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

+ LPA 326/2020 & CM No.27748/2020 (for condonation of 412 days delay in filing the appeal)

VIKRAM THAPA Appellant
Through: Mr. Anuj Aggarwal, Adv.

Versus

DECCAN CHARTERS PRIVATE LIMITED Respondent
Through: Mr. Praveen Kumar Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **14.01.2021**

[VIA VIDEO CONFERENCING]

1. The appeal impugns the judgment dated 15th July, 2019 of a Single Judge of this Court, allowing W.P.(C) No.4414/2017 preferred by the respondent.
2. This appeal came up first before this Court on 3rd November, 2020, when the counsel for the respondent Management appeared on advance notice. Vide subsequent order dated 9th November, 2020, notice of the appeal was accepted by the counsel for the respondent Management and the appeal posted to today for hearing.
3. We have heard the counsel for the appellant and the counsel for the respondent.
4. The respondent Management preferred the writ petition from which this appeal arises, impugning the "interim award dated 4.01.2017 passed in

ID No.156 of 2012 by the Central Government Industrial Tribunal-cum-Labour Court No.1, New Delhi" and vide which interim award, the respondent Management had been directed to pay interim maintenance of Rs.4,000/- per month, with effect from 3rd December, 2015, to the appellant workman.

5. The writ petition remained pending before this Court till it was decided vide the impugned judgment dated 15th July, 2019. On enquiry, it is informed that during the pendency of the writ petition, there was a stay of the interim award of the Central Government Industrial Tribunal (CGIT)-cum-Labour Court impugned in the writ petition, subject to the respondent Management depositing some amount in this Court but the value whereof is not known today to either of the counsels.

6. The undisputed facts are, (i) that the appellant workman was employed as a Driver in the respondent Management, with effect from 12th September, 2007; (ii) that the employment of the appellant workman was terminated by the respondent Management vide letter dated 15th March, 2012; (iii) that the appellant workman raised an industrial dispute and which was referred to the CGIT-cum-Labour Court; (iv) that the CGIT-cum-Labour Court, vide order dated 31st December, 2013 decided the preliminary issue of validity of the enquiry held preceding the termination of employment of the appellant workman to be bad and having been conducted without complying with the principles of natural justice, and since the respondent Management sought opportunity to prove the alleged misconduct before the CGIT-cum-Labour Court, opportunity to the respondent Management therefor was given; (v) that the appellant workman filed an application for interim maintenance and which was allowed vide order dated

4th January, 2017 and directions issued, as aforesaid, for payment of interim maintenance; and, (vi) that aggrieved therefrom, the writ petition, as aforesaid, was preferred by the respondent Management.

7. The Single Judge, in the impugned judgment, accepting the contention of the counsel for the respondent Management that the termination of the employment of the appellant workman was owing to loss of confidence by the respondent Management in the appellant workman and, no enquiry even was required before the termination of employment of the appellant workman, as held in *State Bank of Travancore Vs. Prem Singh* 2019 SCC OnLine Del 8258, has held, "*prima facie*" the subject case was covered by the principles laid down in *State Bank of Travancore* supra and has in view thereof, set aside the order dated 4th January, 2017 of the CGIT-cum-Labour Court and remanded the case back to the CGIT-cum-Labour Court to hear the matter afresh in terms of the principles laid down in *State Bank of Travancore* supra.

8. The contention of the counsel for the appellant workman is that the order dated 31st December, 2013 of the CGIT-cum-Labour Court deciding the preliminary issue of the validity of the enquiry in favour of the appellant workman was not even the subject matter of challenge before the Single Judge and the Single Judge, instead of going into the question of validity of the order of grant of interim maintenance subject matter of challenge in the writ petition, has proceeded as if the challenge was to the finding dated 31st December, 2013 of the CGIT-cum-Labour Court qua the preliminary issue, which was not even the subject matter of challenge. It is further argued that the question, whether the termination of the appellant workman was on account of loss of confidence and/or whether *State Bank of Travancore*

supra has any application or not, is still to be decided by the CGIT-cum-Labour Court.

9. During the course of hearing, it is informed that the industrial dispute aforesaid is listed for final hearing before the CGIT-cum-Labour Court on 18th February, 2021.

10. The counsel for the respondent Management does not dispute that the challenge in the writ petition from which this appeal arises was not to the order dated 31st December, 2013 on the preliminary issue qua the validity of the enquiry held by the respondent Management preceding the termination of employment of the appellant workman. He however contends that the Single Judge has rightly held *State Bank of Travancore* supra to be applicable.

11. We have considered the rival contentions and find that the Single Judge indeed has not addressed the matter from the perspective of the challenge to the award of interim maintenance by the CGIT-cum-Labour Court and which alone was challenged before the Single Judge. There is no discussion whatsoever in the impugned judgment, as to whether the award of interim maintenance was in accordance with law or not and/or as to the quantum thereof.

12. However since we are informed that the industrial dispute is now ripe for final adjudication before the CGIT-cum-Labour Court, we are of the opinion that the direction of the Single Judge, remanding the matter, would only delay the final adjudication and which is not in the interest of either the appellant workman or the respondent Management. We have thus proposed that we dispose of this appeal, setting aside the direction of the Single Judge of remand and directing release to the appellant workman, out of the

amounts deposited in this Court, a sum of Rs.50,000/- (because under the award of interim maintenance impugned in the writ petition, a sum of over Rs.2,00,000/- would have otherwise been due to the appellant workman) and direct the CGIT-cum-Labour Court to adjudicate the industrial dispute on or before 31st March, 2021.

13. The aforesaid course of action is agreeable to the counsels, with the counsel for the respondent Management contending that some amount, even in the event of termination of the appellant workman being upheld by the CGIT-cum-Labour Court, would in any case be payable by the respondent Management to the appellant workman and the amount so paid can be adjusted there out of.

14. Accordingly, this appeal is disposed of:

(I) Setting aside the direction of the Single Judge, insofar as remanding the matter of interim maintenance to the CGIT-cum-Labour Court.

(II) Directing the CGIT-cum-Labour Court concerned, to endeavour to proceed to hear the industrial dispute being ID No.156/2012, as scheduled, on 18th February, 2021 and/or in any case, adjudicate the same on or before 31st March, 2021.

(III) Directing, that out of the sums deposited by the respondent Management in this Court, a sum of Rs.50,000/- be released to the appellant workman; if the amounts deposited in this Court together with interest accrued thereon is less than Rs.50,000/-, the entire amount be released to the appellant workman and with a direction to the respondent Management to, on or before 18th February, 2021, pay the balance amount out of Rs.50,000/- so due directly to the appellant

workman; if the amounts deposited in this Court with interest are in excess of Rs.50,000/-, the balance amount, after so releasing Rs.50,000/- to the appellant workman, to remain deposited in this Court, subject to final adjudication of ID No.156/2012; if ID No.156/2012 is decided in favour of the appellant workman, the entire balance amount can be withdrawn by the appellant workman; however, if ID No.156/2012 is decided against the appellant workman, the entire balance amount so deposited, be released in favour of the respondent Management.

(IV) Clarifying that the CGIT-cum-Labour Court, while finally adjudicating the dispute, shall adjudicate the same on the basis of records and contentions of the parties, including as to the applicability of *State Bank of Travancore* supra but without being influenced in any manner by the findings or *prima facie* finding of the Single Judge.

RAJIV SAHAI ENDLAW, J.

SANJEEV NARULA, J.

JANUARY 14, 2021

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