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

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Date of Decision: 03rd July, 2019

+ W.P.(C) 1519/2016 & CM APPLN. 6555/2016

CENTRAL WAREHOUSING CORPORATION Petitioner

Through: Mr. K.K. Tyagi and Mr. Iftekhar
Ahmed, Advocates.

versus

MADAN MOHAN

..... Respondent

Through: Mr. Pranav Chadha, Advocate.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The petitioner has challenged the award dated 04th August, 2015 of the Labour Court whereby the Court set aside the order dated 09th July, 1980 of compulsory retirement of the respondent and granted full back wages with all consequential benefits to the respondent till the age of superannuation.

2. The respondent was working as a *Daftary* with the petitioner and he was charged for serious misconduct vide charge sheet dated 28th November, 1975. As per the charge sheet, the respondent attempted to obtain fraudulent payment from the petitioner on the basis of a forged sanction order dated 02nd June, 1975 and he lacked integrity. The respondent remained absent from duty from 16th June, 1975 to 13th July, 1975 without any leave application/intimation to avoid police investigation in the matter. The

statement of imputation of charges against the respondent are reproduced hereunder:

“ A cheque for 27,745/- was issued by the Finance Division on 10.6.1975 in favour of Shri Chander Prakash, Printer against sanction order No. CWC/II-Stationery/74-75/Store dated 2nd June 1975. Subsequently, it transpired that the signatures on the I Bid sanction order were forged and an attempt was made to obtain fraudulent payment from the Corporation.

Enquiries have revealed that the said Shri Madan Mohan, Dafatry, (brother of Shri Chander Mohan alias Chander Prakash, Dafatry Printer) took unusual interest and rather chased the issue of cheque, in question. After his interrogation by the police on 14.06.1975, the said Shri Madan Mohan absconded/remained absent from duty from 16.06.1975 to 13.07.1975 without any leave application, with a view to cover up his connivance in this forged sanction order/cheque and evade from further police investigation in the matter. In brief, his role in the I Bid incident has not been above board.

He is, thus, charged with gross misconduct, connivance to defraud the Corporation and lacking in integrity.”

3. The petitioner conducted an inquiry against the respondent which resulted in the inquiry report dated 10th December, 1976 holding the charges leveled against the respondent as proved. The inquiry report was furnished to the respondent, who submitted his reply dated 11th July, 1977 challenging the validity of show cause notice dated 13th June, 1977. On considering the reply, the disciplinary authority remitted the matter to the inquiry officer on 30th May, 1977 and the inquiry officer recorded the evidence of the petitioner.

4. The inquiry officer submitted a fresh report holding the respondent guilty of charges of misconduct leveled against him. The disciplinary authority issued a show cause notice dated 01st February, 1980 to the

respondent purposing the penalty of removal from service to which the respondent submitted his reply dated 05th April, 1980. On considering the reply, the disciplinary authority imposed the punishment of compulsory retirement which was communicated to the respondent vide order dated 09th July, 1980.

5. The respondent preferred an appeal against the order of disciplinary authority dated 09th July, 1980 before the appellate authority which was considered by the Board of Directors of the petitioner and was rejected vide order/memorandum dated 18th March, 1981.

6. The respondent raised an Industrial Dispute against the order of compulsory retirement which was referred to the Labour Court on 26th December, 1985.

7. The petitioner contested the respondent's claim on the ground that the respondent committed fraud and lacked integrity; he got cheque issued for Rs.27,745/- in favour of his own brother, Chander Prakash *alias* Chander Mohan; the fraud came to the light when Manager of Dena Bank informed the petitioner and on inquiry, it was found that Chander Prakash *alias* Chander Mohan was real brother of the respondent.

8. The Labour Court, vide award dated 06th August, 2002, set aside the order of compulsorily retirement and granted reinstatement with all service benefits including back wages to the respondent.

9. The petitioner challenged the award dated 06th August, 2002 in W.P.(C) 8242/2002 which was decided on 19th December, 2013 by which this Court set aside the award and remanded back the matter to the Labour Court. After the remand, the petitioner lead the evidence to prove the misconduct against the respondent and thereafter, a fresh award was passed

by the Labour Court on 04th August, 2015 by which the Court set aside the award of compulsory retirement and granted full back wages with all consequential benefits to the respondent till the age of superannuation.

10. Learned counsel for the petitioner urged at the time of the hearing that there was sufficient evidence to prove the misconduct before the Labour Court. The respondent admitted Chander Mohan to be his real brother and he had taken active part in the release of payment on the basis of a forged sanction order. Without prejudice, it was further submitted that it was clear case of loss of confidence and, therefore, the full back wages along with consequential benefits were not at all warranted. It was further submitted that 29 years have lapsed from 09th July, 1980 and the order directing payment of full back wages was perverse.

11. Learned counsel for the respondent urged at the time of the hearing that the petitioner failed to prove the misconduct and therefore, the payment of full back wages along with consequential benefits was justified.

12. This Court is of the view that this is a clear case of loss of confidence by the petitioner against the respondent on account of the respondent's involvement in attempt to obtain fraudulent payment of Rs.27,745/- from the petitioner for his brother against a forged sanction order. The integrity of the respondent was doubted by the petitioner. The law with respect to the loss of confidence is well-settled that the reinstatement or full back wages 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 , summarized 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)

13. Applying the principles laid down in the aforesaid judgments, this Court is satisfied that the respondent is not entitled to the relief of full back wages with consequential benefits as the petitioner lost confidence in the respondent on account of the respondent's involvement in attempting to obtain fraudulent payment of Rs.27,745/- from the petitioner. The decision of the petitioner was *bonafide* as sufficient material justifying loss of confidence was available with the petitioner. The order of compulsory retirement is upheld and the award of full back wages with all consequential benefits to the respondent till the age of superannuation is set aside. However, the respondent is awarded compensation of Rs.2,00,000/- which amount he has already received in terms of orders dated 15th December, 2016 and 25th July, 2018. The amount paid by the petitioner to respondent towards wages under Section 17B of the Industrial Disputes Act shall also be treated as compensation to the respondent and shall not be recovered.

14. The remaining amount deposited by the petitioner in terms of orders dated 22nd February, 2016 and 10th May, 2016 be refunded back to the petitioner forthwith.

15. The writ petition is disposed of in above terms. Pending application is disposed of.

J.R. MIDHA, J.

JULY 03, 2019

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