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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) 1214/2020

M/S SHIV SHAKTI TRACTOR CORPORATION Petitioner

Through: Ms. Roopali Chaturvedi, Adv.

versus

BABLOO YADAV

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 4060/2020 (Exemption)

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

W.P.(C) 1214/2020 & CM APPL. 4059/2020

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. 4,00,000/- granted is on the higher side.

4. It is an admitted position that the respondent-workman was employed by the petitioner w.e.f. 12.12.2000. He was working as a helper and his last drawn salary was Rs. 8,000/- 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, with no legitimate facility being provided to him. Upon his request for providing his due remuneration as per law, the management

became inimical towards him and started harassing him. His payment of salary was stopped. He alleged that (i) 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 (ii) that the management had also got lodged a report with the police. 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 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 sought reinstatement with full back wages.

5. It is admitted by the petitioner that the workman was indeed employed with them but they deny that his services had been terminated without reason. It is alleged that he had stolen some goods of the management. The claimant/workman had reiterated his claim and sequence of events before the Conciliation Officer. In the absence of any progress, a reference was made to the learned Labour Court. The case of the management was that an inquiry had been conducted by a person who was first cousin of Mr. Ramesh Arora-Manager of the management. However, the learned Labour Court had dismissed the said Inquiry Report on account of the said relationship. The Inquiry Officer did not even summon the Stock Register of the company or ascertain the company's stock on the day when it claimed that its goods had been stolen by the workman. This would be a fallacious allegation against the workman that he had stolen some goods. Firstly, the management ought to have established before the Inquiry Officer

that the goods did exist in the godown and were part of the stocks of the company, which were later misappropriated by the workman.

6. It is also the case of the respondent-workman that one Mr. Shiv Nath had informed him that earlier two other persons namely Mr. Bablu Yadav and Mr. Shri Ram Sharma were stealing goods of the management. Despite intimation by Mr. Shiv Nath, management did not take any action against Bablu Yadav. Mr. Shri Ram Sharma was however, subsequently removed from work. The evidence of Shiv Nath was not taken by the management.

7. The management claimed to have filed a police complaint on 27.05.2013 apropos the theft which subsequently 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 from the material on record, the accused persons had been arrested merely on the basis of the disclosure statement, 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 formed the basis of the termination of his services, then the police complaint ought to have been filed earlier and not after his removal from services, especially as he had already sought payment of wages from 01.04.2013 to 15.05.2013. The lodging of the police complaint appears to be an afterthought, only to justify the unwarranted illegal termination of the workman's 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 contention of the

learned counsel against the impugned order is untenable and is accordingly rejected.

8. The Court would note that the learned Labour Court fixed a lump sum amount of Rs. 4,00,000/- 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 12.12.2000 and his last drawn salary was Rs. 8,000/- per month, this court has considered it fit to grant a lump sum amount of compensation of Rs. 4,00,000/-. 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.”

9. What emanates from the above is that the respondent-workman had not been paid wages from 01.04.2013 till 15.05.2013 and the total amount if computed strictly, for the aforesaid period as per the admitted wages of Rs. 8,000/- per month would be much more than the lesser lump sum compensation of Rs. 4,00,000/-, which has instead been rightly granted by the learned Labour Court. It does not call for any interference.

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

NAJMI WAZIRI, J

JANUARY 31, 2020/kb