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

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**Date of Decision: 1<sup>st</sup> March, 2018**

+ W.P.(C) 6279/2011

LANCER'S CONVENT  
SENIOR SECONDARY SCHOOL ..... Petitioner  
Through: Mr. S.N. Gupta, Advocate

versus

JAI PRAKASH ..... Respondent  
Through: Mr. C.S. Parasher, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE J.R. MIDHA**

### **J U D G M E N T**

1. The petitioner has challenged the award dated 26<sup>th</sup> May, 2011 whereby the Labour Court has awarded reinstatement with full back wages to the respondent.
2. The petitioner is a recognized private un-aided senior secondary school in which the respondent was working as a driver for a school bus. The respondent remained absent from duty without leave from 15<sup>th</sup> February, 2007 to 26<sup>th</sup> February, 2007. On 27<sup>th</sup> February, 2007, the respondent reported for duty when he was asked by the school to submit the medical fitness certificate to drive the school bus.

3. On 28<sup>th</sup> February, 2007, the respondent submitted a letter dated 28<sup>th</sup> February, 2007 in which he disclosed that he was not ill from 15<sup>th</sup> February, 2007 to 26<sup>th</sup> February, 2007 but was facing trial of a case under Section 279/337 IPC registered in P.S. Model Town in which he was convicted and sent to jail. The respondent further disclosed that he filed a revision petition against the conviction order and was released on bail. The true translation of the respondent's letter in Hindi is reproduced hereunder: -

“To,

*The Principal,  
Lancer's Convent Senior Secondary School,  
Rohini, Delhi-110085*

*Sub: Reply of your notice Ref: No. L.C./2007 dt. 27.2.07*

*Sir,*

*That I have remained absent in school from 15.2.2007 to 26.2.07. The reason for this is that I was facing a trial under S.279/337 I.P.C. of P.S. Model Town, Delhi in which orders were passed against me and I was sent to jail. I want to clarify that I was not ill from 15.2.07 to 26.2.07.*

*I have filed a revision petition against the above order in which it was prayed that the above order be set aside and I have been released on bail. The next date in the revision petition is 01.03.2007.*

*Thanks*

*Dated 28.2.007*

*Your Employee*

*Sd/-*

*Jai Parkash (Driver)  
Lancer Convent School,  
Rohini, Delhi-110085”  
(Emphasis Supplied)*

4. Vide letter dated 19<sup>th</sup> March, 2007, the petitioner terminated the respondent's service w.e.f. 15<sup>th</sup> February, 2007 on the ground that the Supreme Court judgment and the Notification No.F17/3/98/Vol.II/1061-75

dated 23<sup>rd</sup> July, 1998 issued by the Directorate of Education, Government of NCT of Delhi prohibited the appointment of a driver challaned or charged with the offence of over-speeding, drunken-driving, driving dangerously, rash driving or riding on a public way causing hurt or grievous hurt by an act of endangering life or culpable homicide. The petitioner also stated that the respondent concealed the material fact of facing a criminal trial in respect of an accident dated 01<sup>st</sup> April, 1999. The letter dated 19<sup>th</sup> March, 2007 is reproduced hereunder: -

“Ref.No. LC/2007

Dated 19-03-2007

Shri Jai Parkash  
Son of Shri Duli Chand,  
Resident of 103, Village and P.O. : Nayabans,  
Alipur,  
DELHI

*While joining Lancer’s Convent Senior Secondary School you never disclosed that you were facing criminal trial in respect of accident caused by you on 01.04.1999 at 2:30 PM while driving school bus bearing No. DL 1P – 2420 and thereby concealing material fact because as per the judgment of the Hon’ble Supreme Court of India titled as Satinder Prasad Vs. Union of India and notification No. F 17/3/98/Vol. II/1061-75 dated 23.07.1998 issued by Government of Union Territory of Delhi, Directorate of Education School Branch Old Secretariat Delhi a driver who has been challaned or charged with the offence of over-speeding, drunken driving, driving dangerously rash driving or riding on a public way causing hurt or grievous hurt by an act of endangering life or other culpable homicide of the IPC cannot be appointed as a driver of any school bus. In addition to the above you have also remained in jail as a convict from 15.02.2007 to 26.02.2007 as mentioned by you in your letter written to this school.*

As such you cannot be permitted to continue with the service and drive the bus of the school children who are of tender age and mind.

*In view of the above said actual position, your services are no more required by the school management and you are terminated from 15.02.2007 when you were sent to jail as a convict.*

(JOGINDER SINGH)  
Secretary”

*(Emphasis Supplied)*

5. The respondent raised an industrial dispute alleging that he has been illegally terminated by the petitioner without holding an inquiry. The respondent alleged that he was working with the petitioner since 1996 at a monthly salary of Rs.7,667/- per month. The respondent further alleged that he had been acquitted by the Sessions Court in the criminal case registered against him.

6. The petitioner contested the respondent's claim on the ground that the Supreme Court judgment and the notification No.F17/3/98/Vol.II/1061-75 dated 23<sup>rd</sup> July, 1998 issued by the Directorate of Education, Government of NCT of Delhi prohibited the school from employing a driver who has been challaned or charged with the offence of over-speeding, drunken-driving, driving dangerously, rash driving or riding on a public way causing hurt or grievous hurt by an act of endangering life or culpable homicide. The petitioner denied the respondent's averment that the respondent was working with the petitioner since 1996. According to the petitioner, the respondent was appointed as a driver with effect from 5<sup>th</sup> November, 2001 vide appointment letter dated 30<sup>th</sup> October, 2001. The petitioner relied upon the appointment letter dated 30<sup>th</sup> October, 2001 Ex-WW1/M1, which records

that the respondent's employment would be subject to the directions issued by the Supreme Court/High Court, the standing orders/rules and regulations of the school. The petitioner alleged that the respondent was guilty of concealment of the material fact of the respondent facing a trial of a criminal case at the time of his appointment. The petitioner claimed the termination of respondent to be legal and valid.

7. The Labour Court held the termination of the respondent to be illegal on the short ground that the petitioner has neither issued any notice nor held any inquiry in the matter. Learned Labour Court held that the services of the respondent could not have been terminated without giving any notice and without holding an inquiry. Relevant portion of the impugned award is reproduced hereunder: -

“ISSUE NO. 3:

*7. The Management has claimed that while seeking appointment with the Management, the claimant had concealed the fact of his facing a trial u/s 279/337 IPC. It was a case pertaining to the year 1999 vide FIR No.230/99, P.S. Model Town, Delhi, and workman in his cross-examination denied that a case was pending against him when he joined the Management, claiming that he was working as a driver with the Management since 1996. In the written submissions, placed on record on behalf of the Management, it is argued that services of the workman were ordered to be dispensed with in view of the Guidelines for School Transport, as framed by the Directorate of Education vide Office Order No.F.17/3/98/Vol.II/1061-75 dated 23.7.1998 as contained in notification no. DE 23(47)/School Br/2004/66942-66988 dated 18.11.2005, pursuant to the law laid down by Hon'ble Supreme Court in the judgment entitled M.C. Mehta Vs. Union of India (1988) 1 S.C.C. 676, according to which no bus belonging to or hired by educational institution shall be driven by a driver who has been challaned/charged even once for the offence of over-*

*speeding, drunken driving dangerously or for the offences u/s 279/337/338 and 304A IPC. Even as per the case of the management, the claimant had joined the Management in year 2001, and notification which is being relied upon on behalf of the Management being EX.MW1/3 is dated 18.11.2005. Before dispensing with the services of the claimant on the basis of a notification dated 18.11.2005, it was just reasonable for the Management that it should have issued a notice to the claimant to clarify the position before dispensing with his services. Dispensing with the services of the claimant, in the circumstances, on the basis of notification dated 18.11.2005, and that too without giving any notice and without holding an enquiry in the matter, is both illegal and unjustified. Accordingly, it is held that services of the claimant have been terminated by the Management illegally as well as unjustifiably. This issue is decided in favour of the workman and against the Management.*

**ISSUE NO. 4-RELIEF:**

*The workman is entitled to be reinstated to his job and is also entitled to receive full back wages from the Management from the date of termination of his services, till the time he is reinstated to his job. The workman is entitled to full back wages and continuity of services. Award is made accordingly.”*  
(Emphasis Supplied)

8. Learned counsel for the petitioner urged at the time of the hearing that the termination of the respondent is legal and valid. It was submitted that the respondent was facing trial of a criminal case on the date of his appointment on 30<sup>th</sup> October, 2001 but he concealed the material fact of facing criminal trial which was disclosed for the first time on 28<sup>th</sup> February, 2007 and the petitioner lost the confidence in the respondent who cannot be entrusted to drive the school bus with 74 students. It was further submitted that the Supreme Court judgment and the notification No.F17/3/98/Vol.II/1061-75 dated 23<sup>rd</sup> July, 1998 issued by the Directorate of Education, Government of

NCT of Delhi prohibits the school from permitting any school bus to be driven by a driver challaned or charged with the offence of over-speeding, drunken-driving, driving dangerously, rash driving or riding on a public way causing hurt of grievous hurt by an act of endangering life or culpable homicide.

9. Learned counsel for the respondent urged at the time of the hearing that the termination of the respondent without holding an inquiry was illegal. Moreover, the respondent was acquitted by the Sessions Court. The respondent claimed reinstatement with full back wages.

10. Before considering the respective contentions of the parties, it is necessary to consider the judgments of the Supreme Court and the notification issued by Directorate of Education, Government of NCT of Delhi.

11. In *M.C. Mehta v. Union of India* (1997) 1 SCC 770, the Supreme Court issued the following directions on 20<sup>th</sup> November, 1997: -

*“1. After hearing learned counsel for the parties and learned amicus curiae, for reasons indicated separately, in exercise of the power of this Court under Article 32 read with Article 142 of the Constitution of India, we hereby give the following directions, namely:*

*A. The Police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act and generally with the control of the traffic shall ensure the following:*

- (a) .....*
- (b) .....*
- (c) .....*
- (d) .....*
- (e) .....*
- (f) .....*

*No bus belonging to or hired by an educational institution shall be driven by a driver who has*

*— less than ten years of experience;*

— been challaned more than twice for a minor traffic offence;  
— been charged for any offence relating to rash and negligent driving.

*All such drivers would be dressed in a distinctive uniform, and all such buses shall carry a suitable inscription to indicate that they are in the duty of an educational institution.”*

*(Emphasis supplied)*

12. In ***M.C. Mehta v. Union of India*** (1998) 1 SCC 676, the Supreme Court modified the directions dated 20<sup>th</sup> November, 1997 on 16<sup>th</sup> December, 1997. The relevant portion of modified directions are reproduced as under: -

*“(12) There are certain modifications called for in our earlier order dated 20-11-1997, which we direct as hereunder:*

*(i) .....*

*(ii) In para A(f), the sentence commencing “no bus” and ending with “educational institution” shall stand substituted with the following:*

*“No bus belonging to or hired by an educational institution shall be driven by a driver who has—*

*(a) less than five years of experience of driving heavy vehicles:*

*(b) been challaned more than twice in a year in respect of offences of jumping red lights, improper or obstructive parking, violating the stop line, violating the rule requiring driving within the bus lane, violating restricting the overtaking, allowing unauthorised person to drive;*

*(c) been challaned/charged even once for the offence of over-speeding, drunken-driving and driving dangerously or for the offences under Sections 279, 337, 338 and 304-A of the Indian Penal Code.*

*All such drivers would be dressed in a distinctive uniform and all such buses shall carry a suitable inscription to indicate that they are in the duty of an educational institution.”*

*(Emphasis Supplied)*

13. Vide office order No.DE23(47)/School Br./2004/66942-66988 dated 18<sup>th</sup> November, 2005 the Directorate of Education, School Branch of

Government of NCT of Delhi issued the following directions to all the schools:

*“4(iv). The driver should not have been challaned or charged with the offence of over speeding, drunken driving, driving dangerously rash driving or riding on a public way, causing hurt or grievous hurt by an act of endangering life or personal safety or other culpable homicide or the IPC.”*

14. The law with respect to termination of an employee on the ground of loss of confidence without an inquiry is well settled that the employee is not entitled to reinstatement. The reinstatement cannot be directed in a case of loss of confidence even if the employee is able to secure an acquittal or discharge. The relevant judgments in this regard are discussed hereunder.

15. In *M/s Francis Klein & Co. Pvt. Ltd. v. The Workmen* AIR 1971 SC 2414, the Supreme Court upheld the termination on the ground of loss of confidence of the employee. The Supreme Court further held that once the employee has lost confidence in its employer, it is idle to ask him to employ such a person in other job. The Supreme Court further held that the employee in whom confidence has been lost, cannot be entrusted to do any work for the employer.

16. In *Anil Kumar Chakaborty v. M/s Saraswatipur Tea Company Limited* AIR 1982 SC 1062, the Supreme Court held the compensation to be an adequate relief in case of loss of confidence in an employee on the part of the management.

17. In *Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P) Ltd.* AIR 1990 SC 1054, the Supreme Court held employees terminated

on the ground of loss of confidence are not entitled to reinstatement but only compensation.

18. In **A.K. Dass v. National Fed. of Coop. Sugar Factories Ltd.** 1994 SCC Supl. (2) 520, the staff car driver of the management was dismissed on the allegation of pilfering petrol and not handling the car efficiently. The Supreme Court upheld the termination but enhanced compensation in lieu of reinstatement from Rs.25,000/- to Rs.40,000/-. Relevant portion of the said judgment is as under: -

“.....it is well settled that if it is a case of loss of confidence the discretion is vested in the Court to refuse reinstatement. This is based on the doctrine of confidence. We agree with the Labour Court that since the appellant was a staff-car driver even if his termination is quashed on the ground that allegations are not established, that would be a factor which would weigh with the court since the officer occupying the staff- car would not have confidence in the person if he is placed in charge of that vehicle. Therefore, we are not inclined to agree with the learned counsel for the appellant that this was not a fit case for the Labour Court to refuse reinstatement on the ground of loss of confidence.”

19. In **Sudhir Vishnu Panwalkar v. Bank of India** (1997) 6 SCC 271, the termination of a bank officer on the ground of loss of confidence due to his involvement in a criminal case under Sections 409 and 109 IPC was held to be valid.

20. In **Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy**, AIR 2005 SC 2769, the employer lost confidence in the employee who removed the security documents and was terminated without an inquiry. The Supreme Court upheld the termination on the ground of loss of confidence.

21. In *Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal*, (2012) 1 SCC 442, the Supreme Court held that reinstatement cannot be directed in case of loss of confidence even if the employee is able to secure acquittal or discharge.

22. In *Sindhu Education Society v. Kacharu Jairam Khobragade* (1995) ILLJ 451 Bom, the school terminated the watchman without an inquiry on the ground of loss of confidence as the watchman was indulging in nefarious activities in the school. The termination without an inquiry was upheld by the Bombay High Court.

23. In *Sanjiv Kumar Mahapatra v. A.L. Alaspurkar* 2003 (1) ALLMR 534, the employer terminated the services of the driver who threatened the Director's wife. The Division Bench of Bombay High Court upheld the termination on the ground of loss of confidence without an inquiry. The Division Bench held that in such cases, the employer was not bound to hold any inquiry to visit the employee with penal action even if such reason happens to be misconduct of the employee. The Division Bench has further observed that it is only the absence of such reason and not mere failure to hold inquiry that would render such discharge mala fide or an act in colourable exercise of power raising an inference of victimisation. In such matters, no risk of any nature can be taken and in my opinion, the respondents have rightly not taken any risk. Poison can never be tasted and the respondent company rightly did not want to taste the poison in the mind of the driver. It is not that the post of cashier or some such post alone is the post of confidence. A cashier might commit a fraud and might misappropriate money from the coffers of the company but he will not take away the life of the people. The post of driver is a post of more confidence

than the post of a cashier. The life of a passenger sitting in the vehicle is in the hands of the driver who is holding the wheel.

24. In *All India Institute of Medical Sciences vs. O.P. Chauhan*, 2007 LLR 435 (Del HC), the termination of a Lab Assistant involved in theft of chemicals/equipments from the laboratory without any inquiry was upheld by this Court.

25. In *National Institute of Mental Health & Neuro Sciences v. Sri G. Suggappa*, W.P. No.66/2013 dated 19<sup>th</sup> December, 2013 passed by Karnataka High Court, the driver was accused of an offence under Section 302/201 read with Section 34 IPC in which he was acquitted after trial. However, the driver was held guilty of the charges in the disciplinary proceedings and was terminated from service. The Labour Court directed reinstatement with back wages. The Karnataka High Court held that there cannot be no reinstatement in cases of loss of confidence and compensation can be awarded. Following *A.K. Dass v. National Federation of Co-operative Sugar Factories Limited* (Supra), *Bharat Fritz Werner (P) Limited v. Workmen of Bharat Fritz Werner (P) Limited*, *O.P. Bhandari v. Indian Tourism Development Corporation Limited* 1993 Supp (4) SCC 468 and *N. Puttaswamy v. Hindustan Machine Tools Limited*, ILR 1998 KAR 3253, the Karnataka High Court awarded compensation to the driver in lieu of reinstatement.

26. In *Torrent Power Ltd. v. Chelabhai Nathabhai Luhar* Manu/GJ/0871/2017, the Gujarat High Court examined the relevant case law on the termination on the ground of loss of confidence and summarized the legal principles which are reproduced heruender: -

*“10. The principle of law which emerges from the above cited judicial pronouncements can be summarized thus:*

*10.1. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of discharge must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in such a case of loss of confidence, reinstatement cannot be directed.*

*10.2. The test to find out as to whether there was bona fide loss of confidence in the employee is thus:*

- (i) Whether the workman is holding the position of trust and confidence;*
- (ii) by abusing such position, he commits act which results in forfeiting the same; and*
- (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment.*

*10.3. Loss of confidence cannot be subjective but must rest on objective tangible facts leading to a definite apprehension in the mind of the management, regarding trustworthiness or reliability of the employee. An employer who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion of the employer should not be a mere whim or fancy. It should be bona fide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly with due care and prudence.*

*10.4. Expressing dissatisfaction with the overall result of the performance of duties by employee does not necessarily imply misconduct on the part of the employee and thus it would be permissible to dispense with the service of the employee in private employment subject to the terms and conditions by expressing the dissatisfaction with the performance of the private employee. The opinion formed by the employer about the*

*suitability of his employee, for the job assigned to him even though erroneous, if bona fide, is final and not subject to review by the industrial adjudication.*

*10.5. Thus, if the facts constituting misconduct resulting in loss of confidence form the record of the employer, the employer in its discretion may invoke the power to discharge simpliciter for loss of confidence while dispensing with inquiry into the conduct of the workman.”*

The Gujarat High Court applied the aforesaid principles to the facts of that case and recorded the following findings:

*“11. Keeping in view the above principles if the facts of the case in relation to loss of confidence are appreciated, it would appear that in the instant case, the management did not hold the departmental inquiry into the conduct of the workman. It rather opted to invoke Standing Orders-21 to terminate the services of the workman simpliciter. In the impugned order of termination, though it was sounded that the workman had misused the position and power resulting into loss of confidence, the order was not founded on the misconduct, but it was indicated to him that it was not in the interest of the company or consumer to retain him in services of the company. It was felt that retaining the workman in the company would be against the interest of the organization as a whole in the light of the post he was holding which demanded confidence of the management. With that the workman was relieved and offered a cheque in the sum of Rs.7600/- on account of one month's notice salary and he was also informed that final settlement will be made in due course.*

*11.1. In the light of settled legal position above referred, mere statement in the order of termination pointing out to the workman the facts leading to the loss of confidence i.e. misuse of the position and trust by him would not constitute an order which very clearly sounds to be an order simpliciter, as the order founded on misconduct. The departmental inquiry in such a case was not necessary. The courts below seem to have been swayed away by misconception of law that on mere allegation of facts which may constitute misconduct; departmental inquiry was necessitated and*

that without departmental inquiry, the order of termination simpliciter on loss of confidence was not a valid order.

11.2. The courts below seem to have failed to notice the authority of the management envisaged in clause-21 of the Standing Orders to effect termination simpliciter. Once the material justifying loss of confidence was available on the file of the employer its bona fide for losing of confidence could not have been doubted and if the employer had more than one procedure under the Standing Orders to resort to for dealing with such employee, there was no justification for the courts below to confine the authority of the employer to holding of the inquiry. Both the judicial authorities below failed to notice that the material justifying the loss of confidence was available with the employer and that it was permissible for him to resort to one of the two fold powers to deal with the employee in such a situation i.e. (i) by terminating him simpliciter and (ii) by proceeding against him in a departmental inquiry to punish him.

11.3. The material in the form of the complaint of the consumer and his statement that illegal gratification was asked for by the workman, in the opinion of this Court was sufficient enough for the management to perceive the loss of confidence in the workman. No management would retain the association with the employee facing such serious complaint. If under such circumstances, it decides to terminate the services of the workman simpliciter, its action cannot be said to be vitiated. Still, however, the evidence justifying the misconduct of the employee leading to loss of confidence in the workman was adduced, without any reservation from any quarters. It may be noted that the finding of the appellate Court that no plea seeking permission to adduce the evidence to justify the loss of confidence was advanced in the written statement is a perverse finding; inasmuch as this Court finds such application seeking a permission in the written statement itself. As indicated above, the material in the nature of complaint against the workman demanding illegal gratification was available with the employer. Such availability was never questioned by the workman. Demand of illegal gratification by the workman to the prejudice of the employer's interest would, undoubtedly, lead to loss of confidence by the employer in the employee justifying dispensing with his

service. Furthermore, it was misconception of law to say that for the said purpose, a separate application ought to have been made by the management. While no such specific provision is pointed out by the learned Counsel for the workman, the procedure for giving an opportunity to justify the termination or any penalty imposed by employer on the workman, has emerged not from the specific provision under the labour laws, but by judicial pronouncements noted in paragraph 5.3 above.

11.4. It is clear from the above judicial pronouncements that it would be permissible for the employer to justify its action; punitive or otherwise by leading evidence for the first time before the Labour Court at any stage before the conclusion of the matter. None of the authorities require a separate written permission for the purpose. It will be thus sufficient for the employer to plead and urge for such permission. In the instant case, not only the employer pleaded and urged for such permission, but in fact, adduced evidence; documentary as well as oral, without any objection from any quarters and it is only at the final pronouncement that the Courts below held that in absence of separate application and in absence of the averments in the written statement, the evidence adduced was not worth consideration. In the opinion of this Court, such technical approach by the Courts below cannot be countenanced.

11.5. The Labour Court on perusal of the oral and documentary evidence adduced in support of the claim of loss of confidence by the employer, was convinced that the misconduct was established. It, however, discarded the evidence only on the grounds afore-stated and the appellate Court discarded it with the findings that the evidence adduced was not in accordance with the procedure laid under the Evidence Act. This approach was contrary to the settled law by judicial pronouncements noted in paragraph 5.2 above.

11.5.1. Thus, it is a settled legal position that the procedure laid down under the Evidence Act, may not strictly apply to the proceedings under the Labour Laws and it will be justified for the Court to draw inference on preponderance of probabilities on the facts brought to its notice and that exactly was done by the Labour Court. Pertinently, the workman did not even challenge the factual

*aspects narrated by witnesses in the oral testimony; nor did he question the documents adduced in evidence before the Labour Court. Thus, the factual story constituting the loss of confidence was not at all disputed by the workman.*”

*(Emphasis supplied)*

27. In the present case, the respondent was charged with the offence of rash and negligent driving and causing hurt under Sections 279/337 IPC in respect of an accident dated 01<sup>st</sup> April, 1999 for which he was convicted by the Metropolitan Magistrate vide judgment dated 08<sup>th</sup> February, 2007 and was sent to jail. Admittedly, the respondent did not inform the same to the petitioner till 28<sup>th</sup> February, 2007 when he was jailed after conviction. The position of the driver of the school bus is a position of trust and confidence as the driver of the bus has to drive the bus with students and the management cannot put the lives of its students in danger by permitting the driver charged with rash and negligent driving to drive the school bus. The petitioner was, thus, justified in losing the confidence in the respondent on the ground of concealment of material facts. The factual story constituting the loss of confidence was not at all disputed by the workman. Moreover, the petitioner has led the evidence before the Labour Court to place on record the evidence to justify the termination on the ground of loss of confidence.

28. The Supreme Court judgments as well as the notification of Directorate of Education prohibit the driving of a school bus by a driver who has been charged with the offence of rash and negligent driving and, therefore, the respondent is not competent to drive the school bus. The Supreme Court judgments as well as the notification of Directorate of Education do not empower the driver who has been acquitted, to drive the

vehicle. In that view of the matter, the subsequent acquittal of the respondent is of no consequence so far as the directions of the Supreme Court and Directorate of Education are concerned.

29. The respondent's contention that he was employed in 1996 would not help the respondent's case. Even assuming that the respondent was employed since 1996, he was duty bound to disclose his involvement in a case of rash and negligent driving in 1999 as the Supreme Court judgments as well as the notification of Directorate of Education prohibited him to drive the school bus anymore.

30. The termination of the respondent on the ground of loss of confidence without an inquiry is held to be justified in the facts and circumstances of this case. This Court is satisfied that the respondent is not entitled to the relief of reinstatement. The finding of the Claims Tribunal directing the reinstatement is contrary to the well settled principles of law discussed hereinabove.

31. The writ petition is allowed, the impugned award is hereby set aside and the respondent's claim is hereby dismissed. The petitioner paid a sum of Rs.6,82,152/- to the respondent towards the monthly wages under Section 17B of the Industrial Disputes Act in terms of the order dated 9<sup>th</sup> May, 2012. The wages paid under Section 17B be treated as compensation to the respondent. The petitioner has deposited Rs.4,14,018/- towards the back wages which has been released to the respondent on the undertaking to refund the said amount in the event of the petitioner succeeding in this writ petition. The respondent is directed to refund the back wages of

Rs.4,14,018/- to the petitioner within eight weeks from today failing which the respondent shall be liable to pay interest thereon @ 7.5% per annum.

**MARCH 1, 2018**  
rsk

**J.R. MIDHA**  
**(JUDGE)**

