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

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Date of Decision: 10th April, 2019

+ W.P.(C) 11160/2004 & CM APPLN. 32904/2017, 42326/2018

STATE BANK OF TRAVANCORE

..... Petitioner

Through: Mr.Buddy A. Ranganadhan and
Ms.Stuti, Advocates.

versus

PREM SINGH

..... Respondent

Through: Mr.R.K.Sharma, Advocate.
Mr.Raj Birbal, Senior Advocate with
Ms.Raavi Birbal, Advocate (Amicus
Curiae)

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGEMENT (ORAL)

1. The petitioner has challenged the award of the Industrial Tribunal whereby the Labour Court has awarded reinstatement with 50% back wages to the respondent.

2. The respondent was appointed as a peon with the petitioner bank on 17th January, 1985 and his service was confirmed on 31st July, 1985. The respondent made nine withdrawals totalling Rs.6,750/- from the savings bank account No.2160 of Ms. Rina Mandal between 26th April, 1990 and 05th August, 1991. The account holder filed a complaint to the bank that she had not made the aforesaid withdrawals from her account whereupon the bank manager questioned the respondent and other bank employees.

During the questioning, the respondent admitted having made unauthorized withdrawals and gave a confession letter to the Branch Manager. The respondent also admitted having destroyed the relevant documents. According to the bank, the conversation in the manager's room was recorded. The petitioner terminated the services of respondent on 26th October, 1993 whereupon the respondent raised an industrial dispute.

3. The respondent denied the charge of misappropriation. According to the respondent, the confession letter was obtained under threat and coercion. The Industrial Tribunal accepted the respondent's defence and directed the reinstatement of the respondent with 50% back wages.

4. Learned counsel for the petitioner submits that the termination of the respondent is legal and valid. It is submitted that the respondent was guilty of a criminal offence of cheating and criminal misappropriation and no case for reinstatement was made out. Without prejudice, it is submitted that this is a clear case of loss of confidence on account of the respondent indulging in criminal acts and the reinstatement cannot be granted in such cases. Reliance is placed on *M/s Francis Klein & Co. Pvt. Ltd. v. The Workmen* AIR 1971 SC 2414; *Anil Kumar Chakaborty v. M/s Saraswatipur Tea Company Limited* AIR 1982 SC 1062; *Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P) Ltd.* AIR 1990 SC 1054; *A.K. Dass v. National Fed. of Coop. Sugar Factories Ltd.* 1994 SCC Supl. (2) 520; *Sudhir Vishnu Panwalkar v. Bank of India* (1997) 6 SCC 271; *Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal*, (2012) 1 SCC 442; *State Bank of Bikaner v. Nemi Chand Nalwaya*, (2011) 4 SCC 584; *Sindhu Education Society v. Kacharu Jairam*

Khobragade (1995) ILLJ 451 Bom; ***Sanjiv Kumar Mahapatra v. A.L. Alaspurkar*** 2003 (1) ALLMR 534; ***All India Institute of Medical Sciences v. O.P. Chauhan***, 2007 LLR 435 (Del HC); ***National Institute of Mental Health v. Sri G. Suggappa***, W.P. No.66/2013 decided by Karnataka High Court on 19th December, 2013 and ***Torrent Power Ltd. v. Chelabhai Nathabhai Luhar***, MANU/GJ/0871/2017.

5. Mr. Raj Birbal, Senior Advocate and Ms. Raavi Birbal, Advocate assisting this Court as *amicus curiae* submit that reinstatement cannot be directed in a case of loss of confidence. Reliance is placed on ***O. P. Bhandari v. Indian Tourism Development Corp. Ltd.***, (1986) 4 SCC 337; ***Bharat Fritz Werner (P) Ltd.***, (*Supra*); ***K. C. Sharma v. Delhi Stock Exchange***, (2005) 4 SCC 337; ***Kailash Singh v. The Managing Committee, Mayo College, Ajmer*** MANU/SC/0926/2018; ***State Bank of India v. J.R. Sharma***, 2002 SCC OnLine Del 973; ***On-Dot Couriers and Cargo Ltd. v. Anand Singh Rawat***, 2009 SCC OnLine Del 3382; ***Lancer's Convent Senior Secondary School v. Jai Prakash***, SCC OnLine Del 7763; ***Johnson And Johnson Ltd. v. Gajendra Singh Rawat***, (2016) 233 DLT 388, ***M.G. Vittal Rao***, (*Supra*); ***Air India Corporation v. V.A. Rebellow***, AIR 1972 SC 1343, ***Chandu Lal v. Management of M/s Pan American World Airways Inc.*** (1985) 2 SCC 727 and ***Abheyraj Jaswal v. Godrej Boyce Manufacturing***, (2011) SCC OnLine Del 3301.

6. Learned counsel for the respondent submits that the reinstatement of the respondent by the learned Industrial Tribunal is valid. After some hearing, learned counsel for the respondent, on instructions from the respondent, agrees to the payment of reasonable compensation in lieu of the

reinstatement.

7. In *M/s Francis Klein & Co. Pvt. Ltd. v. The Workmen*, AIR 1971 SC 2414, the Supreme Court held that when an employer loses confidence in his employee particularly in respect of a person who was discharging an office of trust and confidence, there can be no justification for directing his reinstatement. The Supreme Court held the post of *Durwan* for guarding valuable property in an industrial concern, to be a post of confidence. When one of colleagues of the employee called the employee to assist him in apprehending a thief, the refusal to do so by the employee was sufficient to justify the loss of confidence by the employer. It is idle to ask the employer to employ such a person in another job.

8. In *Air India Corporation v. V.A. Rebellow*, AIR 1972 SC 1343, the appellant lost confidence in the complainant due to a grave suspicion regarding the complainant's private conduct and behavior with air-hostesses employed by the appellant. The Supreme Court held that if the management was not fully satisfied beyond suspicion about his general conduct and behavior while dealing with them, it cannot be said that loss of confidence was not *bonafide*. Once the *bonafide* loss of confidence is affirmed, the order of termination must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, if *bonafide*, is final and not subject to review by the industrial adjudication. Such opinion may legitimately induce the employer to terminate the employee's service; but such termination can on no rational grounds be considered to be for misconduct and must be held to be permissible and immune from challenge.

9. 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 cases of loss of confidence. The Court held the post of compounder in a tea company to be a post of trust and confidence as the respondent was responsible for handing out free of cost medicines to workers of the tea estate. The respondent abused his position of trust and was involved in trafficking of drugs and medicines and thus, caused detriment to the health and well-being of the workers.

10. In *Chandu Lal v. Management of M/s Pan American World Airways Inc.*, (1985) 2 SCC 727, the workman, involved in smuggling, was terminated on the ground of loss of confidence. The management pleaded that the entire basis of its business operations was based on confidence with the custom authorities. Without examining the tenability of the stand on loss of confidence as a defense to reinstatement and accepting the allegations advanced that there has been loss of confidence, the Supreme Court observed that reinstatement cannot be granted even if the termination was bad. The workman was awarded Rs. 2 lakh by the way of back wages as also in lieu of relief of reinstatement.

11. In *O. P. Bhandari v. Indian Tourism Development Corp. Ltd.*, (1986) 4 SCC 337, the relations between the respondent Corporation and the appellant (Manager of a hotel run by the Corporation) were strained beyond the point of no return. The trade union lodged a strong protest and even held out a threat of strike. The reinstatement was not found to be in the interest of both. The Supreme Court held that compensation equivalent to 3.33 years' salary (including allowances) on the basis of the last pay and

allowances would be a reasonable amount to award in lieu of reinstatement.

The Court took into consideration the fact that the corpus, if invested at the prevailing rate of interest (15%), will yield 50% of the annual salary and allowances and the workman would get 50% of what he would have earned by way of salary and allowances with four additional advantages:

- (i) He will be getting this amount without working.
- (ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50 % of the salary he would have earned.
- (iii) If he had been reinstated he would have earned the salary upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation, for his life time (if he lives longer), but even his heirs would get it in perpetuity after his demise.
- (iv) The corpus of lump sum compensation would remain intact, in any event.

12. In ***Workmen v. Bharat Fritz Werner (P) Ltd.*** (1990) 3 SCC 565, five workmen were terminated for threatening the President of Company with dire consequences, wrongfully confining him in his room and compelling him to withdraw the notice. The Supreme Court held employees terminated on the ground of loss of confidence were not entitled to reinstatement but only compensation as the reinstatement of these workmen was neither desirable nor expedient. Relying on ***O.P Bhandari*** (*Supra*), the Supreme Court awarded Rs.1 lakh compensation in lieu of reinstatement.

13. 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.”

(Emphasis Supplied)

14. In ***Punjab Dairy Development Corporation Ltd. v. Kala Singh***, (1997) 6 SCC 159, the employee was dismissed from service after holding a domestic inquiry on the charge that he inflated the quantum of milk supplies and fat contents. The Supreme Court upheld the dismissal on the ground that the management had lost the confidence that the employee would truthfully and carefully carry on his duties.

15. 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.

16. In ***Kanhaiyalal Agrawal v. Factory Manager, Gwalior Sugar Co. Ltd.***, AIR 2001 SC 3645, the Supreme Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, namely, (i) 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. Loss of confidence cannot be subjective based upon the mind of the management. The loss of confidence can be based on objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee.

17. In ***Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane***, (2005) 3 SCC 254, the conductor of a bus was terminated on the charge that he was found to be in possession of unaccounted money of Rs.93/- over and above the amount equivalent to the tickets issued by him. The Supreme Court held the loss of confidence to be a primary factor to be taken into consideration. The Supreme Court further held that when a person is guilty of misappropriating employer's funds, there is nothing wrong in the employer losing confidence in an employee. The relevant portion of the said judgment is reproduced hereunder:-

“12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.”

18. 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.

19. In ***T.N.C.S. Co. Ltd. v. K. Meerabai***, (2006) 2 SCC 255, the employee was terminated on the charge of misappropriation of the employer's funds. The Supreme Court upheld the termination. The Supreme Court held that the primary factor to be taken into consideration was the loss of confidence and not the amount of money misappropriated. The punishment of dismissal from service imposed by the employer cannot be interfered with by the Court on ground of sympathy or generosity. In view of the position of trust occupied by the delinquent, the Court further held that such matters have to be dealt with firmly and not leniently. Relevant portion of the said judgment is reproduced hereunder:-

“ 35. In the instant case, the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning and, therefore, in our opinion, the matter should be dealt with firmly with firm hands and not leniently. In the instance case, the respondent deals with public money and is engaged in financial transactions or acts in a fiduciary capacity and, therefore, highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in the background, the conclusion of the learned Single Judge as affirmed by the Division Bench of the High Court do not appear to be proper. We have no hesitation to set aside the same and restore the order passed by the disciplinary authorities upholding the order of dismissal.”

20. In ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya***, (2011) 4 SCC 584, a clerk employed in the Bank was charged with disclosure of secret information which led to a fraudulent withdrawal of Rs. 6000/-, thereby putting the Bank to loss. The Supreme Court upheld the finding of

guilt recorded by the disciplinary authority but modified the punishment from dismissal to compulsory retirement. Relevant portion of the said judgment is as under: -

“8. When a court is considering whether the punishment of “termination from service” imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from “dormant” to “operative” category (contrary to the instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be the account-holder was an impostor, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A bank is justified in contending that not only the employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.”

(Emphasis Supplied)

21. In ***Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal***, (2012) 1 SCC 442, the helper in Road Transport Corporation was charged with breaking in and opening the cash room in collusion with four other employees. The workman was dismissed after an enquiry. The Industrial Tribunal held the enquiry bad for insufficient evidence. The workman pleaded that he has been acquitted in the criminal case. 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 ***On-Dot Couriers & Cargo Ltd. v. Anand Singh Rawat***, (2009) 165 DLT 89, this Court held the employee to be entitled to reinstatement, where the termination is held to be illegal. However, certain exceptions to this rule have been recognized in various legal pronouncements. Reinstatement has not been considered desirable in cases where there have been strained relationships between employer and employee or there is lack of trust or loss of confidence. Reinstatement is also denied when an employee has been found to be guilty of subversive activities or acting prejudicial to the interest of the Industry. Courts have also denied reinstatement with back wages in cases where long time has lapsed or where the industry itself has become sick. Following ***O.P. Bhandari (Supra)*** and ***Bharat Fritz. Werner (P) Ltd. (Supra)***, this Court awarded Rs.2,16,000/- as compensation in lieu of reinstatement.

23. In ***All India Institute of Medical Sciences v. 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.

24. In ***Abheraj Jaswal v. M/s Godrej Boyce Manufacturing***, 2011 SCC OnLine Del 3301, the Division Bench of this Court upheld the termination of the workman who was charged with breach of trust by diverting the customers to a third party.

25. In ***Johnson and Johnson Ltd. v. Gajendra Singh Rawat***, (2016) 233 DLT 388, this Court upheld the termination of the workman for loss of

confidence for theft and stealing the privileged and confidential documents from the office and threatening the employer to circulate it to the outside agencies.

26. In ***Lancers Convent Senior Secondary v. Jai Prakash***, 2018 SCC OnLine Del 7763, this Court upheld the termination of the driver of the school for loss of confidence as the driver was guilty of concealment that he was facing trial of a criminal case under Sections 279/337 IPC at the time of his appointment. Following ***Francis Klein*** (*supra*), ***Anil Kumar Chakaborty*** (*supra*), ***Workmen of Bharat Fritz Werner (P) Ltd.*** (*supra*), ***A.K. Dass*** (*supra*), ***Sudhir Vishnu Panwalkar*** (*supra*), ***Bharat Heavy Electricals Ltd.*** (*supra*), ***M.G. Vittal*** (*supra*), ***Sindhu Education Society*** (*supra*), ***Sanjiv Kumar Mahapatra*** (*supra*), ***O.P. Chauhan*** (*supra*), ***Sri G. Suggappa*** (*infra*) and ***Chelabhai Nathabhai Luhar*** (*supra*), this Court held that the reinstatement cannot be directed in a case of loss of confidence even if the employee is able to secure an acquittal or discharge.

27. In ***Sindhu Education Society v. Kacharu Jairam Khobragade*** (1995) ILLJ 451 Bom, the watchman of the school was terminated for indulging in nefarious activities. The Supreme Court upheld the termination of the watchman without an enquiry on the ground of loss of confidence.

28. 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 victimization. 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.

29. In ***National Institute of Mental Health & Neuro Sciences v. Sri G. Suggappa***, W.P. No.66/2013 decided by Karnataka High Court on 19th December, 2013, the driver was charged with an offence under Section 302/201 read with Section 34 IPC but 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 reinstatement in cases of loss of confidence and only compensation can be awarded. Following ***A.K. Dass (supra)***, ***Workmen Bharat Fritz Werner (P) Limited (supra)***, ***O.P. Bhandari (supra)***, and ***N. Puttaswamy v. Hindustan Machine Tools Limited***, ILR 1998 KAR 3253, the Karnataka High Court awarded compensation in lieu of reinstatement to

the driver.

30. In ***Torrent Power Ltd. v. Chelabhai Nathabhai Luhar*** 2018 SCC OnLine Guj 3580, the Gujarat High Court examined the relevant case law on termination for loss of confidence and summarized the legal principles which are reproduced hereunder: -

“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.

(Emphasis Supplied)

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 report 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, it's 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)

Summary of Principles

31. When an employee acts in a manner by which the management loses confidence in him, his reinstatement cannot be ordered because it would neither be desirable nor expedient to continue the employee in service. It may also be detrimental to the discipline or security of the establishment. In case of loss of confidence, only compensation can be awarded.

32. The plea of ‘*loss of confidence*’ by the employer has to be *bonafide*. Loss of confidence cannot be subjective. It has to rest on some objective facts, which would induce a reasonable apprehension in the mind of the management regarding the trustworthiness of the employee and the power has to be exercised by the employer objectively in good faith, which means honestly with due care and prudence. Otherwise, a valuable right of reinstatement to which an employee is ordinarily entitled to, on a finding that he is not guilty of any misconduct, will be irretrievably lost to the employee.

33. The *bonafide* opinion formed by the employer about the suitability of his employee for the job assigned to him, even though erroneous, is final and not subject to review by the industrial adjudication.

34. In case of misconduct resulting in loss of confidence, the employer is 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 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 departmental inquiry in such a case is not necessary.

35. The reinstatement of an employee terminated for loss of confidence cannot be ordered even if the inquiry held by the employer has been held to be bad.

36. The reinstatement of an employee terminated for loss of confidence for involvement in a criminal case cannot be directed even if the employee is able to secure a acquittal or discharge in the criminal case.

37. The reinstatement has not been considered desirable in cases where there have been strained relationship between employer and employee. The reinstatement is also denied when an employee has been found to be guilty of subversive or prejudicial activities. The Courts have also denied reinstatement in cases where long time has lapsed or where the industry itself has become sick.

Conclusion

38. Applying the principles laid down in the aforesaid judgments, this Court is satisfied that the respondent is not entitled to the relief of reinstatement as the petitioner lost confidence in the respondent on account of the unauthorized withdrawals made by him from the account of a customer. The decision of the petitioner was *bonafide* as sufficient material justifying loss of confidence was available with the petitioner. The reinstatement of the respondent along with back wages is, therefore, set aside. However, the respondent is entitled to fair compensation in lieu of reinstatement.

39. The petitioner has already paid approx. Rs.3,00,000/- to the respondent towards wages under Section 17B of the Industrial Disputes Act

in terms of orders of this Court. The aforesaid amount paid under Section 17B be treated as compensation to the respondent. The respondent is awarded further compensation of Rs.1,00,000/-.

40. The petitioner is directed to pay Rs.1,00,000/- to the respondent within four weeks. The payment be made by means of a demand draft in the name of respondent and the same be handed over to the respondent through his counsel. The petitioner is also directed to pay the outstanding dues, if any, to the respondent within a period of four weeks.

41. The writ petition is disposed of in above terms. Pending applications are disposed of.

42. This Court appreciates the assistance rendered by Mr. Raj Birbal, Senior Advocate and Ms. Raavi Birbal, Advocate as *amicus curiae*.

43. Considering the principles of law discussed in this judgment, copy of this judgment be sent to the District Judge (HQs) Central who shall send the same to all Industrial Tribunals/Labour Courts.

44. Copy of this judgment be also sent to the Delhi Judicial Academy.

45. Copy of this judgment be given *dasti* to counsel for the parties as well as learned *amicus curiae* under signatures of the Court Master.

J.R. MIDHA, J.

APRIL 10, 2019

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