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

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Decided on: 31.01.2020

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W.P.(C) 1200/2020

M/S SHIV SHAKTI TRACTOR CORPORATION Petitioner

Through: Ms. Roopali Chaturvedi, Adv.

versus

SHRI RAM SHARMA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 3989/2020 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

W.P.(C) 1200/2020 & CM APPL. 3988/2020

3. This petition impugns the award dated 31.05.2019 passed by the learned Labour Court in LIR No. 405/2016 on the ground that: (i) the Inquiry Report was not to be considered in the adjudication and (ii) the lump sum compensation of Rs. 6,00,000/- granted is on the higher side.

4. It is an admitted position that the respondent-workman was employed by the petitioner w.e.f. 10.03.1986. He was working as a helper and his last drawn salary was Rs. 9,500/- per month. The management had not provided him any appointment letter, attendance card, leave book, pay-slip, annual and casual leave, overtime allowance etc. He was asked to work for more

than 12 hours a day, but in default of legal facilities being provided to him. It was alleged that upon the workman's request for providing him due remuneration as per law, the management became inimical towards him and started harassing him; payment of his salary was stopped; that his signatures were taken on a blank paper and his services were terminated on 15.05.2013, along with a threat by the management that he will be implicated in a false case, if he ever came to the management again; and that management had also got lodged a report with the police; that the management did not pay him any wages from 01.04.2013 to 15.05.2013 i.e. the day when his services were terminated. In this regard, he sent a legal demand notice dated 28.05.2013 to the management. He also sent a demand letter dated 22.05.2013. In the absence of any response, he approached the Conciliation Officer, Labour Department, Govt. of NCT of Delhi, where he prayed that he be reinstated with full back wages.

5. It is admitted by the petitioner that the workman was indeed employed with them but it is denied that his services had been terminated without any reason. It is alleged that the workman had stolen some goods of the management. The workman had reiterated his claim and sequence of events before the Conciliation Officer. In the absence of any progress in the matter, a reference was made to the learned Labour Court. The case of the management was that an inquiry was being conducted by a person who was first cousin of Mr. Ramesh Arora the Manager of the management. The learned Labour Court had dismissed the said Inquiry Report for the reason that he was related to the management. The Inquiry Officer did not even summon the Stock Register of the company to ascertain the stock position of the day when the company claimed that its goods had been stolen by the

workman. Not ascertaining the actual loss of goods would be a fundamental flaw. It goes to the root of the allegation of theft. First it ought to have been established, only then the theft would need to be identified.

6. The management ought to have established before the Inquiry Officer that the goods did exist in the godown or the stocks of the company, which were then misappropriated. The management claimed to have filed a police complaint on 27.05.2013 apropos the theft. It was got converted into an F.I.R. on 01.07.2013. It is another matter though that in the subsequent criminal proceedings, the respondent-workman had been discharged by the order dated 02.06.2016 passed by the Court of the learned M.M., with the observation that: (i) from the material on record, the accused persons had been arrested merely on the basis of the disclosure statement and (ii) the investigating agency had failed to place on record any incriminating evidence against the accused persons. Interestingly, if the theft had been committed by the workman and was the reason for the termination of his services, then the police complaint ought to have been filed earlier in time and not after his removal from services. It was filed after he had sought payment of wages from 01.04.2013 to 15.05.2013. The police complaint appears to be an afterthought, only to justify the unwarranted illegal termination from the services. The Inquiry Report was rightly rejected by the learned Labour Court. The misconduct of the workman was never proven. In the circumstances, his illegal termination was set aside. The aforesaid contention of the learned counsel is untenable and is accordingly rejected.

7. The Court would note that the learned Labour Court fixed a lump sum amount of Rs. 6,00,000/- for the following reasons:-

“18. Issue no. 3: Relief, In the present case, since the management has lost the confidence of the workman as the management had lodged the FIR of theft against the workman, therefore, reinstatement of the workman does not serve any purpose because in such atmosphere, it is also not in the interest of workman to work with the management. Considering the length of the service that he was employed since 10.03.1986 and his last drawn salary was Rs. 9,500/- per month, this court has considered it fit to grant a lump sum amount of compensation of Rs. 6,00,000/-. The compensation shall be in lieu of above said benefit. The aforesaid amount shall be paid by the Respondent/Management within two months from the date this Award becomes enforceable, failing which the management shall also pay interest @ 9% per annum on the aforesaid amount from the date of Award till the date of realization.”

8. Evidently, the respondent-workman had not been paid wages from 16.05.1986 to 07.01.2000. The total amount for the aforesaid period of 13 ½ years, as per the admitted wages of Rs. 9,500/- per month could have been awarded i.e. Rs. 9500/-x12x13 = Rs. 14,82,000/-. Instead, the learned Labour Court has granted lump sum compensation of only Rs. 6,00,000/-. It does not call for any interference.

9. There is no merit in the petition. It, alongwith pending application, is accordingly dismissed.

NAJMI WAZIRI, J

JANUARY 31, 2020

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