

(1986) 04 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No. 9167 of 1985 and W.A. No. 617 of 1986

Poonacha

APPELLANT

Vs

New Government Electric Factory

RESPONDENT

Date of Decision : 08-04-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Penal Code, 1860 (IPC) — Section 420

Citation : (1986) ILR (Kar) 3181

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : S. Krishnaiah, for the Appellant; B.C. Prabhakar and S.G. Sundaraswamy, for the Respondent

Judgement

Bopanna, J.—The petitioner employed as a Security Superintendent by the respondent-company (hereinafter referred to as the management) has challenged the order of dismissal passed against him with effect from 5-6-1985 on the ground that the said order of dismissal is violative of the provisions of Article 14 of the Constitution and it also smacks of victimisation and unfair labour practice. In the light of the decision of the Supreme Court in Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., and in the light of the amendment to Section 2(s) of the I.D. Act (for short the Act) raising the upper limit of salaries drawn by supervisors to Rs. 1600/- so as to enable them to qualify themselves for the relief to which they are entitled to under the Act, there could be no doubt that the petitioner was a workman though he was holding the post of Security Superintendent. Thus, the various contentions raised by the petitioner could have been the subject matter of an industrial dispute as provided for under the Act, but the management has not taken such a stand, obviously because the case of the petitioner before the Labour Court, if a reference had been made by the State Government, would have been unassailable and it has conceded that the questions raised by the petitioner could be disposed of in this Writ Petition.

2. The petitioner is a graduate and he joined the services of the management after serving for about 16 years in the Indian Air Force. He had an unblemished record of service till certain malpractices arising out of a beneficial piece of welfare scheme were unearthed by the management sometime in the year 1984. This scheme was introduced by the management pursuant to the decision of the Government of India making it obligatory on the management to encourage their workmen to adopt family planning for the betterment of their families. The management accordingly by a circular letter dated 28th October, 1976, informed its workmen that the following facilities would be extended to them as an incentive to undergo vasectomy/ tubectomy operations. The facilities offered to the workmen are :

- 1) transport from residence to nursing home/hospital ;
- 2) free vasectomy/ tubectomy by competent surgeon at the nursing home/hospital ;
- 3) post-operative care at the nursing home/hospital ;
- 4) transport from nursing home to residence ;
- 5) six days special leave ;
- 6) cash benefit of Rs. 200/- ;
- 7) in case the wives of the employees undergo tubectomy operation without delivery 7 days casual leave is sanctioned to the employees.

This circular letter was preceded by another circular letter dated 21-8-1975 under which, as an incentive for the successful implementation of the National Family Planning programme, the management, as a special case, was pleased to sanction Rs. 200/- to such of those employees who had undergone vasectomy/ tubectomy operations on production of certificate from the competent authority in addition to the present practice of sanctioning Special Leave for six days during the period, The management had also enumerated a list of eligible nursing homes and clinics wherein these operations could be performed. Additionally, the management had issued another circular letter dated 29-6-1984 informing its employees that sterilisation operations under the family planning scheme should not be performed in the nursing homes which had been specifically de-recognized by the management. The list of de-recognized nursing homes was also enclosed in that circular letter. The nursing home in question in this Petition is not one of the de-recognized nursing homes since it does not find a place in the list attached to the said circular letter.

3. It is not in dispute that a large number of workmen abused this scheme by producing false medical certificates from doctors of questionable repute and scruples and withdrew the amounts to which they were entitled to under the scheme. The amounts drawn by these workmen who produced bogus medical certificates came to more than Rs. 1,700/-each including the special incentive

allowance of Rs. 200/-. More than 220 workmen had drawn these cash incentives by fraudulently obtaining fictitious medical certificates. In due course the fraud committed on the management was unearthed and there was an investigation into this matter at the management level and also through the crime branch of the Police department. Criminal complaints were filed against these workmen u/s 420 I.P.C., and other provisions. Departmental enquiries were also instituted against these workmen. All these workmen admitted their guilt and pleaded that a lenient view should be taken on the ground that they were prepared to refund the amounts that had been disbursed to them. The management accepted their plea and in consideration of the fact that these workmen had returned the amounts that were paid to them, it dropped the proceedings against them, both departmental and in the criminal Court and they were taken back to duty without any interruption in their service. The only loss suffered by them was wages during the suspension period. In other words, all these workmen were exonerated of the charges of committing fraud on the Management and cheating the Management and they were taken back to duty after due admonition. However, in the case of six security superintendents who were alleged to be responsible for this fraud, the management instituted disciplinary action proceedings and the petitioner was one of them. The charges framed against them are as under :

"Standing Order 20(3) : Fraud or dishonesty. -do- 20(11) : Any act of subversive of discipline -do- 20(22) : Deliberately making false Statement before a superior knowing to be false. -do - 20(39) : Neglect of duty including carelessness. -do- 20(45) : Abetment of any misconduct."

4. In the domestic enquiry held against these superintendents, the very persons who committed fraud on the Management appeared as Management witnesses and they narrated in detail how they obtained bogus certificates from the medical practitioners who had issued such certificates and how they withdrew the amounts by producing these certificates and other incidental facts leading to the exoneration of their misconduct and reinstatement in service, The witnesses examined by the Management in the domestic enquiry against these superintendents do not in any way implicate them in the alleged misconduct which was the subject matter of the domestic enquiry proceedings. However, one official namely the Security Officer in his deposition before the Enquiry Officer had stated that the petitioner had been served with a memo which is produced at Ex.20 and in terms of the memo he should have made the necessary enquiries and verification in the nursing home known as Jalajakshi Nursing Home where about 50 operations had been performed by a doctor Hegde and on the basis of the certificates given by that doctor fifty workmen had fraudulently claimed and drawn the amounts under the family planning scheme. Ex.20 which is the foundation of the charge against the petitioner requires to be noticed in detail. It reads as under :

So/34-84/867 Date : 12th February 1984 MEMO

Sub : Verification of Tubectomy Operations and Hospitalisation.

At present verifications are being done in a routine and stereo-type manner without bothering to go in depth. Hence, the following instructions are given. It should be complied by the verifying officers.

- 1) The verifying officers should peruse the records maintained in the Nursing Home. Question the doctor who has actually conducted the Tubectomy or treated the patient. If the concerned doctor is not available at least his name should be noted in the report.
- 2) The nature of the records perused by the verifying officers should be noted.
- 3) Whether there is facility for conducting Tubectomy in the Nursing Home and whether there are wards for inpatients etc., should be noted in the report.

Sd/- Security Officer".

5. This Security Officer who was examined as the 14th witness in the domestic enquiry had stated that after receiving the complaints in respect of the employees who were alleged to have got the tubectomy operation done in Jalajakshi Nursing Home on their wives, he contacted the Controller of Finance and Audit Manager personally and came to know that the largest number of operations were reported during the month of November 1984 and in that month on a single day 10 alleged operations were certified by Dr. Hegde. Therefore, he collected the particulars regarding the name of the employee, date of his application, name of the verifying officer etc., from the original files which were in the custody of the Audit Manager; that on 22-12-1984 he visited the alleged Nursing Home at No. 21, V Cross, Malleswaram, Bangalore City in his jeep; he had a thorough look at the frontage of the building; there was no board saying "Jalajakshi Nursing Home"; instead there was a name-board at the centre of the building in the region of the first floor saying "Jalajakshi Health Clinic"; there were a number of name boards of medical men of various categories all over the building in the first floor and the ground floor; that in the region of the ground floor there was a board saying "Deeksha Polyclinic, Dr. H.S. Hegde, M.B.B.S. 9-30 am. to 1 pm. 4-30 pm. to 8-30 pm. Sunday 9 am. to 12 noon". According to him, this name-board made it clear that Dr. Hegde had only a health clinic and not a nursing home; he went inside the Polyclinic and found Dr. Hegde seated; there was no other person in that room; there was no examination table in that room; he enquired with Dr. Hegde regarding the issue of certificates for tubectomy in respect of the wives of a number of employees of the management; that he (doctor) frankly admitted that he had issued those certificates without conducting the operation; further he told the witness on questioning that he had no operation theatre nor any beds for the patients. On questioning he (doctor) showed the witness a register from his table drawer. The witness perused the register and found entries had been made regarding tubectomy operations. He was also shown a letterhead pad on which the doctor stated that he was issuing the certificates. Thereafter, on the request of the

witness the doctor accompanied the witness to the first floor; that the witness had a thorough look at the arrangements in the first floor; that there was no operation theatre and no bed for any patient; that there was a small laboratory and a X-ray room; that rest of the rooms in the entire building were found let out to various categories of medical men as could be seen from the name boards; that his investigation disclosed that 220 employees of the management had applied for and obtained financial benefits from the management on the basis of the false certificates issued by Dr. Hegde; that among these cases 50 were referred to the petitioner earlier for verification and report as per Ex.7; that the petitioner had made reports in all these 50 cases and the investigation of the witness disclosed that all the 50 reports of the petitioner were false; that in some cases that petitioner had stated that patient was still under treatment when he (petitioner) visited; that the witness had issued a memo laying down guidelines with regard to verification of tubectomy operation and hospitalisation on 12-2-1984 (Ex.20). He had also spoken to the statements made by the two Industrial Relations Managers, Prasanna Kumar and Nagendra. His evidence no doubt was not seriously challenged in cross-examination.

6. The petitioner in his statement before the Enquiry Officer stated that he had been working in the security department since about 3 1/2 years as Assistant Security Officer ; that he had given his explanation as per Ex. 5 and his written statement dated 25-2-1985 as per Ex 11; that depending on the availability of time at his disposal after duty hours he used to visit the Jalajakshi Nursing Home for making necessary verification using his own Vehicle ; that he used to contact Dr. Hegde during his visit and verify the records maintained by Dr. Hegde ; that after referring to the entries made in the register and after discussing with Dr. Hegde, Dr. Hegde used to give him the certificates in respect of cases which he had verified ; that in most cases he had enclosed the certificates issued by Dr. Hegde along with his verification reports and these verification reports had been submitted to the Security Officer. In cross-examination he stated that he had visited the Jalajakshi Nursing Home about 50 times ; that on the top of the upstairs of the building he had seen the boards of Jalajakshi Nursing Home and Deeksha Polyclinic, but the names were painted on the wall of the building ; that he did not check the hours of the Nursing Home ; that he did meet Dr. Hegde every time of his visit ; that he verified one register containing about 250 pages maintained by Dr. Hegde which contained the names of employees, names of their wives, date of admission, date of operation, date of discharge and other particulars; that he came across the names the employees of the management in the register; that he did not check up whether the said register was a general one or maintained specifically for the employees of the management; that he saw one pad containing letter-heads on which Dr. Hegde used to issue certificates; that he was not aware that the records and registers maintained by any nursing home are open to scrutiny and verification by authorities like Indian Medical Council and tax authorities etc; that he did not find any stamps, seal, endorsement or notings of the above said authorities in the register that he had

verified; that there was only one room in the nursing home and there were three beds in the room; that at the beginning he had been shown by Dr. Hegde the operation, theatre; that there were some equipment in the nursing home but he was not conversant with their names; that he came across an examination table and also the staff members during his visit; but he did not enquire-the details of the staff members; that he also saw the other doctors in the nursing home but he did not meet any other doctor apart from Dr. Hegde ; that he denied the suggestion that in some verification reports he had not stated about, the verification records of the nursing home; that he had verified the records and stated to that effect in his reports; that the suggestion that he had not verified the records in the nursing home is a wrong suggestion; that he had verified the records and he had stated to that effect in his reports; that in his verification reports he had not stated as to what type of records he had verified; he had also not stated anything about the facilities available in the said nursing home like wards, beds etc; that on visit to the nursing home he was shown by Dr. Hedge some people as patients and on some occasions he was informed that the inpatients had gone for bath etc; that he did not speak to the inpatients due to certain reasons which were beyond his control; that he did not check up the case-sheets maintained in the nursing home; that the reports submitted by him are in accordance with the guidelines issued to him and he sincerely verified the cases given to him and to the best of his ability he had acted in a fair way ; that he had also visited some other nursing homes and given reports. It was finally suggested that he had not made any sort of verification from the said nursing home and it was denied by him. If the entire gamut of his cross-examination is taken into account there was no suggestion to this witness that he had either acted fraudulently or dishonestly or sent reports knowing them to be false or acted negligently in the discharge of his duties or committed acts subversive of discipline. The only incriminating question put to him in cross-examination is that he had not complied with the guidelines given by the Security Officer in Ex.20. His statement should be considered in the light of his explanation to the Security Officer and Industrial Relations Officer on 9-1-1985 and 25-2-1985. The relevant portions read as under :

"I and other security staff deputed for such verification have brought to your attention and others personally and in our meetings held on 5-5-83 and 1-2-84 about the practical difficulties experienced by us and specifically requested you and other officers concerned to suggest ways and means to overcome the same. Had these practical difficulties been rectified by taking suitable and timely remedial measures at your end, perhaps the so called false and bogus claims by the employees would have been well avoided."

" In all the cases referred to me, I have performed my duty promptly with a great personal risk like road accidents enroute while using own vehicle, i.e.. after duty hours. The reports given by me in all the cases were specifically as per the records of the said Nursing Home and as per the certificates issued by Dr HSSS Hegde, whenever I had visited the Nursing Home I had seen beds and at times

with inpatients. Here it may be mentioned that one of the COD's mother was admitted in the said Nursing Home for about ten days for treatment and Sri Antony Peter who had verified the case had seen the patient (mother of the COD) as an inpatient there. Prior to the present case, i.e., before the period considered for the present number of cases, there were cases of tubectomy operations done in the said Nursing Home and the bills from the same Nursing Home were accepted and amounts paid to the employees. In some of those cases, I had verified the case and my reports submitted which were accepted as correct."

If his entire statement in examination-in-chief and cross examination is read as a whole it is clear that the petitioner had perused the records maintained at the nursing home of the doctor who had allegedly conducted the tubectomy operations or treated the patients and examined the records maintained by the doctor. The only remissness on his part was that he did not mention in his report that there was facility for conducting tubectomy /vasectomy operations in the nursing home and whether there were wards for the inpatients etc. On that point the guideline given to him reads as under :

"Whether there is facility for conducting tubectomy in the nursing home and whether there are wards for inpatients etc., should be noted in the report."

The guideline does not show that the petitioner should personally make an inspection of these facilities and submit his report. It should be noticed in the context of these guidelines, that the doctor who was alleged to have performed the operations is neither an employee of the management under its control nor a subordinate of the petitioner. The doctor is an independent person and he is answerable for his actions only to the Indian Medical Council and not to the management or to the security department of the management. The petitioner in the position of security superintendent will not be in a position to question the manner in which the operations were being performed or to interrogate the doctor and find out whether the doctor has really performed the operations unless the management had imposed any conditions on the doctor and he had agreed to the same. There is no evidence to show that the petitioner had submitted the reports without meeting Dr. Hegde. His case is every time he went to the nursing home, he had met this doctor and the report was submitted by him after making the necessary enquiries with the doctor and after perusing the records produced by the doctor. If the doctor had made fictitious entries in his books and if the doctor had issued false certificates as admitted by him, the petitioner cannot be faulted either for not eliciting from the doctor that he had issued false certificates or that he had made fictitious entries in the books for claiming fees for the operations which he never performed. Therefore the guidelines issued to the petitioner are of an administrative nature and those guidelines will have to be understood in the context of the petitioner's position in the hierarchy of the security department and the position of the doctor who was entirely independent of the management. In the circumstances, any defect in the

report submitted by the petitioner could not have attracted the misconduct or fraud or dishonesty, or un-truthfulness or of submitting reports knowing them to be false. It may amount to negligence of duty. But the degree of negligence exhibited by the petitioner in the discharge of his duties is not of an alarming proportion so as to warrant an order of dismissal against him. I am also at a loss to understand how this act of the petitioner would amount to an act subversive of discipline. No question of discipline arises on the instructions given by the security officer under Ex.20. As noticed earlier, the only mistake that was committed by the petitioner was that in his report he did not mention the facilities available for conducting tubectomy operation in the nursing home and whether there were wards for the patients etc. But it should be noted that the petitioner had questioned the doctor about the facility available and he was shown the room, three beds and patients on some dates and on some other dates he was told by the doctor that they had gone to the bath room etc., and therefore it could not have been possible physically to check whether these patients were there in the nursing home on a given date. In the circumstances, on the statement of the security officer and the statement of the petitioner in cross-examination it is not possible to come to the conclusion that the petitioner was guilty of the charges of misconduct alleged against him. That apart, the statement of the Security Officer does not in any way negate the explanation of the petitioner in his two written statements excerpted above.

7. I am aware of the fact that there are certain limitations on the discretion to be exercised by this Court while interfering with a finding of fact in a departmental enquiry. Ordinarily a finding of fact is not open to interference in these proceedings unless it is shown to be perverse or not based on any legal evidence at all. On the evidence on record I am inclined to take the view that the finding that could have been recorded against the petitioner was a finding for acting negligently or carelessly. But that act should have been considered by the management in the light of the explanation given by him on 9-1-1985 and 25-2-1985. In the absence of any such consideration, there was no evidence against him even on that charge. But the matter does not rest there since the petitioner has challenged the order of dismissal on the ground that there has been a violation of Article 14 of the Constitution. His grievance is that the workmen who had committed more heinous misconduct, namely, production of false certificates and false bills and thereby enriched themselves to the tune of Rs. 1,700/- each had been let off with a mere admonition all because they refunded the amount and prayed for a lenient view of the matter. Secondly, the other security inspectors who were found guilty of the alleged act of misconduct were also given service certificates when they tendered their resignations and requested the management to accept their resignations on humanitarian grounds. As noticed earlier, six superintendents including the petitioner had been charged with the misconduct of similar nature and all of them had been dismissed from service. Five officers did not choose to challenge the orders of dismissal, but after they were communicated to them they tendered their

resignations. If they had been really guilty of the heinous act of committing fraud and other serious misconduct alleged against them, the management was well within its right to refuse to accept the resignations and stand firm by its order of dismissal. On humanitarian grounds the management appears to have revoked the orders of dismissal passed against them and given them service certificates and also paid them the gratuity amount that would have been due to them had they completed the full term of service. That only shows that the management was satisfied that the act committed by these security inspectors was not of a grave nature as to warrant the extreme penalty of dismissal from service. But the petitioner was not granted this indulgence all because he chose to challenge the validity of the order of dismissal. In my view, these acts on the part of the management clearly attract the vice of Article 14 of the Constitution. Persons who had committed heinous acts, namely, defrauding the management by their brazen conduct had been let off by the management all because they chose to refund the amounts. They had no option but to refund the amounts because they were duty-bound in law to refund the amounts. Therefore, punishment meted out to the petitioner ex facie will clearly attract the vice of Article 14 of the Constitution.

8. However, it is contended by the learned Counsel for the management that the petitioner belongs to a distinct class being employed in the security department and persons employed in the security department are expected to maintain very high integrity in the discharge of their duties, but in the other cases the persons exonerated are all workmen either skilled, semi-skilled or unskilled; that they belong to a lower class of service unlike the petitioner and therefore the management was well within its rights to take a lenient view. I am unable to accept this contention since the gravity of misconduct committed by these workmen merited nothing short of dismissal from their service. They entered into criminal conspiracy with a doctor who, I understand, is currently facing disciplinary action before the Indian Medical Council and defraud the management to the tune of more than Rs. 2 to 3 lakhs. Therefore, it is clear that the petitioner had been singled out, all because he chose to establish his innocence before the enquiry authority and even after the dismissal order was made against him he preferred to file this petition which he was entitled to do under Article 226 of the Constitution since it is not contended by the learned Counsel for the management that it is not an authority within the meaning of Article 12 of the Constitution.

9. One more facet of discrimination under Article 14 is writ large from the leniency shown to the other Security Inspectors who had been dismissed from service. They did not choose to challenge the order of dismissal but they submitted their letters of resignation after they were dismissed. It would have been a different matter if the management had accepted their resignation before the enquiry proceedings commenced against them or before the order of dismissal was made against them. Though the management was perfectly within its right to reject the letters of resignation since the order of dismissal had

already become final, on humanitarian grounds the management accepted their resignations and gave them service certificates and also the gratuity amount which they would have earned had they remained in service till the date of their superannuation. But the constitutional right of the workman under Article 14 should prevail over the managerial right of the management to single out its employees for hostile discrimination. What the management means is "you resign, you will be taken care of otherwise we will exercise our managerial right". In the circumstances, violation of Article 14 is established from the records of the proceedings before me and this Court has to interfere with the order of dismissal passed by the management.

10. After the matter was heard for some time on the last date of hearing, I had suggested to the Learned Counsel for the management whether it was prepared to take the petitioner back into service in the light of the observation made by me in the course of the arguments. On the submission made by the learned Counsel for the management today, it appears that the management is not prepared to take back the petitioner into service. On the other hand, the learned Counsel suggested that certain amounts may be directed to be paid to the petitioner by way of compensation instead of making a direction for reinstatement.

11. The learned Counsel for the management invited my attention to the peculiar facts of this case and submitted that the petitioner being a Security Officer, the nature of work turned out by him was different from the nature of work turned out by the workmen who had been exonerated of the serious misconduct alleged against them and therefore the vice of discrimination protected under Article 14 of the Constitution of India is not attracted to the facts of this case. No doubt from the nature of duties performed by a particular workman or a group of workmen it could be made out whether they belong to the same category or belong to a different category. In Industrial adjudication also, this point is kept in view by the Tribunals and the Courts. But the petitioner was not responsible for the fraud. Fraud had already been committed by the other workmen with the connivance of the doctor. Persons who committed fraud do not belong to a privileged class and a person who failed to detect fraud does not belong to a less privileged class. It should be noticed that the charge against the workman was based on the fact that he did not comply with the relevant guidelines given to him by his security officer. The guidelines given to the petitioner are of a routine nature. I have already considered this aspect of the case while considering the statements of the petitioner and the Security Officer in the domestic enquiry proceedings. The only infraction of the guidelines that could be seen from the material on record is that the petitioner did not bestow sufficient care to make the necessary enquiries in regard to the instructions contained in Clause-3 of Ex. 20. That stipulates that the facility for conducting tubectomy operation in the nursing home and whether there were wards for inpatients etc., should be noted in the report. He said he had done so in his statement. But he had not mentioned in his report about such enquiry. The evidence disclose that in this building there

were a number of other doctors and therefore the petitioner could have made certain discreet enquiries with these doctors in order to verify the correctness of the information given by Dr. Hegde who is the principal culprit in the entire sordid episode. But whether the other doctors have would obliged him is also a matter for consideration. However, that is a matter which cannot be characterised as an act of fraud or an act which will impeach either the credibility of the petitioner or his honesty or his faithfulness in the discharge of his duties. The degree of care that has to be bestowed on a certain work varies from person to person and unless there are definite guidelines to the workman as to the manner of verification it is not possible to accept the contention of the management that the petitioner was grossly negligent in the discharge of his duties and such gross negligence amounted to fraud in the discharge of his duties. As noticed earlier, Dr. Hegde was neither an employee of the management nor the subordinate of the petitioner. The petitioner had no control either over his activities or actions or the manner in which he performed his business of running the clinic. If the petitioner had been guilty of any such carelessness in the discharge of his duties within the factory precincts, different considerations would have arisen for the purpose of considering the plea of the management. But I am not prepared to take the view that the petitioner has discharged his duties entrusted to him satisfactorily by submitting his report in the manner he has done. There is an element of carelessness and for that carelessness it is not possible to take the view that he should be dismissed. The order of dismissal is not only discriminatory but also arbitrary.

12. So, the next point for consideration is whether this is a fit case for reinstatement of the petitioner with continuity of service and back wages or direct the management to pay him certain amount of compensation towards backwages and for loss of employment. There have been considerable arguments on both sides on this question. Mr. Krishnaiah maintained that the petitioner is on the threshold of his career under the management ; that he has got about 18 years of service and in these days when jobs are hard to come by it would be difficult for him to get a suitable job elsewhere commensurate with his qualification and experience. There is a point in what Mr. Krishnaiah says. But on the other hand the learned Counsel for the management submitted that even if this Court were to take the view that the petitioner could be properly compensated in terms of money, the management would pay him a sum of Rs. 18,000/- which is equivalent to the gratuity amount that the petitioner would have earned had he remained in service up to the date of superannuation. The petitioner being a workman, it is possible for this Court under Article 226 of the Constitution to go into the quantum of compensation the petitioner would be entitled to. It would also have been possible for this Court to arrive at a suitable figure if the matter had been adjudicated before the Labour Court on this point and there was some material before the Labour Court on the quantum of compensation due to the workman for loss of employment, towards backwages etc. But from the amount tendered by the management, I am of the view that

the offer made by the management does not appear to be reasonable. Moreover, as the workman is not agreeable for this sum, the only other alternative for this Court is to direct the management to reinstate the petitioner with continuity of service and backwages. Though at one point of time there was some doubt about the powers of this Court to make an order for reinstatement with continuity of service and backwages in a matter directly arising in a proceeding under Article 226, the Supreme Court in *Sengara Singh -v- State of Punjab & ors.* AIR 1984 SC 1499 had clearly laid down the law on this point. That was also a case where there was arbitrary picking and choosing of the employees for reinstatement after mass dismissal for the alleged misconduct of participating in an unlawful agitation. In that case a number of policemen belonging to the Punjab Police Force were dismissed. But a majority of them excepting the Petitioners were reinstated and criminal proceedings against them had been withdrawn on the basis of the recommendation of a Committee comprising of senior officers. The criteria for depriving the petitioner of the largesse of reinstatement was not disclosed and even if it was disclosed they were found to be insufficient. The Supreme Court ruled such action as arbitrary and discriminatory and offended Article 14 of the Constitution. After holding so, the Supreme Court set aside the order of dismissal and made a direction that the petitioners were entitled to be treated on par with the others in matters of reinstatement and ordered consequential benefits in the absence of any distinguishing features. Accordingly the petitioners in that case were ordered to be reinstated in service with continuity of service treating the period of absence as leave.

13. Mr Krishnaiah relying on this decision of the Supreme Court strongly contended that the petitioner who is hardly about 42 years old has a long period of service before him under the management and therefore reinstatement with continuity of service would be more helpful to him than payment of compensation. Had the management come out with a proposal to compensate the petitioner substantially for wrongful termination of his services and also for loss of future employment, I would have been inclined to consider that proposal of the management. But in the light of the offer made by the management it is not possible to accept the plea of the management that it is a fit case for awarding compensation and not reinstatement. Any doubt on this point is removed by the latest decision of the Supreme Court in *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.,* . The Supreme Court in that case held that Article 14 attracts any arbitrary order of the Executive or of an authority under Article 12. It ruled :

"Article 14 strikes at arbitrariness in State action, whether it be of the Legislature or of the executive or of an "authority" under Article 12, because any action that is arbitrary must necessarily involve the negation of equality and if it affects any matter relating to public employment, it is also violative of Article 16. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal protection by law."

14. The cases of the Supreme Court cited by the learned Counsel for the management supporting the action of the management on the ground of loss of confidence are not applicable to the facts of this case since the order of dismissal was based on the specific acts of misconduct and not on the ground of loss of confidence and it is not permissible for the management to make out a new case in this Court. I fail to understand why the management did not put any confidence in its medical officers who were in a better position to check on Dr. Hegde than the petitioner. The petitioner had been made the scapegoat for the management's bungling in implementing the 20-Point Programme. After my dictation was concluded in this matter, the learned Counsel for the management submitted that he may be given some time to obtain further instructions from the management for paying a suitable amount as compensation to the petitioner for wrongful termination of his services and also for loss of future employment. Accordingly, I posted this matter for further hearing today. Mr Krishnaiah on this point invited my attention to two decisions of the Supreme Court in Chandu Lal Vs. Management of Pan American World Airways Inc., and in Sant Raj and Another Vs. O.P. Singla and Another, . In Chandu Lal Vs. Management of Pan American World Airways Inc., the Supreme Court awarded a compensation of Rs. 2 lakhs in lieu of reinstatement of the workman and eleven years of unemployment after his illegal dismissal. The charge was one of involvement in a smuggling activity but his services had been terminated by the respondent-employer on the ground of loss of confidence in him. The Supreme Court took into consideration not only the backwages due to the workman but also the period of eleven years of unemployment after his illegal dismissal. In Sant Raj and Another Vs. O.P. Singla and Another, the Supreme Court was dealing with the case of a loader doing manual job. A sum of Rs. 2 lakhs was paid as compensation to a loader in that case. However, the learned Counsel for the management after taking instructions from the management has submitted that they are prepared to pay the petitioner the gratuity amount on the basis that he has served the full term up to 58 years and the backwages from the date of the order of termination up to this date. That amount would come to about Rs. 30,000/-. Had the petitioner gone to the Labour Court by raising an industrial dispute, which he undoubtedly could have done, in the light of the decision of the Supreme Court in Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., the management would have been slapped with an award of reinstatement in the light of the provisions of Section 11A of the Act or compensation equivalent to a substantial amount in the light of the decision of the Supreme Court referred to above. All because the petitioner had approached this Court under Article 226 of the Constitution the management wants to treat this case on a different plane in complete disregard of the rulings of the Supreme Court on the quantum of compensation in similar cases. In the circumstances, Mr Krishnaiah is justified in taking the contention that the compensation which the management is ready to pay is very negligible and does not meet the ends of justice in this case. In the circumstances, I have no other option but to make an order declaring that the impugned order of termination is bad in law and the petitioner shall be reinstated

as Security Superintendent in the service of the management with continuity of service and back wages.