



\$~34

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

Date of Decision: 26th September, 2023.

+ LPA 660/2023 & CM APPL. 50268/2023

SIDDHARTHA MUKHERJEE

..... Appellant

Through: Dr. Anurag Kumar Agarwal and Mr.
Ram Gupta, Advocates.

versus

HINDUSTAN PETROLEUM CORPORATION LTD & ANR.

..... Respondents

Through: Ms. Priyanka Das and Mr. Shashvat
Pant, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present intra-court appeal assails the order dated 18th August 2023 passed by a learned Single Judge of this Court, whereby Appellant's challenge to the reassignment of his role by the Respondent-Hindustan Petroleum Corporation Limited ("HPCL"), was dismissed. The ambit of the Appellant's challenge now solely focusses on the issue of entitlement to salary for the period spanning four and a half months i.e., February (half-month salary) to June 2019.

2. Brief facts leading up to the filing of the present appeal are as under:

2.1. In 1986, the Appellant joined the service of HPCL in the capacity of Clerk-cum-Typist within "Grade M-08", before being subsequently elevated



to the position of Chief Administrative Superintendent. On 25th January 2019, HPCL issued a reassignment letter bearing no. MNZ.KG.PERS/T to the Appellant, redirecting him to the Operations and Distribution (O&D) Department, North Zone, on a lateral basis in “Cluster C” with immediate effect.

2.2. Upon further enquiry, Appellant was informed that he had being reassigned to the role of a Stenographer. This reassignment was objected to by the Appellant, who submitted a representation articulating his concerns. However, this representation failed to garner favour from HPCL. On 02nd April, 2019, Appellant received a reminder from HPCL of the reassignment and he was directed to report accordingly. Upon his failure to comply, Appellant was marked absent and the salary disbursal was ceased.

2.3. Faced with this situation, the Appellant filed a writ petition [W.P.(C) 4928/2019] impugning the said reassignment letter. Moreover, he aired grievances regarding the cessation of his salary disbursements which were coupled with prohibitions barring him from executing his work duties.

2.4. The said writ petition was initially disposed of *vide* order dated 08th May, 2019, in terms of the statement made by HPCL counsel, holding that the Appellant herein would not be reassigned to the position of a Stenographer, and that salary dues from March 2019 onwards, would be disbursed. In appeal filed by HPCL against the aforesaid order, the Division Bench remanded the case back to the learned Single Judge on the specific issue: Whether the Appellant was entitled to salary for the months of April and May, 2019 or not? Pursuant thereto, the matter was decided by the learned Single Judge by way of the impugned order, as under:

“30. On perusal of the aforesaid paragraphs, it is crystal clear that the



position of law is settled with regards to the payment of salaries when the employee deliberately absences from the workplace without providing sufficient and reasonable grounds for such absence.

31. *In the instant case, it is evident that the petitioner deliberately abstained from joining the new location, and kept visiting the old office to mark his attendance in the officer register. It is also clear that the respondent Corporation had tried their level best to convince the petitioner to join the relocated office, however, the petitioner was adamant on his stance and kept on sending representations requesting quashing of the order passed by the respondent Corporation in due accordance with law.*

32. *On perusal of material on record, it is also clear that the petitioner is currently working in 'Cluster C' and even though there is no particular role assigned to the employees in the clusters, the CDP clearly envisages that the employees working under Cluster 'C' are required to perform all the jobs pertaining to the categories includes both clerical and secretarial jobs.*

33. *In the earlier hearings in the instant petition, the respondent Corporation had given assurances that the petitioner shall not be deployed as a stenographer and had concurred to the contention that the petitioner does not possess the requisite skill and qualification for being appointed as the stenographer, however, the petitioner still took considerable time to join the relocated position, therefore, establishing the fact that the he flouted the rules of the Corporation and the same can only be held as a deliberate attempts to not comply with the orders issued by the respondent Corporation.*

34. *At last, it is pertinent to look into the rules governing the employees of the respondent Corporation. The clause 33A (3) part 1 of the Certified Standing Orders applicable to the petitioner states that the competent authority has powers to deduct wages for the period of absence. The said provisions as adopted by the Corporation are in compliance with the provisions of Payment of Wages Act, 1936 and stand as the rule of law. The clause 33A (3) part 1 is reproduced herein:*

“Competent Authority reserves the right to deduct wages for period of absence on account of absence in accordance with the principles of provisions of Payment of Wages Act, 1936.”

35. *On perusal of the aforesaid provision and in light of the foregoing discussion, it is evident that the respondent Corporation is empowered to deduct wages/salaries of the employees on account of absence from the office. In the instant case, the petitioner had chosen not to join the relocated office and did not reply or act upon the directions despite several reminders sent by the respondent Corporation. Therefore, it is*



established that the respondent Corporation rightly decided to not disburse the salaries for the period where the petitioner was wilfully absent without any reasonable justification.”

APPELLANT’S CONTENTIONS:

3. Dr. Anurag Kumar Agarwal, counsel for Appellant, makes the following submissions:

3.1. The learned Single Judge has erroneously held that the Appellant rebuffed the prospect of reporting for the reassigned role and accordingly, undeserving of the claimed salary. In reality, the Appellant exhibited no refusal in taking up the new assignment. The sole hindrance was that he was bereft of the fundamental skills or qualifications requisite for the role of a Stenographer. It is imperative to underscore that the Appellant promptly reported to his newly assigned office subsequent to receiving the reassignment letter.

3.2. The self-contradictory stance adopted by HPCL has not been taken into account. In the pleadings before the learned Single Judge, at one instance it is stated that the Appellant was on unauthorised absence from 08th February, 2019 till 12th May, 2019, whereas in another instance it is stated that such absence was till 31st March, 2019. HPCL also paradoxically admitted to a mistake in deducting the salary for April 2019 in the salary disbursement for June 2019, hence showcasing an inherent inconsistency in their stance.

3.3. The impugned order failed to take note of the observation in order dated 18th September 2019, which expressed astonishment over the unceremonious withholding of an employee’s entire salary without the issuance of a show cause notice or conducting any inquiry. This act of



summary deduction imposed unwarranted hardships upon the Appellant.

3.4. HPCL relied on an antiquated Career Development Policy (“CDP”) dated 23rd May, 2002. The said CDP stood superseded by more recent CDPs, and the learned Single Judge failed to take note of the same. Notwithstanding, the learned Single Judge erred in diverting the focus towards the irrelevant aspects of “Cluster-C” category and the CDP (old or new). The quintessence of the dispute remains the allocation of the Appellant to the position of a Stenographer, as articulated in the reassignment letter dated 25th January 2019, a role for which the Appellant unambiguously lacked the necessary skills and knowledge. The failure to address this cardinal issue resulted in a miscarriage of justice in the impugned order.

3.5. There was inordinate delay on part of HPCL in clarifying the job role of the Appellant. It was only on 08th May 2019, before the learned Single Judge, that HPCL clarified that the Appellant would not be assigned to the role of a Stenographer. Had this clarification been made at the outset, i.e., on 25th January 2019, the Appellant would not have faced any hindrance in joining at the reassigned location, thereby averting the ensuing dispute.

3.6. The principle of “no work no pay” is being misused by the HPCL. The Appellant never displayed any refusal to work, and there was a conspicuous absence of a show cause notice or any adverse comments from his Reporting Officer on record to substantiate HPCL’s stance.

3.7. Despite the adverse circumstances, the Appellant never demonstrated any disinclination towards performing his duties and consistently attended the office to carry out the clerical tasks expected of him. HPCL unilaterally deactivated the Appellant’s attendance/ ID card without any legitimate cause



or prior notice, which unjustly prevented the Appellant from performing his duties and earning his rightful salary. This action by HPCL, and the learned Single Judge's failure to consider its implications, has aggrieved the Appellant.

ANALYSIS AND FINDINGS:

4. We have considered the aforesaid contentions and perused the record. In the initial order dated 08th May, 2019 passed by this Court, the matter was disposed of in the following terms:

“Accordingly, in view of the statement made by learned counsel for the respondents, I hereby dispose of the present petition and make it clear that the petitioner shall not be posted to the post of Stenographer. I further make it clear that the salary from March, 2019 onwards shall be disbursed in the account of the petitioner.”

5. However, the above order was challenged by HPCL in LPA No. 367/2019 where it was set-aside and the matter was remanded back to the learned Single Judge to decide the question regarding Appellant's entitlement to the salary for the months of April and May, 2019. The relevant portion of the order, is as under:

“2. After some hearing, it is agreed that the following lines of the order dated 08.05.2019 passed by a learned Single Judge of this Court may be set aside and the matter may be remanded back to the learned Single Judge to decide whether the respondent is entitled to two months' salary or not:

“ I further make it clear that the salary from March, 2019 onwards shall be disbursed in the account of the petitioner.”

Both parties will make submission before the learned Single Judge in this regard. List before the learned Single Judge on 20.08.2019.”

6. Pursuant to the above, the learned Single Judge examined the matter



afresh and dismissed the petition by way of the impugned order. Said order notes that the Appellant was relocated/ reassigned on account of the closure of the department where he was earlier working and Appellant did not join the reassigned location despite several communications. Instead, he continued to visit the old office to mark his attendance, despite HPCL's express direction to report for the reassigned role.

7. HPCL, on good faith, continued to disburse salary post issuance of the reassignment letter on the presumption that the Appellant would take up the new assignment. However, on failure to do so, the disbursal of salary was ceased with effect from 08th February, 2019 i.e., the date of receipt of the reassignment letter. The Appellant finally reported at his new position on 13th May, 2019 and as such, was on unauthorised absence from 08th February to 12th May, 2019. Necessary deductions for the unauthorised absence as also HRA-Taxable amounts were made in the disbursement of salary for the months of March to June, 2019. Admittedly, the error in the salary deduction for the month of June, 2019 which was wrongly deducted has since been paid to the Appellant.

8. The core principle guiding the entitlement of salary, particularly within formal employment settings such as HPCL, hinges upon the delivery of work and adherence to stipulated responsibilities within designated work locations. The Appellant's failure to report to the reassigned office, despite numerous communications urging compliance, fundamentally breaches this principle. While the Appellant's concerns regarding the initial reassignment as a Stenographer were later addressed by the HPCL, the delay in reporting for the reassigned role and location displays a disconcerting reluctance to abide by organizational directives. Such reluctance unduly hampered the



operational fluidity, efficiency and perhaps the service delivery at the reassigned office, thereby justifying the invocation of the “no work no pay” principle for the period in-question.

9. The conduct of continuously marking attendance at the old office, despite clear instructions of reassignment also demonstrates a defiance to the organizational restructuring. This could potentially set a concerning precedent, whereby other employees may feel emboldened to resist organizational changes, thus creating a ripple of indiscipline and reduced adaptability within the workforce. The stance taken by HPCL in withholding the salary for the period of unauthorized absence, therefore, serves as a justified measure enforcing adherence to organizational directives and sustaining the required decorum within the workforce.

10. The narrative that HPCL possessed *mala fide* intentions in invoking the “no work no pay” principle lacks substantiation. No concrete evidence has been presented to demonstrate any form of harassment or undue targeting of the Appellant. Instead, HPCL made amends by clarifying the Appellant’s role and urging compliance with the reassignment directive. The deductions of salaries are in consonance with Clause 33A (3) Part 1 of the Certified Standing Orders applicable to the Appellant, which empower the competent authority to make such deductions in instances of unauthorized absences.

11. Before concluding, we must emphasise that the rule of “no work no pay” has been developed to ensure fairness between employers and employees, based on their employment agreements. The mechanism ensures that while employees are fairly compensated for their contribution, employers are safeguarded from unwarranted financial obligations,



especially in instances of unauthorized absences. By adhering to this principle, the HPCL merely upheld a well-established norm thereby negating the Appellant's claim for salary entitlement for the period in dispute.

12. In view of the above, we find no ground to interfere with the impugned order.

13. Dismissed along with pending application.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 26, 2023

as