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

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Date of Decision: 14th May, 2019

+ W.P.(C) 1353/2016

NANAK CHAND

..... Petitioner

Through: Mr. R.C. Khanna and Mr. Harry
Khanna, Advocates.

versus

M/S INDIAN PORTS ASSOCIATION

..... Respondent

Through: Mr. Anil Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The petitioner has challenged the award of the Labour Court whereby the Labour Court awarded compensation of Rs.4,00,000/- to the petitioner along with interest @ 9% per annum apart from litigation cost of Rs.30,000/-.
2. The petitioner joined the respondent as a sweeper on 01st April, 1981. On 14th August, 1993, Rs.6,500/- was stolen from room No.8 in which Dr.P.K.K. Marikar, Medical Officer, Co. P.T. was staying. The respondent charge-sheeted the petitioner and after enquiry, the management inflicted the punishment of compulsory retirement whereupon the petitioner raised an industrial dispute. The petitioner was compulsorily retired.
3. The Labour Court held that the workman was not entitled to reinstatement and was awarded compensation of Rs.4,00,000/- apart from

gratuity, provident fund and leave encashment.

4. Learned counsel for the petitioner submits that the inquiry was not conducted fairly; Dr.P.K.K. Marikar was not produced in the witness box and the punishment of compulsory retirement was not justified.

5. This Court is of the view that this is a clear case of loss of confidence by the respondent against the petitioner on account of the incident of theft of Rs.6,500/- from the room where the petitioner was on duty. The law with respect to the loss of confidence is well-settled that the reinstatement cannot be ordered when an employee acts in a manner by which the management loses confidence in him. In case of loss of confidence, only compensation can be awarded. Reliance be made to the recent judgment of this Court in *State Bank of Travancore v. Prem Singh*, 2019 SCC OnLine Del 8258 in which this Court, after considering *M/s Francis Klein & Co. Pvt. Ltd. v. The Workmen*, AIR 1971 SC 2414, *Air India Corporation v. V.A. Rebellow*, AIR 1972 SC 1343, *Anil Kumar Chakaborty v. M/s Saraswatipur Tea Company Limited*, AIR 1982 SC 1062, *Chandu Lal v. Management of M/s Pan American World Airways Inc.*, (1985) 2 SCC 727, *O. P. Bhandari v. Indian Tourism Development Corp. Ltd.*, (1986) 4 SCC 337, *Workmen v. Bharat Fritz Werner (P) Ltd.* (1990) 3 SCC 565, *A.K. Dass v. National Fed. of Coop. Sugar Factories Ltd.* 1994 SCC Supl. (2) 520, *Punjab Dairy Development Corporation Ltd. v. Kala Singh*, (1997) 6 SCC 159, *Sudhir Vishnu Panwalkar v. Bank of India*, (1997) 6 SCC 271, *Kanhaiyalal Agrawal v. Factory Manager, Gwalior Sugar Co. Ltd.*, AIR 2001 SC 3645, *Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane*, (2005) 3 SCC 254, *Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy*, AIR 2005 SC 2769, *T.N.C.S. Co. Ltd. v. K. Meerabai*, (2006) 2 SCC

255, *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584, *Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal*, (2012) 1 SCC 442, *On-Dot Couriers & Cargo Ltd. v. Anand Singh Rawat*, (2009) 165 DLT 89, *All India Institute of Medical Sciences v. O.P. Chauhan*, 2007 LLR 435 (Del HC), *Abheraj Jaswal v. M/s Godrej Boyce Manufacturing*, 2011 SCC OnLine Del 3301, *Johnson and Johnson Ltd. v. Gajendra Singh Rawat*, (2016) 233 DLT 388, *Lancers Convent Senior Secondary v. Jai Prakash*, 2018 SCC OnLine Del 7763, *Sindhu Education Society v. Kacharu Jairam Khobragade* (1995) ILLJ 451 Bom, *Sanjiv Kumar Mahapatra v. A.L. Alaspurkar*, 2003 (1) ALLMR 534, *National Institute of Mental Health & Neuro Sciences v. Sri G. Suggappa*, W.P. No.66/2013, *Torrent Power Ltd. v. Chelabhai Nathabhai Luhar* 2018 SCC OnLine Guj 3580, summarised the principles as under:-

“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.”*

(Emphasis Supplied)

6. At this stage, learned counsel for the petitioner submits that the petitioner has attained the age of superannuation and the compensation of Rs.4,00,000/- awarded to him be enhanced to Rs.5,00,000/-.

7. In the peculiar facts and circumstances of this case, the compensation of Rs.4,00,000/- awarded by the Labour Court is enhanced to Rs.5,00,000/-. However, the enhanced compensation amount of Rs.1,00,000/- shall not carry any interest. The compulsory retirement of the petitioner by the respondent is upheld. The writ petition is disposed of in the above terms.

8. Learned counsel for the respondent submits that on 04th September,

2015, the respondent offered Rs.5,45,972/- to the petitioner towards the compensation along with the interest and cost but the petitioner did not accept the same. The letter dated 04th September, 2015 is duly signed and acknowledged by the petitioner.

9. The respondent is directed to pay Rs.5,45,972/- offered to the petitioner on 04th September, 2015. For the period 01st September, 2015 up to the date of the payment, the respondent shall be liable to pay interest @ 7.5% per annum on Rs.4,00,000/-.

10. The payment in terms of this order (Rs.1,00,000/- + Rs.5,45,972/- + Interest on Rs.4,00,000/- from 01st September, 2015 upto date of payment @ 7.5% per annum) be made by the respondent to the petitioner within four weeks. The respondent shall send the payment to the petitioner by means of a cheque at the following address:-

*House No.280, Balmiki Mohalla,
Gaon Palla No.1, Amarnagar,
Faridabad, Haryana.*

11. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

भारतमेव जयते

J.R. MIDHA, J.

MAY 14, 2019

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