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

+ W.P.(C) 2349/2019 & CM APPLs. 10994/2019, 10995/2019

M/S WEARWELL (INDIA) PRIVATE LIMITED Petitioner

Through: Mr.Alok Bhasin and Ms.Poonam Das,
Advocates

versus

MOHD. NIZAM

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

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13.03.2019

1. Learned counsel for the petitioner submits that in similar writ petition bearing W.P.(C) No.1698/2019, this Court vide order dated 20th February, 2019, disposed of the writ petition with liberty to the petitioner to approach the Appellate Authority by depositing only the actual wages found due to the respondent under the impugned order. Learned counsel for the petitioner seeks similar order in this writ petition. The order dated 20th February, 2019 is reproduced hereunder:

“1. Vide the present petition, the petitioner impugns the order dated 28.11.2018 passed by the competent authority under the Payment of Wages Act, 1936 (hereinafter referred to as ‘the Act’) whereunder the petitioner was directed to pay to the respondent/workman wages for the period from 16.12.2017 till 30.04.2018 along with 10 times the amount of his wages by way of penalty for failing to pay him his wages during the aforesaid period when he was out of service.

2. Learned counsel for the petitioner, while drawing my attention to the Memorandum of Settlement dated 03.05.2018, pursuant whereunto the respondent had been reinstated in service, submits that once the parties had agreed that the petitioner/management will

reinstate the workman only with continuity of service, there was nothing implicit in the said settlement that the wages for the intervening period, when he was out of service, had to be paid. He submits that, in these circumstances, even if the competent authority was of the view that the petitioner was liable to pay wages for the said period, it was not a fit case warranting the imposition of 10 times the respondent's wages as penalty upon the petitioner.

3. *Learned counsel for the petitioner further submits that even though a statutory remedy of appeal against the impugned order is provided in Section 17 of the Act, the same is subject to pre-deposit of the entire amount awarded which, in the present case, includes penalty equivalent to 10 times the wages of the respondents. He submits that keeping in view the fact that the respondent had not been duly reinstated as per the terms of the settlement but also had been paid subsistence allowance for the period when he was out of service, the pre-condition for depositing the entire awarded amount is very onerous and unjust. He, therefore, prays that his appeal may be directed to be considered on merits by the Appellate Authority under the Act upon the petitioner depositing the amount of wages as found due under the impugned order, without insisting on deposit of the penalty.*

4. *Learned counsel for the petitioner relies on a decision dated 27.01.2014 of this Court in **M/s. Top Security Ltd. Vs. Tops Detective and Security Services Ltd. Karamchari Union (Regd.)**, [LPA No.407/2013] and submits that this Court has the power to reduce the amount of pre-deposit in appropriate cases.*

5. *Having considered the submissions of learned counsel for the petitioner, I find that there is no reason as to why the petitioner should not exercise the statutory remedy of appeal provided under the Act. However, there is merit in the contention of the learned counsel for the petitioner that the direction to deposit 10 times the respondent's wages as penalty was wholly unwarranted in the present case, especially in the light of the fact that the terms of Memorandum of Settlement dated 03.05.2018 signed between the parties only refer to reinstatement with continuity of service and not to payment of any back wages.*

6. *In the light of the limited prayer now being made before me and keeping in view the fact that the condition of pre-deposit does not in any event affect the rights of the respondent herein, the procedural formality of issuing notice to the respondent is dispensed with.*

7. *Accordingly, in the peculiar facts of the case, the petitioner is granted liberty to approach the appellate authority under the Act by*

depositing only the actual wages found due to the respondent under the impugned order. The said appeal would be considered by the Appellate Authority on merits without insisting on pre-deposit of the penalty amount. It is made clear that this Court has not expressed any opinion on the merits of the case and has only granted liberty to the petitioner to file an appeal before the appropriate forum, subject to depositing only the actual amount of wages found payable to the respondent.

8. The writ petition is disposed of with the aforesaid directions along with the pending applications.”

2. This Court is satisfied that this case is similar to W.P.(C) 1698/2019 and the petitioner's prayer for similar order is justified. In that view of the matter, the petitioner is granted liberty to approach the Appellate Authority under the Act by depositing only the actual wages found due to the respondent under the impugned order. Upon depositing of the actual wages found due to the respondent, the Appellate Authority shall consider the petitioner's appeal on merits without insisting on pre-deposit of the penalty amount.

3. The writ petition is disposed of in the above terms.

4. The pending applications are disposed of.

5. Copy of this order be sent to the respondent.

6. Copy of this order be given *dasti* to counsel for the parties under signatures of Court Master.

J.R. MIDHA, J.

MARCH 13, 2019

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