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**(2015) 03 KAR CK 0395**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 5601/2006 (L-TER)**

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| The Chairman, Pragathi Grameena Bank | APPELLANT  |
| Vs                                   |            |
| H.S. Krishnamurthy                   | RESPONDENT |

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**Date of Decision :** 12-03-2015

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 17-B

**Citation :** (2015) 03 KAR CK 0395

**Hon'ble Judges :** B.S. Patil, J

**Bench :** Single Bench

**Advocate :** Sunitha P. Kalasoor, for the Appellant; Ravi Hegde, Advocates for the Respondent

**Final Decision :** Allowed

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## Judgement

B.S. Patil, J.—This matter was heard at length and on 06.03.2015, the Court passed the following order:

"This matter is heard at length.

2. Counsel for the respondent submits that respondent has been reinstated into service subject to the result of the proceedings with effect from 22.11.2011 as per order passed by this Court. It is seen from the facts and circumstances of this case that order discharging the respondent-employee from the service of Chitradurga Grameena Bank was passed on 20.01.1986. The Central Industrial Tribunal has set aside this order and has ordered reinstatement of the service along with backwages from 01.06.2004.

3. While admitting the writ petition, this Court granted an interim order on 21.04.2006 directing payment of last drawn wages as contemplated under Section 17-B of the Industrial Disputes Act which was later on modified on 22.11.2011 to reinstate him and extract work. The question that arises for consideration in this writ petition is:

"Whether the order terminating the services of the respondent is a punitive one founded on the allegations of misconduct, camouflaged as discharge simplicitor or is a discharge simplicitor though the motive for the order is unauthorised absence of the delinquent respondent?"

4. Several judgments of the Supreme Court have been placed for perusal of the Court including the judgment in *Samsher Singh Vs. State of Punjab and Another*, AIR 1974 SC 2192 : (1974) 2 LLJ 465 : (1974) 2 SCC 831 : (1975) 1 SCR 814 : (1975) 1 SLJ 1 , *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another*, AIR 1999 SC 609 : (1999) 81 FLR 475 : (1998) 8 JT 585 : (1999) 1 LLJ 432 : (1998) 6 SCALE 562 : (1999) 2 SCC 21 : (1999) SCC(L&S) 439 : (1998) 3 SCR 558 Supp : (1999) AIRSCW 207 : (1998) 9 Supreme 504 and *Chandra Prakash Shahi Vs. State of U.P. and Others*, AIR 2000 SC 1706 : (2000) 5 JT 181 : (2000) 4 SCALE 209 : (2000) 5 SCC 152 : (2000) SCC(L&S) 613 : (2000) 2 UPLBEC 1661 : (2000) AIRSCW 1816 : (2000) 4 Supreme 510 .

5. In *Chadraprakash Shahi's* case, the Apex Court in paragraphs 28 and 29 has observed as under:

"28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an enquiry is held and it is on the basis of that enquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

29. "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary enquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary enquiry."

6. In the background of this law laid down by the Apex Court, the facts of this

case have to be examined. If the order of termination is founded on the serious allegations of misconduct for which enquiry was indeed initiated then, it can be said that the order is indeed punitive and without holding a departmental enquiry, such an order of discharge simplicitor could not have been passed. If the misconduct alleged is only a motive for the employer to embark upon assessment of suitability of the employee and the foundation for the order was not the alleged misconduct but was the general suitability of the employee, then the order passed discharging the employee would be perfectly valid.

7. At this stage, learned counsel for the respondent-employee submits that case of the petitioner falls in the first category because the foundation for the order is alleged misconduct of unauthorised absence of the petitioner. However, he urges that without prejudice to this contention and having regard to the fact that he has already been reinstated into service with effect from 2011 as per the order passed by this Court at the instance of the petitioner, he would advise not to press for backwages and rest satisfied with the order of reinstatement so that the order passed by the Tribunal can be sustained by making suitable modification only with regard to backwages. This submission in my view is fair and reasonable. Therefore, further dictation in the matter is deferred till 12.03.2015.

Both the parties are at liberty to make their submissions only with regard to the said aspect of the matter concerning backwages as the matter has been fully heard.

Hence, list this matter on 12.03.2015."

2. Today, learned counsel for both parties submit that although the respondent-employee was ordered to be reinstated at the instance of the petitioner and on application made by the petitioner in this regard as per order dated 22.11.2011, the respondent has not been so far reinstated. Counsel for the petitioner submits that indeed an application was immediately filed before this Court seeking recalling of the order on the ground that the interim application for direction to extract work from the employee was filed by the petitioner under mistake and that there was no such provision in the Rules governing service under the Banks to seek such extraction of work once the employee has been discharged from service.

3. But, the fact remains that no order has been passed on the said application and the order directing reinstatement of the respondent holds the field even as on today. The order discharging the respondent-employee from the services of the Bank has been passed on 20.01.1986. Though the Tribunal has ordered reinstatement of the employee with backwages with effect from 01.06.2004 but even as on today, respondent-employee has not been reinstated. He is out of job from the Bank for the last 29 years. If he is ordered to be reinstated into service particularly in the services of Bank, after such long lapse of time, it would not be in the interest of the services of the Bank nor it would in any manner help the

respondent because he may not be able to effectively handle the responsibility to be entrusted to him.

4. It has come on record that his work was not satisfactory, in that, findings are that he was not capable of preparing Return Statement at the branch level. It is true, the Bank has initially made an effort to hold a preliminary enquiry to find out whether the reasons assigned by the workman to remain absent from duties assigning the ground of ill-health of his mother were true or false. It is also true that the Bank obtained a report to the effect that his mother was indeed keeping good health and there was no justification for the employee to remain absent from duties of the Bank. But, the fact remains that the respondent-employee was a probationer and his services were liable to be discharged, if found unsatisfactory, without holding any enquiry.

5. Therefore, if the cumulative effect of the facts and circumstances of the case are taken into consideration, it would be clear that foundation for the order lies in the misconduct alleged against the workman. The discharge order is a mere camouflage for imposition of penalty. Therefore, such an order passed without holding any enquiry deserves to be set aside.

6. Indeed all this is the making of the workman which has led to these consequences. He has chosen to remain unauthorisedly absent. He has tried to cover up the same by falsely stating that his mother was not well. It is found that he was not performing his duties satisfactorily. Hence, such a person if reinstated on technical considerations, it will not further the interest of the Banking services.

7. At the same time, as the Bank has not followed proper procedure, and has not held any enquiry before punishing him, I find that workman has to be compensated by awarding a lump sum amount. In my view, a sum of Rs. 3 lakhs has to be paid by the Bank to the respondent-workman towards full and final settlement of his claim. This order is passed having regard to the special and peculiar facts and circumstances involved in this case.

Accordingly, the writ petition is allowed in part. The award dated 12.12.2005 passed by the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, in C.R. No. 69 1989 is modified.

It is made clear that petitioner is not entitled for any other relief.