

(2019) 08 DEL CK 0281

In the Delhi High Court

Case No : Civil Writ Petition No. 14301, 14302 Of 2005, Civil Miscellaneous
Application No. 11598, 30829 Of 2019

Bakhtawar Lal Nagpal & Anr

APPELLANT

Vs

Prabhu Mahto & Ors

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Citation : (2019) 08 DEL CK 0281

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : B.L. Chawla, Akarsh Bhalla

Final Decision : Allowed

Judgement

J.R. Midha, J

1. The petitioner has challenged the award dated 12th February, 2004 passed by the Labour Court whereby the Labour Court has granted reinstatement with 50% back wages to the respondent.
2. The respondent was working with the petitioner as a driver. The petitioner terminated the respondent on 17th June, 1993 on account of his alleged involvement in a serious crime against the petitioner in respect of which the FIR was lodged with the police.
3. The respondent raised an industrial dispute which was referred to the Labour Court. The Labour Court held the termination to be illegal on the ground that no domestic enquiry was conducted by the petitioner.
4. Learned counsel for the petitioner submits that the petitioner lost confidence in the respondent due to the crime committed by him and there is no illegality in the termination without a domestic enquiry. Reliance is placed on State Bank of Travancore v. Prem Singh, 2019 SCC OnLine Del 8258.
5. 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) 111 J 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. At this stage, learned counsel for the respondent submits that the respondent does not press for reinstatement. Learned counsel for the respondent however seeks reasonable compensation in terms of the principles laid down in State Bank of Travancore (supra).

7. Learned counsel for the petitioner submits that the petitioner offered Rs.1 lakh as compensation to the respondent No.1 on 07th February, 2019 which was not accepted by respondent No.1.

8. This Court is of the view that compensation of Rs.1,25,000/- is fair and reasonable in the presence case.

9. The writ petition is allowed and the impugned award granting reinstatement with 50% back wages is set aside. However, compensation of Rs.1,25,000/- is awarded to respondent No.1.

10. Learned counsel for the petitioner has handed over a cheque for Rs.1,25,000/- to respondent No.1 present in Court. The claim of respondent No.1 in terms of this judgment stands satisfied.

11. This Court appreciates the assistance rendered by counsel for both the parties in this matter.

12. The pending applications are disposed of.

13. Copy of this judgment be given dasti to learned counsel for the parties under signature of Court Master.