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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1690/2011

% Judgment delivered on: 24<sup>th</sup> December, 2014

THOMAS COOK (INDIA) LIMITED ..... Petitioner  
Represented by: Mr. Alok Bhasin and Ms.  
Poonam Das, Advs.

versus

MOHIT JAIN & ANR. .... Respondents  
Represented by: Mr. Vikas Arora and  
Mr. Akshat Rehani, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J.**

1. Vide the present petition, the petitioner seeks quashing and setting the impugned award dated 15.02.2010, passed by the Labour Court in I.D. No.111/2000, whereby the learned Labour Court directed the petitioner to pay compensation in the form of lump sum amount of Rs. 3 lac (Rupees Three Lakhs) towards all the claims of the respondent/workman.

2. Mr. Alok Bhasin, learned counsel appearing on behalf of the petitioner submitted that the respondent was appointed as a trainee on

09.07.1997 for a fixed term of one year. Thereafter, he was appointed as an Executive, Foreign Exchange and was posted at Hotel Imperial Branch on 20.07.1998. Mr. K.C. Pathak, one of the tourist came to Hotel Imperial branch of the petitioner on 25.08.1998 with a demand draft of Rs.1,22,500/-(Rupees One Lakh, Twenty Two Thousand and Five Hundred) to purchase US Dollars. As per procedure, demand draft was first presented by Mr. Pathak at the “Formalities Window” where Mr. Vipul Agarwal was on duty, who completed the transaction manually. He applied the selling rate of US Dollars prevalent at that time so as to cover the amount of the demand draft and mentioned the US Dollars amount USD2838 equivalent to Rs.1,22,460/- @ Rs.43.15 on the A-2 Form, BTQ Form and Passport of Mr. K.C. Pathak. Having made the said entries, said Mr. Vipul Agarwal handed over the A-2 Form, BTQ Form and the Passport of Mr. K.C. Pathak to respondent no.1 for further processing. The respondent no.1 sold USD 2838 to Mr. Pathak and accordingly he deposited only a sum of Rs.1,17,777/- in respect of the said sale. The shortfall in the deposit made by the respondent no.1 was detected on 25.08.1998 evening itself. The respondent no.1, while admitting having deposited only Rs.1,17,777/- instead of Rs.1,22,460/- , has taken the stand that it was due to human error as he applied a wrong rate of Rs.41.50 instead of the actual selling rate of Rs.43.50 and thus sold US Dollars 2838 to Mr. Pathak for Rs.1,17,777/- instead of Rs.1,22,460/-.

3. Learned counsel further submitted that respondent no.1, in the evening of 25.08.1998, himself fed the details of the above transaction

in respect of Mr. K.C. Pathak in computer. Thus, respondent no.1 has miserably failed to justify his mistake and did not try to locate and contact the customer despite repeated advice by the Manager.

4. Learned counsel submitted that respondent no.1 in its letter dated 27.08.1998 submitted his explanation to the Manager of the petitioner that the same was accepted by the computer and mistake of rate could not be detected. The same was detected only when a person from Nehru Place office, feeding all the manual cases, noticed the under rate sale. Accordingly, he also cross-checked and found the rate of Rs.41.50 for sale to be the under rate. Accordingly, he made cash payment of Rs.4723/- from his pocket and asked the manager to consider it as a human error being in the interest of fast customer service. Learned counsel further submitted that he did not cross-check the amount and sold the Dollar at below rate. The theory of human error cannot be accepted for the reason he did not ask for quotation, moreover, he failed to contact the customer despite advice by the Manager.

5. Learned counsel submitted that Mrs. Vrinda Bhave (MW-1) even told respondent no.1 to go to airport and use the airport counter of the petitioner for establishing contact with the customer, however, the said respondent refused to take steps. The purported excuse of the respondent no.1 in his explanation dated 27.08.1998 that it was not possible to contact Mr. Pathak as his address or telephone number was not available with him; whereas copy of air ticket was on record and

respondent no.1 was fully aware that Mr. Pathak was to leave for Russia by a flight. He could very well go to the airport and at least made an endeavour to get back the alleged excess payment made to Mr. Pathak. However, respondent no.1 refused to do so and choose the convenient way of depositing the same with the petitioner and taking ground of inadvertent human error.

6. He also submitted that Ms. Vrinda Bhave, MW-1 in her affidavit stated that as per the normal practice and standing instructions if the amount to be returned is about Rs.400-500, it is reimbursed in cash; but if the amount is larger than Rs.400-500, the amount has to be reimbursed to the customer by way of cheque; and if the customer wants cash he is required to make application for payment of the balance amount in cash and the cashier on duty has to obtain approval of the manager concerned before making cash payment. In the present case, the respondent no.1 had taken approval of accepting the demand draft, however, not taken any approval for making payment in cash.

7. The learned Labour Court recorded in the impugned award that the following facts have been gathered from the cross-examination of Mrs. Vrinda Bhave (MW-1):-

“i) It comes out that the Management failed in its internal investigation to point out as to whether the claimant had tampered the US Dollar rates;

ii) that the claimant reimbursed the company from his

own pocket, as per the policy of the company;

iii) the rate file was not in possession of the claimant;

iv) she did not hear any voice recording done by the claimant.”

8. Accordingly, the learned Tribunal opined that the petitioner has failed in its internal enquiry to point out towards the respondent no.1 claimant and failed to prove that he had tampered the rate of US Dollar on the date of the incident. However, recorded that the workman was performing duties of a cashier dealing with foreign exchange, thus, his nature of job was to be highly vigilant. The fact that respondent no.1 did not perform his duty vigilantly, certainly the management has to be at loss and such a workman cannot be given reinstatement, therefore, the learned Labour Court granted a lump sum amount of Rs.3 lac in his favour.

9. To strengthen his arguments, the learned counsel relied upon the judgment of the Supreme Court in the case of ***Kamal Kishore Lakshman vs. The Management of M/s Pan American World Airways Inc. And others***, AIR 1987 SC 229 wherein the Apex Court has held as under:-

*“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.*

*11. Several decisions were relied upon by appellant's learned Counsel in support of his contention that the conclusion in Chandu Lal's case that loss of confidence amounted to stigma was wrong. We have not been shown a single case other than Chandu Lal's where this aspect has been directly considered. Whether termination is grounded upon stigma would not vary from case to case depending upon whether it involves a government servant or a workman. But the procedural safeguards appear to be different when termination is sought to be founded upon stigma. If disciplinary inquiry has not preceded the prejudicial order in the case of a Government servant the action would be bad while in the case of a workman the order could be justified even in the course of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no inquiry had been undertaken earlier.”*

10. Learned counsel further relied upon the judgment of the Supreme Court in the case of **Lalit Popli vs. Canara Bank and Others AIR 2003 SC (1796)** in which the Apex Court has held as under:-

“20. As noted above, the employee accepted that there was some lapse of his part but he pleaded lack of criminal intent. A bank employee deals with public money. The nature of his work demands vigilance with the inbuilt requirement to act carefully. Any carelessness invites action.”

11. On the other hand, Mr. Vikas Arora, learned counsel appearing on behalf of respondent no.1 has drawn the attention of this Court to the affidavit filed by Mrs. Vrinda Bhave (MW-1) in which she has stated that she had given approval with regard to the authenticity of the DD. Thus, she had approved the transaction. Respondent no.1 had no power to issue cheque and even he was not the signatory of the same. Moreover, as per the policy of the company if the cashier had paid excess cash by mistake to a customer, he was required to retrieve the excess cash from the customer or in case he was unable to do so he was required to make the deficiency from his own pocket. Admittedly, the respondent no.1 had reimbursed the company from his own pocket, thus, there is no loss occurred to the petitioner establishment.

12. Learned counsel further submitted that the rates on the computer were different from the actual rate, however, according to the rates available on the computer, he had paid the amount to Mr. Pathak. Moreover, it is established during enquiry that the respondent no.1 had not changed the rates as he was not authorized to deal with computer on this aspect. If under this mistake the respondent no.1 had paid the amount to Mr. Pathak which has been approved by Mrs. Vrinda Bhave (MW-1), then it was not the fault of respondent no.1, despite he had

paid the excess amount to the company on the very same day. Moreover, signature of the customer was on the receipt. Though the Manager of the company advised him to contact the customer through their branch at airport, however, first of all due to security reasons it was very difficult for the respondent no.1 to enter into the airport and he did not even have the contact number of the said passenger. Therefore, the advice of the petitioner company was not possible to execute, therefore, the respondent no.1 preferred not to go to airport to retrieve the excess amount from the passenger. The petitioner company also failed to establish that the rates were changed by the respondent no.1, eventuality, if inadvertently he had paid the excess amount which was thereafter reimbursed by the respondent no.1 to the petitioner company, in such a situation the respondent no.1 was not liable to be terminated from service. Despite, the learned Labour Court did not grant reinstatement to the respondent no.1 with full back wages and only awarded a compensation in the form of lump sum amount of Rs.3 lac towards his all claims which is unjust, unfair and disproportionate to the claims of the respondent no.1.

13. Upon hearing learned counsel for the parties, it emerged that the buying rate of US Dollar was Rs.41.50 and the selling rate was Rs.43.15. The respondent no.1 paid excess amount of Rs.4723/- which had been reimbursed to the petitioner company on the very same day. Undisputedly, the rates were changed in the computer at the time of the transaction in question and the respondent no.1 was not responsible for the same. Moreover, he was not in-charge of handling computer on

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this issue, therefore, if he had made excess payment inadvertently, he cannot be held liable for the same. Moreover, no loss was caused to the petitioner company. It is not the case of the petitioner that the respondent no.1 had been doing such deliberate mistakes in the past also. It was not possible to contact any international passenger at the airport due to security reasons and especially when the respondent no.1 did not have the contact number of the said passenger. Accordingly, he preferred to pay the difference amount from his pocket when the mistake was detected by another staff member. Moreover, the transaction has been approved by the Manager, therefore, no fault can lie upon the respondent no.1. Even as per policy of the petitioner management, if the cashier of the management pay excess amount by mistake to any customer, said cashier shall retrieve the same from the customer or in case he is unable to do so, then deficiency shall be paid by the employee, which has been done in this case.

14. As regards the issue raised by the petitioner that the respondent no.1 workman was on the executive post, thus, he does not come under the definition of workman under the Industrial Disputes Act. However, the fact remains that the respondent no.1 was designated as an executive but the dominant nature of the work was only of a cashier which is of a clerical nature. He was working under the supervisory control of the supervisor. Thus, the respondent no.1 by his designation cannot be considered to be an executive. Moreover, neither other staff was under his control nor he was having any supervisory power over them. He also neither had any power to sanction leave of the staff

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member nor any power to take disciplinary action against any of the staff member.

15. Accordingly, the petitioner has failed to prove any perversity with the impugned order passed by the learned Labour Court, therefore, I am not inclined to interfere with the same.

16. Accordingly, the present writ petition is dismissed with no order as to costs.

17. Pursuance to order dated 15.03.2011, the petitioner deposited an amount of Rs.3 lac with the Registrar General of this Court. Since the writ petition has been dismissed, the Registrar General is directed to release the said amount in favor of the respondent no.1. workman with upto date interest accrued thereon.

**SURESH KAIT, J**

**DECEMBER 24, 2014  
RS**