

\$~

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

%

Date of Decision: 10th July , 2019

+ W.P.(C) 13732/2018 & CM APPLN.16095/2019

CHANDA TIWARI

..... Petitioner

Through: Mr.Sudhir Sharma, Ms.Shobana,
Advocates

versus

DIRECTORATE OF SOCIAL WELFARE AND ANR....Respondents

Through: Mr.Sanjoy Ghose, ASC for GNCTD
with Mr.Rhishhabh Jetley, Ms.Urvi
Mohan, Advocates

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The petitioner has challenged the award dated 18th July, 2018 whereby the Labour Court rejected the petitioner's claim as stale.
2. The petitioner was engaged as a House Aunty with the Directorate of Social Welfare from 25th March, 1996 to 10th March, 1998 on an honorarium of Rs.1,000/- per month. On 10th March, 1998, six mentally challenged children escaped from the cottages No.1 and 2 of Home for Mentally Retarded Children at Avantika Complex, Rohini, Sector-I, Delhi-110085, out of which four children were in the custody of the petitioner. The Deputy Director conducted an enquiry and the services of the petitioner and other House Aunty were terminated on 10th March, 1998.
3. In 2010, the petitioner again applied for the post of House Aunty but she was not taken. The petitioner made representations dated 18th February,

2011, 25th February, 2011 and 14th March, 2011 for re-engagement but no action was taken. The petitioner thereafter approached Central Administrative Tribunal by filing O.A. No.1475/2011 which was disposed of vide order dated 21st April, 2011 by directing the respondent to dispose of the representation of the petitioner.

4. Vide order dated 28th June, 2011, the petitioner's representations were rejected whereupon she again approached the Central Administrative Tribunal by O.A. No.4406/2011 which was rejected by the Tribunal on 25th July, 2012. The learned Tribunal held that the petitioner was disengaged on account of dereliction of her duties and unsatisfactory performance and therefore, Selection Committee rightly decided not to recommend her case due to her past service record.

5. The petitioner filed writ petition bearing W.P.(C) No.132/2013 challenging the order dated on 25th July, 2012 of the Central Administrative Tribunal. The writ petition was dismissed vide order dated 09th January, 2013. The petitioner challenged the order dated 09th January, 2013 before the Supreme Court by SLP No.17746/2014 which was dismissed on 14th November, 2014 on the ground of delay as well as on merits.

6. In 2016, the petitioner raised an industrial dispute against her termination dated 10th March, 1998 after 18 years.

7. The learned Labour Court held that the management failed to prove her misconduct. However, the learned Labour Court rejected the petitioner's claim as stale as the petitioner agitated her claim against the termination order dated 10th March, 1998 for the first time in 2016, after delay of about 18 years.

8. Learned counsel for the petitioner urged at the time of the hearing that the petitioner pursued her remedies before the Central Administrative Tribunal on wrong legal advice till 2014 and her claim cannot be said to be stale. It was submitted that the petitioner should not be made to suffer due to the wrong legal advice given to her.

9. Mr. Sanjoy Ghose, learned Additional Standing Counsel urged at the time of the hearing that the petitioner never challenged her termination before Central Administrative Tribunal. It was submitted that the petitioner approached the Central Administrative Tribunal seeking re-engagement with the respondent and she contested the matter up to the Supreme Court seeking re-engagement. It was submitted that the petitioner never challenged her termination till the year 2016. Learned Additional Standing Counsel further urged that the finding of the Labour Court that the respondent has not proved the misconduct, is contrary to the well settled principles of law in *State Bank of Travancore v. Prem Singh*, 2019 SCC OnLine Del 8258. It was submitted that the respondent terminated the services of the petitioner for loss of confidence as four mentally challenged children escaped from her custody. It was submitted that no enquiry was required to be conducted in cases of loss of confidence as held by this Court in *State Bank of Travancore (supra)*. It was submitted that the finding of the Labour Court is contrary to the well settled law and liable to be set aside.

10. 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 four mentally challenged children escaping from the custody of the petitioner on 10th March, 1998. 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)

11. This case is squarely covered by the principles laid down by this Court in ***State Bank of Travancore*** (*supra*) and therefore, the petitioner was not required to prove the misconduct. The termination of the petitioner by the respondent is legal and valid. The contrary finding of this Labour Court is set aside.

12. There is no merit in the petitioner’s contention that the petitioner’s claim had not become stale. It is on record that the petitioner never challenged her termination before Central Administrative Tribunal. The petitioner approached the Central Administrative Tribunal for the re-engagement by the respondent and she continued to pursue it up to the Supreme Court till 2014. The petitioner raised the industrial dispute against her termination for the first time in 2016. There is no infirmity in the finding of the Labour Court that the petitioner’s claim was stale and therefore, the petitioner was not entitled to any relief.

13. There is no merit in the writ petition which is hereby dismissed. Pending application is disposed of.

J.R. MIDHA, J.

JULY 10, 2019/dk