

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

% **Date of decision: 22.10.2019**

+ **W.P.(C) 3711/2016 & CM No.32936/2017**

M. K. SAINI Petitioner

Through Mr. Chandra Prakash, Adv.

versus

INDRAPRASTHA POWER GEN CO LTD AND ORS.. Respondents

Through Mr.R.N.Vats, Advocate
for R-1 & R-2.
Ms. Nidhi Nagpal and Ms. Nupur,
Advocates for Ms. Tara Narula, Adv.
for R-3.

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

By the instant petition, the petitioner, in effect, seeks issuance of a Writ of Mandamus for being released the salary for the period from 01.02.2014 to 08.05.2015 by the respondent–Indraprastha Power Gen. Co Ltd. in short ‘IPGCL’.

2. Facts relevant to the relief prayed are that the petitioner has been the employee of IPGCL. Vide transfer order dated 23.10.2012, he was transferred to another company namely Pragati Power Corporation Ltd. in

short 'PPCL'. On 01.11.2012, he was relieved from the services of IPGCL and directed to join the Safety Department at PPS-III, Bawana at the instance of IPGCL and PPCL. Petitioner assailed such transfer and relieving order by way of W.P.(C) No.579/2013 and vide judgment dated 07.04.2015, the transfer order dated 23.10.2012 came to be quashed. During the pendency of the said writ petition, the petitioner however joined IPGCL. Thus, after the quashing of the transfer order, he continued to work with IPGCL till his superannuation. By the instant petition, the petitioner agitates the issue as regards the payment of salary and other perks if any, for the period he did not or could not work with either IPGCL or PPCL. Though in the writ petition, the prayer clause reads for such period to be w.e.f. 01.02.2014 to 08.05.2015, the ld. counsel for the petitioner, on being queried, submits that the actual period, the petitioner could not perform his duties is w.e.f. 01.02.2013 to 08.05.2014. It is not in dispute that under the orders of the Court, the petitioner actually joined on 09.05.2014.

3. Though, the transfer order came to be quashed by the Coordinate Bench of this Court vide judgment dated 07.04.2015, the moot question for consideration remains as to whether for the period the petitioner did not render any service, is he entitled to any salary etc. Though, it is trite in the ordinary course of the things, the principle of no work and no pay should follow, during the course of hearing, ld. counsel for the petitioner adverts to a copy of the purported communication forming part of the rejoinder as Annexure 'P14' on running page 117 of the paper book, to contend that vide his such communication, which he purportedly signed on 03.02.2014 and was delivered to the office of IPGCL on 04.02.2014, the petitioner had

drawn attention of the respondent IPGCL to the request he made vide **his request dated 18.01.2013** (*emphasis supplied*) to allow him to join his duties in GM(CS) office. Whether, the petitioner had, in fact, made any request on 18.01.2013 to IPGCL to allow him to join the duties or not, is a matter of fact, which has an element of consideration to the claim made by the petitioner in the instant writ petition. Though, the petitioner's withholding such fact would ordinarily invite adverse inference, it appears, no effort has been made on behalf of IPGCL to dispute the contents of the communication dated 03.02.2014, which is forming part of the rejoinder as Annexure 'P14'. It is therefore in the fitness of the things that such factual aspect is gone into by IPGCL, in the first instance.

4. For the foregoing reasons, the writ petition is disposed of with a direction to IPGCL to look into the factual aspects of the matter especially the assertion of the petitioner that as on 18.01.2013, he had requested IPGCL to allow him to join the duties and pass a speaking order.

5. With the foregoing observations, the writ petition stands disposed of. No order as to costs.

A.K. CHAWLA, J.

OCTOBER 22, 2019

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