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

% ***Date of Judgment: 27.02.2018***

+ **W.P. (C) 1869/2018**

M/S TRIG DETECTIVE SECURITY PRIVATE LTD

..... Petitioner

Through: Mr. Anil Kumar Chandel,
Advocate.

versus

SHRIKANT UPADHAYAY

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

CM APPL. 7775/2018 (exemption)

Exemption granted subject to all just exceptions.

Application stands disposed of.

W.P. (C) 1869/2018 & CM APPL. 7774/2018 (for stay)

1. Challenge in this writ petition filed under Article 226 read with 227 of the Constitution of India is the Award dated 19.01.2016 in the case vide LIR No. 72/2014 on a reference being made by Government of NCT of Delhi under Section 10(1) (c) and 12 (5) of the Industrial Disputes Act, 1947 (in short 'I.D. Act') specifying the terms of the reference as "*Whether services of Sh. Shrikant Upadhyay S/o Sh. Ratikant Upadhyay have been*

terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled?''. This reference was answered by the learned Presiding Officer Labour Court-XIX, Karkardooma Courts, Delhi (in brief 'Industrial Adjudicator') against the petitioner by holding that the respondent is entitled to reinstatement in service with the benefit of continuity of service and all consequential benefits and full back wages w.e.f. 10.08.2013 (except for the period from January, 2014 to January, 2015).

2. The respondent/workman in his statement of claim pleaded that he was employed with the petitioner/management as Guard on 17.03.2011 and his last drawn salary was Rs.8,525/- per mensem. It is alleged that the petitioner/management did not provide him appointment letter, casual and earned leaves, attendance card, bonus, wage slip, etc. He was made to work for 12 hours but was not paid overtime charges. The petitioner/management used to deduct from his salary the amount for ESI and PF but no proof was provided. Since the respondent/workman requested the petitioner/management from time to time to provide him all these benefits, overtime for four hours ESI and PF Cards, the petitioner/management without any prior notice terminated his services on 10.08.2013. His salary for the month of July, 2013 was also not paid. The respondent/workman filed a complaint before the Assistant Labour Commissioner, New Delhi on 11.10.2013 through the

Union regarding his termination. He also sent a demand letter dated 10.12.2013 to the petitioner/management for his reinstatement and release of his wages, which was not replied. The respondent/workman filed his statement of claim before the Assistant Labour Commissioner, New Delhi and despite repeated opportunities the petitioner/management did not join conciliation proceedings.

3. In its written statement the petitioner/management admitted that the respondent jointed their employment on 17.03.2011 as a Guard at a salary of Rs.5,200/- per mensem and his last drawn salary was Rs.8,525/- per mensem. However, it is denied that they have terminated the services of the respondent/workman. It is pleaded that the respondent/workman has stopped reporting for duties without any excuse and intimation. It is also pleaded that they have already paid the salary of the respondent/workman for the month of July, 2013.
4. The respondent/workman filed his rejoinder to the written statement of the petitioner/management wherein he had denied the allegations of the petitioner/management and reaffirmed the averments made in his statement of claim.
5. On the pleadings of the parties, the Industrial Adjudicator framed the following issues on 17.10.2014:-

“1.Whether the workman himself voluntarily and unauthorizedly absented from his duties? OPM

2. As per terms of reference.

3. Relief.”

6. In support of his case, the respondent/workman stepped in the witness box and examined himself as WW-1. However, the petitioner/management failed to lead any evidence despite repeated opportunities. Ultimately, the Industrial Adjudicator had closed the evidence of the petitioner/management by an order dated 12.01.2016.
7. After hearing the parties, the Industrial Adjudicator found that the petitioner/management has illegally terminated the services of respondent/workman in violation of Section 25-F of the I.D. Act and directed his reinstatement with the benefit of continuity in service and all consequential benefits and full back wages w.e.f. 10.08.2013 except for the period from January, 2014 to January, 2015 during which period the respondent/workman was admittedly gainfully employed.
8. Learned counsel for the petitioner argued that name of the petitioner firm is wrongly mentioned in the reference and in fact their name is M/s. Trig Detective Private Limited instead of M/s. Trig Detective Securities Private Limited. However, it is found that this writ petition has been filed by M/s. Trig Detective Securities Private Limited.
9. He further argued that their counsel before the Industrial Adjudicator did not pursue the matter with diligence. He submits that their lawyer did not call the

petitioner/management to adduce evidence in support of its defence. Lastly, he argued that the respondent/workman did not disclose in his statement of claim that he was gainfully employed and as such the Industrial Adjudicator fell into error by awarding full back wages to the respondent/workman.

10. Admittedly, the respondent/workman has joined the services of the petitioner/management as a Guard on 17.03.2011. His last drawn salary was Rs.8,525/- per mensem. The respondent/workman has claimed that his services were suddenly terminated by the petitioner/management on 10.08.2013 without any prior notice. Ex.WW-1/3 is the copy of the complaint dated 11.10.2013 lodged by the respondent/workman through his union to the Assistant Labour Commissioner. Ex.WW-1/4 is the copy of his demand notice dated 10.12.2013 sent to the petitioner/management vide postal receipt Ex.WW-1/5. Both these documents reflect about raising of dispute by the respondent/workman about termination of his services by the petitioner/management on 10.08.2013.
11. The petitioner/management has nowhere mentioned the date from which the respondent/workman stopped attending the duties. However, in his cross-examination, the respondent/workman had denied the suggestion of the petitioner/management that he started absenting from his duties w.e.f. 10.08.2013. Therefore, it was for the

petitioner/management to prove by oral and documentary evidence like Attendance Register to show that the respondent/workman had started absents from duties from the said date. In his evidence, the respondent/workman has categorically stated in his cross-examination that the Field Officer Sh. Praveen, on direction of the petitioner/management, had directed him to leave the job and therefore, it was the petitioner/management to rebut the same. Despite opportunities, the petitioner/management did not adduce any evidence and therefore the Industrial Adjudicator has rightly come to the conclusion that the services of the respondent/workman were illegally terminated without compliance of pre-requisites stipulated under Section 25-F of the I.D. Act.

12. It is nowhere reflected in the petition as to who was their lawyer representing the petitioner/management before the Industrial Adjudicator and when they were lastly informed by him regarding the next date of hearing. It is also not reflected as to whether they had issued any notice to their lawyer representing them before the Industrial Adjudicator or whether they had taken any action against their lawyer. Therefore, it comes out that it was the petitioner/management who did not adduce any evidence consciously despite opportunities before the Industrial Adjudicator.
13. It is the respondent/workman who had testified before

the Industrial Adjudicator that he remained unemployed except for the period from January, 2014 to January, 2015 and during this period he was earning Rs.8,500/- per mensem. The respondent/workman did not conceal anything from the Labour Court. In these circumstances, the Industrial Adjudicator has rightly granted the relief of reinstatement of the respondent/workman with benefit of continuity in service and all consequential benefits and full back wages w.e.f. 10.08.2013 except for the period from January, 2014 to January, 2015.

14. I do not find any illegality or perversity in the impugned award dated 19.01.2016. The writ petition is dismissed in *limine*.
15. In view of the above, the CM No. 7774/2018 also stands dismissed.

FEBRUARY 27, 2018

"shailendra"

**(VINOD GOEL)
JUDGE**