



\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 3rd February, 2022

+ **W.P.(C) 12229/2019 & CM APPLs.6065-66/2022**

M/S TIGER FORCE SECURITY SERVICES Petitioner
Through: Mr. Deepak Jain and Mr. Tanpreet Gulati, Advocates.

versus

MR. UMENDER KUMAR Respondent
Through: Mr. Sumit Kumar, Advocate

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 19th January, 2019 in *ID No. 7732/2016* titled *Umender Kumar v. M/s Tiger Force Security Services* passed by the Id. PO, Labour Court-V, Dwarka Courts/Delhi (*hereinafter "Labour Court"*). Vide the impugned order, Respondent/Workman (*hereinafter "Workman"*) was granted reinstatement with full backwages along with continuity of service and consequential benefits. The impugned award being an *ex parte* award has been challenged before this Court.
3. Vide order dated 20th November, 2019, this Court had granted interim stay on the impugned award subject to deposit of 50% of the awarded amount. Pursuant thereto, the Petitioner/Management (*hereinafter "Management"*) has deposited a sum of Rs.4,89,420/- which has been kept in an FDR. The same is lying in the account of the Registrar General.
4. Today, an application has been moved by the Workman for litigation expenses and during the course of hearing, submissions were made in the



main petition. The case of the Management is that the Workman was working as a security guard with the Management and he had left the employment to go back to his village out of his own volition. On the issue of non-appearance of the Management before the Labour Court, Id. Counsel submits that the counsel who was engaged by the Management met with an accident due to which he could not appear leading to the *ex parte* award being passed. Mr. Deepak Jain, Id. Counsel relies upon the reply filed by the Workman before the Labour Court wherein he clearly admitted that he was neither dismissed nor terminated by the Management but had gone back to his native village and that he did not return to re-join the service. Mr. Jain, Id. Counsel also submits that the Management is willing to take him back as a security guard.

5. Mr. Sumit Kumar, Id. Counsel, at this stage, was requested to contact the Workman and take instructions as to whether the Workman wishes to join back the Management. The Workman was also directed to join the proceedings virtually. The matter was passed over. However, after pass over, Mr. Sumit Kumar, Id. Counsel submits that he contacted the Workman but he unable to join the Court proceedings virtually as he is in his village in U.P. On the point of re-joining the services of the Management, he submits that the Workman has some apprehensions in re-joining the Petitioner/Management, however, he is agreeable to accepting a lump sum compensation in this matter.

6. Heard Id. Counsel for the parties. The Court has considered the matter. The statement made by the Workman before the Labour Court which is on record clearly has a categorical admission to the effect that the Workman had not been dismissed or terminated but he had gone to his



native village and he did not return to service. The same reads as under:

“मैसर्स: टाईगर फोर्स सिक्योर्टी सर्विसेज

विषय: प्रबन्धक के जबाब दावे के उत्तर में।

महोदय,

निवेदन यह है कि प्रबंधको ने अपने जबाब दावे में जो भी तथ्य दिए हैं असत्य एवं बेबुनियाद दिए हैं। सच्चाई यह है कि उन्होंने कर्मचारी को नौकरी से नहीं हटाया कर्मचारी अपने गाँव गया था उसके बाद लोट कर वापिस ड्यूटी ज्योन करने नहीं आया। सच्चाई यह है कि कर्मचारी ने उनकी संस्थान दिनांक 06/01/2008 से बतौर सिक्योर्टी गार्ड के पद पर से अंतिम वेतन 8800/- रु. प्रतिमाह पर कार्यरित था प्रबंधक ने कर्मचारी को श्रम कानूनों के अंतर्गत - लीव बुक, ओवर टाईम कार्ड, एवं वेतन बढ़ोतरी, संस्थान की बैलेंस शीट के मुताबिक बोनस, एवं कैजुअली राष्ट्रीय त्यौहारी अवकाश, एवं सालाना अवकाश, कर्मचारी को नहीं दिए थे। जब भी कर्मचारी ने प्रबंधक से कानूनी सुविधाओं की माँग की तो प्रबंधकों ने कहा कि काम करते रहें हम कानूनी सुविधाएँ लागू कर देंगे। कर्मचारी के बार बार मौखिक रूप से माँग करने पर प्रबंधकों ने कानूनी सुविधाएँ लागू नहीं की नाही मेरी पिछली वैधानिक सुविधाओं की धनराशी कर्मचारी को भुगतान की हैं तथा बिना कारण बताएं बिना कर्मचारी को लिखित नोटिस दिए बिना दिनांक 01/10/2010 को नौकरी से हटा दिया। तथा कर्मचारी का अर्जित वेतन दिनांक 01/08/2010 से 30/09/2010 तक का भुगतान नहीं



किया प्रबंधकों से बार-बार मौखिक रूप से नौकरी की माँग की लेकिन प्रबंधकों ने श्रमिक से विरोधी रवैया अपना कर कर्मचारी की माँग को ठुकरा दिया।”

7. His stand is that he was denied various statutory increments, bonus, etc., by the Management. Thereafter, the Workman was finally terminated by the Management on 1st October, 2010 without any legal notice being issued.

8. Considering the fact that the impugned award is an *ex parte* award as also the fact that the Management is now willing to take back the Workman, this Court is of the opinion that the ends of justice would be met if a lump sum compensation is awarded to the Workman. In the present case the Workman joined the Management on 7th January, 2008 and the date of termination is 1st October, 2010. Thus, he has worked for a period of more than two and a half years. His last drawn salary was Rs.8,800/-. The termination having taken place in 2010, the claim was filed by the Workman only in April, 2015 after a lapse of almost 5 years. Thus, the grant of backwages for the delayed period of five years would be completely unsustainable in the opinion of this Court. In the overall facts and circumstances of this case, the following directions are issued:

- i) The Workman shall be paid a lump sum compensation including litigation expenses of Rs.1,50,000/-. In addition, the interest which has accrued on the total amount lying deposited in Court shall be released in favour of the Workman after deducting the TDS as applicable. The said amount shall be credited by the Cash Branch of the Registry of this Court directly into the bank account of the Workman whose mobile number is [M:9411496630]. Alternatively, if



the Workman does not have a back account a demand draft shall be prepared in his own name and he shall come personally along with his counsel who shall identify him to collect the said demand draft. After deducting, Rs.1,50,000/- from the deposited amount, the remaining amount deposited with this Court shall be released back to the Management. This payment shall be effected within six weeks. If the workman does not collect the amount for his own reasons, after the period of six weeks, the amount to be refunded to the Management shall be refunded. The amount payable to the workman shall be retained in the account of the Registrar General, in interest bearing mode.

ii) If the Workman is willing to join the Management, he shall be permitted to do so and in that case the Management shall ensure that he shall be fairly treated like other employees and shall be employed on the same terms as other employees rendering similar services. If the Workman wishes to join the services of the Management, he shall contact Col. K.K. Nanda [M:9811115954], who is the HR official Authorised Representative of the Petitioner/Management.

9. With these observations the present petition, along with all pending applications, is disposed of.

10. Accordingly, the date already fixed i.e., 7th April, 2022 before the Registrar stands cancelled.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 3, 2022

dj/sk