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

% *Date of Judgment: 25.04.2018*

+ **W.P.(C) 329/2017**

SHINE TRAVELS & CARGO PVT. LTD. Petitioner
Through: Mr. A.K. Pandey and Mr. Vikas
Kumar, Advs.

versus

BAJRANGI PRASAD Respondent
Through: Mr. Ataur Rahman and Mr.
Sarefaraz Khan, Advs.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. The petitioner has impugned the order dated 15.10.2015 passed by the Authority under Minimum Wages Act, 1948/Deputy Labour Commissioner, South West District, New Delhi by which the claim petition of the respondent workman against the petitioner for non-payment of minimum wages for the period 01.04.2014 to 30.09.2014 was allowed in exercise of its power conferred by Clause (i) of sub-section 3 of Section 20 of Minimum Wages Act, 1948 (in short 'M.W. Act') and the petitioner management was directed to pay the difference of the minimum wages along with the compensation to the extent of

five times of the difference of the amount of the minimum wages and actual wages paid.

2. Learned counsel for the petitioner submits that the petitioner management had always paid the minimum wages to the respondent and the Authority could not have imposed any penalty upon them. He further submits that the respondent was absenting from duty. He also submits that Deputy Labour Commissioner has made a reference to the Labour Court at Karkardooma Courts, Delhi as to whether the respondent has been absenting from duty or his services has been terminated illegally or unjustifiably by the management and if so, what relief is he entitled to and what directions are necessary. He also submits that the reference petition has been pending before the Industrial Adjudicator. He submits that the petitioner was under the impression that the issue of minimum wages would also be decided by the Labour Court and they were not aware that proceedings were pending before the Authority under M.W. Act. He submits that the petitioner became aware of the impugned order when he received summons from the Evening Court No.3, Patiala House Court, New Delhi.
3. Per contra, it is submitted by learned counsel for the respondent that the petitioner did not appear before the Authority under M.W. Act and the impugned order dated 15.10.2015 was passed *ex parte* against the petitioner. He submits that minimum wages

during the relevant period were Rs.10,374/- per month for skilled workers as notified by the Government of NCT Delhi whereas the petitioner had paid the wages to the respondent @ Rs.7826/- per month and thus the respondent was paid less salary @ Rs.2,548/- every month during the relevant period.

4. The petitioner has not disputed the fact that the respondent was being paid salary @ Rs.7,826/- per month as against the Minimum Wages @ Rs.10,374/- during the relevant period.
5. The Division Bench of this Court in LPA No.407/2013, M/s. Tops Security Ltd. Vs. Tops Detective and Security Services Ltd. Karamchari Union (Regd.) decided on 27.01.2014 has set aside the order of the authority under MW Act directing the appellant to pay compensation/penalty equal to five times of the excess wages due and substituted with a direction to pay the excess wages along with three times the compensation.
6. Whenever any claim is lodged with the authority under MW Act under Section 20 (2), the authority under Section 20 (3) (i) of the MW Act after hearing both the parties is empowered upon finding the employer to have paid less than the minimum rates of wages, to direct the employer to pay the employee the amount by which the minimum wages payable to him exceeds the amount actual paid, together with the payment of such compensation as the authority may think fit but not exceeding ten times of such excess amount.

7. The MW Act or the Rules framed thereunder admittedly do not lay down any guideline or criteria for determining the quantum of such compensation.
8. Having heard the learned counsel for the parties and looking into the facts and circumstances of the case that the period of the default is only 01.04.2014 to 30.09.2014, it would be appropriate if the direction of the authority to pay the arrears of difference in wages along with compensation equal to five times the excess wages due is substituted with a direction to pay the difference of wages for five months Rs.15,288/- along with three times of the excess amount of wages as compensation.
9. Since, the petitioner has deposited Rs.91,728/- with the Registry of the Court in terms of the order dated 13.01.2017, it is directed that the amount payable to the respondent in terms of the order of this Court be released to the respondent by the Registry with accrued interest thereon and remaining amount with accrued interest be refunded to the petitioner.
10. The petition along with pending application being CM No.1549/2017 is disposed of accordingly.

(VINOD GOEL)
JUDGE

APRIL 25, 2018
"sandeep"