$~26

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

\+ W.P.(C) 89/2024

M/S AERONET TRAVTOUR PRIVATE LIMITED THROUGH ITS DIRECTOR MR. SANDEEP BHARDWAJ ..... Petitioner

Through: Ms.Pragya Dubey, Advocate

versus

CHIEF LABOUR COMMISSIONER (CENTRAL) & ORS. ..... Respondents

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

% **04.01.2024**

CM APPL. 400/2024 (Exemption)

Subject to the petitioner filing the clear, original and legible/typed copies of any dim documents on which the petitioner may seek to place reliance, within four weeks from today, exemption is granted for the present.

The application is disposed of.

W.P.(C) 89/2024 & CM APPL. 399/2024 (Stay)

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

"(i) writ of mandamus or any other appropriate writ or direction/order thereby setting-aside the order dated

24.08.2023 passed by the Deputy Chief Labour Commissioner (Central), Appellate Authority, (respondent no.1) under the Payment of Gratuity Act, 1972 in Appeal No. 36(136)/2023 PADYC; and/or,

(ii) writ of mandamus or any other appropriate writ or order thereby setting aside the operation of the order dated 08.05.2023 passed by the Controlling Authority (respondent no. 2) during pendency of the present writ petition; and/or

(iii) writ of mandamus or any other appropriate writ or order thereby directing the Appellate Authority to exempt the petitioner from depositing the amount of gratuity till the matter is not decided on merits; and/or

(iv) Directing respondent no. 1 to remand back the matter for hearing on merits before respondent no. 1 and thereby respondent no 2 to hear and entertain matter afresh; and/or, And/or;

(v) Pass any other further writ, order and / or direction which this Hon'ble Court may deems fit and proper in the facts and circumstances of the case in favor of the petitioner."

2. Learned counsel appearing on behalf of petitioner submitted that the respondent No. 3 has been working as Visa executive and Field executive with the petitioner from 2003. It is submitted that the respondent no.3 has allegedly claimed to work for the petitioner-Company for a period of 18 years and 11 months. It is further submitted that on 21st March, 2020, the respondent No.3 willingly, with free consent and without any undue influence gave his resignation letter from the job with the petitioner-Company. After resigning from the organization of petitioner-Company, the respondent no. 3 in the year 2022 filed his claims dated 14th February, 2022

with the controlling authority i.e. respondent no. 2 herein, vide application bearing No. 2857 of 2022.

3. Learned counsel appearing on behalf of petitioner submitted that for the applicability of the Payment of Gratuity Act, 1972 (hereinafter "The Act"), it is important for the establishment that there must be at least 10 employees, but in the present case, the petitioner-Company does not have 10 employees and the Act is not applicable in its entirety on the petitioner-Company for the very simple reason and, therefore, the petitioner-Company could not have been made to pay the gratuity amount in favour of the employee as the learned Assistant Labour Commissioner failed to appreciate the document brought forward at the time of evidence. It is submitted that the Appellate Authority has further failed to appreciate that as per Section 2A, an employee claiming for gratuity must have been in a continuous service for a period of 5 years. On the contrary, in the present case, since the Act is not applicable on the petitioner-Company, therefore, the span of working years is immaterial thereby making her not entitled to claim gratuity from the petitioner-Company. It is further submitted that the Appellate Authority further failed to appreciate that the gratuity amount payable by the petitioner computed in pursuant to the provisions of the Act, i.e. on the basic salary, whereas no document in this regard has ever been provided by the respondent to substantiate the last drawn salary. Moreover, the gratuity has wrongly been computed as no settled/constant amount has been reflected in the Statement of Account of the respondent which makes it clear that the respondent was being paid remuneration unsystematically.

4. Heard.

5. On filing PF within a week, issue notice to the respondents, through

all permissible modes, returnable on 26th March, 2024.

CHANDRA DHARI SINGH, J

JANUARY 4, 2024
dy/av

Click here to check corrigendum, if any