



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

WRIT PETITION NO. 15526 OF 2017 (L-RES)

BETWEEN:

1. M/S JET AIRWAYS (INDIA) PVT LTD
SIROYA CENTRE, SAHAR AIRPORT ROAD,
ANDHERI (EAST), MUMBAI-400 099.
REPRESENTED BY ITS
DEPUTY GENERAL MANAGER HR
A.SAHANA

...PETITIONER

(BY SRI. P.P.HEGDE, SENIOR COUNSEL FOR
SRI. DHARMA TEJ, ADVOCATE)

AND:

1. SRI PRASHANT RAO
C/O MR.V.GOVINDA RAO,
NO.47/A, 1ST BLOCK, 1ST MAIN ROAD,
THYAGARAJA NAGAR,
BANGALORE-560 028.

...RESPONDENT

(SRI. PRASHANTH RAO/RESPONDENT (PARTY-IN-PERSON))

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED AWARD DATED:13.1.2017 IN CR.NO.35/2009 AT ANNEXURE-N TO THIS WRIT PETITION, ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.08.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE **D K SINGH J.,** PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV ORDER

(PER: HON'BLE MR. JUSTICE D K SINGH)

Mr. Prashanth Rao, - Respondent was appointed as Customer Service Assistant on 23.10.1999 with M/s. Jet Airways (India) Pvt. Ltd., now under liquidation. He had undergone probation for a period of 6 months and was thereafter posted in Customer Service Department of the petitioner - company in Bangalore. He was confirmed as a Customer Service Assistant with effect from 23.07.2000 on a monthly gross salary of Rs.5,700/-. The respondent later faced disciplinary proceedings and on conclusion of disciplinary proceedings, he was dismissed from service vide order dated 30.08.2008.

2. The respondent had challenged the said dismissal order before the Central Government Administrative Tribunal-Cum-Labour Court in C.R.No.35/2009. The Industrial Tribunal by a detailed judgment and order dated 13.01.2017 held that the disciplinary proceedings conducted against the respondent were in violation of the principles of natural justice and also

held that on a careful perusal of entire material on record, the employer could not prove the alleged misconduct committed by the respondent. Thus, the punishment order of dismissal from service held to be illegal and not justified. The Tribunal directed the reinstatement of the respondent along with 50% of back wages. The respondent was held entitled to continuity of service and all other consequential benefits that he would have received. The said Award is the subject matter of challenge in this writ petition filed by the M/s. Jet Airways (India) Pvt. Ltd.

3. The learned Single Judge on 20.04.2017 passed an interim order in the Writ petition, staying the operation and execution of the impugned award dated 13.01.2017 passed in C.R.No.35/2009, subject to the deposit of a sum of Rs.13,00,000/- within a period of 4 weeks from the date of the order. The said sum, if deposited before this Court, was directed to be kept in fixed deposit for a period of 6 months initially. It was also made clear that if the deposit was not made within the stipulated period, the interim order would stand vacated automatically.

4. In pursuance to the said interim order, the petitioner - Company deposited a sum of Rs.13,00,000/- within

the time granted by the Court and the said sum is still lying in the Court.

5. The respondent - Workman being unsatisfied and aggrieved by the said interim order, filed the Writ Appeal No.6108/2017 before the Division Bench of this Court. The Division Bench vide its judgment and order dated 22.11.2017, directed payment of 30% of the wages to the respondent workman of his last drawn salary towards sustenance, including the amount unpaid from the date of interim order passed by the learned Single Judge on 20.04.2017. The petitioner - Company was directed to pay last drawn wages until disposal of the writ petition. Insofar as the amount deposited before this Court in terms of the interim order dated 20.04.2017, it was directed that the same should await the result of the writ petition. The Registry was directed to put the sum deposited in pursuance of the interim order in a fixed deposit for a further period of one year with a direction to periodically renew the said deposit till disposal of the writ petition. Thus, the Division Bench upheld the interim order and disposed of the appeal as stated hereinabove.

6. The present writ petition has been filed against the impugned award dated 13.01.2017 in C.R No.35/2009. The Tribunal had directed reinstatement of the respondent - Workman with continuity of service in the employment of the petitioner - Company with 50% back wages. Based on that, an amount of 50% back wages was deposited by the petitioner - Company in terms of the interim order dated 20.04.2017. The Jet Airways is under liquidation in pursuance of the judgment. passed by the Supreme Court in the case of **State Bank of India and others Vs. Consortium of Murari Lal Jalan and Florian Fritsch and Another** reported in **2025 (4) SCC 354** and the Official Liquidator has taken over the assets of the petitioner - Company for its liquidation. In view of the aforesaid development that the petitioner - Company is under liquidation, the relief of reinstatement granted by the Industrial Tribunal cannot be implemented inasmuch as now the petitioner - Company is no longer carrying on any business and is under liquidation. Therefore, the relief of reinstatement of the respondent - Workman in the petitioner - Company has become untenable.

7. Now, the question which remains to be decided is the payment of 50% back wages and the said amount was

determined to be Rs.13,00,000/- in the interim order 20.04.2017 passed by the learned Single Judge.

8. Before coming to the said question, it would be appropriate to consider the merits of the case.

9. The Industrial Tribunal framed the following points for consideration on the basis of the pleadings and evidence led by the parties:

i. Whether the delay in raising the dispute is fatal and as a result the same is liable for rejection, as contended by the 2nd party i.e., the employer?

ii. Whether the action of the 2nd party/Management in dismissing the workman Prashant Rao from service w.e.f 30.08.2008 is justified and legal?

iii. Whether the workman proves that he is entitled for the relief of reinstatement, continuity of service and consequential benefits and also back wages and to what relief, if any, he is entitled to get?

iv. Whether the workman demonstrates that the finding of the Enquiry being baseless and perverse, necessitating interference of this Tribunal?

v. Whether the workman demonstrates that the punishment imposed against him, is disproportionate to the misconduct alleged, as against him?

vi. To what order or Award?

10. The impugned award would suggest that the Tribunal has considered all evidence and submissions and has come to a conclusion that the charges levelled against the respondent- Workman were not proved. It was also held that the disciplinary proceedings were conducted in violation of the principles of natural justice. The Tribunal was of the opinion that on a careful scrutiny of the management witnesses and materials available on record, the respondent - Workman would not be held responsible for making the wrong entry of the fuel figures. The impugned award is well-reasoned award and the Tribunal has considered all evidence in detail while arriving at the said conclusion. We have not been shown anything which would demonstrate that the findings of the Tribunal are either perverse or against the record. With the efficacy of the limited jurisdiction of Judicial Review under Article 226 of the Constitution of India, we are of the considered view, that the impugned award passed by the Industrial Tribunal does not

require an interference by this Court so far as the challenge to the impugned award is concerned. We, therefore, dismiss the writ petition and uphold the award passed by the learned Industrial Tribunal.

11. The next question which would arise for consideration before us is the relief which can be granted to the respondent - Workman in view of the fact that the petitioner - Company is under liquidation and it is not carrying on any business.

12. On 23.07.2025 when this writ petition was listed, we queried the respondent, who has appeared in person as to whether he would be willing to receive Rs.13,00,000/- along with the accrued interest in deposit, in pursuance of the interim order dated 20.04.2017, towards full and final settlement of all his claims. He expressed his willingness to accept Rs.13,00,000/- along with the accrued interest in full and final settlement of his claims. The order dated 23.07.2025 passed in this writ petition reads as under:

"The respondent/party-in-person, when queried in the peculiarities of the case, is categorical that though he would be worse off, he would be willing to receive Rs.13,00,000/- in deposit along with the interest in full and final settlement of

all his claims and the respondent also states that he is making this statement without prejudice to his case.

In the light of the afore, Sri. Somashekar, the learned Counsel for the petitioner, is called upon to secure instructions from the petitioner/Official Liquidator.

The office is directed to re-list this matter on 30.07.2025."

13. Mr. Dhyan Chinnappa, learned Senior Counsel appearing for the official liquidator, has submitted that the said amount of Rs.13,00,000/- deposited in the Court in pursuance of the interim order dated 20.04.2017 cannot be released in favour of the respondent - Workman. The respondent being aware of the liquidation of the petitioner - Company ought to have exercised his right and filed a claim as on the liquidation commencement date. It is further submitted that the respondent had filed a proof of claim for an amount of Rs.63,441/- with the erstwhile resolution professional, of which a claim for an amount of Rs.56,605/- was admitted by the erstwhile resolution professional.

14. It is submitted that as per the Regulation 12(2)(c) of the Liquidation Regulations read with Section 38 of the Insolvency and Bankruptcy Code, 2016 (for short 'the IBC,

2016') whereby if a stake holder does not submit a claim during the liquidation process, the claim submitted by such stakeholder before the erstwhile resolution professional in continuation of the Corporate Insolvency Resolution Process (for short 'the CIRP') shall be deemed to be admitted under Section 38 of the IBC, 2016. He further submits that Rs.13,00,000/- along with interest accrued thereon deposited by the petitioner - Company in pursuance of the interim order passed by this Court on 20.04.2017 in this writ petition forms part of the assets of the petitioner - Company and it is part of liquidation assets as prescribed under Section 36 of the IBC. This amount therefore, is for the benefit of the creditors of the petitioner-Company and cannot be released in favour of the respondent - Workman.

15. Mr. Dhyan Chinnappa, learned Senior Counsel placing reliance on the judgment of the Bombay High Court in the case of **Siti Networks Limited Vs. Rajiv Suri** reported in **2024 SCC ONLINE BOM 3550** submits that under the provisions of Section 14(1) of the IBC, the moratorium on enforcement commences on commencement of the CIRP and a decree cannot be enforced once a moratorium has commenced. Under the IBC, a decree holder is merely a creditor having a

claim. The amount owed under the decree would be subject to the terms of the resolution plan that is approved pursuant to the CIRP. If the CIRP were to fail, the decree-holder would be one of the creditors, who would stand in a queue along with other creditors for distribution of the assets of the corporate debtor in liquidation proceedings, to discharge its claim.

16. The submission is that once the CIRP proceedings have failed and the Supreme Court has ordered liquidation of the petitioner - Company, the Tribunal's order even for the payment of 50% of the back wages cannot be enforced and this amount should be released in favour of the official liquidator.

17. We have already dismissed the writ petition insofar as the challenge to the award passed by the Industrial Tribunal is concerned. The dismissal of the writ petition will relate back to the date of its institution i.e., 10.04.2017. Thus, the respondent's claim in pursuance of the impugned award got crystallized way back on 13.01.2017, 50% of the back wages had already deposited before this Court in pursuance to the interim order dated 20.04.2017. But for the interim order passed by this Court, the respondent should have been paid

50% of the back wages as ordered by the Tribunal soon after the award dated 13.01.2017 was passed.

18. The pendency of the writ petition cannot act to the prejudice of the respondent. Once we dismiss the writ petition, we hold that the rights got crystallized on the date of the award i.e., 13.01.2017 for payment of 50% of the back wages and those back wages were already deposited. But for the interim order, the same could not be paid to the respondent. It is well settled principle in equity that the maxim *Actus curiae neminem gravabit* "an act of the Court shall prejudice none" shall apply where a writ petition is dismissed, in which an interim order is granted, inasmuch as the interim order merges with the final order. A party whose writ petition is dismissed, cannot take advantage of its own wrong.

19. The Supreme Court, in the case of **Amarjeet Singh and others** Vs. **Devi Ratan and others** reported in 2010(1) SCC 417, explained the said principles at paragraphs 17 and 18, which reads as under:

"17. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately

dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court. (Vide Shiv Shankar v. U.P. SRTC, GTC Industries Ltd. v. Union of India and Jaipur Municipal Corpn. v. C.L. Mishra.)

18. In Ram Krishna Verma v. State of U.P. this Court examined the similar issue while placing reliance upon its earlier judgment in Grindlays Bank Ltd. v. ITO and held that no person can suffer from the act of the court and in case an interim order has been passed and the petitioner takes advantage thereof and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party

invoking the jurisdiction of the court must be neutralised."

20. This Court exercised equity jurisdiction under Article 226 of the Constitution of India. While granting interim relief, thereby the Court exercised its discretionary power. If the writ petition is dismissed and the interim order stands nullified merging with the final judgment/order, this Court needs to exercise its inherent jurisdiction in doing *Ex debito justitiae* for mitigating the damage suffered by the respondent, against whom the interim order was passed.

21. In paragraphs 19 and 20 of the aforesaid judgment the Supreme Court held as under

"19. In Mahadeo Savlaram Shelke v. Pune Municipal Corpn. this Court observed that while granting the interim relief, the court in exercise of its discretionary power should also adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the court that in the event of his failing in the suit to obtain the relief asked for in the plaint, he would adequately compensate the defendant for the loss ensued due to the order of injunction granted in favour of the plaintiff. Even otherwise the court while exercising its equity jurisdiction in granting injunction is also competent to grant adequate compensation to mitigate the

damages caused to the defendant by grant of injunction. The pecuniary award of damages is consequential to the adjudication of the dispute and the result therein is incidental to the determination of the case by the court. The court can do so in exercise of its inherent jurisdiction in doing ex debito justitiae mitigating the damage suffered by the defendant by the act of the court in granting injunction restraining the defendant from proceeding with the action complained of in the suit. Such a procedure is necessary as a check on abuse of the process of the court and adequately compensate the damages or injury suffered by the defendant by act of the court at the behest of the plaintiff.

20. In South Eastern Coalfields Ltd. v. State of M.P. this Court examined this issue in detail and held that no one shall suffer by an act of the court. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party. There is nothing wrong in the parties demanding being placed in the same position

in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences."

22. Thus, the parties should be placed at the same position in which they would have been, had the Court not intervened by its interim order. When, at the end of the proceedings, the Court pronounces its judicial verdict which would match with the Tribunal order, the injury, if any, caused by the act of the Court, should be undone, and the gain which the party would have earned unless interdicted by the Court's order, would be restored or conferred on the party by suitably commanding/directing the liable party.

23. As observed earlier, but for the interim order dated 20.07.2017 the petitioner would have been paid 50% of the back wages along with the interest soon after the award was

passed by the Tribunal on 13.01.2017. As we have dismissed the writ petition, the parties must be restored back to their position as operating on 13.01.2017 i.e., the date of the award passed by the Tribunal. On the said date the company was not under liquidation and the CIRP, had not commenced. Therefore, we consider the judgment cited by Mr. Dhyan Chinnappa, Senior Counsel in **Siti Networks Limited Vs. Rajiv Suri** (supra), has no applicability to the facts and circumstances of the present case for doing *Ex debito justitiae*, in exercising our discretion under Article 226 of the Constitution of India.

24. We, therefore, direct the Registry to release a sum of Rs.13,00,000/- along with accrued interest to the respondent - Workman after due identification.

25. With the aforesaid, the writ petition stands **dismissed.**

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

RKA