IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 7TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO. 110225 OF 2016 (L-TER)

BETWEEN:

THE MANAGEMENT OF NWKRTC,
U.K. DIVISION, REPRESENTED BY
ITS DIVISIONAL CONTROLLER,
U.K. DIVISION, SIRSI,
REPRESENTED AT PRESENT BY
THE CHIEF LAW OFFICER,
NWKRTC, CENTRAL OFFICE,
GOKUL ROAD, HUBBALLI-580 030.

... PETITIONER

(BY SMT. VEENA HEGDE, ADVOCATE)

AND:

SMT. DORATHI W/O LAURENCE ALMEDA,
AGE: 56 YEARS, OCC: SERVICE,
R/O: C/O. XAVIER P D'SOUZA,
SOUL VILLA, SANTREWADA,
1ST CROSS, KAJUBAG, KARWAR.

... RESPONDENT

(SERVED AND UNREPRESENTED)

Digitally signed by
PREMCHANDRA M R
Location: HIGH
COURT OF
KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS.

THIS WRIT PETITION IS LISTED FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, AN ORDER IS MADE AS UNDER:

ORAL ORDER

Smt.Veena Hegde, counsel for the petitioner, has appeared in person.

A notice was issued to the respondent. A perusal of the office note depicts that the respondent is served and unrepresented. The respondent has neither engaged the services of an advocate nor conducted the case as a party in person.

2. The brief facts are these:

The respondent Smt.Dorathi, was a Junior Assistant in the establishment of the Corporation. She remained unauthorizedly absent from duty from 22.11.2007 without prior permission or sanction of leave. The Depot Manager submitted a report in this regard. Articles of charge were issued. The disciplinary authority appointed an inquiry officer. The inquiry officer conducted a detailed inquiry and submitted his findings holding that the charges are proved. The disciplinary authority taking note of the material on record passed an order of minor punishment on 13.12.2008, withholding three ensuing annual increments with cumulative effect.

The respondent raised a dispute before the Industrial Tribunal, Hubli in I.D.No.117/2014. The Industrial Tribunal vide award dated 20.06.2016 set aside the order of minor punishment. This award is called into question in this Writ Petition on several grounds, as set out in the Memorandum of Writ Petition.

3. Counsel for the petitioner has urged several contentions and perused the Writ papers with utmost care.

Counsel for the petitioner placed reliance on the following decision:

SOUTH INDIAN CASHEW FACTORIES WORKERS' UNION V/S. KERALA STATE CASHEW DEVELOPMENT CORPORATION LIMITED AND OTHERS reported in ***(2006) 5 SCC 201.***

4. The simple point that arises for consideration is whether the award of the Tribunal requires interference.

5. Suffice it to note that the respondent was visited with an order of minor punishment in 2008. Strangely, she raised a dispute in 2014. There is an inordinate delay of almost

six years. The Tribunal erroneously condoned the delay solely on the ground that the inordinate delay in raising the dispute cannot be fatal to the dispute. In my view, the Tribunal could not have condoned the delay of six years and entertained the reference. The reason is apparent. The Hon'ble Apex Court reported in ***PRABHAKAR VS. JOINT DIRECTOR, SERICULTURE DEPARTMENT AND ANOTHER*** reported in ***(2015) 15 SCC 1*** has held that when there is no agitation by the workman against the order of punishment and the dispute is raised belatedly and the delay and laches remained unexplained, it should be presumed that he had waived his right. It is also observed that at the time when the dispute was raised, it had become stale and was not an existing dispute. Even in the present case, when the dispute was raised by the workman, it had virtually become a stale dispute. The Tribunal has overlooked the aspect of delay and laches.

Moreover, setting aside the order of minor penalty is without jurisdiction in as much as the Tribunal has no power to set aside the minor penalty. The Tribunal could not have been pressed into service the aspect of minor penalty. The Managerial decision to impose a minor penalty is absolute, and

the same cannot be modified by the Tribunal unless there is a perversity and victimization. In the present case, there is no perversity and victimization. Hence, setting aside the order of minor punishment is unsustainable in law. For the reasons stated above, the award of the Tribunal is liable to be set aside, and so, it is set aside.

6. The Writ of Certiorari is ordered. The Order dated 20.06.2016 passed by the Industrial Tribunal, Hubballi, in I.D.No.117/2014 vide Annexure-C is quashed. The order of minor punishment dated 13.12.2008 is confirmed.

7. Resultantly, the Writ Petition is ***allowed***.

Because of the disposal of the Writ Petition, all pending interlocutory applications, if any, are disposed of, and the interim order, if any, granted by this Court stands discharged.

Sd/-
(JYOTI MULIMANI)
JUDGE

MRP,RH
LIST NO.: 2 SL NO.: 46