

**The Divisional Controller vs Shambulingaiah Chikkamataiah**

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**SooperKanoon Citation :** [sooperkanoon.com/1865851](https://sooperkanoon.com/1865851)

**Court :** Karnataka Orders

**Decided On :** Apr-25-2024

**Judge :** K.S. Hemalekha

**Appeal No. :** WP/3648/2024

**Appellant :** The Divisional Controller

**Respondent :** Shambulingaiah Chikkamataiah

**Judgement :**

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2024 BEFORE THE HON'BLE MRS JUSTICE K.S. HEMALEKHA WRIT PETITION NO. 3648 OF 2024 (L-RES) BETWEEN: THE DIVISIONAL CONTROLLER, B.M.T.C., DEPOT 33, SOUTH ZONE/DIVISION, CENTRAL OFFICE, K.H.ROAD, SHANTHI NAGAR, BENGALURU - 560 027. REPRESENTED BY ITS CHIEF LAW OFFICER. PETITIONER (BY SMT. RENUKA H R., ADVOCATE) AND: SHAMBULINGAIAH CHIKKAMATAIAH, S/O SIDDIAIAH, AGED ABOUT 44 YEARS,

Digitally signed by

MAHALAKSHMI B M

R/O HANAGAL, HALALUR HOBLI, Location: HIO

KARNATAKA KARNATAKA - 581 110. RESPONDENT (BY SRI. NATARAJ SHARMA S., ADVOCATE) THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF

## **THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER**

DATED 23.01.2023 IN ID NO.297/2021 PASSED BY THE III ADDITIONAL LABOUR COURT, BANGALORE ANNEXURE -B AND ETC., THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING: -2-

### **ORDER**

The petitioner has called in question the order dated 23.01.2023 in ID No.297/2021 on the file of III Addl. Labour Court, Bangalore, wherein, the petitioner herein was directed to pay 50% of the last drawn wages from the date of application.

2. Heard Smt H.R. Renuka, learned counsel for the petitioner and Sri S. Nataraja Sharma, learned counsel for the respondent.

3. Learned counsel for the petitioner would submit that the respondent herein is facing criminal proceedings, on

the complaint filed by the Corporation under Section 2-B, 2(A) of Karnataka Prevention of Destruction and loss of Property Act 1981, under Sections 4, 5 of the Karnataka Essential Services Maintenance Act, 2013, under Sections 5, 6 of the Karnataka Epidemic Diseases Act 2020, under Sections 427, 109, 143, 149, 506, 504, 353 and 114 of IPC and the FIR was registered under Crime No.0076/2021.

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4. Respondent counsel would submit that in identical

circumstances, where FIR registered against the workman, the Co-Ordinate Bench of this Court has directed the petitioner-corporation to reinstate the workman pending consideration of the industrial dispute before the Labour Court.

5. Learned counsel for the petitioner-Corporation

would contend that during the pendency of the criminal proceedings, the workman cannot be reinstated and it could be only after the final adjudication of the industrial dispute.

6. The material on record would indicate that the

petitioner-Corporation has reinstated not just those workmen who were dismissed from service and did not face penal proceedings, but also those who were dismissed from service and facing penal proceedings upon the concerned accepting the terms offered.

7. The law is well settled that initiation of criminal proceedings by itself cannot establish culpability, the Apex Court in Ajith Kumar Nag Vs. General Manager (PJ), -4- Indian Oil Corporation<sup>1</sup> has observed that, two

proceedings, criminal and departmental are entirely different, whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with Service Rules. The degree of proof which is necessary to

**order conviction is different from degree of proof necessary**

to record the commission of delinquency. The Rule relating to appreciation of evidence in two proceedings is also not similar. In criminal Law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law. On the other hand, in a Departmental enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability.

8. Merely pendency of the criminal proceeding alone cannot be a reason to discriminate the present respondent,

(2005) 7 SCC 764 -5- when the corporation has reinstated the workmen who are similarly placed.

9. It is also not in dispute by either of the parties that in identical circumstances, the Co-Ordinate Bench of this Court has taken a similar view in W.P. No.17774/2022 and

connected petitions. Thus, this Court is of the considered view that the petition needs to be disposed of with a direction to the petitioner to reinstate the workman pending consideration of the industrial dispute before the Labour Court and this Court pass the following order.

## **ORDER**

i. The petition is allowed dissolving the impugned orders and directing the petitioner to reinstate the respondent, and the respondent shall be extended an opportunity to report to duty within a period of two (2) weeks from the date of receipt of a certified copy of this order. The respondent reinstatement thus shall be subject to the final outcome in the pending proceedings. -6-

ii. The petitioner and the corresponding respondent is directed to co-operate with the concerned Labour Court for expeditious disposal of the pending proceedings, and the Labour Court is directed to ensure that the proceedings are decided expeditiously without any delay. iii. The Labour Court, as part of the final decision and if there is occasion for the same, shall also decide on the question of back wages and other benefits that the corresponding respondent would assert for the period they are out of employment. All pending applications, if any, stand disposed of accordingly. Sd/- JUDGE YKL List No.: 1 SI No.: 16