

**IN THE COURT OF SH. ANIL KUMAR, PRESIDING OFFICER,
LABOUR COURT NO. XVI,
ROUSE AVENUE COURTS, NEW DELHI**

Old ID No.	91/10
LID No.	38/16
Date of institution	03.07.2010
Date of decision	27.07.2020

BETWEEN THE WORKMAN

**Sh. Sudhakar Dhoundiyal,
S/o Sh. S.C. Dhoundiyal,
R/o K-374, Gali No.6C, Near Kamaldeep School, Mahipalpur,
New Delhi-110037**

**Represented by
Group-4, Falk Cash Service Pvt Ltd.,
Karmachari Union(Regd.),
L-Ist, 453/A, Budh Bazar, New Delhi-110062**

.....

Workman.

VERSUS

THE MANAGEMENT OF

**1. M/s G4S Cash Services(India)Pvt Ltd.,
Building No.875/2(B-41-42) Oppo.CNG
Pumping Station, Mahipalpur, New Delhi-110037.**

**2. M/s G4S Cash Services(India)Pvt Ltd.,
Through its Managing Director,
Registered office at
C-16, Community Centre, Janakpuri,
Behind Janak Cinema, New Delhi-110058.**

.....

Management.

ORDER

1. Proceedings of the matter have been conducted through video conference.
2. By this order, I shall dispose of the claim of the claimant/workman filed under section 10(4A) of The Industrial Disputes Act 1947 challenging his termination on account of alleged misconduct/loss of confidence.
3. In statement of claim, the workman has stated that he had been working with the management as a custodian since 16.05.2002 and his last drawn salary was Rs.7100/- per month and his service record was good. It is further stated that Group4 Falk Cash Services Pvt Ltd Karmachari Union(Regd.) is a registered and recognized trade union of the workers of the management and the workmen of the company used to take up their grievances through the union. It is further stated that management is well known for its anti labour and unfair labour practices such as denial of double overtime wages for extra work after normal duty hours, non-issuance of appointment letters, arbitrary withdrawal of existing benefits of workers etc. It is further stated that the management wanted to implement its own anti labour policies and also wanted to curtail certain existing benefits of the workers like discontinue of dinner allowances after 10:00

p.m., discontinue of conveyance charges of workers after 10:00 p.m. transfer of workers from one place to another but the union did not agree to the management's new scheme. It is further stated that on 01.05.2010, management supplied a letter of management's agenda to the union, though in the said letter name and address of the union was not mentioned, about proposed new rules curtailing some existing benefits and wanted additional burden of job on the agreed proposal of the management. It is further stated that the union did not fully agree with the management though for the betterment of the company union agreed certain conditions through their letters dated 06.05.2010 and 07.05.2010, but the union had totally disagreed with the proposed agenda of transfer of workers from Delhi to other States and it had informed the management that if any particular workman was willing to go to other State/place/ home town, he was free to choose the same. It is further stated that just because the union did not agree with the management's arbitrary agenda on a sudden when the workman reported for duty on 12.05.2010, he saw that the premises was locked and no management personnel was present in the office. It is further stated that a handwritten notice was pasted on the gate mentioning that the management had been closed with immediate effect. It is further

stated that no notice or intimation was given to the workmen or to the labour department. It is further stated that union officials tried to speak to the management at registered office at Janakpuri, but no one from management spoke to the union and to the workers including workman and as such the union lodged a complaint with the Labour authorities at Hari Nagar, South West Dist. Labour Office about illegal lock. It is further stated that union also requested officials of Labour department to depute some officials of the office of the management at Mahipalpur and Jhandewalan to assess and verify the facts mentioned in complaint lodged by the union about locking of office of management and not allowing workmen to resume duty. It is further stated that labour department officials visited the office of the management on the complaint of union to verify the facts of the complaint and found that office was locked. It is further stated that a notice was pasted on gate of management calling management to attend meeting with Dy.Labour Commissioner's office at Hari Nagar, New Delhi on 20.5.2010 at 12noon but none appeared. It is further stated that since the management is not lifting its illegal lock out and not allowing the workman is having key/combination of the ATM and willing to hand over the same to the management and urged management

to receive the same but with bad intention management did not accepted the same nor send any responsible official to collect the same with ulterior motive. It is further stated that workman is daily reporting for duty at his workplace at Mahipalpur office but office was locked and hence he could not resume duty. The entire scene was created by management against workman because they did not fully agree the management's eight point agenda dt.1.5.2010. It is further stated that workman received termination letter dt.15.5.2010, letter posted on 20.5.2010. This termination letter was prepared after receiving telegrams, letters from union to lift the illegal lock out and after notice of the Dy Labour commissioner calling management to attend the case. No chargesheet, show cause notice was issued to workman and no enquiry was held. Thereafter workman served a demand notice dt.02.06.2010 to management to its office at Mahipalpur and Janakpuri urging management to reinstate him with continuity of service and full back wages but management did not consider the demand of workman. Hence, present claim has been filed with prayer to pass an Award against the management directing the management to reinstate the workman in service with all consequential benefits with continuity of service and full back wages.

4. Respondent/ management had appeared and filed the written statement. Management took the preliminary objections stating that the present claim is not maintainable and same is liable to be dismissed. It is further stated that workman was deployed for servicing the ATMs of the bank to which management had been providing services under a contract. It is further stated that management provided claimant with key/codes combination which were changed by claimant from time to time as per security requirements. It is further stated that claimant created obstructions in the performance of duties due to which the work of replenishment of ATMs suffered. It is further stated that claimant was advised by management to handover the key/codes but the claimant refused to hand over the same back and held the company and bank to ransom which resulted in taking strict action by the bank against the company. It is further stated that due to acts of claimant in not handing over the codes resulted in loss of business and reputation of the management. It is further stated that services of claimant were terminated vide letter dt.15.5.2010. It is further stated that the allegations made against the management are wrong, baseless and specifically denied. It is further stated that no notice to appear on 20.5.2010 was received by

management. It is further stated that there was no lockout so there was no question of lifting the same. It is further stated that claimant never reported for work nor handed over the key/combination of the ATMs. It is further stated that termination of the claimant is legal, valid and justified in all respect.

5. Rejoinder has also been filed by the workman wherein he had reiterated the averments averred by him in his statement of claim and denied whatever has been stated by the management in the written statement.

6. After completion of the pleadings of the parties, vide order dated 06.03.2012, following issues have been framed:- (inadvertently typed as paras no. 10,11 and 12 and now corrected as paras no. 1,2 and 3.)

1. Whether the workman conducted gross misconduct for which he was dismissed from service without holding any enquiry and if yes, to what effect? OPM

2. Whether the services of the workman were illegally and unjustifiably terminated? OPW

3. Relief.

After framing of issues matter was adjourned and fixed for management evidence.

7. Management has examined its General Manager Sh.Sanjeev Kumar Taku as MW 1 and Vice President Mr. Praveen Roy, as MW2(inadvertently written in evidence sheet as MW3). MW1 has reiterated the same facts in his affidavit of evidence as mentioned in written statement. He has relied upon the following documents:-

Ex. M/W 1/1 is letter of request for security of office building

Ex. MW 1/2 is management agenda dated 1.5.2010

Ex. MW 1/3 is the letter by management to Karamchari Union

Ex. MW 1/4 is the letter by management to Karamchari Union dated

6.5.2010

Ex. MW 1/5 is the letter written by management to SHO Vasant Kunj

Police station dt.12.5.2010

Ex. MW 1/6 is the complaint against custodians for handing over bank's property.

Ex. MW 1/7 is the letter to SHO Vasant Kunj Police station dt.15.5.2010

Ex. MW 1/8 is medical record dated 15.5.2010

Ex. MW 1/9 is the letter to SHO Vasant Kunj Police station dt.15.5.2010

Ex. MW 1/10 is medical record dated 15.5.2010

Ex. MW 1/11 is the letter to Dy Commissioner of Police, Hauz Khas

Ex. MW 1/12 is the letter to Karamchari Union dated 18.5.2010

Ex. MW 1/13 is complaint u/s 200 Cr.P.C before MM

Ex. MW 1/14 is application u/s 156(3) Cr.P.C

Ex. MW 1/15 is the letter to SHO Vasant Kunj Police station dt.22.5.2010

Ex. MW 1/16 is the letter to SHO Vasant Kunj Police station dt.29.5.2010

Ex. MW 1/17 is the letter to SHO Vasant Kunj Police station dt.14.6.2010

Ex. MW 1/18 is the letter to SHO Vasant Kunj Police station dt.15.6.2010

Ex. MW 1/19 is the receipt of management

Ex. MW 1/20 is the statement of account of management.

MW2 has deposed that workman was transferred due to exigency of work and administrative requirements, the services of claimant were transferred from strictly as per agreed terms of employment but claimant failed to report for duties at the transferred place.

8. Workman in order to lead evidence has examined himself only and in his affidavit of evidence he has reiterated the facts as mentioned by him in his statement of claim. Workman has relied upon the following documents:-

Ex. WW 1/1 is the letter of termination

Ex. WW 1/2 is the demand notice sent by workman to management dated 02.06.2010

Ex. WW 1/3 are postal receipts of letter written by workman to management dt. 02.06.2010

Ex. WW 1/4 is the copy of management agenda dt.1.5.2010

Ex. WW 1/5 is the letter of union dt.4.5.10

Ex. WW 1/6 is the letter of management to union

Ex. WW 1/7 is the letter of management to union dt.6.5.2010

Ex. WW 1/8 is the letter to management from union dt.6.5.2010

Ex. WW 1/9 is the letter of union dt.6.5.2010

Ex. WW 1/10 is the letter of union dt.7.5.2010

Ex. WW 1/11 is the letter to Labour Commissioner dt.13.5.10

Ex. WW 1/12 is the telegram message to MD of management

Ex. WW 1/13 is copy of telegram receipt

Ex. WW 1/14 is the telegram to Labour Commissioner

Ex. WW 1/15 is copy of telegram receipt

Ex. WW 1/16 is the telegram to Commissioner of police

Ex. WW1/17 is the copy of telegram receipt

Ex. WW 1/18 is the letter to Managing Director dt 18.5.2010

Ex. WW 1/19 is the letter to Managing Director dt 18.5.2010

Ex. WW 1/20 is the letter to management by labour officer dt 18.5.2010

Ex. WW 1/21 is certificate of registration of trade union

Ex.WW1/22 is the letter to Dy.Registrar Trade Union by union

dt.14.3.2011for submission of Annual Return

9. I have heard Ld. Counsels for both the parties and given my thoughtful consideration to their respective submissions. I have also gone through oral as well as documentary evidences led by both the parties in support of their cases. My issues wise findings are as under:

ISSUE NO. 1

“1. Whether the workman conducted gross misconduct for which he was dismissed from service without holding any enquiry and if yes, to what effect? OPM”

10. Onus to prove this issue is on the management. In the case in hand workman was dismissed from service vide admitted termination letter Ex.WW1/1 without holding any enquiry. Workman has taken plea that without holding an enquiry dismissal is illegal. Let me examine the legality of dismissal without holding an enquiry.

Ld. AR for the management has submitted that holding enquiry before dismissal of workman on account of his misconduct is not mandatory and management can prove workman's misconduct by adducing evidence in trial before Court and same has been done in present case. In support of his contentions he has relied upon judgement **Johnson And Johnson Ltd Vs Gajendra Singh Rawat 2016 IX AD(DELHI)367.**

I have gone through aforesaid judgement. In this judgement Hon'ble High Court of Delhi has held as under:

“12. First question for consideration is what is the effect of not conducting a disciplinary inquiry before terminating the services of the workman. The issue was dealt in detail in Municipal Corporation of Greater Bombay(supra). In that case, the services of the workman were terminated on account of unsatisfactory record of service. On factual matrix of the case, it was found that the order of termination was not punitive in character so as to invite disciplinary inquiry. It was further held that even if order of termination of service of the workman was punitive in character and could not have been passed save and except as a result of a disciplinary inquiry, the impugned order cannot be struck down as invalid on the ground of non-compliance with the requirement of standing orders since the workman availed of the opportunity open to her before the Labour Court when the management adduced sufficient

evidence to show that the impugned order terminating the service of the workman was justified. This view was fortified by a catena of decisions where it has been consistently held that no distinction can be made between cases where the domestic enquiry is invalid or defective and those where no enquiry has infact been held as required by the relevant standing orders and in either case it is open to the employer to justify his action before the Labour Tribunal by adducing all relevant evidence before it. Reference in this regard was made to the Punjab National Bank Ltd Vs. Its Workmen(1960)1 S.C.R.806, Management of Ritz Theatre(P) Ltd Vs. Its Workmen(1963) 3 S.C.R.461, Workmen of Motipur Sugar Factory (Private) Ltd. Vs. Motipur Sugar Factory (1965) 2 S.C.R. 588, Delhi Cloth and General Mills Co. Ltd Vs. Ludh Budh Singh (1972) 1 LLJ 180, State Bank of India Vs. R.K.Jain and Ors.(1972) 1 S.C.R 755, Workmen of Messrs Firestone Tyre & Rubber Company of India(P) Ltd. Vs. Management & Ors.(1973) 3 S.C.R.587 and Cooper Engineer Limited Vs. P P Mundhe (1976) 1 S.C R 361. In Santa Cement Works & Anr Vs. Bachchan Lal Srivastava & Ors, 1997 II CLR 67 also reference was made to D.K.Yadav Vs. J M A Industries,1993 (67) FLR 111(SC) wherein it was held that although the recent trend is to insist on giving an opportunity of hearing despite any provision in the Standing Orders, however, even if no enquiry was held before termination of services, the employer can had evidence before the Tribunal to justify its action. In view of the same, even if before terminating the services of the workman, no enquiry was held, the termination order cannot be

held to be illegal on that ground alone as the management availed the opportunity of leading evidence before the Labour Court and adduced evidence justifying its action taken against the workman.”

11. In view of aforesaid judgment, it cannot be said that in the case in hand dismissal is illegal on the ground alone of not holding enquiry before dismissal of workman.

12. Now let me examine whether workman has committed misconduct warranting his dismissal and management has able to prove misconduct of workman as alleged/pleaded in written statement.

13. In the service law area, it is now well settled that service of employee holding post of confidence can be terminated on account of his misconduct resulting in loss of confidence.

14. In **L. Michael & Anr vs M/S. Johnston Pumps India Ltd** (1975)1SCC574 Hon’ble Supreme Court has held as under:

"20....loss of confidence is often a subjective feeling or individual reaction to an objective set facts and motivations. The Court is concerned with the latter and not with the former, although circumstances may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or responsible post being misused or a sensitive or strategic position being abused, it may be a high risk to keep the employee, once suspicion has started and a disciplinary enquiry cannot be forced on the master.

There, a termination simpliciter may be bona fide, not colourable, and loss of confidence may be evidentiary of good faith of the employer.

21. In the present case, the catalogue of circumstances set out in the earlier part of the judgment strikes a contrary note. The worker was not told when he wrote; the union was not disclosed when they demanded; the Labour Court was treated to verbal statements like 'very reliable sources' and other credulous phrases without a modicum of evidence to prove bonafides. Some testimony of unseemly attempts by the workman to get at secrets outside his orbit, some indication of the source of suspicion, some proof of the sensitive or strategic role of the employee, should and would have been forthcoming had the case been bona fide. How contradictory, that even when a strong suspicion of leaking out sensitive secrets was being entertained about the employee who was being given special merit increments over and above the normal increments' A case of res ipsa loquitur. Circumstances militate against the 'I say so' of M.W.1 that the management had suffered an ineffable loss of confidence. To hit below the belt by trading legal phrases is not Industrial Law. We are constrained to express ourselves unmistakably lest industrial unrest induced by wrongful terminations based on convenient loss of confidence should be generated.

22. Before we conclude we would like to add that an employer who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any

stigma attaching to the discharge. But such belief or suspicion of the employer should not be a mere whim or fancy. It should be bona fide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly with due care and' prudence. If the exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicially."

15. Hon'ble High of Delhi in judgment title STATE BANK OF TRAVANCORE Vs PREM SINGH dated 10.04.2019 passed in W.P.(C) 11160/2004 & CM APPLN. 32904/2017, 42326/2018 has summarised the Principles related to 'loss of confidence' as under:

“ 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 an 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.”

16. In view of aforesaid judgments, it is very clear that alleged misconduct should be duly proved by the management and the plea of ‘loss of confidence’ by the management has to be bonafide and 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.

17. It is admitted facts of case that workman had been working with the management as a custodian since 16.05.2002 and his last drawn salary was

Rs.7100/- per month. Workman was deployed for servicing the ATMs of the bank to which management had been providing services under a contract and management provided workman/claimant with key/codes combination which were changed by claimant from time to time as per security requirements. Holding post of confidence by workman is not disputed.

18. Management witness MW1 Mr. Sanjeev Kumar Taku, General Manager of management, as stated in affidavit, has deposed in his affidavit in evidence Ex.MW/A that during the period from 01.05.2010 the claimant created obstructions in the performance duties due to which the work of replenishment of ATMs suffered, as a result of which the Bank instructed the management to hand over the key/codes. It is further stated that claimant was advised by management to provide the key/codes combination of the respective ATMs to the bank but the claimant refused to hand over the same and held the company and bank to ransom which resulted in taking strict action by the bank against the company. It is further deposed that due to acts of claimant in not handing over the codes resulted in loss of business and reputation of the management. Since the claimant did not hand over the key/codes combinations of ATMs, the bank

was forced to break upon the locks and install new locks on the said ATMs. Due to acts of insubordination by the claimant and not handing over the key/codes combinations resulting in loss of business and reputation of the management, the management lost confidence in the claimant. Because of indifferent attitude and conduct of the claimant, any further instructions to the claimant on the job could have further caused loss to its business and reputation and thus decided to terminate the services of the claimant and services of claimant were terminated vide letter dt.15.5.2010.

19. MW1 has further deposed that services of the claimant were terminated after he repeatedly refused to follow the lawful instructions of the management to hand over the key/codes combination resulting in loss of business and reputation of the management and management having lost confidence in him.

20. Workman WW1 on the facts relevant to issue in hand has deposed in his affidavit in evidence as under:

“The management is well known for its anti-labour and unfair labour practices. The management wanted to curtail certain existing benefits of the workers and import some new conditions on the workman and also wanted to remove the existing staff from Delhi region and to

employ new staff in place of old staff and also wanted to get the work of the management done through private contractors instead of regular permanent employees of the company. The management with malafide intention issued a letter of eight point agenda of the management dated 1.5.2010 to the union and wanted to implement the same including curtailing certain existing benefits but union opposed this agenda vide holding meeting of the workers. The management did not consider offer of the union and taken punitive steps against the workmen and union officials and started marking time to victimize claimant and other workers in one pretext or other.

Workman when reported for duty on 12.05.2010 he saw many of his fellow workmen were standing outside the office of the company and found that the company office was locked and no management personal were present there or nearby. One security Guard was sitting outside the office and a hand written notice was pasted on the gate of the company by the management stating that the management closed its office with immediate effect. No notice or intimation was given to claimant or the union or to Labour Department to this matter. It was just because the union did not agree the management's eight point agenda dated 1.5.2010.

Because of this illegal locking of the office by the management claimant could not resume duty though he was present for duty and other workmen has also could not resume duty because of the illegal locking of the company by the management. There after matter was reported to Labour Department by the union. Labour officials visited the premises of management but same was found locked. None appeared from the management before Labour Department despite notice to resolve the matter. Since the management was not lifting its illegal lock out and not allowing the claimant and other workers to join duty, union on behalf of them wrote letters to the management that the custodians are having key/code combination of the ATMs and willing to hand over the same to the management and urged the management to receive the same from claimant and other custodians, but with ulterior motives and bad intentions, management did not come forward to collect the key/code combination and not accepted the same as desired by claimant and other custodians, and also not send any responsible officer/officials to collect the same and on the other hand with ulterior motives, management break opened some ATMs to blame on the workers. On 02.06.2010 management handed over claimant a back dated termination letter dated 15.05.2010

alleging certain allegations against claimant which were not at all true and correct, false and fabricated though he was very much available daily in front of the company gate since 12.05.2010 onwards for resuming duty.”

21. In his cross examination MW1 has admitted that he is not the General Manager of management but of other company namely G4S Corporate Services (India) Pvt. Ltd. He has also admitted that between 01.05.10 to 15.05.2010 he was not working at Mahipalpur office of management and was working at Gurgaon with company G4S Corporate Services (India) Pvt. Ltd. Hence it can be said that this witness has no personal knowledge of alleged incident of 12.05.2010 or between 1.5.10 to 15.5.10 happened at Mahipalpur Office of management as stated by the workman. Management has failed to produce any witness who was directly connected with discharge of duty of the workman.

22. MW1 has deposed that that during the period from 01.05.2010 the claimant created obstructions in the performance duties due to which the work of replenishment of ATMs suffered, as a result of which the Bank instructed the management to hand over the key/codes. It is further stated that claimant was advised by management to provide the key/codes combination of the respective ATMs to the bank but the claimant refused

to hand over the same. This deposition of MW1 shows that he has not disclosed as to what obstructions were created by workman and in what manners. Management has also not disclosed that who and how demanded or advised the workman to hand over the key/code of ATMs. Management has failed to produce attendance register or any notice issued to workman for return of key/code. Attendance register could have reflected that office of management was open and employees were free to join the duty. No doubt workman has admitted to have key/code of ATMs but he has deposed that he was very much available daily in front of the company gate since 12.05.2010 onwards for resuming duty. No suggestions in denial have been put to the workman by management in cross examination to the deposition that since the management was not lifting its illegal lock out and not allowing the claimant and other workers to join duty, union on behalf of them wrote letters to the management that the custodians are having key/code combination of the ATMs and willing to hand over the same to the management and urged the management to receive the same from claimant and other custodians, but with ulterior motives and bad intentions, management not come forwards to collect the key/code combination and not accepted the same as desired by claimant and other

custodians, and also not send any responsible officer/officials to collect the same and on the other hand with ulterior motives, management break opened some ATMs to blame on the workers. Hence same is liable to accepted as admitted. These testimonies of the workman find support from the unchallenged document Ex. WW1/18 which is letter issued by union on 18.05.10 to the management in continuance of earlier sent telegram Ex. WW1/12. Vide letter Ex.WW1/18 union had conveyed to the management about willingness of the workmen to hand over the key/ codes to management.

23. Ex MW1/1 to Ex MW1/4 show that there were certain dispute between management and workers union and Ex MW1/5 shows that it was in the knowledge of the management that union was going to hold gate meeting on 12.05.2010. As per Ex MW1/12 on 18.05.2010 management issued letter to union wishes to hold meeting on 19.05.2010. There is no documentary evidence to show that what happened before that between management and workers. There is no communication between union and management in respect to alleged hardship being faced by management in respect to key/code of ATMs.

In the cross examination of claimant, management has put suggestions that management had not locked out but infact claimant alongwith other employees had held 'Dharna', 'Gheraow' and /or demonstration and blocked the gate and did not allow the willing workers/employees to enter the premises of the management company for doing their duty. These suggestions have been denied by the claimant. In my opinion by way of putting these suggestions management has unsuccessfully tried to raise a new defence. Management has nothing stated in written statement about Dharana, Gheraow and obstruction and participation of claimant. Contrary to this management is para no 16 of reply on merit in written statement has stated that workers as usual were free to report for work. Aforesaid suggestions may be used against the management. From these suggestions it appears that between 1.5.2010 to 15.5.2010 willing workers were not able to join the duty due to obstructions at gate. There is no witness of participation of claimant in any Dharana or Gheraow etc. Claimant has stated that he was willing to join the duty but due to lock of gate of management he could not do so.

24. On the point of no return of key/code claimant has deposed that in May 2010 he was having secret code of ATM and admitted that he did not

write any letter to the management between 01.05.2010 till 15.05 2010 both inclusive asking the management to take ATM code. But he has stated that he made a call to Mr. R.S. Chauhan, Manager (ATM) asking him to take ATM codes from him and he told the claimant that they will take back the ATM code but they did not take back the ATMs code and afterwards Mr. R.S.Chauhan Manager stopped picking up his telephonic calls. I do not find any ground to disbelieve this testimony of claimant because management is totally silent as who on behalf of management had ever called the claimant to hand over the key/code. There is no any notice to claimant to return the key/codes or any complain specifically against him. Documentary evidences led by the management are not specifically related to the claimant.

25. In view of these evidences and its scrutiny it is difficult to believe the version of management of alleged misconduct. In the totality of evidences and to the preponderance of probabilities this court accept the version of workman as duly proved. It is hold that management has failed to prove the facts of misconduct as alleged against the workman. Hence this issue is decided against the management and in favour of workman.

ISSUE NO. 2

“2. Whether the services of the workman were illegally and unjustifiably terminated? OPW”

26. Onus to prove this issue is on workman. Since as per findings on issue no.1 on the point of misconduct, management has failed to prove that workman has misconducted with management hence termination of workman is held to be illegal and unjustified. Apart from this I find that termination notice is not as per requirement of Section 25 F of The Industrial Dispute Act 1947 because compensation to workman and notice to appropriate government has not been given or proved on record. This issue is decided in favour of workman and against the management.

ISSUE NO.3

“3. Relief:”

27. Since the workman has able to prove his termination was not legal and justified, hence his termination is hereby set aside.

28. Ld. AR for the management has argued that the management has been closed and relied upon the testimony of MW2 on this point. I find that there is no sufficient evidence on record to show that management has been closed. In his affidavit in evidence MW2 on this point has stated only

that there is no existing employee working with management. Further management has failed to show that closure notice was ever given to workman or any authority.

29. The workman has stated that he is unemployed since the date of his termination. Management has not brought any evidence to show that the workman is employed in any manner anywhere after his termination. Workman has prayed for reinstatement in service with all consequential benefits with continuity of service and full back wages.

30. Hon'ble Supreme Court of India in the case titled BSNL versus Bhurumal reported in (2014) 7 SCC 177 has held as under:

“20 . The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL V. Man Singh, Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer V. Shankar Shetty, it was held that those cases where the workman had worked on daily – wage basis, and worked merely for a period of 240 days or two to three years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement. In this judgment of

Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion.

“Should an order of reinstatement automatically follow in a case where the engagement of a daily – wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short “ The ID Act”)? The course of the decisions of this Court in recent years has been uniform on the above question.

In Jagbir Singh V. Haryana State Agriculture Mktg. Board, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this court, namely, U.P. State Brassware Corpn. Ltd. Vs Uday Narain Pandey, Uttranchal Forest Development Corpn. V. M.C. Joshi, State of M.P. V. Lalit Kumar Verma, M.P. Admn. Vs. Tribuban, Sita Ram Vs. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority V. Ramasahai, GDA V. Ashok Kumar and Mahboob Deepak V. Nagar Panchayat, Gajruala and stated as follows:(Jagbir Singh case, SCC pp. 330 & 335, paras 7 & 14)

“ It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly

inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25 although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.” Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal[12], wherein this Court stated: (SCC p.777, para 11) “In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.”

31. In the instant case, the workman was terminated on 15.05.2010 and his last drawn wages was Rs.7100/-pm. It is not believable that he might have remained idle. Further both the parties have lost faith in each other. In such circumstances, and in view of case BSNL Vs Bhurumal (supra) I

deem it appropriate to grant compensation to the workman instead of reinstatement. Considering the length of the service and the fact that the management has not paid his back wages, retrenchment compensation and notice pay, this court has considered it fit to grant a lump sum amount of compensation of Rs. 1,60,000/- (One Lac Sixty Thousand only) to workman in lieu of his reinstatement and above said benefits. The aforesaid amount shall be paid by the Respondent/Management within two months from the date this Award becomes enforceable, failing which the management shall also pay interest @ 9% per annum on the aforesaid amount from the date of Award till the date of realization.

32. A copy of the award be sent to the Deputy Labour Commissioner, Government of NCT of Delhi of Distt./Area concerned for publication as per rules and judicial file be consigned to Record Room as per rules.

**PRONOUNCED THROUGH
VIDEO CONFERENCE
ON 27.07.2020**

**(ANIL KUMAR)
PRESIDING OFFICER
LABOUR COURT-XVI/
ROUSE AVENUE COURTS,
NEW DELHI**

LID No. 38/16

27.07.2020

Sh. Sudhakar Dhoundiyal Vs Group-4, Falk Cash Service Pvt Ltd.,

Present: None.

Vide my separate order dictated and announced from residence through video conference held in view of direction of Hon'ble High Court of Delhi from time to time during and in respect to pandemic, Award is passed accordingly. Copies of order be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

(ANIL KUMAR)
PRESIDING OFFICER
LABOUR COURT-XVI/
ROUSE AVENUE COURTS,
NEW DELHI