence of the IP address the person who has sent the e-mail cannot be identified and remains anonymous. Therefore, he would seek the dismissal of the above Writ Petition.

Submissions:-

19. The main argument that has been advanced on the side of the petitioners by the learned Senior Counsel, Mr.S.Ravi is that the 2nd respondent had signed a confidentiality agreement on 19.04.2011 when he had been appointed to the petitioner's company. Clause 11 of the said agreement clearly defines what constitutes confidential information and outlines the nature of confidentiality expected from



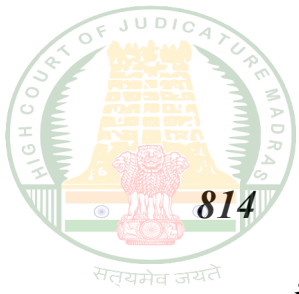
an employee. The learned counsel for the petitioners would submit that it is this clause that has been breached by the 2nd respondent as a result of which the petitioner company had lost confidence in the 2nd respondent. He further submitted that the salaries paid to the employees were not uniform, and by disclosing these details among the employees, the 2nd respondent had caused discontent within the workforce. The forensic report obtained clearly implicates the 2nd respondent and therefore the order dismissing him from service is well founded. He would further submit that once the company had lost confidence in the 2nd respondent the petitioner cannot be compelled to reinstate him into service.

20. The learned counsel for the petitioners would rely upon the following judgements in this regard:-

i. Ruby General Insurance Co. Ltd. Vs. P.P.Chopra – (1969) 3 SCC 653

ii. Francis Klein & Co. (P) Ltd. Vs. Workmen – (1972) 4 SCC 569

iii. Air India Corporation Vs. V.A.Rebellow – (1972) 1 SCC



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- iv. Hindustan Steels Ltd. Vs. A.K.Roy – (1969) 3 SCC 513*
- v. Anil Kumar Chakraborty Vs. Saraswatipur Tea Co. Ltd. – (1982) 2 SCC 328*
- vi. Air Lanka Ltd. Vs. John William Nanthan – 1990 SCC Online Mad 864.*
- vii. Karnataka SRTC Vs. M.G.Vittal Rao – (2012) 1 SCC 442*
- viii. Mangatu J.Vergese Vs. Daulatram Dyeing and Bleaching Mills. – 2000 SCC Online Bom 257.*
- ix. Management of Best and Crompton Engineering Ltd. Vs. Presiding Officer, II Additional Labour Court - 2004 SCC Online Mad 538.*

21. Per contra, Mr.K.Sridhar, learned counsel appearing on behalf of the 2nd respondent would submit that the petitioner has not made out any case whatsoever to show that the 2nd respondent has been responsible for the transmission of the confidential information and therefore the 1st respondent has rightly allowed the appeal.

**Discussion:-**

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22. The main argument that has been canvassed by the petitioner management is that the 2nd respondent had indulged in transferring confidential information and therefore the petitioner management lost confidence in the 2nd respondent and in these circumstances, the order directing reinstatement is erroneous and has to be set aside. The defence is that the 2nd respondent has not shared any confidential information and that he has been summarily dismissed without any enquiry. That apart, the petitioner has not been able to prove that the e-mail which is the genesis for the proceeding has been transferred by the 2nd respondent.

23. In order to appreciate the rival arguments, it would be necessary to sequence the grievance starting from the transfer of the mail and the e-mail address from which the same has been done.

(i) On 17.04.2013, at around 03.39 PM an e-mail had been forwarded from nivas@nsk.com to Nivas s. The said mail only contains the reference to the attachment, which is shown as “SALARY REVISION APRIL 2013.xls; BOOK 1.xls; Organisation



Chart 20130201.ppt. However, the attachment is not displayed in the email.

(ii) On 19.04.2013, at around 10:47 AM, an e-mail had been sent from nivas@nsk.com to [nivas s.](mailto:nivas.s) The contents of the mail are 29 e-mail addresses.

(iii) The next mail is also dated 19.04.2013 at 01:24 PM and the mail is sent from niscounions@gmail.com to the 29 e-mail addresses. This e-mail contains an attachment titled "SALARY REVISION APRIL 2013.xls". The body of the mail contains just one sentence which is as follows " *This is the fair appraisal from the management*".

(iv) Thereafter the next mail is dated 22.04.2013 which is a mail sent by nivas@nsk.com to Imamura with the copy mark to tahara@nsk.com. The following is the subject of the mail, "*JUST sharing my grievance*" and the body of the mail contains a letter in an by which the 2nd respondent has informed the management that by an anonymous e-mail source all concerned have come to know what he is being paid.

24. On 25.04.2013, it is seen that the Manager HR has



addressed a letter to the 2nd respondent stating that on the basis of the investigation carried out by their Global IT, they have come to learn that the confidential information has been accessed by the 2nd respondent and transferred to his personal e-mail. Since the allegation was serious, it required further investigation and therefore, his training in Japan was terminated and he was asked to return to Chennai. This is followed by a “Confidential Information Leakage Report” dated 27.04.2013 prepared by one Saravanan, IT Manager of the petitioner company and addressed to the President and the IT Head of the petitioner company.

25. Thereafter, on 29.04.2013, the petitioner had issued a show cause notice to the 2nd respondent asking him to show cause about the accessing and circulation of the confidential information. The show cause notice refers to the offer of employment dated 19.04.2011 and states that the Clause 11 therein has been breached by the 2nd respondent. However, along with the report of the forensic lab, five Annexures have been attached. Annexure I contains the e-mail dated 19.04.2013 sent from niscounions@gmail.com to the 29 addressees



which have been sent at 10:54:26 AM and received at 10:54:34 AM.

Annexure II is an e-mail dated 21.07.2015 and a reply of the same date relating to an exchange of messages between the officials of the petitioner company regarding the manner in which the confidential information can be secured. Annexure III is the e-mail dated 22.04.2013 which was sent by the 2nd respondent to Mr.Imamura sharing his grievance. Annexure IV is the e-mail dated 17.04.2013, attaching the Salary Revision April 2013.xls. This e-mail also displays e-mail ID to which the mail had been sent. However, the e-mail dated 17.04.2013 which is enclosed at page 10 of the typed set of papers does not display this e-mail address and only displays "nivas s". Annexure V is the e-mail dated 19.04.2013 transferring 29 e-mail addresses from nivas@nsk.com to nivas s.

26. A perusal of these e-mails as also the forensic report does not explain or clarify the following factors:-

(i) The e-mail address from which the confidential information has been transferred.

(ii) The anonymous e-mail transferring the addresses has been

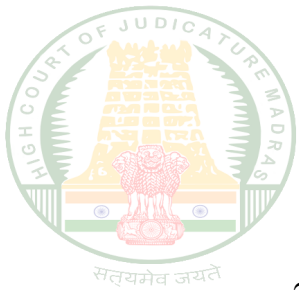


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received by MW.1 on 19.04.2013 itself based on which the petitioner management would state that the investigation had taken place at their Japan office. However, none of the documents showing the investigation relating to the transfer of these details in the form of a digital trail has been produced.

(iii) Though M.W.1 would state that he has received the anonymous e-mail along with other addresses his device has not been submitted for forensic examination.

27. These are the glaring discrepancies which has not been explained by the petitioner company. No doubt, this Court exercising jurisdiction under Article 226 of the Constitution of India cannot go into the evidence. However, when obvious facts have not been explained the Court can look into the same. The petitioner, has produced only the CD in which the messages/emails have been copied. Therefore, this is not the original device to which the mail has first copied. The original IP address from which the e-mail has been emanated has not been tracked and there is nothing to link it to the IP Address of the 2nd respondent.



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28. A perusal of the e-mails that have been sent to the employees by the management starting from 19.04.2013, only states that confidential information has been hacked and maliciously circulated through an anonymous e-mail ID and that the petitioner management would take steps to identify the hacker. However, none of the e-mails thereafter has specifically described the e-mail ID from which the original mail had been forwarded. In fact, in a mail dated 24.04.2013, sent from the Japan Office to Saravanan, it is stated that a particular user log ID which has been looked into does not show any suspicious behavior. Therefore, as rightly held by the 1st respondent, the petitioner company has not been able to establish that it is the 2nd respondent who has indulged in the sharing of the confidential information. Further, the forensic report that been filed also does not support the case of the petitioner.

29. In a mail dated 24.04.2013 sent at 9.44 AM from Mr.Shimamoto Osamu to Mr.Saravanan, the said Simamoto informs Mr.Saravanan that they require an official approval to proceed with the IT forensic and to disclose the information. In this e-mail they are



stating that they are working to extract the logs (*A log is a file or record containing information about activities in a computer system*).

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However, the letter dated 25.04.2013 in and by which the petitioner was recalled from Japan there is a categoric statement that based on the investigation carried out by their Global IT, it was the 2nd respondent who had accessed the confidential information and transferred the same to his personal e-mail ID. The mail referred above, i.e. 24.04.2013 however indicates that the investigation was yet to be concluded. That being the case on the very next date i.e; 25.04.2013, the petitioner management has issued the letter categorically holding the 2nd respondent liable. As already stated, the investigation details have not been placed before the 1st respondent or this Court for consideration. Therefore, it is clear that the petitioner management have not been able to prove that the confidential information has been shared by the 2nd respondent.

30. The order of termination suffers from the vice of not only arbitrariness but also malafides and is a pre-determined one. Even before the show cause notice dated 29.04.2013 was issued the



petitioner has found the 2nd respondent guilty which is evident from the contents of the letter dated 25.04.2013 which is discussed supra.

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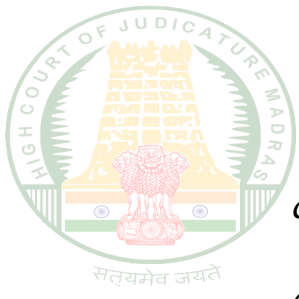
Further, even the show cause notice pins the blame upon the 2nd respondent. Therefore, it is clearly evident that the petitioner management has already held the 2nd respondent guilty and the show cause notice was merely a lip service.

31. The show cause notice has been issued on the ground that the 2nd respondent had violated Clause 11 of the offer of appointment dated 19.04.2011. It would be useful to extract the said clause. Clause 11 of the offer of employment would read as follows:-

11. General

You are to devote your whole time, attention and ability to the interest of the Company.

You are to treat as strictly confidential the affairs of the Company and its customers of which you may be cognizant and particularly any and all knowledge, information, know-how, trade secrets and data, whether technical, non-technical or



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computer-generated (including, but not limited to drawings, sketches, plans, documents, quotations, specifications, etc., and any information obtained from these).

You are not to interest yourself in any business or do any trading on your own account.

You will be governed by the rules and regulations of the company in matters of conduct and discipline and carryout all lawful orders of the Management and Superiors of the company.

Breach of any of the conditions above will render you liable to termination of your employment without notice."

32. A reading of this clause would clearly show that the sharing of address or salary details do not come within the category of confidential information as set out in clause 11 of the offer of employment. The 2nd respondent having categorically denied downloading and sharing the alleged confidential information, the

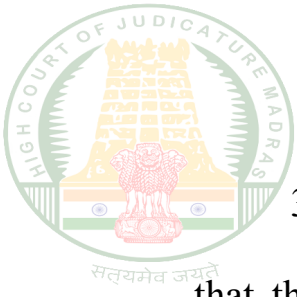


onus is on the petitioner management to prove the same, in this endeavour the petitioner has miserably failed.

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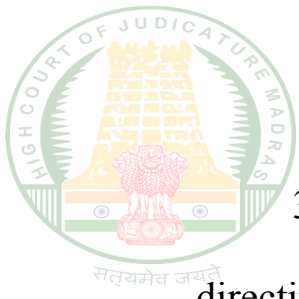
32. From a perusal of the records it is clearly seen that the petitioner management has not followed the provisions of Section 41(1) of the Tamil Nadu Shops and Establishment Act, 1947 (hereinafter called as the "TNSE Act") before terminating the 2nd respondent. Section 41 (1) of the TNSE Act would read as follows:-

41. (1) - No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one months notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose."



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33. A reading of the aforesaid provisions would clearly show that the employer cannot dispense with the services of a employee without a reasonable cause and without giving such person one month's notice or wage in lieu of such notice. This Section further states that the notice would not be necessary only where service of the person is dispensed with on a charge of mis-conduct supported by satisfactory evidence recorded at an enquiry held for the purpose. Therefore, the provisions of the TNSE Act stipulates that before dispensing with the services of an employee he has to be given notice and an enquiry has to be held, which in the instant case has admittedly not been conducted. A show cause notice has been issued on 29.04.2013 to which the petitioner has sent a detailed reply on 02.05.2013. The explanation in the said reply has not been taken into consideration which is evident from a perusal of the letter dated 06.05.2013 sent by the petitioner management to the 2nd respondent and thereafter by a letter dated 02.08.2013 his services has been terminated. Therefore, the dismissal order has been rightly set aside by the 1st respondent.



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34. The petitioner management would submit that the order directing reinstatement is erroneous since the petitioner management had lost confidence in the 2nd respondent and therefore they cannot be compelled to reinstate the 2nd respondent. In support of this argument the petitioner management has relied upon the following judgments:-

(i) *Ruby General Insurance Co. Ltd. Vs. P.P.Chopra* –(1969) 3 SCC 653.

(ii) *Air India Corporation Vs. V.A.Rebellow* – (1972) 1 SCC 814.

(iii) *Anil Kumar Chakraborty Vs. Saraswatipur Tea Co. Ltd.* – (1982) 2 SCC 328.

(iv) *Karnataka SRTC Vs. M.G.Vittal Rao* – (2012) 1 SCC 442.

35. In the judgment of reported in **(2012) 1 SCC 442 - *Karnataka SRTC Vs. M.G.Vittal Rao***, the Hon'ble Supreme Court was considering the order passed by a division bench reinstating the employee into service despite the fact that he had been found guilty of cutting a Padlock of the cash room and removing cash from the chest. A departmental enquiry was conducted and criminal proceedings were



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also initiated. Although the employee was acquitted in the criminal case, he was found guilty in the departmental enquiry and was subsequently dismissed from service. The Management had taken a plea that the order of the division bench directing reinstatement was erroneous in as much as they had lost confidence in the employee and therefore they cannot be compelled to reinstate the employee into service. The learned Judges had referred to the judgment reported in **2001 9 SCC page 609 - Kanhaiyalal Agrawal Vs. Gwalior Sugar Co. Ltd.** wherein the Hon'ble Supreme Court had laid down the test for loss of confidence to find out as to whether there was a bonafide loss of confidence in the employee. The learned Judges had held the following to be the test :-

- (i) The workman is holding a position of trust and confidence.*
- (ii) by abusing the position he commits an act which results in forfeiting the same.*
- (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment.*



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36. The learned Judges observed that loss of confidence cannot be subjective based upon the mind of the management. Objective facts that 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.

37. If this test were to be applied to the instant case, though the allegation has been made that the 2nd respondent is guilty of sharing confidential information, there is nothing to prove that it was he who was guilty of the same. Therefore, without proving the same, the loss of confidence pleaded is purely is in the mind and a perceived apprehension of the petitioner management. Further, as already held the confidential information which is shared does not come within the category of confidential information as described in clause 11 of the offer of employment.

38. Therefore, in the absence of proof, the petitioner cannot dilate on the defence of loss of confidence to set aside the order passed by the 1st respondent. Accordingly, I see no reason to interfere with



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the well considered order passed by the 1st respondent.

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39. In fine, the Writ Petition stands dismissed. No costs.

Consequently, the connected Miscellaneous Petitions are closed.

26.08.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The Special Joint Commissioner of Labour
(The Appellate Authority
under the Tamil Nadu Shops and Establishments Act, 1947),
Teynampet Chennai- 600 006.

P.T. ASHA. J.,

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