

Court No. - 6

Case :- WRIT - C No. - 25396 of 2023

Petitioner :- M/S Somerville School

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Chandra Bhan Gupta

Counsel for Respondent :- CSC, Sarwar Ali Siddique

Hon'ble Mrs. Manju Rani Chauhan, J.

Heard Mr. Chandra Bhan Gupta, learned counsel for the petitioner, Mr. Sarwar Ali Siddiqui, learned counsel for respondent no.3 and learned Standing Counsel for the State-respondents.

The writ petition has been filed by the petitioner with a prayer to quash the order dated 29.05.2023 passed by respondent no.2 in Misc. Case No.203 of 2021 as well as entire proceeding of the aforesaid case, pending before Labour Court, Noida, Gautam Budh Nagar.

Brief facts of the case are; the respondent no.3 was appointed as Conductor-cum-helper by the petitioner by means of an appointment letter dated 01.04.2019 for a fixed term from 15.4.2019 to 31.03.2020. The services of respondent no.3 automatically came to an end after expiry of the aforesaid fixed term period. The respondent no.3 filed a claim application before respondent no.2, Labour Court, Noida, under Section 6H(2) of U.P. Industrial Disputes Act, 1947 and Section 33C(2) of the aforesaid Act in short “Act, 1947”, whereby he claimed the payment of Rs.34,83,284/- with 24% interest amount.

The petitioner filed a written statement raising a preliminary objection regarding the maintainability of the aforesaid proceedings on following grounds:-

(i) The proceeding regarding equal pay are to be filed by means of moving an application under Section 7(1)(B) of Equal Remuneration Act, 1976 in short “Act, 1976”. Accordingly, as per the act, the Assistant Labour Commissioner as appointed by the Government is empowered to decide the claim arising out of Payment of Wages Act, 1936 and Equal Remuneration Act, 1976. Thus, in view of the aforesaid provisions, the claim application filed by respondent no.3 before Labour Court is not maintainable. The proceeding for payment of wages as claimed by the respondent no.3 have to be done by reference under 4K of the Act, 1947.

In the present case, the respondent no.3 has filed claim under Section 6H(2) read with Section 33C(2) of the Act, 1947 along with Section 7(1)(B) of the Act, 1976.

In support of his submission, he has relied upon the judgements of Supreme Court passed in case of **State of U.P. & Anr. Vs. Brijpal Singh, 2005 0 Supreme (SC) 1251**, and **Municipal Corporation of Delhi Vs. Ganesh Razak And Another, 1994 0 Supreme (SC) 1054**, and another judgement of this Court passed in **U.P. State Road Transport Corporation Vs. State of U.P., 2002 0 Supreme (All) 367**.

He submits that the application so moved raising objection regarding maintainability of the same has been illegally rejected.

Learned counsel for respondent no.3 on the other hand submits that there is no illegality in the order impugned, as in entertaining the claim petition filed before the Labour Court it has nowhere been denied by the petitioner that the respondent no.3 has not been performing the same functions as that of a

permanent employee. Thus, he is entitled for payment to be decided by an appropriate authority under the relevant section as filed.

No interference is required.

In view of above, with consent of parties, without expressing any opinion on the merits of the case, the writ petition is **disposed off** with a direction that, in case, the respondent no.3 moves an application before the appropriate Court where the proceedings are pending, within three weeks from today, the Court concerned will proceed in accordance with law to decide the claim petition, within stipulated period of three months from the date of production of certified copy of this order, by means of a reasoned and speaking order, if there is no legal impediment.

Order Date :- 18.10.2023

Rahul.