

Karnataka High Court The Manager, Reserve Bank Of India vs S. Mani And Ors. on 25 June, 2002 Equivalent citations: 2002 (95) FLR 273, 2002 (5) KarLJ 30, (2002) IILLJ 792 Kant Bench: K Rajaratnam, K Bhakthavatsala JUDGMENT 1. The Reserve Bank of India has preferred these writ appeals against the order of the learned Single Judge (Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors., 2000(2) Kar. L.J. Sh. N. 36 2. The respondents were all employees of Bank working as Ticca Mazdoor in the Bank from some time in the year 1980. They did not according to the Bank turn up for work after 1983. 3. It is common ground that the Bank lodged a criminal complaint against the respondents under Sections 471 and 420 of the IPC for producing alleged forged School Transfer Certificates. Two criminal cases were registered as Cri. Case Nos. 5517 and 5518 of 1984. The case after a prolong trial ended in an acquittal at the hands of the Additional Chief Metropolitan Magistrate, Bangalore by its judgment dated 24-9-1987. After the acquittal the respondents sought to resume work as Ticca Mazdoor. They were denied employment. 4. Subsequently the matter went before the Industrial Tribunal. The Tribunal in Cri. Case Nos. 1 to 11 of 1992 passed a common award directing reinstatement of all the respondents and also for payment of back wages from the date of termination till the date of reinstatement within a period of six months. Aggrieved by the award the Bank rushed to the Supreme Court without approaching the High Court. 5. The Supreme Court directed the Bank to approach the High Court. Consequently writ petitions were filed before the learned Single Judge against the order of the Tribunal. The learned Single Judge dismissed the writ petitions. 6. Aggrieved by the order of the learned Single Judge the Bank is before us in these writ appeals. 7. Mr. Kasturi, learned Senior Counsel for the Bank submitted that it was the stand of the Bank right at the outset that the workmen, respondents could not be regularised as they had given alleged forged School Transfer Certificates and the question of Section 25-F of the Industrial Disputes Act does not arise for consideration since they were not regularised on account of the alleged misconduct. 8. Some other workmen had approached the Supreme Court. The Supreme Court in Chief General Manager, Reserve Bank of India v. General Secretary, Reserve Bank Workers' Organisation , 2001-II-LLJ-487 (SC) at paragraph 4 held as follows: "4. This Court in somewhat identical matter, though not arising out of a reference made to the Industrial Tribunal considered the very question referred to the Tribunal with reference to certain mazdoors who had been appointed on daily wages since 1984. After examining various aspects of the matter including the effect of the settlement dated July 23, 1993 held that it would not be appropriate to adopt different standards in different sectors in the country and the workmen of the appellant will have to be treated as having been regularised with effect from May 31, 1994 from which date they have been regularised as per the settlement dated July 23, 1993 and disposed off the case accordingly". 9. In fact Mr. Kasturi sought to distinguish the judgment rendered by the Supreme Court in Chief General Manager's case, supra, by submitting that the respondents-workmen are on a different footing since they faced serious allegation of misconduct. 10. Mr. Phadke, the learned Counsel for the respondents-workmen submitted that

the workmen after they were acquitted by the Criminal Court gave a number of representations for reinstatement and that the management promised the workmen that they would be reinstated. Since they were honourably acquitted by the Criminal Court they were not reinstated. Consequently, they were forced to raise a dispute. He relied on the evidence of M.W. 3. M.W. 3 was the Bank Officer in the department of financial companies. He has stated in the cross-examination as follows.—“The workmen have given a number of representations to the management praying for reinstatement. I verified the subsequent T.Cs at the instruction of the manager. The office has written a letter to the Central Office recommending that these workmen should be reinstated. I am not aware whether manager is the appointing authority for Class IV. Re-examination.—The office wrote for reinstatement on compassionate grounds”. From the evidence of the Management it is clear that the Bank intended to reinstate the workmen.

11. The submission of Mr. Kasturi, learned Senior Counsel for the Bank has some force insofar as both the orders of the Tribunal and the learned Single Judge proceeded on the footing that the termination was contrary to Section 25-F of the Industrial Disputes Act. 12. On a perusal of the record the stand of the management was that the workmen were not regularised for the alleged misconduct. The stand of the Bank in our opinion will not in any way help the Bank. 13. If a workman was to be regularised and was not regularised only because of a serious allegation of misconduct, the workman cannot be denied the right of regularisation without a domestic enquiry. The reason for not regularising the workmen was because of serious allegations of misconduct. But for the alleged misconduct it is the stand of the Bank that the respondents would have been regularised. A stigma is attached to the conduct of the workmen since they were denied regularisation only on the ground of alleged serious misconduct. 14. The Supreme Court in *Kamal Kishore Lakshman v. The Management of Pan American World Airways Inc. and Ors.*, held as follows.—“6. Though new life was injected into the appellant’s case by the ratio of decision in the case of *Chandu Lal v. Management of Pan American World Airways Inc.*, at the hearing learned Counsel for the appellant focussed his attention to show that the foundation of the judgment of this Court in *Chandu Lal’s* appeal was based upon an untenable view. According to learned Counsel, termination of service for loss of confidence amounted to retrenchment and nothing more. 7. Having heard learned Counsel, we are inclined to reiterate the view taken in *Chandu Lal’s* case, *supra*, that the plea of loss of confidence in the employee indeed casts a stigma. As was pointed out in *Rable v. Green*, (1985)2 Q.B. 315 the employee is expected to promote the employer’s interests in connection with which he has been employed and a necessary implication which must be engrafted on such a contract is that the servant undertook to serve his master with good faith and fidelity. This view has been accepted by several High Courts in India and meets with our approval. In the absence of a statutory definition of the word ‘stigma’, we shall refer to its meaning as available in dictionaries. 8. According to Webster’s New World Dictionary it is something that detracts from the character or reputation of a person, a mark, sign, etc., indicating that something is not considered normal or standard. The Legal Thesaurus by Bur-

ton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's III New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another Dictionary 'stigma' is a matter for moral reproach. 9. Loss of confidence by the employer in the employee is a feature which certainly affects the character or reputation of the employee and, therefore, this Court correctly held in Chandu Lal's case, supra, that allegation of loss of confidence amounted to a stigma. The ratio in Jagdish Mitter v. Union of India, also supports this conclusion. 10. Retrenchment as defined in Section 2(oo) of the Industrial Disputes Act and as held by this Court in several cases means termination of service for any reason whatsoever otherwise than punishment inflicted by way of disciplinary action and the other exceptions indicated therein. In the present case though no formal domestic inquiry had been held, the employer took the stand in the adjudication that termination was grounded upon loss of confidence and substantiated that allegation by leading evidence. The legal position firmly established is that if there has been no appropriate domestic enquiry or no enquiry at all before disciplinary action is taken, it is open to the employer to ask for such opportunity in the course of adjudication. In the facts of the present case, the order of separation grounded upon loss of confidence has been justified before the Labour Court and the Labour Court has come to that conclusion upon assessment of the evidence". 15. In that view of the matter we have no doubt that the discontinuance of employment of the workmen is bad in law. 16. On the question of relief we are guided by the Supreme Court judgment in similar case in Chief General Manager's case, supra. Accordingly, the orders of the Tribunal and the learned Single Judge are modified to the extent that the workmen shall be reinstated in service with continuity of service and with back wages from 23-7-1993. 17. Time granted for implementation of the Court order is three months from the date of receipt of the order. This will not preclude the Bank from holding a domestic enquiry on the alleged misconduct, if they so wish. 18. Accordingly, these writ appeals are disposed off. No order as to costs.