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

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Date of Decision: 17th July, 2019

+ W.P.(C) 8561/2014

GULAB SINGH

..... Petitioner

Through: Mr.Sheetesh Khanna, Advocate

versus

M/S PRESIDIUM SCHOOL & ANR

..... Respondents

Through: Mr.Sunil Kumar, Advocate for
respondent No.1.

Ms.Savita Malhotra, Ms.Suman
Malhotra, Advocates for respondent
No.2.

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 rejected the claim of the petitioner for reinstatement and back wages.
2. The petitioner was appointed with respondent No.2 who posted him at respondent No.1's school in January, 2007. On 30th September, 2010, the petitioner was involved in an incident of mobile snatching whereupon respondent No.1 told respondent No.2 to dispense with the services of the petitioner. Respondent No.2 terminated the services of the petitioner on 16th October, 2010. The petitioner raised an industrial dispute which was referred to the Labour Court.

3. The Labour Court held that there was no relationship of employer and employee between the petitioner and respondent No.1. The Labour Court further held that the petitioner wilfully abandoned the job with respondent No.1.

4. Learned counsel for the petitioner submits that the petitioner never abandoned the job and was illegally terminated by respondent No.2.

5. This Court is of the view that this is a case of loss of confidence by respondent No.2 on account of the incident of mobile snatching. 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*, 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. Learned counsel for the petitioner submits that the petitioner does not press for reinstatement in view of principles laid down in ***State Bank of Travancore v. Prem Singh*** (*supra*). The petitioner present in Court along with his counsel agrees to accept compensation of Rs.50,000/- in terms of principles laid down in ***State Bank of Travancore v. Prem Singh*** (*supra*).

7. Mr.Shrawan Gupta, Director of respondent No.2 agrees to pay Rs.50,000/- to the petitioner within a period of eight weeks from today.

8. Respondent No.2 is directed to pay Rs.50,000/- to the petitioner by transferring the said amount to his savings bank account No. 1539000100208667 with Punjab National Bank, Lawrence Road Branch, Delhi, IFSC Code: PUNB0153900 within eight weeks from today.
9. The writ petition is disposed of in the above terms.
10. This Court appreciates the assistance rendered by learned counsels for the parties in this matter.
11. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

JULY 17, 2019

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J.R. MIDHA, J.

