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

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Date of Decision: 07th August, 2019

+ W.P.(C) 5637/2017 & CM No.23573/2017

B.K. BHANDARI

..... Petitioner

Through: Petitioner in person.

versus

GOVT. OF NCT & ORS

..... Respondents|

Through: None.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The petitioner has challenged the order dated 31st December, 2015 whereby the Appellate Authority under the Payment of Gratuity Act dismissed the petitioner's appeal against the order dated 02nd September, 2014.
2. The respondent worked with the petitioner as a security guard for 428 days during the period 01st October, 1994 to 15th June, 2000. The respondent resigned from the petitioner's service on 15th June, 2000. The respondent thereafter raised an industrial dispute that the petitioner terminated his service after forcefully taking the resignation letter dated 14th June, 2000 whereupon the industrial dispute was referred to the Labour Court.
3. Both the parties settled all their disputes before the Labour Court on 07th February, 2007 in pursuance to which the petitioner paid a sum of Rs.19,700/- to the respondent in full and final settlement for all his claims.

The Labour Court recorded the statement of the respondent on oath on 03rd February, 2007. The respondent stated on oath that no claim of any kind whatsoever remains due from the petitioner upon receipt of the settlement amount of Rs.19,700/-. The statement of the respondent recorded before the Labour Court on 03rd February, 2007 is reproduced hereunder:-

“03-02-2007

Pr.: Workman Hira Lal with A.R. Sh. P. Dwivedi.

Mr. Pratap Shankar, management AR along with Brig B.K. Bhandari, Proprietor of the Management.

In the light of the settlement dated 24-01-2007 let further statements be recorded:

Statement of workman Hira Lal, S/o. Somnath, Aged about 38 years, R/o. Jhuggi No. 171 (New No.348), Rajeev Colony, Jhilmil Indl. Area, G.T. Road, Delhi (as per the Voter Identity Card produced by the workman). On S.A.

In pursuance of the settlement dated: 24-01-2007 I have received a sum of Rs.19,700/- (Rs.Nineteen Thousand Seven Hundred Only) by way of cash of Rs.5230/- and cheque of Rs.14470/- bearing No. 724836 dated: 03-02-2007 drawn on UCO Bank, Som Vihar Apartment, R.K. Puram, New Delhi. Now, no claim of any kind whatsoever remains due to me from the management. I under take to abide by the term of the settlement dated: 24-01-2007 and the settlement made today. Subject to encashment of the said cheque an award may be passed in terms of the settlement.”

(Emphasis supplied)

4. The Labour Court recorded the settlement and passed an award on the basis of the settlement on 07th February, 2007. The relevant portion of the award dated 07th February, 2007 is reproduced hereunder:-

“2. The management filed a written statement taking preliminary objection that claim of the claimant is mala fide, bogus and is without any basis. It is averred that workman was working at as site of the management of DLF Universal, Residential Colony, Dilshad Extension-II, Shahibabad, U.P. since December, 1998 at a monthly wages of Rs.1,905/- as Guard. It is further averred that in the month of March 2000, workman proceeded on 15 days sanctioned leave but he never joined the duty of the management after expiry of the leave. He resigned from the services on 15th June 2000, after full and final settlement. It is further averred that workman was gainfully employed with M/s. AVN Securities (P) Ltd. At Narang House, K.G. Marg, New Delhi after voluntarily leaving the services of the management. All other allegations as made in the statement of claim were denied by the management.

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5. Thereafter, both the parties adduced their evidence by way of affidavit and examined their respective witnesses. On 24-01-2007 when the case was listed for cross examination of the M.W. 01, the parties appeared and stated that the matter has been settled amicably. As such, statements of workman, Heera Lal and Brigadier B.K. Bhandari, proprietor of the management recorded on separate order sheet on 24-01-2007 and 03-02-2007.

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7. Since workman Heera Lal has settled his claim with the management in full and final settlement at all his dues and received a sum of Rs.19,500/- (Rupees Nineteen Thousand And Five Hundred Only) i.e. Rs.5230/- in cash and Rs.14,700/- by way of cheque No.724836, drawn on UCO Bank, Som Vihar Apartments, R.K. Puram, New Delhi in terms of settlement, nothing remains to be adjudicated upon by this tribunal.”

5. The petitioner present in person submits that respondent raised a false claim of gratuity after 57 months of the full and final settlement. The petitioner defended the claim before the Authority under the Payment of Wages Act on the ground that petitioner settled the matter and the settlement amount of Rs.19,700/- included all claims of the respondent including the

claim of gratuity.

6. The Controlling Authority under the Payment of Wages Act rejected the petitioner's contention on the ground that the case before the Labour Court related to the illegal termination and there was no mention of gratuity in the settlement or the award passed by the Labour Court. The Appellate Authority under the Payment of Gratuity Act upheld the findings of the Controlling Authority.

7. There is no appearance on behalf of the respondent despite the matter having been passed over. The respondent has also not filed the counter affidavit and his right to file the counter affidavit has been closed.

8. This Court is satisfied that the respondent settled all his disputes including the claim of gratuity and the settlement amount of Rs.19,700/- includes the respondent's claim of gratuity. The respondent raised a false claim before the Controlling Authority and the Appellate Authority.

9. The writ petition is allowed and the impugned order 31st December, 2015 of the Appellate Authority as well as the order dated 02nd September, 2014 of the Controlling Authority are hereby set aside. The pending application is also disposed of.

10. Copy of this judgment be given *dasti* to the petitioner present in person under signatures of the Court Master.

J.R. MIDHA, J.

AUGUST 07, 2019

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