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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 1st February, 2022

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W.P.(C) 13880/2019

RADHEY SHYAM

..... Petitioner

Through: Mr. L.B. Rai, Advocate & Mr.
Shivam Shukla, Advocate.

versus

CHINMAYA VIDHYALAYA SENIOR SECONDARY SCHOOL
AND ORS.

..... Respondents

Through: Mr. Jai Kumar Sinha, Advocate for
R-1to3.
Ms. Ruchira Gupta and Ms. Nancy
Shah, Advocates for R-4.**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned order dated 18th July 2019 in *LID No. 915/2016* titled *Sh. Radhey Shyam v. M/s Chinmaya Vidyalaya* passed by the PO, Labour Court-XIX, Rouse Avenue Courts, New Delhi (*hereinafter "Labour Court"*). Vide the said award, the statement of claim filed by the Petitioner/Workman (*hereinafter "Workman"*) was dismissed by the Labour Court on the ground that the Workman was only the employee of the Contractor- M/s Jupiter administrative and Security Services Pvt. Ltd, i.e., Respondent No.3 (*hereinafter "Contractor"*).
3. The Petitioner's case is that he was appointed as driver by the Respondent No.1/Management (*hereinafter "Management"*) in 2006.



Thereafter, he was illegally terminated in 2016 after which he filed a case before the Labour Court. The Workman's last drawn salary was Rs. 15,355/-. Before the Labour court, the Workman placed various documents on record including various identity cards and certificates issued by the Management to show that he was working as a driver with the Management since 2006.

4. On the other hand, Mr. Sinha, Id. Counsel appearing for the Management and the Contractor relies upon documents such as ESI contribution, Provident Fund contribution, etc. which show that the said contributions were made by the Contractor on behalf of the Workman to argue that the Workman was not an employee of the Management. The case of the Management is that the Workman was initially working as a daily wager and it was only in 2009 that he was appointed by the Contractor. Since he was working as a driver in the school, he was given an identity card for that purpose.

5. The issues that were framed by the Labour Court for adjudication of the dispute are as under:

"1. Whether there existed any relationship of employer and employee between the workman Radhey Shaym and management no. 1, 2 & 4? O.P.W.

2. Whether the workman was employed by management no. 3 only? O.P.M- 1,2 & 4.

3. Whether the workman has left the services of management no. 3 on 20.05.2016 of his own? O.P.M-3.

4. Whether the services of the workman were terminated by the management no. 1 and 2 illegally and/ or unjustifiably? O.P. W.



5. Relief.”

6. The Labour Court came to the conclusion that the Workman had failed to establish that he was an employee of the Management. In fact, the witness of the Contractor admitted before the Labour Court that the Workman was a direct employee of the Contractor. On the basis of the said evidence and the fact that the ESI and the Provident Fund contribution were made by the Contractor, issues 1 and 2 were decided by the Labour Court against the Workman. Insofar as issue no. 3 is concerned, the Labour Court came to the conclusion that the Workman was not interested in remaining under the employment of the Contractor as he had failed to respond to show cause notices issued by the Contractor. Hence, the claim came to be dismissed by the Labour Court.

7. Mr. Rai, appearing for the Workman has relied upon certain documents on record to submit that various certificates and authorization cards and permits were issued by the Management to the Workman. A perusal of the said documents show that the Workman was working with the Management since 2006. However, a perusal of the written statement filed by the Management shows that the Management took a stand before the Labour Court that the Workman was working with the Management only since 2009. This was clearly an incorrect stand as the Management ought to have been candid and stated that the driver was working, may be as a casual worker since 2006 but was regularly appointed by the contractor in 2009. It must be noted here that the present matters relate to back wages, reinstatement along with other legal and statutory dues to be paid to the Workman.



8. From documents available on the record, it is established that the Workman was working with the Management since 2006 either through the Contractor or otherwise. He had served the Management for more than 10 years, which is a long period. Thus, this Court is of the opinion that a lump sum compensation of Rs.1 lakh should be awarded to the Workman including the legal and statutory dues. In addition, the Workman is permitted to get the EPF / ESI contribution and gratuity earned by the Workman throughout his service released from the relevant governmental authorities in accordance with law. An application may be filed by the Workman to the concerned authorities which shall release the dues to the Workman. The Management/Contractor are directed to extend the cooperation in this regard.

9. It is clarified that with the payment of Rs.1 lakh and the release of EPF/ESI contribution and gratuity from the appropriate authorities in favour of the Workman, no further claims of the Workman would remain against the Management or Contractor.

10. The petition along with all the pending applications are disposed of in above terms.

11. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 1, 2022/Aman/SK
(corrected & released on 3rd February, 2022)