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

+ **W.P.(C) 5226/2014**

S M MATLOOB

..... Petitioner

Through Petitioner in person

versus

DIRECTOR GENERAL,

INDIAN COUNCIL FOR CULTURAL RELATIONS .Respondent

Through Mr. M.K. Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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21.05.2015

KAILASH GAMBHIR, J. (ORAL)

CM APPL. No. 10395/2014 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P.(C) 5226/2014

1. By way of the present Writ Petition, the petitioner seeks to question the tenability of the order dated 09.05.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'learned Tribunal'*) in Original Application (*in short 'OA'*) No.4473/2013 and order dated 23.07.2014 in R.A.

No.119/2014 whereby the Tribunal has denied full back wages to the petitioner along with all consequential benefits from the date of his transfer, i.e. 20th May, 2004 till the date of his joining the service. The Petitioner in the present Writ Petition has also sought a direction to the respondent to issue him and his family members the CGHS Cards to which the petitioner is legally entitled after being reinstated in service.

2. The petitioner has argued this Writ Petition in person. The main contention raised by the petitioner is that the transfer order dated 20th May, 2004 was passed against him by the respondent due to mala fide reasons as an act of vindictiveness against him. It is also the case of the petitioner that he was transferred vide order dated 20th May, 2004 and he was relieved from his duties on the very next day of passing of the transfer order i.e. on 21st May, 2004. It is also the case of the petitioner that after having received the relieving order on 15.06.2004, he had proceeded to join at the Regional Office, Lucknow but he was prevented from doing so and, in fact, by a letter dated 24th May, 2004 the Director of the respondents at Regional Office, Lucknow expressed his regret to allow the joining of the petitioner at the Regional Office, Lucknow. He, in fact, in his communication made it clear that the Regional Office, Indian Council for Cultural Relations (*hereinafter referred to as the* W.P. (C) 5226/2014

'ICCR') no more needs his services and he was never assigned any work. The stand taken by the petitioner is that in so far as his joining at the Regional Office, Lucknow was concerned as it was the Regional Office, Lucknow which had prevented him to join the said Office in terms of the transfer order passed by the respondent and not because of his fault.

3. The petitioner, thereafter again approached the Delhi Office for permission to join back in Delhi and since he was not permitted to join in Delhi he was left with no other option but to file a Civil Suit being No. 215/2004 and the said Civil Suit filed by the petitioner was ultimately dismissed as withdrawn. Thereafter, he filed a Writ Petition being No.12457/2005 to challenge the said transfer order and this Writ Petition was also dismissed as withdrawn by the petitioner on 7th September, 2005 on the advice given by his counsel. The petitioner again moved an application to seek recalling of the order dated 07.09.2005 and the said application moved by the petitioner was allowed by the Court vide order dated 29th May, 2007. It is also the case of the petitioner that the said Writ Petition was transferred to the learned Tribunal and the same was registered as TA No. 1244/2009. In the said Writ Petition, the petitioner had also filed an application seeking quashing of the order of compulsory retirement passed by the Disciplinary Authority. This T.A. W.P. (C) 5226/2014

Page 3 of 8

No.1244/2009 was disposed of by the learned Tribunal giving liberty to the petitioner to revive the same in case he succeeds in the other O.A. preferred by him, i.e. O.A. No.1821/2009 wherein he raised a challenge against the order of compulsory retirement passed by the Disciplinary Authority. On 14th May, 2010, this O.A. No.1821/2009 was disposed of by the learned Tribunal with the liberty to the petitioner to file an appeal which is to be disposed of in three months period. The said order dated 14th May, 2010 was set aside in Writ Petition (C) No.6011/2010 with the direction to the learned Tribunal to decide O.A. No.1821/2009. The O.A. 1821/2009 was ultimately dismissed as withdrawn with liberty to file another O.A. Another O.A. being No. 3859/2011 was preferred by the petitioner, which again was dismissed as withdrawn giving liberty to the petitioner to file a fresh O.A. This is how the petitioner has preferred another O.A. being No.4473/2013 in which the impugned order has been passed.

4. The above narration of facts would give the background of litigation and at the heart of this litigation is the transfer order dated 20.05.2004. This transfer order was under challenge by the petitioner but in the meanwhile, the respondent had initiated disciplinary proceedings against the petitioner and these disciplinary proceedings led to the passing W.P. (C) 5226/2014

of an order of compulsory retirement by the Disciplinary Authority.

5. As per the case of the petitioner, earlier the petitioner was prevented from joining the Regional Office, Lucknow and later he could not join the Delhi Office because of the order of compulsory retirement passed by the Disciplinary Authority. It is also the case of the petitioner that after the impugned order was passed by the learned Tribunal, he had already joined at the Delhi Office. We are not examining the entire merits of the case as we confine our decision only to a short controversy, namely, as to whether the petitioner is entitled to full back wages or whether this Court should uphold the order passed by the learned Tribunal wherein the petitioner was not granted any back wages due to the application of the principle of “No Work, No Pay”.

6. It is a settled principle in service jurisprudence that a person must be paid his salary if he has worked and should not be paid if he has not. In other words, the doctrine of “No Work, No Pay” is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied (*Ref: Sukhdeo Pandey v. Union of India and Anr. (2007) 7 SCC 455*).

7. We are also mindful of the following observations of the Hon’ble Apex Court in *Chairman-Cum-M.D., Coal India Ltd. and Ors. v. W.P. (C) 5226/2014*

Ananta Saha and Ors. (2011)5 SCC 142:

“The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide: U.P.S.R.T.C. v. Mitthu Singh AIR 2006 SCC 3018; Secy., Akola Taluka Education Society and Anr. v. Shivaji and Ors. (2007) 9 SCC 564; and Managing Director, Balasaheb Desai Sahakari S.K. Limited v. Kashinath Ganapati Kambale (2009) 2 SCC 288).”

8. In the facts of the present case, it is not in dispute that the petitioner had received the relieving order on 15.06.2004 and in fact he had gone to the Regional Office, Lucknow to join his duties in terms of the transfer order dated 20.05.2004. It is also not in dispute that the petitioner was prevented to join at the Regional Office, Lucknow and this is so evident from the letter dated 24.05.2004 issued by none other than one of the highest functionaries of the said Regional Office, Lucknow, i.e. Officer holding the post of Director.

9. The stand taken by the respondent that this unauthorised communication is worth rejected as the person holding the post of

W.P. (C) 5226/2014 Page 6 of 8

Director could not write such a communication. No doubt, the petitioner had been pursuing some wrong legal remedies against the transfer order passed by the respondent, i.e. filing a suit in the Civil Court and then filing a Writ Petition. The petitioner may have been given some wrong legal advice and therefore, he was misled to challenge the orders of compulsory retirement by not taking proper legal recourse.

10. Keeping in view the totality of the circumstances, we are of the view that we cannot place the entire blame on the petitioner for not joining back on his duties as first he was prevented by the Regional Office, Lucknow from joining back his duties and secondly because of some undue haste shown by the respondent in the initiation of disciplinary proceeding against him, the petitioner had to suffer an order of compulsory retirement due to the disciplinary proceedings initiated against him. The utter haste shown by the respondent in initiating the disciplinary proceedings is well reflected in the order passed by the learned Tribunal, relevant para of the Tribunal's order is reproduced hereunder:-

“11. Having considered the afore three these issues, we feel that there is an element of lingering doubt about the way the departmental proceeding has been rushed through and the punishment of compulsory retirement has been awarded.”

11. In view of the above discussion, we are of the opinion that the interest of justice will be best met if the petitioner is at least granted 50% of his back wages but in any case he does not deserve for grant of full back wages as the petitioner has to share the blame for his long absenteeism from his duties.

12. We have been informed that the petitioner is retiring from his service very shortly and therefore, we direct the respondent to pay the petitioner the amount admissible to him after granting him 50% of the back wages from the date of his transfer to Regional Office, Lucknow till he joined back his duties in Delhi within a period of one month from the date of this order.

The present Writ Petition is disposed of in the above terms.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

MAY 21, 2015

v