

\$~53

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

% ***Date of Decision : 9th May, 2018***

+ **W.P.(C) 4981/2018 & CM APPL. 19218-19220/2018**

M/S AUTO WEB PERFORMANCE CARS PVT. LTD. ..Petitioner

Through: Mr.Shivanath Mahanta, Advocate.

versus

SHRI BIJENDER

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

CM APPL. 19219/2018

Exemption allowed subject to all just exceptions.

Application is disposed of.

W.P.(C) 4981/2018 & CM APPL. 19218/2018 (Stay) & CM APPL. 19220/2018 (additional documents)

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 and 227 of the Constitution of India seeking a writ of certiorari or any other appropriate writ for quashing of the award dated 28.01.2017 passed in DID No.860/16 by the learned Presiding Officer, Labour Court-XI, Karkardooma Courts, Delhi (in short 'Industrial Adjudicator'). The impugned Award holds that

termination of services of the respondent was illegal and unjustified and instead of granting reinstatement, the petitioner was directed to pay lump sum compensation of Rs.40,000/- with interest @9% per annum from the date of the award till its payment and Rs.10,000/- as costs of litigation to the respondent.

2. It is submitted by learned counsel for the petitioner that the petitioner had appeared before the Industrial Adjudicator on 02.11.2016, 25.11.2016 and 24.12.2016. He submits that in fact on 24.12.2016 when their counsel was not available, their officer/authorized representative Shri Rajender Kumar was present and he had paid the previous costs of Rs.1,000/- for not filing the written statement and the matter was adjourned to 19.01.2017 for filing the written statement as a last opportunity. He submits that on 19.01.2017 their counsel Shri Anoop Gupta failed to appear in the matter despite the assurance given by their counsel. He submits that ex-parte award was passed on 28.01.2017 but they were not aware of the award and in fact the petitioner received notices dated 19.12.2017 and 19.01.2018 from the Labour Officer under Section 33(C)(1) of the Industrial Disputes Act, 1947 (in short 'ID Act'). He submits that in fact the services of the respondent were terminated by the petitioner on 11.12.2015 as he refused to work and created unhealthy atmosphere in the petitioner's premises and misbehaved with the female staff. He submits that the matter requires fresh adjudication as the petitioner has terminated the services of the respondent for justifiable reasons.

3. He submits that it was the fault of their counsel who did not put in his appearance and the petitioner was ignorant of the award.

4. The impugned award records that the respondent has been working with the petitioner as Driver since 01.02.2014 at a last drawn salary of Rs.10,998/- per month and his services were illegally terminated on 11.12.2015 in violation of Section 25F of the ID Act. Learned counsel does not dispute the relationship of employer and workman between the parties. It is also not disputed that the respondent was working as a Driver with the petitioner at a monthly salary of Rs.10,998/-. It is admitted that the services of the respondent were terminated by the petitioner on 11.12.2015. It is not the case of the petitioner that before terminating the services of the respondent they have complied with the requisite conditions as contained in Section 25F of the ID Act. The findings of the Industrial Adjudicator that the services of the respondent were terminated illegally in violation of Section 25F of the ID Act thus cannot be faulted with.

5. Keeping in view the short period of service of the respondent with the petitioner and also taking judicial notice of the fact that the nature of the job of the respondent as a Driver for which job opportunities are easily available in a Metropolitan city like Delhi, a lump sum compensation of Rs.40,000/- has been awarded in lieu of reinstatement along with interest @9% per annum from the date of the award till its payment and cost of litigation in sum of Rs.10,000/-. The award of compensation of Rs.40,000/- with interest and litigation

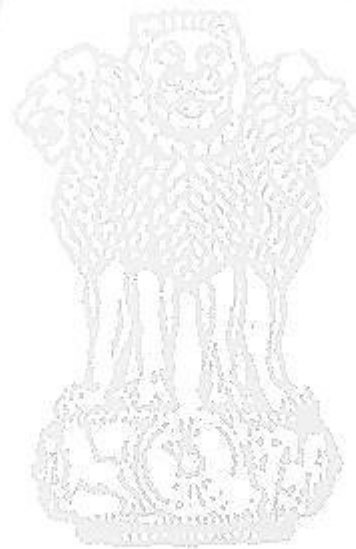
costs in the facts and circumstances of the case in any manner does not appear to be excessive.

6. I do not find any merit in the writ petition. The petition is dismissed along with CM APPL. 19218/2018 & 19220/2018.

(VINOD GOEL)
JUDGE

MAY 09, 2018
dkb

HIGH COURT OF DELHI



नित्यमेव जयते