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

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Date of Decision: 02nd August, 2019

+ W.P.(C) 3242/2017 & CM Appls. 14080/2017, 21952/2017

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mrs.Biji Rajesh and Mr.Gaurang
Kanth, Advocates

versus

JASWANT SINGH

..... Respondent

Through: Mr. Arun K. Yadav, Advocate with
respondent in person

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner has challenged the order dated 05th August, 2016 passed by the Labour Court whereby the Labour Court has granted reinstatement with back wages to the respondent.

2. The respondent was appointed as a *Safai Karamchari* on temporary basis with the petitioner in 1989 and he remained absent without information from 13th November, 2006. In 2008-2009, it came to the knowledge of the petitioner that there were ghost employees in the department whereupon a detailed investigation was carried out and it was found that there was no attendance record of 22,853 out of 1,27,094 employees. The petitioner introduced biometric attendance system to identify the ghost employees. The respondent did not mark any attendance on the biometric attendance system

and according to the petitioner, the respondent is a ghost employee.

3. Vide notice dated 02nd July, 2010, the petitioner again notified the respondent to register himself under the biometric attendance system within seven days. However, the respondent did not turn up for registration and, therefore, on 20th July, 2010, the petitioner terminated the service of the respondent. The respondent raised an industrial dispute on 19th March, 2013 after delay of almost three years.

4. The respondent alleged before the Labour Court that he suffered from schizophrenia from 13th November, 2006 for two years and he was fit to join the duty from 24th December, 2008, when he went to join the duty but was not allowed. With respect to the biometric attendance system, it was alleged that the machine was out of order and, therefore, he could not register himself.

5. The Labour Court held that no inquiry was conducted by the petitioner before terminating the respondent. The Labour Court further held that no evidence has been lead by the petitioner to rebut the case of the respondent with respect to his illness for two years. The Labour Court awarded reinstatement with back wages to the respondent.

6. Learned counsel for the petitioner urged at the time of hearing that impugned award is perverse. It is submitted that no inquiry was required to be conducted in such cases. Reliance is placed on *State Bank of Travancore v. Prem Singh*, 2019 SCC OnLine Del 8258. It is further submitted that the petitioner did not seek any leave for two years and did not prove the illness alleged by him and, therefore, there was no onus on the petitioner to rebut nothing.

7. At this stage, the respondent along with his counsel does not press for

reinstatement with back wages and submits that reasonable compensation be given to him in terms of the principles laid down in *State Bank of Travancore* (supra). The respondent seeks compensation of Rs.1,00,000/- in this matter.

8. This Court is of the view that this case is squarely covered by the principles laid down in *State Bank of Travancore* (supra) and no inquiry was required to be conducted by the petitioner to terminate the respondent in the facts of the case. 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. Reference be made to the recent judgment of this Court in *State Bank of Travancore* (supra) 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)

9. Applying the principles laid down in ***State Bank of Travancore*** (supra), the impugned award is set aside. The respondent is not entitled to reinstatement with back wages. However, in the peculiar facts of this case, compensation of Rs.75,000/- is awarded to the respondent. The petitioner is directed to pay the compensation amount to the respondent through counsel within four weeks. This case shall not be treated as precedent.

10. The respondent shall sign this judgment before leaving this Court.

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

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

J.R. MIDHA, J.

AUGUST 02, 2019
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