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***IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6509/2020 & CM APPLs. 22820/2020, 22821/2020
M/S.JUPITER ADMIN AND SECURITY SERVICES PVT
LTD. Petitioner

Through: Mr. Jai Kumar Sinha, Advocate (M-
9868204722).

versus

STATE (NCT OF DELHI) & ORS. Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 16.09.2020

1. The hearing has been held through video conferencing.
2. Advance copy of the petition was served upon the GNCTD and also the Trade Union through email, however none appears for the Respondents.
3. The present petition has been filed impugning the order dated 6th /9th September, 2019 passed by the Joint Labour Commissioner (South), by which the Respondent-Workman has been awarded minimum wages in the following manner:

“xxx

10. In view of above respondent management is directed to pay Rs.14,790/- difference arrears of Minimum Wages for the period from 01/01/2015 to June-2015 along with Rs.44,370/- penalty which comes total Rs.59,160 /- by way of demand draft in favour of claimant within 30 days from the date of order i.e. 06/09/2019. Failing which same shall be recovered as per provision of Minimum Wages Act, 1948.”

4. The grievance raised by Mr. Sinha, Id. Counsel appearing for the Petitioner/Management, is that in paragraph 6 of the said order, the Tribunal has

wrongly recorded that the witness of the Management, was not present. Mr. Sinha relies upon the various order sheets of the Competent Authority in support of his submission. He prays that if one opportunity is given to the Management, they are willing to lead evidence and thereafter, the matter can be heard on merits.

5. A perusal of paragraph 6 of the impugned order shows that the Labour Commissioner has recorded that the Authorized Representative (*hereinafter* 'AR') of the Management was not present on 6th December, 2018, 20th December, 2018 and finally on 26th December, 2018. Paragraph 6 of the impugned order reads as under:

"6. Claimant filed his statement by way of affidavit Ex.WW1/A. The contents of affidavit on 14/12/2017 claimant also filed documents Ex.WW1/1 to WW1/5 i.e. copy of demand notice dated 26/11/2015, copy of postal receipt, copy of ID Card issued by management to claimant and was also cross examined by Sh. Puneet Sharma AR of respondent management on 14/06/2018 and 19/06/2018.

For respondent management Sh. Ashok Kumar S/o Sh. Vasudev Singh filed his statement by way of affidavit on 30/10/2018 as a evidence on record but respondent witness did not appear in the proceedings to tendered his affidavit and to prove contents of his affidavit despite given 3 dates i.e. 06/12/2018 and 20/12/2018 hence final on 26/12/2018 right of respondent management to lead evidence was closed and matter fixed for filing written argument."

6. However, a perusal of the order sheets reveals that, the orders passed in the matter were as under:

"Order dated 6th December, 2018

Present Sh. Raj kumar Rajput ARW along with claimant respondent Sh. Puneet Sharma along with Sh. Ashok Kumar for mgt. case adjourned for 20.12.2019 at 10:30

am.

Order dated 20th December, 2018

*Authority is busy in m/w case are adjourned for
26.02.2019*

Order dated 26th February, 2019

AR of client Sh. Pramod

None for the Respondent

*Respondent/Management filed affidavit of Sh. Ashok an
evidence on 30-10-2018 but thereafter 3 days were
fixed for chief and cross of respondent but a witness not
appeared. Hence not allow for tending affidavit.*

Matter Adjourned for argument on 28-2-2019”

7. A perusal of the order sheets shows that on 6th December, 2018 the AR of the Management was present before the Court. On the adjourned date i.e. 20th December, 2018, the Authority did not hold the Court at all and the matter was simply adjourned to 26th February, 2019. According to Mr. Sinha, Id. counsel, no notice was issued for 26th February, 2019 in terms of the usual practice before the Labour Commissioner. Despite this being the position, on 26th February, 2019, a simple order was passed stating that for three dates the AR of the Management was not present and therefore the evidence was closed. Moreover, in paragraph 6 of the impugned order instead of 26th February 2019, the date is wrongly noted as 26th December 2018. Out of the three dates, on the first date the AR was present, on the second date the Officer did not hold proceedings and the third date is wrongly noted.

8. Thus, it is clear that the Management's evidence by way of affidavit, though being on record, was not read by the Competent Authority prior to passing of the order. The impugned order is not sustainable.

9. Accordingly, this Court is of the opinion that the Management ought to be given one opportunity to lead its evidence. The impugned order is, accordingly,

set aside. Subject to the Management depositing a sum of Rs.10,000/- before the Labour Commissioner within four weeks, an opportunity shall be granted to the Management to lead its evidence. Thereafter, the matter shall be heard on merits. If any amount is found payable, adjustment of Rs.10,000/-, which is to be deposited, shall be given in the final order.

10. In view of the above order, the recovery proceedings before the Id. Metropolitan Magistrate shall not proceed and shall abate. Copy of this order be communicated to the All India General Mazdoor Trade Union.

11. List on 12th October, 2020 before the Labour Commissioner.

12. The petition is disposed of, in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J

SEPTEMBER 16, 2020

Rahul/A