
(2014) 08 MP CK 0161
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4184/2011

Crompton Greaves Ltd.

APPELLANT

Vs

Sharad Maheshwari

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 11A

Citation : (2014) 143 FLR 908 : (2015) LabIC 797 : (2014) 4 LLJ 363 : (2015) 1 MPHT 61 : (2014) 53 MPLJ 678

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Patwardhan and B.S. Bais, Advocate for the Appellant; Vivek Jain, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Sujoy Paul, J.—This petition filed under Article 227 of the Constitution challenges the impugned award of Labour Court dated 28.1.2011 passed in Case No. 6A/IDAct/09 (Ref) by Labour Court No. 2, Gwalior.

Brief facts necessary for adjudication of this matter are as under:

2. The respondent workman was working as a Technician in the petitioner Industry at Malanpur. A charge sheet dated 13/12/2005 was served on the workman alleging that on 15.10.2005, the workman was on duty in shift "B". On the said date, he mis behaved with Shri Sanjay Goyal, maintenance incharge and with Shri A.N.G. Rao, a superior officer. It is alleged that workman has used filthy language against him. Besides the said charge, it is further alleged that on 1.12.2005 the workman joined his duty in shift "B" which was scheduled to be started at 3-30 PM but he forcefully entered the factory before the scheduled time and mis behaved with security guards. He involved himself in an agitation organized by technicians of "A" shift. The said agitation created nuisance in the factory premises. The workman used filthy language against superior officer,

Rajvinder Singh. Because of the said incident, work of factory was stopped for a considerable long time.

3. The respondent workman denied the allegations mentioned in the charge sheet by filing reply (Annexure P-3). In turn, the employer appointed an enquiry officer to conduct a domestic enquiry. The enquiry started on 6.1.2006 and ended on 3.8.2007.

4. Shri Patwardhan, learned counsel for the petitioner submits that in the departmental enquiry, full, reasonable and effective opportunity of hearing was given to the workman. Thereafter, the enquiry report was supplied to the workman and after obtaining his response, by order dated 31.1.2008 the workman was dismissed from service. It is admitted between the parties that the said dismissal dated 31.1.2008 became the foundation of instant industrial dispute, which was ultimately decided by the Labour Court by impugned award dated 28.1.2011.

5. Shri Patwardhan submits that the Labour Court had framed various issues including issue No. 1, which was regarding legality and validity of the departmental enquiry. It is submitted that the said issue was decided by Labour Court on 1.11.2010 (Annexure P-8). The Labour Court after examining the record opined that the departmental enquiry was legal and justified. Thereafter, the parties were heard on remaining issues and by impugned award, the Labour Court set aside the dismissal order and directed reinstatement of workman with full back wages.

6. Criticizing this order, Shri Patwardhan submits that once the legality, validity and correctness of domestic enquiry is upheld by the Labour Court, it was not open to the Labour Court to act as an appellate authority. He submits that the Labour Court has erred in interfering with the punishment of dismissal from service. It is contended that the Labour Court was not required to sit as an appellate authority to re-appreciate and re-weigh the evidence. If there was some evidence, it was sufficient to hold the workman as guilty. By taking this Court to the enquiry report, it is urged that there was enough evidence to punish the workman. It is further argued that the Labour Court has erred in applying the principles of criminal law/evidence Act in a matter of domestic enquiry. He further submits that in the enquiry even hearsay evidence is permissible.

7. Learned counsel for the employer further submits that once charges are established considering the gravity of allegations, no interference was warranted. He submits that if the findings of departmental enquiry was held to be perverse by the Labour Court, in that situation, the Labour Court should have permitted the employer to lead evidence. Heavy reliance is placed in this regard on *Bharat Forge Company Ltd. Vs. A.B. Zodge and another*, and on a judgment of Punjab and Haryana High Court reported in 2010 (3) LLJ 477 (*Good Year India Ltd. v. D.N. Trikhja*). He also relied on certain other judgments of the Supreme Court. Lastly, Shri Patwardhan submits that in view of allegations which are duly

established in the enquiry, the employer has lost complete confidence on the workman and hence reinstatement should not have been ordered.

8. Per contra, Shri Vivek Jain, learned counsel for the workman supported the Labour Court's award. Shri Jain submits that the charge sheet shows that the incidents are of two different dates. So far the incident of 15.10.2005 is concerned, the workman had allegedly mis behaved with Shri Sanjay Goyal and A.N.G. Rao. None of these witnesses have entered the witness box. The document which is allegedly signed by the said two persons could not be proved by their deposition before the domestic enquiry or before the Labour Court. Thus, the allegations arising out of incident dated 15.10.2005 are not established. Shri Jain further submits that for the second incident of 1.12.2005 also the workman cannot be held guilty. At best he can be held guilty of entering the premises before his scheduled time of duty (3-30 PM). He submits that in the enquiry report there is no application of mind that the workman was an office bearer of a registered trade union. On 1.12.2005 a worker of the petitioner-factory committed suicide in U.P. There was a condolence meeting in the premises and workers were agitated because of said incident. They were demanding a vehicle from the management to attend the funeral. The present workman being office bearer, joined the said workers. This is a legitimate trade union activity which cannot be called as mis conduct. In addition, it is submitted that the alleged strike of 1.12.2005 is held to be legal by the Labour Court. By drawing attention of this Court on the order of the Labour Court dated 3.11.2006 passed in Case No. 123A/MPIR/2005 (Annexure P-12), it is alleged that the Labour Court decided issue No. 3 by holding that on 1.12.2005 the strike held in petitioner Industry is not illegal. Once strike is not held to be illegal, petitioner cannot be punished for the same.

9. By placing reliance on The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, and Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Ltd. and Another, it is submitted that no fresh evidence can be permitted to be adduced once enquiry is found to be valid by the Labour Court. In other words, it is argued that in the event the issue of legality of enquiry is decided in favour of employer, no fresh evidence can be permitted to be adduced by the employer.

10. Shri Patwardhan in his rejoinder arguments submits that various witnesses entered the witness box on behalf of the employer and supported the case of the prosecution, whereas it is only workman who entered the witness box. There was ample evidence to support the allegations. By taking this Court to the order of Additional District Judge, Gohad in Case No. 33A/2005 dated 17.7.2009, it is submitted that the said Court found that on 1.12.2005 the non-applicants therein (present workman is non-applicant No. 5) have created hindrance and obstruction in the functioning and production of the industry. The parameters for holding the delinquent employee as guilty are different in a domestic enquiry and in a criminal case. No other point is pressed by parties.

11. I have heard the learned counsel for the parties and perused the record.

12. Before dealing with the rival contentions of the parties, it is apposite to mention that the scope of judicial interference in a domestic enquiry is limited. The court is not obliged to sit as an appellate authority to reassess the evidence led in domestic enquiry. No interference can be made on the ground that another view is possible on the material on record. If enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of evidence or reliable nature of evidence cannot be a ground for interference in the findings of domestic enquiry. The interference can be made on findings only when the same are based on no evidence or where they are clearly perverse. (See, State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, In other words, the standards of proof required in departmental enquiry and in criminal cases are different. In the departmental enquiry, the principle of preponderance of probability is applicable and not that of the proof beyond reasonable doubt, which is applicable in criminal cases. Apart from this, u/s 11A of Industrial Disputes Act, 1947, the Labour Court/Tribunal can interfere into the punishment when it is shockingly disproportionate. It is said that "sledgehammer cannot be used to crack a nut" or the "sledgehammer cannot be used to kill a fly". As has been said many a time, "where paring knife suffices, battle axe is precluded". In the light of this test, it is to be seen that if allegations are proved, whether punishment is shockingly disproportionate ?

13. As rightly pointed out by Shri Vivek Jain, learned counsel for the workman, the charge sheet is based on the misconducts allegedly taken place on two dates, (i) 15.10.2005 and (ii) 1.12.2005. Admittedly, the Labour Court by order dated 1.11.2010 opined that the departmental enquiry was legal and justified. The interference was made on the ground that the charges are not established against the workman. The Labour Court opined that it is a case of no evidence against the workman.

14. So far the incident dated 15.10.2005 is concerned, the Labour Court opined that the allegations relating to said date are concerned with two superior officers Shri Goyal and Shri A.N.G. Rao. The allegation against the workman is that he used filthy language against the said officers, forcibly entered the chamber of Shri Sanjay Goyal and organised a "Gherao" at the cabin of Shri Rao. The Labour Court opined that this allegation is not substantiated because Shri Goyal and Shri Rao have not entered the witness box in the domestic enquiry. The alleged report of the incident prepared by said officers was not proved as per the procedure mentioned in Criminal Law. The employer has not made any effort to bring those officers as prosecution witnesses in the enquiry. Even if those officers have left the job, they could have been produced as prosecution witnesses. In addition, the Labour Court opined that the management sent a "Diwali Greeting" to the workman on 10.11.2005. The Labour Court opined that if an incident of 15.10.2005 had taken place, there was no occasion for the employer to send such greeting to the workman. Labour Court further opined that from the date of

incident (15.10.2005) to 13.12.2005, no explanation was sought from the workman which shows that no such incident had taken place.

15. In the opinion of this Court, it is difficult to uphold all the reasons aforesaid assigned by the Labour Court to hold the workman as not guilty. As per Standard Standing Orders (SSO), the employer can issue charge sheet to the workman for a major misconduct up to one year from the date of alleged misconduct. Thus, merely because no explanation was sought by the employer from 15.10.2005 to 13.12.2005, it cannot be presumed that the workman was not guilty. The Labour Court further erred in holding that the employer has failed to establish the charges as per the procedure laid down in Criminal Law. As noticed above, the strict principles of Evidence Act/Criminal Law are not applicable in domestic enquiry. Similarly, the finding of the Labour Court based on the greeting of the employer is clearly erroneous. A bare perusal of the said communication dated 10.11.2005 shows that the said communication is a reply to the workman's "Diwali Greeting". The Personal Manager reciprocated Diwali Greeting of the workman in a routine manner. By no stretch of imagination it can be presumed that because of such reply the misconduct is either waived or condoned by the employer. Thus, this reason is clearly erroneous. I am not in agreement with all the reasons assigned by the Labour Court for holding the workman as not guilty regarding incident of 15.10.2005. However, one reason for exonerating the workman from the said incident is in accordance with law, i.e., Shri Sanjay Goyal and Shri A.N.G. Rao did not enter the witness box and their alleged report, Ex. D/23 is not proved in the enquiry by producing the maker of the document. The Apex Court in Satyanarain Prasad Vs. Gadadhar Ram and Others, ; P. Nagamuni Vs. Government of Andhra Pradesh and Another, ; Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, and S.C. Girotra Vs. United Commercial Bank (UCO Bank) and Others, opined that unless maker of the document is produced in the enquiry to prove the document, the document cannot be relied upon. Same view is taken in Chandrakumar Madhukar Deshmukh and etc. Vs. The Board of Trustees of Port of Bombay and Others, Apart from this, if the enquiry report (Annexure P-5) is minutely perused, it will be clear that the enquiry officer has merely reproduced the charges against the workman, which includes allegations of both the dates, i.e., 15.10.2005 and 1.12.2005. However, except reproducing the allegations of charge sheet, there is no discussion or finding against the workman regarding allegations of 15.10.2005. Thus, for different reasons stated above, the conclusion of Labour Court with regard to incident of 15.10.2005 is upheld.

16. The Labour Court interfered with the allegation relating to incident of 1.12.2005 on the ground that Shri Sanjeev Gaur, prosecution witness, entered the witness box but in the charge sheet, there is no allegation relating to Shri Gaur and, therefore, his evidence cannot be counted. The Labour Court further opined that Shri Acharya is not produced as a witness and only Shri Rajvinder Singh is produced as a witness. Shri Rajvinder Singh deposed that he is not aware whether on 1.12.2005, senior officer Shri Patil visited the petitioner-

industry. In paras 17 and 18 of the award, the Labour Court has mentioned about the deposition of prosecution witnesses S/Shri Rajvinder Singh, Chatur Singh and Dinesh Singh. By referring a list of technicians in para 19, the Labour Court opined that the said list contains the names of striking workers. The present workman's name does not figure in the said list and, therefore, he cannot be held guilty of the allegations. In para 20, it is opined that prima facie the workman is not found involved in the strike. The Labour Court referred its earlier order passed in Case No. 123A/MPJR/2005 (Annexure P/12) dated 3.11.2006 and opined that the strike was held to be not illegal and, therefore, it cannot be held that the workman has committed any misconduct relating to illegal strike. The allegation against the workman regarding incident of 1.12.2005 is that he forcibly entered the factory premises before his scheduled duty-time. He used abusive and filthy language against the superior officers. He misbehaved with Shri Acharya and Shri Rajvinder Singh (Production Executives). He threatened Shri Rajvinder Singh by using filthy language and telling him to leave the place otherwise all will beat him to the extent his family members will not be able to recognize his face.

17. In relation to allegation of 1.12.2005, S/Shri Chatur Singh, Dinesh Singh, Rajvinder Singh, Sanjeev Gaur, Rajveer Singh and Vivek Mittal entered the witness box to substantiate the charges. The enquiry officer in its detailed report opined that the charges are established on the basis of statements of aforesaid witnesses. Admittedly, Shri Rajvinder Singh was the person, who was present at the time of incident. The Labour Court has not assigned a single reason as to why the statement of Shri Rajvinder Singh is to be discarded. On the basis of aforesaid evidence, it cannot be said that it is a case of no evidence. The employer has produced sufficient evidence to substantiate the allegation relating to incident of 1.12.2005.

18. It is apt to remember that in State of Haryana and Another Vs. Rattan Singh, the Apex Court opined that strict and sophisticated rules of evidence under the Evidence Act may not apply to domestic enquiries. All materials which are logically probative for a prudent mind are permissible. The Apex Court went to the extent holding that there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The simple test pointed out by the Apex Court was whether this is a case of some evidence or was of no evidence. (Para 4).

19. The Labour Court was finally adjudicating the dispute and, therefore, it was required to give its final finding. The Labour Court has clearly erred in assigning reason in para 20 that "prima facie, workman's involvement in the strike is not established". The aforesaid finding of the Labour Court is clearly perverse. The document dated 1.12.2005 shows that a list of striking technicians was submitted before the Personal Manager. The Labour Court referred enclosure of this list to hold that name of present workman is not included. A bare perusal of this complaint dated 1.12.2005 shows that in the main body of the complaint, the name of present workman is mentioned. In addition, a list was enclosed with

the said complaint. Thus, the Labour Court has not taken into account the relevant and complete material and, therefore, its findings are hit by Wednesbury Principle. Similarly, the finding of Labour Court relating to illegal strike is also liable to be interfered with. The order of Labour Court dated 3.11.2006 (Annexure P/12) shows that it had framed four issues. The first issue was regarding jurisdiction of the Labour Court about hearing of that industrial dispute. This issue is decided in negative by Labour Court by holding that the Labour Court did not have jurisdiction to hear the matter. In the opinion of this Court, once it is held that the Labour Court had no jurisdiction to hear the matter, there was no occasion for the Labour Court to give a finding on merits regarding validity of strike dated 1.12.2005. If the Court had no jurisdiction to try the matter, it had no jurisdiction to deal with merits of the matter. Thus, the finding regarding issue No. 3 by the Labour Court is of no assistance to the workman. Apart from this, the Additional District Judge, Gohad in his order dated 17.7.2009 decided the issue No. 1 and 2 against the workman. In no uncertain terms, a finding is given that the workman has interrupted the functioning and production of the factory on 12.12.2005. The Labour Court has not considered this relevant material at all. Thus, the findings of the Labour Court are perverse in nature and based on irrelevant considerations.

20. So far the stand of the workman that he was officer bearer of trade union is concerned, in my opinion, this does not improve his case at all. Being an employee of the industry, the respondent-workman was also required to follow the discipline and conduct rules/SSO. In *Usha Breco Mazdoor Sangh (supra)*, the Apex Court opined that "union leader does not enjoy immunity from being proceeded with in a case of misconduct". The evidence of Shri Rajvinder Singh and other prosecution witnesses make it clear that there is more than "some evidence" against respondent relating to allegation of 1.12.2005. The Labour Court has erred in holding that the allegations are not established and it is a case of no evidence.

21. The contention of Shri Patwardhan was that even in cases where finding of domestic enquiry is held to be perverse by the Labour Court, the employer must be given an opportunity to adduce evidence. The judgment of Supreme Court in the case of *Bharat Forge Co. Ltd. (supra)* is relied upon in this regard. The basic judgment of Supreme Court in this regard is *M/s. Fire Stone Tyre & Rubber Co. (supra)*. The Apex Court culled out the broad principle in para 27 of the said judgment. The relevant portion reads as under:-

"(3) When a proper enquiry has been held by an employer, and the finding of misconduct is 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.

(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."

22. No doubt, in *Bharat Forge Co. Ltd.* (supra), the Apex Court opined that the employer has a right to lead evidence in both the situations when enquiry is vitiated for non-compliance of rules of natural justice or for perversity. However, the judgment of *Bharat Forge Co. Ltd.* (supra) is based on the judgment in *M/s. Fire Stone Tyre & Rubber Co.* (supra). The Apex Court in *Usha Breco Mazdoor Sangh* (supra) reconsidered the law laid down in *M/s. Fire Stone Tyre & Rubber Co.* (supra). The law is restated by the Apex Court, which reads as under:-

"28. Firestone Tyre and Rubber Co. must be understood in the context in which it was rendered. Section 11A of the Act as interpreted by Firestone Tyre and Rubber Co. must be applied at different stages. Firstly, when the validity or legality of the domestic enquiries is in question; secondly, in the event the issue is determined in favour of the management, no fresh evidence is required to be adduced by it whereas in the event it is determined in favour of the workmen, subject to the request which may be made by the management in an appropriate stage, it will be permitted to adduce fresh evidence before the Labour Court.

29. Indisputably, in the event, fresh evidence is adduced before the Labour Court by the management, the Labour Court will have the jurisdiction to appreciate the evidence. But, in a case where the materials brought on record by the enquiry officer fall for reappraisal by the Labour Court, it should be slow to interfere therewith. It must come to a conclusion that the case was a "proper" one therefor. The Labour Court shall not interfere with the findings of the enquiry officer only because it is lawful to do so. It would not take recourse thereto only because another view is possible. Even assuming that, for all intent and purport, the Labour Court acts as an appellate authority over the judgment of the enquiry officer, it would exercise appropriate restraint. It must bear in mind that the enquiry officer also acts as a quasi-judicial body. Before it, parties are not only entitled to examine their respective witnesses, they can cross-examine the witnesses examined on behalf of the other side. They are free to adduce documentary evidence. The parties as also the enquiry officer can also summon witnesses to determine the truth. The enquiry officer can call for even other records. It must indisputably comply with the basic principles of natural justice."

23. In the light of this judgment restating the entire legal position in this aspect, in my opinion, no permission can be granted to the employer to adduce evidence relating to perversity of finding with regard to incident of 15.10.2005. The second tests laid down in para 28 above are not satisfied by petitioner and therefore the question of permission to adduce evidence does not arise.

24. As analyzed above, the allegations relating to incident dated 1.12.2005 are established against the workman. The allegations are very serious and amounts to grave misconduct. In the considered opinion of this Court, even if allegation

relating to 01.12.2005 is established, the punishment cannot be held to be harsh or excessive. The Apex Court in *Orissa Cement Ltd. vs. Adikanda Sahu*, 1960 (1) LLJ 518 (SC) opined as under :-

"Besides, the words used by the respondent in abusing the labour officer not once but twice without any provocation are absolutely indecent and vulgar and in such case, he could not keep in its employment a person who has capable of such indecent conduct, it would be justified in dismissing him."

In *New Shorrock Mills Vs. Maheshbhai T. Rao*, the Apex Court opined as under:-

"The Labour Court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, the respondent's order of discharge was not by way of victimisation and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the Court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record."

The same view is followed by the Apex Court in *Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.*,

25. Apart from this, the employer has pleaded loss of confidence against the workman. It is argued that the employer has lost complete faith on the workman. The kind of bitterness is developed because of alleged incident, it will not be in the interest of industrial harmony to reinstate the workman.

26. As analyzed above, the incident of 1.12.2005 is established against the workman. The question is whether the employer is justified in taking the plea of "loss of confidence". The law on this aspect is well settled. It is settled that once the employer has lost confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity and in a case of loss of confidence, reinstatement cannot be ordered. [See, *Air-India Corporation, Bombay Vs. V.A. Rebellow and Another*, and *Francis Klein and Co. (P) Ltd. Vs. Their Workmen and Another*,

27. In *Kanhaiyalal Agrawal and Others Vs. The Factory Manager and others*, the Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence. The test is-(i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits an act which results in forfeiting the same; and (iii) to continue him in service/ establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the

mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved. (See also Sudhir Vishnu Panvalkar Vs. Bank of India,

28. In State Bank of India and Another Vs. Bela Bagchi and Others, , the Apex Court rejected the contention that even if the misconduct is established and employer has not suffered any financial loss, it does not attract "loss of confidence". The Apex Court relied on Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik,

29. In The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, the Apex Court opined as under:-

"28. An employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two. [Vide Binny Ltd. Vs. Their Workmen, , The Binny Limited Vs. Their Workmen, Chandu Lal Vs. Management of Pan American World Airways Inc., , Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, and Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi,

29. In Indian Airlines Ltd. Vs. Prabha D. Kanan, while dealing with the similar issue this Court held that :

"56..... loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved."

30. As per the aforesaid test/principles laid down, it is clear that reinstatement cannot be ordered in cases where the employer has established the bona fide loss of confidence. The employee has abused his position and committed the act which resulted into forfeiting the confidence of employer. Continuance of such employee in service would be embarrassing and inconvenient to the employer. It will be detrimental to the discipline and security of the establishment. In Indian Air-line (supra) the Apex Court went to the extent of dealing with the apprehension in the mind of the employer and opined that when the objective facts are available, employer"s apprehension is justified.

31. In the present case, the employer has successfully established the objective facts on the basis of which "loss of confidence" is pleaded. For this reason also, the award of the Labour Court is liable to be interfered with. The Labour Court has not dealt with the stand of the employer regarding loss of confidence.

32. In nutshell, the award of the Labour Court cannot be upheld. The award is accordingly set aside. Petition is allowed to the extent indicated above. No costs.