



\$~1 & 2

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

+ W.P.(C) 8931/2022, CM APPL. 26847/2022
AIR INDIA LTD

..... Petitioner

Through: Dr. Lalit Bhasin, Sr. Adv. with Ms.
Nina Gupta, Ms. Ananya Marwah and
Mr. Ajay Pratap Singh, advocates

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Piyush Beriwal, Sr. Panel Counsel
with Mr. Rudra Paliwal and
Mr. Devvrat Yadav, Govt. Pleaders
and Ms. Divya Srivastava, Advocate
Mr. Inderjit Singh, Adv. for R-2

+ W.P.(C) 8948/2022
AIR INDIA LTD.

..... Petitioner

Through: Dr. Lalit Bhasin, Sr. Adv. with Ms.
Nina Gupta, Ms. Ananya Marwah and
Mr. Ajay Pratap Singh, advocates

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Rahul Sharma, CGSC with
Mr. C.K. Bhatt, Mr. Sparsh Chaudhary
and Mr. Ayush Bhatt, Advocates for
respondent No.1/Union of India.
Mr. Inderjit Singh, Adv. for R-2.

%

Date of Decision: 24th August, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present writ petitions have been filed seeking the following prayers:



“Issue a Writ of certiorari and or any other appropriate Writ or directions or order to set aside and quash the impugned orders dated 16.02.2022 passed by Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court - II, Dwarka Court, Delhi in D.I.D. No. 76 of 2014 and D.I.D. No.63 of 2014 and upheld the domestic enquiry proceedings”

2. Learned counsel for respondent no.2/workman has disputed as to the maintainability of the writ petitions. Learned counsel submits that the present writ petitions have been filed only to delay the trial and are thus liable to be rejected.
3. Dr. Lalit Bhasin, learned senior counsel appearing for the petitioners has submitted that in fact in the impugned order the learned labour court has overlooked the directions passed by this court in W.P.(C) 426/2019 and W.P.(C) 472/2019 titled as *Air India Ltd. vs. Sanjay Kaura* and *Air India Ltd. vs. FG Runda* vide order dated 03.07.2019. Learned senior counsel submits that in terms of this, learned Labour Court was firstly directed to examine the case of the parties afresh in terms of the principles laid down in ***State Bank of Travancore v. Prem Singh***, 2019 SCC OnLine Del 8258. Dr. Bhasin submits that instead of following the directions of this court, learned Labour Court has directed the petitioner to bring evidence to prove the enquiry which has been set aside by the learned Labour court on account of being in violation of principles of natural justice. It would be advantageous to refer to certain background facts in brief. The claimants herein were employees of AIR India Ltd. The charge-sheet of misconduct was served on them and a domestic enquiry was conducted in 2003. At the end of the enquiry, the appropriate disciplinary authority passed an



order of dismissal against the claimants with effect from 13.07.2012. and 22.01.2013. The departmental appeal filed against this order was dismissed by order dated 21.06.2013 and 31.07.2013.

4. The respondents/workmen raised an industrial dispute which was referred by the appropriate authority to the learned CGIT. In the CGIT, a preliminary issue was framed as to the fact that whether the enquiry was held in violation of the principles of natural justice. The tribunal vide order dated 10.08.2018, inter alia held that the domestic enquiry against the claimants was conducted in violation of principles of natural justice to the prejudice of the workmen in an unfair manner. The petitioner management challenged this order before this court vide W.P.(C) Nos. 426/2019 and 475/2019. This court while disposing of these writ petitions inter alia held as under:

*4. Mr. Lalit Bhasin, learned counsel for the petitioner submits that these are clear cases of loss of confidence by the petitioner in the respondents and no inquiry was required to be conducted by the petitioner for the first instance as per the principles laid down by this Court in **State Bank of Travancore v. Prem Singh**, 2019 SCC OnLine Del 8258 in which this Court held that the employee can be terminated without inquiry in the case of loss of confidence. This Court further held that even if the inquiry was held to be bad, the employee is not entitled to reinstatement but only compensation.*

*5. Learned counsel for the petitioner submits that both these cases are squarely covered by the principles laid down by this Court in **State Bank of Travancore** (supra) and, therefore, even if the inquiry is held to be vitiated, the respondents are not entitled to reinstatement but only compensation. It is submitted that this submission is without prejudice to the petitioner's case that there has been no violation of principles of the natural justice. It is further submitted that the learned Industrial Tribunal be directed to hear the matter afresh in terms of the*



principles laid down by this Court in **State Bank of Travancore** (*supra*).

6. Learned counsel for the respondents submit that the respondents shall restrict their claim to compensation only before the Industrial Tribunal in view of the principles laid down by this Court in **State Bank of Travancore** (*supra*). It is further submitted that the petitioner paid about Rs.11,00,000/- to the legal representatives of similarly situated charge-sheeted person and the respondents claim parity with respect to the compensation paid to the legal representatives of the similarly situated person.

7. 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)

*8. In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this Court in **State Bank of Travancore** (supra). The Industrial Tribunal shall withhold the recording of the petitioner’s evidence till the fresh order is passed in terms of these directions.”*

5. It is an accepted position that this order has not been challenged by either of the parties. The implications of the order dated 03.07.2019 as contained in para 8 in W.P.(C) Nos. 426/2019 and 475/2019 are as under:

- (i) The learned tribunal should have examined the matter afresh in term of the principles laid down by this court in **State Bank of Travancore** (supra). Thus, if the termination of the employees was found to be on the basis of loss of confidence of the management, in accordance with the principles laid down in



State Bank of Travancore (*supra*), the claim of the claimants would be confined to only compensation and;

- (ii) If the learned tribunal finds that the removal of the workmen was not on the loss of confidence and was not on the basis of the principles laid down in *State Bank of Travancore* (*supra*) then the tribunal would be proceeded with the recording of the evidence of the petitioner management for proving the charges against the claimants/workmen.
6. It is also pertinent to mention here that vide order dated 03.07.2019, this court had given the liberty that if any party is aggrieved by the fresh order of the learned Tribunal, they shall have appropriate legal remedies in accordance with law.
7. However, it seems that the learned trial court has not gone in accordance with the directions of this court as contained in the order dated 03.07.2019 and therefore, the impugned order is liable to be set aside and is set aside.
8. Thus, the present writ petitions are disposed of with the following directions:
- (i) The learned tribunal shall examine the matter afresh in term of the principles laid down by this court in *State Bank of Travancore* (*supra*). If the termination of the employees is found to be on the basis of loss of confidence of the management, in accordance with the principles laid down in *State Bank of Travancore* (*supra*), the claim of the claimants would be confined to only compensation and;
 - (ii) Only thereafter, if the learned tribunal finds that the removal of the workmen was not on the loss of confidence and was not on the basis of



the principles laid down in *State Bank of Travancore* (*supra*) then the tribunal will proceed with the recording of the evidence of the petitioner management for proving the charges against the claimants/workmen.

9. Learned counsel for the respondent no.2 submits that sufficient time has already expired. It has also been submitted that vide order dated 03.07.2019, this court had directed the tribunal to hear and decide the matters in terms of the order of this court within three months.
10. Taking into account the totality of the facts, the learned tribunal is directed to dispose of the matter on or before 31.12.2022 positively.
11. Both the writ petitions stand disposed of.
12. Parties are directed to appear before the learned tribunal on 30.08.2022.

DINESH KUMAR SHARMA, J

AUGUST 24, 2022

rb

न्यायमेव जयते