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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: -21.02.2019

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W.P.(C) 1244/2017 & CM APPL. 5671/2017

AMAN NAGRATH

..... Petitioner

Through Mr. M.Y. Khan, Adv.

versus

DEVENDER MANDAL

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Article 226/227 of the Constitution of India the petitioner, the Director of M/s Meyer Seals India Private Limited (hereinafter referred to as 'the Company') impugns the order dated 18.11.2016 passed by the Authority under Delhi Shops & Establishment Act, 1954 (hereinafter referred to as 'the Act'), whereunder he has been directed to pay a sum of Rs. 21,910/- along with an additional compensation of Rs.10,000/- to the respondent.

2. It may be noted that despite service, none appears for the respondent. In these circumstances I have heard the submissions of the learned counsel for the petitioner and, with his assistance, perused the record.

3. The respondent claiming to have been appointed as a Driver in M/S Meyer Seals India Private Limited (hereinafter referred to as the Company) w.e.f. 02.02.1998, made a complaint under Section 21 of the Act to the Assistant Labour Commissioner at Delhi(hereinafter referred to as Authority) on 24.09.2014 alleging therein that though he had been driving cars of the Company for the last many years, upon his requesting the management to provide him with statutory facilities including ESIC benefits, he was not only slapped and threatened but was also illegally terminated from service on 03.09.2014 and that too without being paid his leave encashment and accrued wages for the period between 01.06.2014 and 03.09.2014.

4. Before the Authority, the petitioner in its reply to the complaint took the plea that the respondent had never been employed by the Company, but was infact his personal driver and used to reside in the residential quarters provided by him. The petitioner also contended that the respondent had on 09.05.2014 borrowed a sum of Rs 30,000/- from him by way of advance, whereafter he became irregular at work and in fact reported for duty only for a few days in July-August 2014. He was, therefore, not entitled to receive any salary and was in fact liable to refund back a sum of Rs.9990/- to the petitioner towards repayment of the advance amount lend to him.

5. In support of their respective contentions, the parties led evidence. While the respondent workman filed his own affidavit reiterating that he was an employee of the Company and had not been paid wages for the period in question i.e. from 01.06.2014 to 03.09.2014 as also the leave encashment and was therefore entitled to

receive a total sum of Rs. 60,812/- from the petitioner.

6. On the other hand, the petitioner filed the affidavit of one of his domestic help namely Mr. Ganesh Prasad, who stated that he had been employed alongwith the respondent as the personal drivers of the petitioner and they had both been residing at the residential quarters provided by the petitioner. Mr. Ganesh Prasad further stated that the respondent workman had borrowed a sum of Rs.30,000/- from the petitioner by way of an advance payment of salary, which amount had not been returned by him.

7. Based on the pleadings and evidence led before it, the Authority rejected the petitioner's claim that the respondent was his personal driver. In the light of the petitioner's own admission that it had adjusted the salary and leave encashment payable to the respondent against the sum of Rs 30,000/-, stated to have been paid to him as advance, as also the fact that no evidence had been brought on record by the petitioner to show that the respondent had worked only for a few days, the Authority accepted the respondent's claim. Accordingly, after computing the outstanding amount payable to the respondent towards salary leave encashment, the Authority directed the petitioner to pay a sum of Rs.21,910/- along with an additional compensation of Rs.10,000/- to the respondent, within a period of 30 days .

8. Impugning the aforesaid order passed by the Authority, the present petition has been filed by Shri. Aman Nagrath in his personal capacity. Dr MY Khan, the learned counsel appearing on behalf of the petitioner, besides reiterating the submissions made before the

Authority, submits that the impugned order is present and shows complete non-application of mind. He submits that the Authority has relied on the respondent's claim that he was the Company's employee without any basis or proof of any kind, despite the petitioner's specific stand that the respondent was his personal driver. He submits that once there was nothing to show that the respondent was the Company's employee, the Authority could not have entertained the complaint as the Authority admittedly does not have jurisdiction to entertain the complaint of an individual's employee to whom the provisions of the Act are not applicable.

9. I have considered the submissions of the learned counsel for the petitioner but I am unable to persuade myself to accept the same. A perusal of the impugned order shows that the basic issue before the Authority was as to whether the respondent was an employee of the Company or the personal driver of the petitioner, as it is this issue which was crucial in determining the jurisdiction of the Authority to entertain the respondent's complaint. As noted hereinabove, the petitioner failed to produce any relevant documents including any records of the Company before the Authority in support of his plea that the respondent was never employed with the Company and had merely tendered the evidence of one of his domestic helps namely Shri Ganesh Prasad. In the light of the admitted position that the vehicle driven by the respondent was registered in the Company's name, the Authority rightly accepted the respondent's version that he had been employed as the Company's driver. The Authority thereafter allowed the respondent's claim by relying on the petitioner's own

admission that the salary due to the respondent for the period between June to September 2014, had not been paid as the respondent had worked for merely a few days during the said period, in support of which contention as aforesaid, no evidence was led before the Authority. In my opinion, once the petitioner failed to produce the relevant documents in support of his assertions, the Authority based on the limited evidence led before it was fully justified in holding the respondent to be an employee of the Company and passing the impugned order thereby allowing his claim.

10. For the aforesaid reasons, I find no perversity or infirmity in the impugned order passed by the Authority warranting the exercise of the writ jurisdiction of this court.

11. The writ petition, being meritless, is dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

FEBRUARY 21, 2019/sr