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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8416/2017**

M/S SPECTRUM IMAGING & DIAGNOSTIC CENTRE

..... Petitioner

Through: Mr.Neeraj K. Jha, Advocate

versus

MANOJ CHAUBE & ANR

..... Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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20.09.2017

CM Nos.34664/2017 and 34665/2017 (exemptions)

Exemptions allowed, subject to just exceptions.

W.P.(C) No. 8416/2017 and CM Nos. 34663/2017 and 34666/2017

1. Initial submissions made on behalf of the petitioner.
2. Along with the petition CM No.34663/2017 has been filed seeking stay of the operation of the impugned award dated 2.4.2016 in reference No.2257/2016 of the Labour Court-XI, Karkardooma Courts and also an application CM No.34666/2017 under Section 151 CPC seeking to place on record certain documents stated to be the part of the trial court record.
3. Vide the present petition, the petitioner assails the impugned award dated 2.4.2016 of the learned Presiding Officer Labour Court-XI, Karkardooma, vide which the reference Order No.F-3(236)12/Ref./WD/LAB/707 dated 23.7.2012 as referred by the

Deputy Labour Commissioner (District West) Labour Department, Government of NCT of Delhi under Section 10 (1) (c) and Section 12(5) of the Industrial Disputes Act, 1947, to the effect *inter alia* in relation to the aspect of the services of Sh. Manoj Chaubey S/o Sh. B.N.Chaubey and Sh. Naveen Kumar Sharma S/o Sh. Satya Narayan and Sh. Atul Singh S/o Sh. Balram Singh having been allegedly terminated illegally and/or unjustifiably by the management and as to that relief they were entitled to and as to what directions were necessary in that regard were answered.

4. Vide the impugned award, it is indicated that the workman, namely, Sh.Atul Singh on whose behalf a submission had been made by his counsel before the Presiding Officer Labour Court that the case of the workman be closed had thus been closed. Qua the workmen Sh. Manoj Chaubey and Sh. Naveen Kumar, it was concluded to the effect that their services had been illegally terminated without compliance of Section 25F of the Industrial Disputes Act, 1947.

5. It was further observed vide the impugned award that though the services of the said two workmen had been terminated illegally they were not automatically entitled to reinstatement in service with full back wages and that in view of the short length of their service in as much as Sh.Manoj Chaubey had joined on 6.10.2009 and Sh. Naveen Kumar had joined on 17.2.2010 that their services had been terminated on 1.3.2012 without any show cause notice it was held vide the impugned award that they were not entitled to any reinstatement in view of the short lengths of service and there could not be developed any industrial relation between the management and

the workman. The impugned award also takes into account the aspect, there was nothing on record to indicate that the workmen Sh. Manoj Chaube and Mr.Naveen Kumar had made sincere efforts for getting alternative service after termination of their services by the management and the aspect of possibility of an alternative employment in view of the increasing number of diagnostic centres each day was also taken into account. The learned Presiding Officer Labour Court –XI thus did not consider it appropriate to grant full backwages to the workmen. Taking the totality of the circumstances of the case, lumpsum compensation to the tune of Rs.60,000/- each to Sh. Manoj Chaubey and Sh. Naveen Kumar for illegal /unjustified termination of the services by the management and/or as a consequences thereof back wages payable by the management were observed to suffice to meet the ends of justice. It was further directed that the said amount if not paid to the workmen within one month, the management would be liable to pay interest @ 9% per annum on that amount from the date of the award till its payment. Apart from the same a sum of Rs.20,000/- each was also awarded to Sh.Manoj Chaubey and Sh. Naveen Kumar as the costs of litigation expenses payable by the management.

6. Through the petition it is sought to be asserted that the impugned award does not take into account the factum that vide order dated 27.10.2014 of the Authority under the Delhi Shops & Establishment Act, the claim made *inter alia* by Sh. Manoj Chaubey and Sh. Naveen Kumar which they had made with their other workmen Mr.Atul in relation to their wages having not been paid for

the period 1.12.2011 to 29.2.2012 had already been considered by the said authority and that the petitioner herein had been directed to pay an amount of Rs.48,000/- to Sh. Manoj Chaubey and Rs.36,000/- to Sh. Naveen Kumar on account of their earned wages along with compensation of Rs.5,000/- to each claimant for not making payment of earned wages to the applicants in time with Rs.500/- each as costs within 30 days from the date of issue of that order dated 27.10.2014 under intimation to the authority and it is submitted on behalf of the petitioner that the said amount has already been paid and a copy of the demand drafts in relation thereto are placed as Annexure P-10 to the petition.

7. It is needless to observe that the said order under Section 21 (2) of the Delhi Shops & Establishment Act, 1954 relates to the unpaid wages of the workmen Sh. Manoj Chaubey and Sh.Naveen Kumar and also for the lapse for the period 1.12.2011 and 29.2.2012 and the compensation awarded is in relation to the said salary not having been paid in time. The impugned award dated 2.4.2016 in ID No.2257/16 of the Presiding Officer Labour Court, however relates to the illegal termination of the services of the workmen Sh. Manoj Chaubey and Sh. Naveen Kumar whose services were terminated on 1.3.2012 without requisite compliance of Section 25 F of the Industrial Disputes Act, 1947 and as observed herein above the amount that has been awarded is towards the lumpsum compensation in relation to illegal/unjustified termination of their services by the management and for consequences thereof/ back wages payable by the management has been observed to be sufficient to meet the ends of

justice along with the litigation expenses of Rs.20,000/- each as directed thereby.

8. Apparently, the terminology utilized by the impugned award states that it is the lumpsum compensation for illegal/unjustified termination of services and as a consequence thereof/ backwages payable and merely by putting the word 'backwages by the management' does not suffice to indicate that it relates to the full unpaid wages qua the period accounted for by the authority under the Delhi Shops & Establishment Act which has in fact vide the order dated 27.10.2014 directed the payment of the said unpaid wages and the compensation for not making the payment of the said wages in time.

9. As observed herein above, the impugned award has taken into account the aspect that there is no ground for grant of reinstatement under the circumstances of the instant case nor were they not entitled to full back wages. It is apparent thus that there is no reason as observed in the impugned award dated 2.4.2016 there being no infirmity in the same, the petition is thus dismissed.

ANU MALHOTRA, J

SEPTEMBER 20, 2017/sv