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

+ **W.P.(C) 13425/2018**

GP CAPT A W THOMAS (RETD) AND ANR. Petitioners

Through Mr Abhishek R. Shukla, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through Mr Dev P. Bhardwaj, Advocate for
UOI/R1 and R2.

Mr K.K. Tyagi, Advocate for R3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **12.12.2018**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 02.08.2018 dis-empanelling the petitioner no.2 agency from the Directorate General Resettlement (DGR) Security Agency Scheme.
2. The allegation against the petitioner is that he had paid remuneration in cash to the guards employed by him during the period October, 2016 to February, 2017. There is no dispute that the cash was paid to the guards purportedly employed by the petitioner. According to the petitioner, the same was permissible in terms of para 16 (c) of the Guidelines dated 09.07.2012.
3. Before proceeding further, it would be relevant to refer to the said clause, which reads as under:-

“(c) Principal employer will pay wages due to the security

agency by 1st of every month. Payment to security guards/supervisors will be done by ECS/Cheque on by the security agency by 7th of each month. In case the salary is not paid by ECS/cheque due to compelling reasons, DGR will be intimated accordingly. (Authority- Amendment issued vide Para 7 of Office memorandum 28(3)/2012/D(Res-I) dated 16 January 2013).”

4. It is the petitioners’ case that cash was paid to the guards due to compelling reasons. The only explanation with regard to the compelling reasons offered by the petitioner is that respondent no.3 had directed the petitioner to employ guards other than those employed earlier. In other words, the petitioner was not permitted to hire the guards engaged by the earlier agency. The petitioner claims that since guards were not readily available, the petitioner had to hire guards for a short period of times as an interim measure and therefore was required pay them in cash. This contention has been rejected. In the opinion of this Court rightly so. The explanation that guards hired on *ad-hoc* or temporary basis were required to be paid in cash is plainly unsustainable. There is no credible reason why temporary employees could not be paid through banking channels.

5. The petitioner also claims that respondent no.3 was not making payments regularly and this was also one of the compelling reasons for the petitioner to pay cash. This Court is of the opinion that this explanation is merely a ruse as delayed payments from employers is no justification for making payment in cash to the guards employed.

6. In view of the express conditions laid down in paragraph 16 (c) of the aforesaid Guidelines, the same was impermissible. The rationale of introducing the aforesaid condition is to prevent the pernicious practice of

paying the guards less than the minimum wages against receipts of the full amount. It was thus, necessary for the petitioner to duly comply with the same.

7. Even if it is accepted (which this Court does not) that there were compelling reasons for the petitioner to make payments in cash, there is no explanation why the information in this regard was not furnished to respondent no.2 as is required under Regulations 16 (c) of the Guidelines in question.

8. In view of the above, this Court is unable to accept that the punitive measure inflicted on the petitioner is in any manner unwarranted. Paragraph 26 of the aforementioned guidelines expressly provides that agency would be dis-empanelled if it is established that the sponsored agency has violated the norms.

9. The petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

DECEMBER 12, 2018

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