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

+ **CONT.CAS(C) 59/2017**

MUKESH KUMAR Petitioner
Through Mr. V.K. Tandon, Advocate

versus

VIJAY DUTT & ORS Respondents
Through Mr. Ravi Sikri, Senior Advocate with
Mr. Deepank Yadav and Ms. Niyati
Patwardha, Advocates for R-4/alleged
contemnors.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **29.08.2017**
(ORAL)

1. The records of W.P.(C) 6765/2004 listed at serial no.31 in today's cause list have also been put up. Submissions have been made on behalf of either side.
2. Vide the application under consideration it has been submitted on behalf of the petitioner that there is a wilful disobedience on the part of the contemnors/respondents No.1 to 4 of the order dated 15.11.2016 passed in CM No.42096/2016 moved in W.P.(C) 6765/2004 inasmuch as vide order dated 06.09.2011 on the application CM No.13513/2005 under Section 17B of the Industrial Disputes Act, 1947, the said application having been allowed, there were directions that the petitioner management will pay the workman the last drawn wages or the minimum wages, whichever is higher,

from the date of the impugned Award and during the pendency of the writ petition or till their superannuation whichever is earlier. It was further directed that the wages will be paid to the workman on a monthly basis by the 7th day of the following month and the arrears of wages would be paid within a period of eight weeks from the date of the order i.e. 06.09.2011, failing which simple interest @ 9% per annum would be payable on the said sum for the period of delay. In the said order the workman was also directed to file an undertaking stating that in the event of the petitioner succeeding in the writ petition, the respondent workman will refund to the petitioner management the difference between the minimum wages and the last drawn wages.

The records of the W.P.(C) 6765/2004 out of which the present application/petition alleging contempt emerges indicates that CM No.42096/2016 dated 09.11.2016 has been filed on behalf of the workman seeking directions to the contemnors to clear all the arrears immediately to the workman as a skilled workman (Cook) along with interest @ 9% per annum in terms of the order dated 06.09.2011 in the main writ petition i.e. W.P.(C) 6765/2004 with the directions also to the management to pay to the respondent workman i.e. the petitioner herein, the last drawn wages or minimum wages, whichever is higher of a Cook, during the pendency of the writ petition or till his superannuation, whichever is earlier on a monthly basis by the 7th day of the following month.

Vide order dated 15.11.2016 on the said application i.e. C.M. No.42096/2016 though an opportunity was granted to the management of the Ashok Hotel to file its reply, however, there was a further direction to the management to **“release the payment of the admitted amount to the**

respondent along with the computation of the amount within a period of four weeks from the date of the order dated 15.11.2016”.

After the proceedings dated 15.11.2016, the Writ Petition (C) 6765/2004 is indicated to have been listed on 11.01.2017, 12.01.2017, 16.01.2017, 07.02.2017, then on 26.04.2017 and now today. On 07.02.2017 in proceedings qua the application under consideration i.e. Contempt Cas(C) No.59/2017 on behalf of the employer management a cheque for Rs.4,30,812/- dated 21.01.2017 had been handed over to the counsel for the workman towards arrears payable under Section 17B of the Industrial Disputes Act, 1947 in relation to which the learned counsel for the petitioner workman had sought time to verify the calculation and it has been submitted on behalf of the workman that the amount of Rs.4,30,812/- is not in conformity with the orders dated 06.09.2011 passed in W.P.(C) 6765/2004 and that a sum of Rs.4,48,304/- is still due to be paid by the management to the workman, in relation to which it has been submitted on behalf of the management that in terms of order dated 15.11.2016 qua CM No.42096/2016 in W.P.(C) 6765/2004 what was payable was the admitted amount to the workman.

It has been submitted on behalf of the management that the petitioner management vide W.P.(C) 6765/2004 has assailed the impugned Award dated 01.07.2003 of the Labour Court of the Presiding Officer in I.D. No.266/96 in which it has been observed to the effect that an adverse inference was being drawn against the management for not producing the relevant record in relation to the aspect of the workman having been retained as a Helper or as a Cook. In relation to this the workman claimed that he was working as a Cook whereas, the management claimed that he was working

as a Helper and it was thus, submitted on behalf of the management that the amount paid in terms of the order dated 06.09.2011 in W.P.(C) 6765/2004 is on the basis of the payment made to a Helper i.e. an unskilled employee/worker.

It is essential to observe that in W.P.(C) 6765/2004 in paragraph (E) of the Grounds of Petition it has been categorically asserted on behalf of the management that the workman did not possess any document which could show that he remained in the employment of the management as a Cook and vide paragraph (F) of the said petition it has been submitted that there was no vacancy for the post of a Cook at the time of engagement of the workman as a Helper nor the workman concerned fulfilled the prescribed qualifications and experience for the post of a Cook as laid down in the ITDC Recruitment, Promotion and Seniority Rules and that the workman was not holding any appointment and was only engaged as a casual worker according to the exigency of work.

Apparently, in terms of the proceedings dated 15.11.2016 the amount directed to be paid as reading to the effect **“The petitioner shall release the payment of the admitted amount to the respondent along with the computation of the amount within a period of four weeks from today”** relates to the payment of the admitted amount of wages to be paid in terms of the order dated 06.09.2011 to an unskilled workman as a Helper and not to a Cook. It has been submitted on behalf of the respondent No.1 to 4 that the entire amount due/wages payable in terms of order dated 06.09.2011 to an unskilled workman i.e. a Helper has since been paid inasmuch as it has been submitted on behalf of the respondent no.1 to 4 that the amount due towards payment as an unskilled worker i.e. a Helper to the workman has

been sent by way of a cheque till the date 31.08.2017 and it has been submitted on behalf of the respondent No.1 to 4 that the order dated 06.09.2011 in CM No.13513/2005 with a specific direction therein to the effect that the workman wages would be paid by the 7th day of each following month w.e.f. September, 2017 till disposal of the petition would be adhered to in its letter and spirit.

As per the affidavit of the workman on record, the workman's bank account no. is 4172000100010028 with Punjab National Bank, New Nangal Rai, D-2/13, Janak Puri, New Delhi-110 046.

In view thereof the management shall ensure that the payment of the wages in terms of the order dated 06.09.2011 read with order dated 15.11.2016 are paid into the said bank account of the respondent workman by the 7th day of each succeeding calendar month w.e.f. September, 2017 till disposal of the present petition and in the event of any failure to deposit the said amount by the 7th day of each succeeding calendar month there would be simple interest payable @ 9% per annum of the said amount.

The contempt petition is disposed of accordingly.

ANU MALHOTRA, J

AUGUST 29, 2017

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