

(2019) 08 DEL CK 0387

In the Delhi High Court

Case No : Civil Writ Petition No. 1632 Of 2010

Delhi State Civil Supply Corporation Ltd

APPELLANT

Vs

Badan Singh

RESPONDENT

Date of Decision : 30-08-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2019) 08 DEL CK 0387

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

Bench : Single Bench

Advocate : Anju Bhattacharya, Nandita Chandra, Elgin Matt John, Deepika Kumari, B.P. Singh Parihar, Mohan Lal Verma

Final Decision : Allowed

Judgement

J.R. Midha, J

1. The petitioner has challenged the award of the Labour Court whereby reinstatement with 40% back wages was awarded to the respondent.
2. The petitioner engaged the respondent on daily wages on 08th September, 1987. In December, 1989, the respondent deposited deficient sale proceeds of Rs.8,483.23; in February, 1990, the respondent deposited deficient sale proceeds of Rs.13,394.37; in March, 1990, the respondent deposited deficient sale proceeds of Rs.7,590.90; and in April, 1990, the respondent deposited deficient sale proceeds of Rs.3,229.40.
3. The petitioner issued memos to the respondent on 22nd February, 1990 and 12th April, 1990. On 29th May, 1990, the petitioner terminated the services of the respondent on the ground of loss of confidence. On 20th February, 1992, the respondent admitted the deficiency of Rs.16,783.23 and assured to deposit the same. The respondent raised an industrial dispute which was referred to the Labour Court.

4. Learned counsel for the petitioner submits that there is no infirmity in the termination of the respondent on the ground of loss of confidence and this case is squarely covered by the principles laid down in *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) 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 has paid Rs.7,47,134/- to the respondent under Section 17B of the Industrial Disputes Act.

7. Learned counsel for the respondent submits that respondent expired on 25th July, 2018 and he was survived by his widow, three sons and three daughters.

8. This Court is satisfied that this case is squarely covered by principles laid down by this Court in State Bank of Travancore (supra). In that view of the matter, there is no infirmity in the termination of the respondent.

9. The writ petition is allowed and the award of reinstatement with 40% back wages is set aside. However, compensation of Rs.75,000/- is awarded to the widow of the deceased respondent. The amount paid by the petitioner under Section 17B of the Industrial Dispute Act shall also be treated as compensation.

10. The petitioner has deposited Rs.3,15,000/- with the Registrar General of this Court. The Registrar General is directed to release Rs.75,000/- to Smt. Munni Devi, widow of the deceased, respondent No.1 within three weeks. The balance

amount along with interest be refunded back to the petitioner.

11. Copy of this judgment be given dasti to counsels for the parties under signatures of the Court Master.