



W.M.P.No.20552 of 2022

W.A.Nos.2290 and 2807 of 2012

T.RAJA, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

ORDER

[Order of this Court was delivered by T.RAJA, J.]

This matter is listed today under the caption “for being mentioned” at the instance of Mr.K.M.Ramesh, learned Counsel for the appellant in W.A.No.2290 of 2012.

2.Mr.K.M.Ramesh, learned Counsel for the Appellant in W.A.No.2290 of 2012 submitted that a typographical error had been occurred inadvertently in the last line in paragraph 23 of the judgment made in W.A.Nos.2290 and 2807 of 2012, dated 17.03.2022 stating that **“Accordingly, the management/appellant in W.A.No.2807 of 2012 has taken out a Demand Draft for Rs.10,00,000/- (Rupees Ten Lakhs), dated 09.03.2022 drawn on Deutche Bank, Chennai – 600 006, in the name of Mr.L.Baskaran/the appellant in W.A.No.2290 of 2012 and the same has been received by the workman on 14.03.2022.”**

3.He further stated that when the Respondent sent the Demand Draft by post after the order was passed, the appellant refused to



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receive the same. Therefore, that portion in the judgment needs correction.

4.Considering the submission of the learned Counsel for the appellant in W.A.No.2290 of 2012, since the Demand Draft for Rs.10,00,000/- (Rupees Ten Lakhs), dated 09.03.2022 drawn on Deutsche Bank, Chennai – 600 006, in the name of Mr.L.Baskaran/the appellant in W.A.No.2290 of 2012 has not been handed over or received by the workman on 14.03.2022, paragraph No.23 shall be substituted as follows:

“23.In view of the above, when the writ jurisdiction is only a summary proceedings and this Court cannot re-appreciate the evidence let in before the Labour Court, as an appellate Court, unless the findings are shown to be perverse, hence, we do not find any illegality in the order of the learned Single Judge upholding the award passed by the Labour Court denying the order of reinstatement. However, the learned Counsel for the management/appellant in W.A.No.2807 of 2012 submitted that even though they have challenged the award passed by the Labour Court granting compensation of Rs.3,50,000/-, considering the passage of time in the long pending dispute and considering the case of the appellant sympathetically, the management/appellant in W.A.No.2807 of 2012, on its own volition, is ready to offer a sum of Rs.10,00,000/- (Rupees Ten Lakhs) in



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order to give a quietus, in our considered opinion, is justified.”

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Registry is directed to substitute the paragraph No.23 as above and issue fresh order copy.

[T.R.,J.] [S.S.K.,J.]
30.08.2022

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**T.RAJA,J.
and
SATHI KUMAR SUKUMARA KURUP,J.**

srm

W.A.Nos.2290 and 2807 of 2012

30.08.2022



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W.M.P.No.20552 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2022

CORAM

The Hon'ble Mr. Justice T.RAJA
and
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

W.A.Nos.2290 and 2807 of 2012
and
M.P.No.1 of 2012

W.A.No.2290 of 2012

L.Baskaran .. Appellant

Vs

1.DHL Express (India) Pvt. Ltd.,
Represented by Service Centre Manager,
No.12-B, Industrial Estate, South Phase,
Guindy, Chennai – 600 032.

2.The Presiding Officer,
I Additional Labour Court,
High Court Compound,
Chennai – 600 104. .. Respondents

Appeal preferred under Clause 15 of Letters Patent against the
order dated 25.07.2012 made in W.P.No.6962 of 2008.

For Appellant	:	Mr.K.M.Ramesh
For Respondent 1	:	Mr.Anand Gopalan for M/s.T.S.Gopalan & Co.



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W.A.No.2807 of 2012

DHL Express (India) Pvt. Ltd.,
No.44/45, Pantheon Road,
Egmore, Chennai – 600 008,
Represented by Service Centre Manager

.. Appellant

Vs

1.The Presiding Officer,
I Additional Labour Court,
Chennai.

2.L.Bhaskaran

.. Respondents

Appeal preferred under Clause 15 of Letters Patent against the
order dated 25.07.2012 made in W.P.No.16742 of 2008.

For Appellant	: Mr.Anand Gopalan for M/s.T.S.Gopalan & Co.
For Respondent 2	: Mr.K.M.Ramesh

COMMON JUDGMENT

(Delivered by SATHI KUMAR SUKUMARA KURUP, J.)

In view of the fact that the issues involved in both the Writ Appeals are one and the same, both the Writ appeals are taken up together and a common order is passed.

2.W.A.No.2290 of 2012 has been filed against the dismissal of



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the Writ Petition No.6962 of 2007 filed by the workman seeking reinstatement and W.A.No.2807 of 2012 has been filed against the dismissal of the Writ Petition No.16742 of 2008 filed by the management seeking to set aside the award of compensation granted to the workman.

3.The brief facts, relevant for consideration of the Writ Appeals, are as follows:

3.1.The appellant/workman in W.A.No.2290 of 2012 was employed as Sorting Agent with the first respondent/Management. He joined the service on 21.02.1995. The services of the appellant were regularized on 13.04.1995 and he was placed under regular pay scale of Rs.975-90-1425-115-2000-EB-120-3200. The appellant was promoted from the post of Junior Assistant to Senior Assistant on 30.11.1998. The appellant was transferred to Hub and Gateway, an internal department which deals exclusively with the International cargo on 05.04.1999. On 23.10.2003, the management/appellant in W.A.No.2807 of 2012 passed orders discharging the appellant from service. The order of discharge was made on serious allegations of misconduct against the appellant. No opportunity was given to the appellant to refute the allegations made against him. No enquiry was



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conducted to prove the allegations. The appellant raised industrial dispute under Section 2-A of the Industrial Disputes Act, 1947 challenging the discharge from service in November, 2003. Upon failure of conciliation talks, the appellant filed claim statement before the Labour Court, Chennai on 29.01.2004. The First Additional Labour Court, Chennai, took up the dispute as I.D.No.55 of 2004. The appellant filed statement of claims and the management/appellant in W.A.No.2807 of 2012 filed its counter statement. The appellant also filed his rejoinder statement. On the side of the appellant, the appellant examined himself as W.W-1 and marked Ex.W-1 to Ex.W-9. The management/appellant in W.A.No.2807 of 2012 examined one Anirudh Sudhir Manjrekar as M.W-1 and marked Ex.M-1 to Ex.M-10. After conclusion of the enquiry, the learned First Additional Labour Court, Chennai, passed the award in I.D.No.55 of 2004 on 24.01.2008 holding the action of the management/appellant in W.A.No.2807 of 2012 in discharging the appellant from service as not justified. However, the First Additional Labour Court, instead of granting reinstatement in service with other benefits, granted only compensation of Rs.3,50,000/- (Rupees Three Lakhs and fifty thousand only), after accepting the contention of the management/appellant in W.A.No.2807 of 2012 that it had lost confidence in the appellant.



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3.2. Aggrieved by the award of the First Additional Labour Court, Chennai, in I.D.No.55 of 2004, the appellant filed Writ Petition in W.P.No.6962 of 2008 challenging the award insofar as denial of the relief of reinstatement in service with all other benefits. The management/appellant in W.A.No.2807 of 2012 filed Writ Petition in W.P.No.16742 of 2008 challenging the award of the First Additional Labour Court, Chennai, granting compensation on 25.07.2012. Both the Writ Petitions were taken up for consideration and the learned Single Judge dismissed both the Writ Petitions and confirmed the award passed by the Labour Court. Aggrieved by the order passed in W.P.No.6962 of 2008 denying reinstatement to the workman, the workman had filed Writ Appeal No.2290 of 2012 and aggrieved by the order passed in W.P.No.16742 of 2008 confirming the compensation granted to the workman, the management filed Writ Appeal No.2807 of 2012.

4. Mr.K.M.Ramesh, learned Counsel for the appellant/workman submitted that the learned Single Judge failed to consider that a mere suspicion however strong it may be, cannot take the place of proof as held by the Hon'ble Supreme Court in the decisions reported in **1964 (1) LLJ 38 (SC) [Union of Indian -vs- H.S.Goel]; 1978**



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(2) LLJ 84 (SC) [Nanda Kishore Prasad v. State of Bihar and Ors.] and in the decision of this Court reported in **1985 (1) LLJ 46**

[A.V.Krishnamurthy -vs- Government of Tamil Nadu and

others]. In this case, the management/appellant in W.A.No.2807 of

2012 did not issue any charge sheet to the appellant and the order of

discharge passed against the appellant making allegations against

him is a clear case of violation of the principles of natural justice.

Even before the second respondent Labour Court, the

management/appellant in W.A.No.2807 of 2012 did not seek

opportunity to prove the misconduct alleged against the appellant for

passing the order of discharge. In such circumstances, the learned

Single Judge ought to have held that the management/appellant in

W.A.No.2807 of 2012 failed to apply its mind in proper perspective

and the award denying the relief of reinstatement of the appellant is

illegal and unsustainable. The learned Single Judge failed to

appreciate that the management/appellant in W.A.No.2807 of 2012

had given a police complaint dated 25.10.2003, for which FIR was

registered for the offence under Sections 406 and 420 of IPC against

the appellant, for the very same allegations of missing of credit cards

and passport. After a detailed investigation, the police found out

that there were no materials against the appellant for implicating him

for the offence under Sections 406 and 420 of IPC and filed a final



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report referring the case as "Mistake of Fact". The learned Single Judge had erroneously, without considering the above circumstances pointed out that there were pilferages of credit cards sent through courier and at least in two transactions, the appellant alone was present during the operation. The learned Single Judge, instead of holding that both the management/appellant in W.A.No.2807 of 2012 and the second respondent Labour Court entertained suspicion against the appellant without any legal basis what-so-ever and the order of discharge passed against the appellant is arbitrary, invalid, inoperative and illegal, erred in accepting the contention of the management/appellant in W.A.No.2807 of 2012 that the appellant alone was present and that there was sufficient evidence to prove that he played a role in the alleged pilferages. Moreover, the learned Single Judge failed to note that if the appellant had any such role in the alleged pilferages, nothing prevented the management/appellant in W.A.No.2807 of 2012 from holding an enquiry to prove the said misconduct on the part of the appellant after giving due opportunity to the appellant to disprove the allegations. When the management/appellant in W.A.No.2807 of 2012 came out with a serious allegation against the appellant only in the order of discharge and no opportunity was given to the appellant at any point of time prior to his termination from service, the learned Single Judge failed



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to hold that the allegations made against the appellant by the management/appellant in W.A.No.2807 of 2012 had not been proved or established either prior to the order of discharge or before the second respondent Labour Court. In such circumstances, the denial of relief of reinstatement and other benefits to the appellant is illegal and unjustified. The learned Single Judge ought to have held that the second respondent Labour Court had abdicated its power and jurisdiction while denying the relief of reinstatement to the appellant. The learned Single Judge failed to consider that version of loss of confidence by the management/appellant in W.A.No.2807 of 2012 will not apply to a workman, as the workman is bound by the Model Standing Orders. Hence, the discharge of the appellant on the ground of loss of confidence is not proper and is unsustainable. The plea of loss of confidence taken by the first respondent before the second respondent Labour Court ought to have been rejected by it, as the said plea had not been substantiated through proper evidence. The learned Single Judge failed to note the scope of application of the theory of loss of confidence as has been held by the Hon'ble Supreme Court in very many judgements. No charge sheet was issued against the appellant and hence, loss of confidence was not made as a charge and no evidence was let in before the second respondent Labour Court regarding the loss of confidence. Therefore,



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in such circumstances, *ipse dixit* of the management/appellant in W.A.No.2807 of 2012 regarding loss of confidence ought not to have been accepted by the learned Single Judge. On this basis, he prayed for allowing the W.A.No.2290 of 2012 filed by the 'workman'.

5.Mr.Anand Gopalan, learned Counsel for the management/appellant in W.A.No.2807 of 2012 submitted that the learned Single Judge failed to note that when passports and credit cards were pilfered on 9 different days involving the workman/appellant in W.A.No.2290 of 2012 and few other workmen on two days i.e., on 13.06.2003 and 24.06.2003, this workman/appellant in W.A.No.2290 of 2012 alone was involved in the pilferage of four passports and activated ATM card, which was misused to the extent of Rs.1,44,703/-. Therefore, the learned Single Judge ought to have upheld the order of discharge dated 23.10.2003 issued to the workman. The learned Single Judge failed to note that the Labour Court after holding the discharge of the workman was on good faith, ought not to have granted compensation of Rs.3,50,000/- to the workman. The learned Single Judge while dismissing W.P.No.6962 of 2008 filed by the workman, ought to have allowed W.P.No.16742 of 2007 filed by the management and ought to have reversed the finding of the learned Labour Court granting compensation of

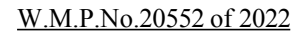


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Rs.3,50,000/- based on the alternative argument made on behalf of the workman before the Labour Court. Therefore, he prays this Court to set aside the order of dismissal passed in W.P.No.16742 of 2008 filed by the management.

6.On a query by the Bench to Mr.K.M.Ramesh, learned Counsel for the workman as to whether the workman/appellant is now in gainful employment, he submitted that the appellant had been fighting for his case right from the date of his discharge by filing petitions before the Labour Court and even after the award was passed by the Labour Court, since he was refused reinstatement, he had filed Writ Petition and the Writ Petition was also dismissed. Now, he is not employed, because of the same, he had not married also till date. He has been engaged in union activities as a social worker. Since the appellant has no regular income, he had avoided to contract a marriage. He has 10 more years of service left, if in case, he is reinstated.

7.In reply to the above submissions, the learned Counsel for the management/appellant in W.A.No.2807 of 2012 submitted that there is no question of reinstatement of the workman by the management/appellant in W.A.No.2807 of 2012. However,



9. For this, the learned Counsel for the management/appellant in W.A.No.2807 of 2012 submitted that as per the rulings of the Hon'ble Supreme Court, the compensation to be granted to the workman either discharged or dismissed by the management shall not exceed 50% of his regular pay. Applying the said principle, if the compensation is calculated, it may not go beyond Rs.8,00,000/-. Therefore, Rs.10,00,000/- is an acceptable amount from the point of view of the management/appellant in W.A.No.2807 of 2012 in the light of the decision of the Hon'ble Supreme Court. Since the learned



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Single Judge had dismissed the Writ Petition upholding the award of the Labour Court, the appeal filed by the workman lacks merits.

10.The learned Counsel for the management/appellant in W.A.No.2807 of 2012 also relied on the relevant portions of the award of the Labour Court and the order passed by the learned Single Judge and submitted that there is no illegality either in the award of the Labour Court or in the finding of the learned Single Judge dismissing the writ petition filed by the workman, as on the date when the missing of credit cards and passport from the office of the first respondent was found out, the appellant herein was on duty and there were no other persons. Therefore, based on the documents furnished by the management/appellant in W.A.No.2807 of 2012, the Labour Court had come to a clear conclusion that the discharge of the workman by the management is justified. That is why, for the loss of confidence by the management/appellant in W.A.No.2807 of 2012, the appellant was not ordered to be reinstated by the management/appellant in W.A.No.2807 of 2012. It is based on preponderance of evidence before the Labour Court. The Writ Court cannot re-appreciate the evidence, as the claim of the workman that no enquiry was conducted and no charge sheet was filed, was already considered by the Labour Court. The fact that the



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regularised on 13.04.1995 and he was promoted as Senior Assistant on 30.11.1998, he was transferred to Hub and Gateway, an internal department which deals exclusively with the international cargo on 05.04.1999. However, on 23.10.2003 the management/appellant in W.A.No.2807 of 2012 passed an order discharging him from service on the ground of misconduct without giving any opportunity to refute the allegations. When he raised an Industrial Dispute before the Labour Court challenging the order of discharge, although the Labour Court found that the discharge order passed against the appellant/workman was not justified, in spite of ordering for reinstatement of the workman, it has passed an award granting only compensation of Rs.3,50,000/- accepting the contention of the management that it has lost confidence on him. Further, when he questioned the award in the Writ Petition No.2290 of 2012, the learned Single Judge also confirmed the award ordering for compensation.

13.On perusal of the judgment of the learned First Additional Labour Court in I.D.No.55 of 2004 and the judgment of the learned Single Judge in W.P.No.6962 of 2008, we find that the Labour Court, on proper appreciation of evidence and materials available before it, had upheld the loss of confidence principle on the appellant. As



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rightly pointed out by the learned Counsel for the management/appellant in W.A.No.2807 of 2012, this Court cannot go into the appreciation of evidence of the Labour Court as an Appellate Court, as only limited compass is available under Article 226 of the Constitution of India.

14.Coming to the judgments relied upon by the learned counsel for the workman/appellant, firstly, the learned Counsel for the workman/appellant relied on a decision of the Kerala High Court in the case of ***P.B.Rochu -vs- Union of India and others*** reported in ***1984 (2) LLJ 203 (Kerala)***. Although the facts in the above case and the facts in the case on hand are similar, however, it has no bearing on this case, because in the reported decision, the appellant was serving as Constable in Central Reserve Police Force, Pallipuram near Trivandrum. Disciplinary proceedings were initiated against him on the basis of four charges. First charge was that he had either directly or indirectly caused the theft of 200 Kgs. of wood for the benefit of his family from the CPWD Contractor of CRPF Campus. Second charge was that, while serving as Constable, he disobeyed the orders of Commandant, GC, CRPF, Pallipuram, to vacate the family quarters allotted to him and refused to accept the copy of the order directing him to vacate the said family quarters. Third charge



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was that, while serving as Constable, he disobeyed the orders of Commandant, GC, CRPF. Pallipuram, to avail Casual leave to take his family home. Fourth charge was that, while serving as Constable, he made irrelevant and insubordinate statement in the copy of the suspension order issued to him.

15.The learned Single Judge of the Kerala High Court found out that as per the case of the Department, 200 Kgs of wood missing from the GC, CRPF Campus was stated to be teak wood. There is no documentary evidence regarding the same. One of the departmental witnesses, who was examined in the enquiry stated that 80 Kg of wood was recovered from the delinquent. Another witness for the department stated that it was 40 Kg. Therefore, there was wide discrepancy in the evidence of the department. Also, the learned Single Judge of the Kerala High Court observed that the difference in the evidence of the departmental witnesses regarding the recovery of the quantity of the wood is significant because no note or report was prepared by them and they did not weigh the wood at the time of the alleged recovery. In the absence of any contemporaneous record evidencing search and recovery, the learned Single Judge rejected the testimony of the departmental witnesses, who widely disagree as to the quantity recovered, to connect the petitioner or his family with



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the alleged recovery of the wood in question. Also, learned Single Judge found that the charge did not mention that the wood was teak and the witnesses have described the wood as logs in the shape of firewood, and insofar as the value collected from the petitioner is suggestive of the price payable for the same quantity of firewood, and far short of the price of teak, the alleged recovery of any wood from the petitioner's house alleged to be highly suspicious and improbable. Assuming that ordinary firewood was recovered from the petitioner's house, that fact without more would not connect him with the alleged theft, for that is ordinary household material which can be recovered from any house. It would be most unusual if some quantity of firewood for fuel was not stored in the petitioner's house. Recovery of such articles has no evidence to connect the petitioner with the theft mentioned in the charge. In fact, there was evidence that the petitioner had purchased firewood in April and May 1979. That evidence was totally ignored by the Enquiry Officer.

16.Also, the learned Single Judge observed that it was alleged that wood was recovered from several other houses of employees in different quantities and what was recovered was teak. Yet, admittedly, no action was taken against those employees. It would indeed be strange conduct on the part of the department, if what had



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been recovered from those houses were teak wood logs, and yet no action was taken pursuant to such recovery. Only at the time of the enquiry, the firewood loomed as teak wood. Yet those articles were not shown in the enquiry. It is, therefore, not possible to imagine what the Enquiry Officer would have thought of the recovered articles, had they been produced before him. Would he have found them to be teak wood in the shape of firewood or mere firewood? Therefore, the learned Single Judge of the Kerala High Court rejected the enquiry report based on the enquiry regarding the alleged theft made against the delinquent therein.

17.In the case before us, it is true that the enquiry was not conducted and based on presumption, the workman/appellant had been removed from service on the principle of "loss of confidence" by the management. At the same time, on the ground that the enquiry was not conducted, the workman had raised Industrial Dispute and approached the Labour Court. Whereas, the Labour Court conducted enquiry and based on appreciation of evidence, the learned Labour Court had refused to order reinstatement of the workman/appellant and instead, granted compensation for the termination of service. Therefore, the decision relied upon by the learned Counsel for the workman/appellant in the case of ***P.B.Rochu -vs- Union of India***



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(Kerala) reported in 1984 (2) LLJ 203 (Kerala) will not be applicable to the facts of this case.

18.He relied upon another decision of the Hon'ble Supreme Court of India in the case of **Management of Panitole Tea Estate -vs- The Workmen** reported in **1971 (1) LLJ 233 (SC)**. As per the facts of the above reported ruling, one H.P.Bhagavati was employed as Store Clerk in the depot of Panitole Tea Estate. Panitole Tea Estate had separate godown and one B.K.Borgohain, a part-time Clerk was in charge of that godown. Ammonia sulphate fertiliser was stored in that godown where 970 bags had been received between December 12, 1960 and January 5, 1961. Pursuant to receipt of an anonymous letter stating that there was pilferage of those bags, the stock was checked and 89 bags were found missing. In the domestic enquiry against Borgohain, a chit (Ex.12) was produced by him which suggested H.P.Bhagavati's collusion with Borgohain in this affair. Bhagavati was accordingly charge sheeted and after domestic enquiry, Bhagavati was dismissed with effect from March 23, 1961. The order of dismissal of Bhagavati gave rise to an industrial dispute which was referred to the Labour Court of Assam at Dibrugarh. The Labour Court by its award dated 30th October, 1969 held that the



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contents of Ex.12 were too vague to connect Bhagavati with the offence charged. According to the Labour Court, the management had procured this exhibit only to harass Bhagavati for no fault of him. The domestic enquiry was found to be violative of the principles of natural justice and its conclusions perverse, there being no evidence to support them. Therefore, Bhagavati was accordingly held entitled to reinstatement with all the back wages and benefits. The dismissal of Borgohain was not challenged by him and that order became final. In the case of the reported ruling, the Labour Court had found that the enquiry conducted by the Management of Panitole Tea Estate was not fair and had accordingly ordered reinstatement. But, in the facts of the case before us, the workman/appellant was found either colluding or remaining indifferent for the missing of 13 ATM cards and two passports which were received as parcels from the clients of the Management to be delivered to its clients. But, the missing ATM cards were activated subsequently. On those dates, the workman/appellant was in charge of the office of the Management in the place where he was serving and he was under watch of the security on mere suspicion. It was admitted that the management had not conducted any enquiry, but it has lost confidence in him. When his services were terminated, he has approached the Labour Court. After due enquiry and on appreciation of evidence let in by



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the management, the Labour Court had passed an award in favour of the workman, but not ordered reinstatement, instead, granted compensation of Rs.3,50,000/-. The Labour Court had conducted enquiry and on appreciation of evidence, accepted the termination of the workman/appellant by the management. In the case of the reported ruling, the Labour Court did not accept the findings of the Enquiry Officer of the Panitole Tea Estate. Not only that, the award of the Labour Court was agitated by way of Writ Petition by the workman. The learned Single Judge of this Court refused to accept the contentions of the workman and confirmed the findings of the Labour Court. Therefore, the same principle does not apply to the facts in this case and hence, the said ruling relied on by the learned Counsel for the workman/appellant is rejected.

19.In the case of ***L.Michael and another -vs- M/s.Johnson Pumps India Ltd.,*** reported in ***1975 (1) LLJ 262 (SC)*** wherein the workman L.Michael was terminated from service on the ground that he had formed employees union against the management. The alleged offence of the workman for the union activity was the reason for termination of his service. Also, it was alleged that the workman was betraying the sensitive secretes of business of the management to people outside. There also, the workman was terminated on the



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ground of loss of confidence. What was the reason for loss of confidence was not proved before the Labour Court on the ground of mere suspicion. In the facts of this case before this Court it is an accepted fact that enquiry was not conducted by the management and the workman had agitated the termination by the management before the Labour Court. In the enquiry before the Labour Court, the management was not able to prove the source for loss of confidence through material evidence. Once confidence is lost, it is hard for the management to order for reinstatement. Therefore, the Labour Court had granted alternative relief of compensation. Aggrieved by the same, the workman had agitated his right before the High Court by way of filing Writ Petition challenging the award of the Labour Court. The Learned Single Judge, on consideration of the materials, had dismissed the Writ Petition and confirmed the award of the Labour Court. The Writ Court cannot go into the appreciation of evidence as in Civil Court or Criminal Court. The only principle to be considered by the Writ Court is the principles of natural justice and fair enquiry. The learned Single Judge had rejected the contention of the workman regarding the award of the learned Labour Court in refusing to order reinstatement. Therefore, the award of the Labour Court had attained finality before the High Court. Therefore, the above ruling relied upon by the learned Counsel for the workman/appellant will



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not help the case of the workman/appellant.

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20.The learned Counsel for the workman also relied upon yet another decision of the Hon'ble Supreme Court in the case of **Chandulal -vs- Management of M/s.Pan American World Airways Inc.** reported in **1985 (2) LLJ 181 (SC)**. In the said case, the workman Chandulal was employed in Pan American World Airways Inc. at Delhi. It was alleged by the management that on 19th February 1974 two aluminium foot lockers with BKK (Bangkok) destination tag had been received at the Palam airport with its flight. It was the appellant who had got the tags changed by substituting the New Delhi tags and the two items had been delivered to one Lakshman by williams, an employee of the respondent. The management pleaded that the entire basis of its business operation was of confidence and once the customs authorities lost or doubted the same, operational hazards were apprehended as respondent's aircrafts as also pilots were liable to be detained by customs authorities now and then. Like all other employees of the respondent, the appellant was also required to behave in a manner keeping with maintenance of such confidence. The order of termination was communicated to the appellant stating that "Having regard to recent happenings, we regret that we have lost confidence in you and



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cannot retain you in service any more.” In that case also, there was no domestic enquiry. The matter was referred to Labour Court and the matter went upto the Hon'ble Supreme Court. The Hon'ble Supreme Court had only ordered compensation in lieu of reinstatement. Therefore, the above reported ruling of the Hon'ble Supreme Court, if applied to this case, the version of the management is to be accepted. Therefore, it does not help the case of the workman.

21.Learned Counsel for the Appellant relied on yet another decision of this Court in the case of **India Pistons Ltd -vs- C.Kumaraswamy and another** reported in **1998 (3) LLN 8781 (Mad. DB)**. In that case, the Writ Appeal was filed by India Pistons Ltd., against workman aggrieved by the order passed by the learned Single Judge of this Court in favour of the workman. In the facts of the reported decision in the case of India Pistons Ltd., the workman was alleged to have caused pilferage of diesel from the tank maintained by them. The relevant portion of the said order is extracted as under:

“Industrial Disputes Act, 1947, Schedule 2, Item 3 – Reinstatement in service – Petitioner, a store attender – Charged with shortage of receipt of light diesel oil and not checking both dip rod and loading point covered with lid – False fitting by contractor at the bottom of oil tank – Workman had been made scapegoat for illegal activities of the contractor in having a false bottom and an M-5 pipe (non-



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perforated) inserted in the perforated dip pipe – Award of Labour Court based on no evidence – No reasons to show as to how Management had lost confidence in worker – Management has alternative method of checking quantum of delivery by taking measurements in their own tank – No clinching evidence – Relief of restatement.”

22.In the above case, there was no evidence regarding the allegations against the workman. The management of India Pistons can themselves employ methods to check the diesel in the tank. While the contractor is alleged to have caused pilferage, the workman was terminated based on mere surmises and conjunctures. The said facts cannot be helpful to the case of the workman/appellant in W.A.No.2290 of 2012. In this case, before the Labour Court the management of DHL was able to prove the loss of confidence through evidence based on which the Labour Court had passed award granting compensation instead of reinstatement. The award of the Labour Court was challenged before this Court. The learned Single Judge has confirmed the findings of the Labour Court. In such circumstances, the reliance placed upon the judgment by the learned Counsel for the workman/appellant cannot be accepted as it is not applicable to the facts involved in this case.

23.In view of the above, when the writ jurisdiction is only a summary proceedings and this Court cannot re-appreciate the evidence let in before the Labour Court, as an appellate Court, unless



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the findings are shown to be perverse, hence, we do not find any illegality in the order of the learned Single Judge upholding the award passed by the Labour Court denying the order of reinstatement. However, the learned Counsel for the management/appellant in W.A.No.2807 of 2012 submitted that even though they have challenged the award passed by the Labour Court granting compensation of Rs.3,50,000/-, considering the passage of time in the long pending dispute and considering the case of the appellant sympathetically, the management/appellant in W.A.No.2807 of 2012, on its own volition, is ready to offer a sum of Rs.10,00,000/- (Rupees Ten Lakhs) in order to give a quietus, in our considered opinion, is justified. Accordingly, the management/appellant in W.A.No.2807 of 2012 has taken out a Demand Draft for Rs.10,00,000/- (Rupees Ten Lakhs), dated 09.03.2022 drawn on Deutsche Bank, Chennai – 600 006, in the name of Mr.L.Baskaran/the appellant in W.A.No.2290 of 2012 and the same has been received by the workman on 14.03.2022.

In the light of the above discussions, Writ Appeal No.2290 of 2012 filed by the workman is dismissed and Writ Appeal No.2807 of 2012 filed by Management is disposed of. No costs. Consequently, connected miscellaneous petition is closed.



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(T.R., J) (S.S.K., J)
17.03.2022

Index:Yes/No
srm

Note: Issue on 17.08.2022

To

The Service Centre Manager,
DHL Express (India) Pvt. Ltd.,
No.12-B, Industrial Estate, South Phase,
Guindy, Chennai – 600 032.



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T.RAJA, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

srm

W.A.Nos.2290 and 2807 of 2012

17.03.2022