

(1988) 12 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No's. 4775, 10541 and 10542 of 1987

A. Ram Mohan

APPELLANT

Vs

Labour Court, Bangalore and Another

RESPONDENT

Date of Decision : 15-12-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 2 (s), 25 F

Citation : (1989) 59 FLR 1 : (1989) 2 LLJ 179

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. The first writ petition is presented by an ex-employee of M/s. Wockhard Private Limited questioning the legality of the award of the Labour Court, Bangalore, declining to grant the relief of reinstatement and awarding only compensation in lieu of reinstatement. The two other petitions are presented by the management questioning the legality of the order on a preliminary issue holding that the employee was a "workman" as defined under the Industrial Disputes Act and also the final award directing the payment of compensation of Rs. 63,000 in addition to the amounts already received by the workman.

2. As the three petitions arise out of the common award made in the same reference, they are being disposed of by this common order.

3. The facts of the case, in brief, are as follows : The workman was appointed as a Professional Service Representative ("P.S.R." for short) in the services of Messrs Wockhard Private Limited on 5th January, 1972. He was entrusted with the work of promoting sales of pharmaceutical products of the company within the State of Karnataka. The nature of the duties of the employee was to meet the doctors and apprise them about the products of the company with a view to create market for the products of the company and to book orders from hospitals, doctors and medical shops. His service were terminated with effect from 24th January, 1982 (annexure B in W.P. Nos. 10541 and 10542 of 1987). By the same order, the provisions of Section 25-F of the Industrial Disputes Act were

complied with, in that, the employee was paid one month's salary in lieu of notice and 15 days' salary for every completed year of service, that is for ten years of service which the employee had already put in. Thereafter, the employee raised an industrial dispute on the ground that the termination of his service was penal in nature and was not as all justified. The State Government referred the dispute raised by the employee for industrial adjudication u/s 10(1) of the Act by an order made on 21st November 1983. The points of dispute referred for adjudication were :

"I. Are the management of Messrs Wockhard Private Limited, Bombay, justified in terminating the services of Sri A. Ram Mohan with effect from 23rd August 1982 ?

II. If not, to what relief(s) the worker is entitled ?"

4. In the reference, the company raised a preliminary objection to the effect that the employee was not a "workman" as defined either under the Sales Promotion Employees (Conditions of Service) Act, 1976, which was a special enactment applicable to the sales promotion employees, or "workman" as defined u/s 2(s) of the Industrial Disputes Act, and, therefore, the reference was incompetent. The issue was answered in favour of the employee, by the order of the Labour Court dated 20th August, 1985. Thereafter, a memo was filed by the company stating that the company would contest the case of the employee on merits without prejudice to the questioning of the legality of the order on the preliminary issue if and when the award were to go against the company. Thereafter, the dispute was tried on merits and the Labour Court made an award on 20th October, 1986, directing that the termination of service be treated as resignation and that the employee is not entitled to reinstatement and that the management shall pay Rs. 63,000 to the employee by way of compensation in addition to an amount of Rs. 15,000 already received by the employee. The employee has presented this writ petition dissatisfied with the above award. The management has also presented the two writ petitions, one against the finding on preliminary issue and the other questioning the legality of the award.

5. Sri Ram Mohan, the employee, appeared in person and argued his case. He submitted that the order of termination was in the nature of penalty imposed for misconduct without holding an inquiry and the Labour Court in fact had come to such a conclusion and, therefore, the Labour Court ought to have set aside the order of termination and should have directed his reinstatement with full back wages.

6. Sri B. C. Prabhakar, learned counsel for the company, contended that the finding of the Labour Court on the preliminary issue holding that the employee was a "workman" was patently erroneous and further the finding recorded by the Labour Court that the State Government was the appropriate Government to make the reference was also untenable as the company had its head office at Bombay and there was no regional office in the State of Karnataka. He also contended that the order of termination was only a retrenchment simpliciter and

as the company had complied with the provisions of Section 25-F of the Industrial Disputes Act, there was no justification for the Labour Court to award compensation more than the one contemplated by Section 25-F of the Act.

7. In the light of the submissions made by the employee and learned counsel for the company, the following points arise for consideration :

I. Whether the finding recorded by the Labour Court that the employee was a "workman", as defined u/s 2(s) of the Act, is correct ?

II. Whether the finding recorded by the Labour Court that the Karnataka Government was the appropriate Government to make the reference is correct ? and

III. Whether the award made by the Labour Court is erroneous as contended for the employee or as contended by the company ?

8. I shall proceed to consider the three points in the same order.

9. As regards the first point, learned counsel for the company relied on the provisions of the Sales Promotion Employees (Conditions of Service) Act, 1976. This Act was enacted by Parliament to regulate certain conditions of service of sales promotion employees in certain establishments. The expression "sales promotion employee" is defined u/s 2(d) of the Act. According to the definition, an employee engaged in any establishment to do any work relating to promotion of sales excluding those drawing wages exceeding Rs. 750 and employed mainly in managerial or administrative capacity is a "sales promotion employee". Sub-section (2) of Section 6 of the Act provides that the provisions of the Industrial Disputes Act, as in force for the time being, shall apply to sales promotion employees, as they apply to "workman" as defined under the Act. It also provides that for the purposes of any proceedings under the Industrial Disputes Act in relation to an industrial dispute, the sales promotion employees shall be deemed to include a sales promotion employee who has been dismissed, discharged or retrenched from service. There is no dispute that on the date of termination of service of the employee, he was drawing a salary of Rs. 1,050 per month. In view of this, learned counsel for the company contended that the provisions of the Sales Promotion Employees (Conditions of Service) Act was not attracted as sales promotion employee drawing a salary of more than Rs. 750 per month were excluded from the definition of the expression "sales promotion employees". Learned counsel pointed out that though this definition was amended by the Industrial Disputes (Amendment) Act, 1982, according to which only persons engaged in supervisory capacity drawing wages exceeding Rs. 1,600 and persons who were employed or engaged mainly in managerial or administrative capacity, are excluded from the definition of the expression "sales promotion employee" and consequently the employee in the present case would fall within the scope of the Act, as the said amendment was subsequent to the termination of the services of the employee, the said provision cannot be invoked by the employee. This position is not controverted by the employee.

10. The employee, however, contended that he was a "workman", as defined u/s 2(s) of the Industrial Disputes Act, and the Labour Court has rightly recorded a finding to the effect that he was a workman, as defined u/s 2(s) of the Act, and, therefore, the reference was competent.

11. Sri B. C. Prabhakar, learned counsel for the company, however, maintained that the duties of sales promotion employee were in the nature of canvassing agent for promoting the sales of the goods manufactured by the company and, therefore, would not fall within the definition of "workman" as defined u/s 2(s) of the Act. In support of this, learned counsel relied on the judgment in the case of *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, The relevant portion of the judgment reads (at page 606) :

".... There is no suggestion at all that he was employed on clerical work or manual work. Reliance was placed on the word "technical" used in the definition of a workman. The amount of technical work that a sales engineering representative does is all ancillary to his chief duty of promoting sales and giving advice. As we have held earlier, the mere fact that he is required to have technical knowledge for such a purpose does not make his work technical work. The work of advising and removing complaints so as to promote sales remains outside the scope of technical work. Consequently, the Tribunal's decision that the sales engineering representative is a workman is set aside."

12. He also relied on the judgment in the case of *Management of May and Baker (India) Ltd. Vs. Their Workmen*, in which the Supreme Court held that a medical representative engaged for canvassing for the promotion of the sales of pharmaceutical items was not a "workman" as defined u/s 2(s) of the Industrial Disputes Act. Relevant portion of the judgment reads (at page 97) :

"..... We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances, the Tribunal's conclusion that Mukerjee was a workman is incorrect. The Tribunal seems to have been led away by the fact that Mukerjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the Tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore, as Mukherjee was not a workman, his case would not be covered by the Industrial Disputes Act and the Tribunal would have no jurisdiction to order his reinstatement. We, therefore, set aside the order of the Tribunal directing reinstatement of Mukerjee along with other reliefs."

13. These decisions do support the contention of the company.

14. The employee, however, relied on a later judgment of the Supreme Court in

case of S.K. Verma Vs. Mahesh Chandra and Another, in which the question for consideration was whether a field officer of the Life Insurance Corporation, whose nature of duties were to promote the life insurance business of the life Insurance Corporation was "workman" as defined u/s 2(s) of the Act. The Supreme Court held that field officers were also workmen as defined u/s 2(s) of the Act. The relevant portion of the judgment reads (at page 432) :

"The words "any skilled or unskilled manual, supervisory, technical or clerical work" are intended to limit to or narrow the amplitude of the definition of "workman"; on the other hand they indicate and emphasise the broad sweep of the definition which is designed to cover all manner of person employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. Quite obviously the broad intention is to take in the entire "labour force" and exclude the "managerial force". That, of course, is as it should be.

It is trite to say that the Industrial Disputes Act is a legislation intended to bring about peace and harmony between labour and management in an industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definitions of "industry", "workman", "industrial dispute" etc., so as not to whittle down, but to advance the object of the Act. Disputes between the forces of labour and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in the Act. Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of employees who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of labour for no apparent reason at all."

15. As can be seen from the aforesaid portions of the judgment, the Supreme Court has ruled that the entire labour force, irrespective of the nature and duties of the post, falls within the definition of the word "workman" and only the managerial force and the supervisory force to the extent excepted in the definition, stand excluded from the definition of the word "workman" u/s 2(s) of the Act. In the present case also, there is no dispute that the duties of the petitioner were to meet doctors, chemists and druggists and apprise them of the nature of the pharmaceutical items manufactured by the company and promote their sales. He had no managerial power and there were none who were working under him. It is true that the ratio of the decisions in *Burmah Shell*, (supra), and *May and Baker* (supra), support the contention of the company, whereas the ratio of the later decision in *S. K. Verma's case* (supra), supports the contention of the employee. Both the decisions have been rendered by a three-Judge Bench and, therefore, in view of the decision of this Court in *New Krishna Bhawan v. Commercial Tax Officer* (AIR) 1961 Mys. 3, it is the later decision, which is binding on this Court. In fact, the Labour Court, after referring to the aforesaid decisions, has held, and, in my opinion rightly, that the ratio of the decision in *S.*

K. Verma's case (supra), has to be followed and according to that it should be held that the employee was a "workman" as defined u/s 2(s) of the Act.

16. The employee also invited my attention to the amendment to Section 2(s) of the Industrial Disputes Act by the Industrial Disputes (Amendment) Act, 1982. By the said amendment, the definition of the word "workman" was substituted. It reads :

"2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

17. The employee pointed out that the word "operational" has been added to the definition of the word "workman" and this addition was made to cover all employees including the employees like sales promotion employees whose duties involved a combination of skill, clerical and manual. He said that the sales promotion work of pharmaceutical items required great skill and the work also involved considerable amount of clerical work and also manual work as he had to carry samples to the customer and, therefore, he was a "workman" in view of the ratio in S. K. Verma's case (supra).

18. On consideration of the rival contentions. I am of the view that the Labour Court was right in holding that the employee fell within the meaning of the expression "workman" as defined in Section 2(s) of the Industrial Disputes Act, in view of the ratio of the judgment of the Supreme Court in S. K. Verma's case (supra). Further, it appears to me that the addition of the word "operational" in the amended definition of workman, vide Section 2(s) of the Act, places the matter beyond doubt. On this aspect of the matter, the learned author O. P. Malhotra in The Law of Industrial Disputes, Volume I, after referring to the meaning of the word "operational" used in the amended definition, proceeded to state as follows :

"In *S. K. Verma v. Mahesh Chandra*, the Supreme Court has observed that the words qualifying the word "work" are not intended to limit or narrow the amplitude of the definition of a "workman" (before the 1982 amendment); on the other hand they indicate and emphasise the broad sweep of the definition which is designed to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. The broad definition is to take in the entire "labour force" and exclude the managerial force. It could not be the intention of Parliament to keep out of the purview of the legislation small bands of employees who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the force of labour for no apparent reason at all. This holding renders all the expressions qualifying the word "work" superfluous. It says that the entire labour force should be included in the definition of "workman". It is probably this object which the Legislature by insertion of the expression "operational" aims to achieve. But that could have been done more effectively by deleting all the expressions qualifying the word "work"."

The learned author has stated that the amendment was intended to bring the definition in conformity with the ratio of the judgment of the Supreme Court in *S. K. Verma's* case (supra). The learned author observes that though the definition could have been made in conformity with the ratio in *S. K. Verma's* case (supra) by deleting all the expressions qualifying the word "work" from the definition, Parliament has achieved the said object by adding the word "operational". I am in respectful agreement with the view of the author. In view of this amendment, the conclusion is inevitable that the entire labour force engaged in an industry except the managerial and such of the supervisory force falling within the exception expressly indicated in the definition itself would fall within the definition of the word "workman".

19. Learned counsel for the company, however, relied on a still later judgment of the Supreme Court in the case of AIR 1989 31 (SC) in which the Supreme Court held that while an educational institution was an "industry", a teacher was not a "workman". The said decision does not in any way advance the case of the company for two reasons. The ratio of the decision in *S. K. Verma's* case (supra) is directly applicable to this case. Secondly, the unamended definition of the word "workman" in Section 2(s) of the Act was applicable to the said case as is evident from facts of the case and it is the unamended definition that has been interpreted by the Supreme Court. As pointed out earlier, the amendment also makes the difference as far as this case is concerned. For these reasons, I hold that the finding recorded by the Labour Court on the preliminary issue holding that the employee was a "workman" as defined u/s 2(s) of the Act is correct.

20. In support of the second point, learned counsel for the company contended that the head office of the company was situated at Bombay and there was no regional office in Bangalore, that is, in that State of Karnataka, and, therefore,

appropriate Government which had the competence to make the reference was the Government of Maharashtra and not the Karnataka Government. In support of his submission, learned counsel relied on the judgment of the Madhya Pradesh High Court in Association of Association of Medical Representatives (M and V) Vs. The Industrial Tribunal and Others, and also the decision of the Kerala High Court in J. and J. Dechane Distributors Vs. State of Kerala and Others, In both these decisions, it has been held that, in the absence of a regional office in a State, merely because the workman is asked to discharge his duties in a place falling within that State, the Government of that State would not be the appropriate Government for the purpose of making reference u/s 10(1) of the Act. As against this, the employee contended that a regional officer has been appointed by the company for the State of Karnataka and he was the controlling authority in the matter of sanctioning of leave, approving tour programme of the employee, etc., and, therefore, the Karnataka Government was the appropriate Government to make the reference. In support of his contention, he relied on the decision of the Supreme Court in the case of Workmen of Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, In this case, the head office of the industry was at Krishnagiri in the State of Tamil Nadu. The reference was made by the Karnataka Government in respect of a dispute raised by a workman who was working at Bangalore. Rejecting the contention that the Karnataka Government was not the appropriate Government to make the reference, the Supreme Court said thus (at p. 17) :

"Therefore, the appeal must succeed unless the company can satisfy us that the points decided against it should have been decided in its favour. This takes us to the other points. Mr. O. P. Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Krishnagiri, and that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the head office, but the order was to operate on a workman working in Bangalore. In our view, the High Court was right in holding that the proper question to raise is : where did the dispute arise ? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. This Court in The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen, held as follows :

The Act contains no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the

provisions of the Bombay Industrial Relations Act, 1946, Chagla, C.J., observed in *Lalbhai Tricumlal Mills Ltd. v. D. M. Vin* (1956 I LLJ 557 at 558) :-

"But what we are concerned with to decide is : where did the dispute substantially arise ? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But, applying the well-known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject-matter of the dispute substantially arises within jurisdiction."

In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference u/s 10 of the Act."

Applying the above principles to the facts of this case, it is quite clear that the subject-matter of the dispute in this case substantially arose within the jurisdiction of the Mysore Government."

The employee also relied on the judgment of the Punjab and Haryana High Court in the case of *Ramlal Vs. Labour Court and Others*, In this case, the Punjab and Haryana High Court held that though the order concerned in that case was made at Chandigarh, it was served at Bhatinda and therefore, the Punjab Government could make the reference. It is in evidence that the management had appointed a Regional Manager for Karnataka who was stationed at Bangalore, who had some administrative control over the employee, in that, the employee had to submit his tour programme, PTCR's and leave applications to the Regional Manager. The employee was working in this State and the order of termination was served at Bangalore. Applying the ratio of the decision of the Supreme Court in the case of *Ranga Vilas* (supra) and based upon the evidence on record, the Labour Court has recorded a finding that the Karnataka Government was the appropriate Government to make the reference. I am unable to agree that the said finding is erroneous. Therefore, the contention of the management on this point is rejected.

21. The last question for consideration is as to whether the termination of the services of the employee was justified and if not what should have been the relief that should have been granted to the employee. The contention of the employee was that the termination of service was not termination simpliciter and that it was in the nature of penalty imposed for misconduct, without holding any inquiry. In support of this he relies on the order of termination itself. The employee pointed out that a reading of the contents of the termination order makes it clear at once that the termination of service was on grounds of misconduct, namely, the alleged false reporting by the employee. As admittedly no inquiry was held by the management by framing any charge against the employee, the order was liable to be set aside and further reinstatement with full back wages should have been awarded.

22. The employee also submitted that there were two other grounds which actually constituted the basis for penalising the employee by terminating his

services, namely, his trade union activities and a complaint by the Regional Manager, Mr. Bhaskaran, to the effect that the employee had assaulted him at Brigade Road in Bangalore on 11th August, 1982, though actually it was the Regional Manager who had assaulted the employee in respect of which the employee had lodged a complaint before the Shoolay police Station, Bangalore.

23. Sri B. C. Prabhakar, learned counsel for the company, however, maintained that the order of termination was retrenchment as defined u/s 2(oo) of the Act and as the company had complied with the provisions of Section 25F of the Act, in that one month's salary in lieu of notice and 15 days' wages for every completed year of service had been paid to the employee, the termination of service was perfectly in accordance with law and there was no justification for the Labour Court to interfere even to the extent it had done.

24. First, I proceed to consider as to whether the termination of the service of the employee was a mere discharge or it was a penalty for misconduct. The order of termination dated 24th September, 1982, (annexure B), reads :

"Dear Mr. Ram Mohan,

We refer to the personal discussion our General Manager - Marketing, Mr. R. B. Smarta, and the undersigned had with you on 23rd September, 1982, at around 3 p.m. in the company's head office, located at Poonam Chambers, North Wing, 5th Floor, Dr. Annie Besant Road, Worli, Bombay 400 018.

During the course of the discussion, you were requested to explain the false reports submitted by you to the company, for which you had no satisfactory explanation. The company has, therefore, lost confidence in you.

Your services are forthwith terminated and a cheque No. 665081 dated 24th September 1982 for Rs. 6,825 (Rupees six thousand eight hundred and twenty-five only) is enclosed herewith as compensation as follows :

Rs. (a) One months' salary in lieu of notice 1,050 (b) 15 days' salary for every completed year of service 5,775 ----- Total 6,825 ----- Your final dues will be settled on receipt of a clearance letter from your Regional Manager, stating that all the company's property has been handed over to him intact."

As can be seen from the order, it specifically states that the services of the employee was being terminated on account of making false reports in respect of which he had no valid explanation. It is true that the order proceeds to say that the management had lost confidence in the employee and, therefore, his services were being terminated. But the fact remains that the contents of the order clearly casts a stigma on the character and conduct of the employee and, therefore, it is in the nature of punishment imposed for misconduct, namely, the submission of false report. Admittedly, no article of charges was framed, no disciplinary proceedings were held; nevertheless the company proceeded to find the petitioner guilty of the said misconduct and to pass the impugned order. The company could not have passed the same without holding an inquiry in

conformity with the rules of natural justice. This is also the view taken by the Labour Court. This position in law is placed beyond doubt by the decision of the Supreme Court in the case of Chandu Lal Vs. Management of Pan American World Airways Inc., The relevant portion of the judgment reads (at pp. 182-183) :

"It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter, this amounts to a dereliction on the part of the workman and, therefore, the stand taken by the management that termination for loss of confidence does not amount to a stigma has to be repelled. In our opinion, it is not necessary to support our conclusion by reference to precedents or textual opinion as a commonsense assessment of the matter is sufficient to dispose of this aspect. "Retrenchment" is defined in Section 2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained."

Therefore, I hold that the order of termination made against the employee was in the nature of penalty for misconduct and it casts stigma on the character and conduct of the employee without inquiry and, therefore, has to be set aside.

25. The Labour Court, having declined to accede to the contention of the management that the termination of service of employee was termination simpliciter, proceeded to consider the alternative plea of the management that on account of the false reporting in two of the reports, exhibits M-7 and M-8, the management had lost confidence in the employee and, therefore, there should be no order for reinstatement. The particulars relating to the false reporting are these : The employee was required to submit regular reports called Professional Trade Call Reports (PTCR's). In two of the reports, namely, exhibit M-7, dated 15th July, 1982, and exhibit M-8, dated 12th August, 1982, the employee had mentioned that among the doctors whom he had met on those dates, was one Dr. M. H. Khan. But the company came to know that actually Dr. M. H. Khan had gone abroad in June, 1982 itself and, therefore it was not true that the employee had met Mr. M. H. Khan. According to the company the employee was asked to go to the head office and when he came there he was confronted with these two reports and he was asked to give his explanation but he had no explanation at all and, therefore, the management proceeded to issue the order of termination. The employee, however, has averred that the alleged false reports were not

brought to his notice at the head office and, therefore, the question of his not being in a position to give any explanation did not arise at all. He, however, pleaded that writing of the name Dr. M. H. Khan in the two reports was only a clerical mistake and on those days he had visited another doctor by name Dr. M. A. Khan and by mistake in the report he had written Dr. M. H. Khan. On consideration of the material on record, the Labour Court recorded its finding as follows :

"67. As stated earlier in this case, there is oral and documentary evidence to prove the allegations of false reporting. In fact, the reporting are admitted by the workman himself but, according to him, they are not false reporting, but only by force of habit he has mentioned the name of Dr. M. H. Khan which he has failed to disprove even after it was proved by the second party by oral and documentary evidence as false reporting."

In the light of this finding, the Labour Court took the view that the order passed by the management that they had lost confidence was bona fide, and, therefore, this was a fit case for not directing reinstatement. The Labour Court also considered the plea of the employee that the termination of his service was really on account of his trade union activities as he happened to be an active office-bearer of the sales promotion employees" union and also on account of the complaint by the Regional Manager to the effect that the employee had assaulted him. The Labour Court has recorded a finding that the employee failed to substantiate these pleas on a thorough consideration of the evidence on record.

26. The Labour Court then proceeded to determine the amount of compensation to be awarded to the employee. The relevant portion of the award reads :

"Moreover he has put in nearly 11 years of service and he has got many more years of service. At the time of termination of his services he was drawing about Rs. 1,050 per month. The same would come to Rs. 12,600 per year. From the date of termination till today for about 4 years the salary would come to about Rs. 50,000. As stated earlier, I would also like to give him one year's salary for loss of future employment. Thus, in my opinion, he should be paid salary for a total period of five years which will come to nearly Rs. 63,000. As stated earlier, he has already received Rs. 15,000 odd. Under such circumstances. I direct the management to pay him Rs. 63,000 as compensation. Hence, the following award is passed :

AWARD

The reference partly succeeds. The first party workman is not entitled to reinstatement. The management shall pay Rs. 63,000 to the first party workman by way of compensation in addition to the amounts already received by him. The termination of his services be treated as his resignation. However, there will be no order as to costs."

27. Learned counsel for the management, submitted that there was no

substance in the challenge made to the award by the workman. The employee, however, submitted that as the order of termination was in the nature of penalty for misconduct set out in the order, and it casts a stigma on his character and conduct without inquiry, it should have been set aside and he should have been reinstated with full back wages and the award directing that termination be treated as resignation was patently erroneous. Learned counsel for the management, however, submitted that even if this Court were to come to the conclusion that termination of service of the employee should be set aside, there should be no order of reinstatement as it is based upon loss of confidence.

28. As can be seen from the contents of the order of termination, it does cast a stigma on the character and conduct of the employee. Therefore, it is liable to be set aside on the ground that it was not preceded by an inquiry and even on the basis that the making of false reports to the effect that he had visited Dr. M. H. Khan on 15th July 1982, and 12th August, 1982, in exhibits M-7 and M-8 is proved as held by the Labour court, without anything more, it would not justify the imposition of penalty of removal from service as it would be highly disproportionate to the gravity of the charge, particularly for the reason that no case is made out that the employee did make or could have made any wrongful gain by such false reporting. Therefore, it appears to me that the Labour Court erred in not setting aside the order of termination of service of the employee.

29. Even so, the question for consideration is, whether the Labour Court was justified in holding that the employee was not entitled to reinstatement ?

30. The principle that in a case in which the termination of service of an employee is found to be wrongful, if the management pleads want of confidence in the employee concerned and the opinion of the management is based upon some valid material and having due regard to the nature and duties of the employee, it is found to be not unreasonable, the Labour Court has the power to decline to order reinstatement and could direct the management to pay compensation to the workman as held by the Supreme Court in the case of *Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra*, and *Air-India Corporation, Bombay Vs. V.A. Rebellow and Another*, and *Chandu Lal*, (supra).

31. Having given my anxious consideration to the rival pleas, I am satisfied that, on the facts and circumstances of this case, the view taken by the Labour Court that there should be no order for reinstatement of the employee, cannot be said to be unjustified. However, I am of the view that in view of the finding that the order of termination casts a stigma on the character and conduct of the employee, the order should be set aside. Further, I am of the view that in lieu of reinstatement with back wages, the employee should be granted a substantial amount by way of compensation. It is in evidence that the employee was a very competent sales promotion employee and had received encomiums in that regard from the employer. He had, as stated by him, declined promotion as Regional Manager, as he was desirous of continuing his trade opinion activities for the benefit of his co-employees. In the case of *Chandu Lal* (supra), the

Supreme Court quantified the compensation thus (at page 183) :

"The quantum of compensation has now to be ascertained. Ordinary, the appellant would have gone back into service with full back wages. Admittedly he has been out of employment from March, 1974. If he had gone back into service he would have been entitled to back wages of a little more than 11 years. In computing compensation, this aspect has to be kept in view. If he was restored to service, he would have been assured of employment for a further term of years. Keeping this as also other relevant aspects in view, we quantify the compensation payable to the appellant at Rs. 2 lakhs."

32. In the present case, a statement showing the amount which the employee would get consequent on the setting aside of the termination of service and awarding back wages, has been furnished by learned counsel for the management. It reads :

1982 Oct., Nov. and Dec.	Rs. for 3 months at Rs. 1,050 p.m.	3,150.00
1983	$(1.050+120-60+100) = 1.230+100 = 1.330 \times 12$	15,960.00
1984	$1.290+100 (1.330+60) = 1.390 \times 12$	16,680.00
1985	$1.290+60 = 1.350-100 = 10450 \times 6$	8,700.00
1986	$(1.350+100-100-200) = 1.750 \times 6$	10,500.00
1987	$1.550+70+200 = 1.820 \times 12$	21,840.00
1988	$(1.620+70-200) = 1.890 \times 6$	11,340.00
	$1.690+140-100-250 = 2.180 \times 6$	13,080.00
	$1.830+80+350 = 2.260 \times 11$	24,860.00
----- Total		1,26,110.00 -----

33. I am of the view that awarding of compensation equal to back wages up to date and salary for three years, which works out to Rs. 81,360 in lieu of reinstatement, which together amounts to Rs. 2,07,470, is adequate and would meet the ends of justice.

34. Before concluding, I place on record my appreciation for the remarkable ability, composure and courtesy exhibited by the employee in arguing his own case. 35. In the result, I make the following order :

I. In W.P. No. 4775 of 1987 :

(i) The writ petition is allowed in part.

(ii) The award of the Labour Court is modified as follows :

"The reference partly succeeds. The order terminating the service of the workman is set aside. The workman is not entitled to reinstatement. The management shall pay a sum of Rs. 2,07,470 to the workman."

(iii) The management shall be entitled to deduct the amount of Rs. 78,000 already paid to the petitioner out of the amount payable pursuant to the modified award.

II. In W.P. Nos. 10541 and 10542 of 1987 :

(i) The writ petitions are dismissed.

36. After the order was pronounced, the employee submitted that the amount payable pursuant to the modified award may be directed to be distributed for the past years, as indicated in paragraph 32 of the order, and in respect of three years" salary of Rs. 81.360 awarded as compensation be distributed for three years thereafter.

37. The Management is directed to do so and the liability of Income Tax of the employee shall be determined after making the distribution, as indicated and the deduction of Income Tax at source shall be made on that basis.