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

Date of Decision:- 08.01.2020

+ W.P.(C) 752/2001

UNIVERSITY OF DELHI

..... Petitioner

Through: Mr. G. K. Pathak, proxy counsel for
Mr. S. R. Singh, Advocate.

versus

G.P.MITTAL & ANR.

..... Respondents

Through: Ms. Meghna De and Ms. Liu
Gangmei, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition preferred by the management assails the award dated 09.05.2000 passed by the Labour Court-III, Tis Hazari, Delhi in L. C. A. No.110/93. Under the impugned award, the petitioner has been directed to release the respondent's salary for the period between 29.07.1987 to 28.06.1988 as also between 07.07.1989 to 29.01.1992, after deducting 41 days' salary which was paid to him during the pendency of the proceedings before the Labour Court.

2. The brief facts as emerging from the record are that the respondent no.2 was employed with the petitioner as a Junior Library Attendant *w.e.f.* 23.09.1978. It appears that the respondent no.2, claiming to be unwell, remained absent from duty for the period between 17.01.1987 to 26.09.1987, without seeking any prior leave

from the petitioner. Consequently, when he reported back to the petitioner on 27.09.1987, he was not permitted to rejoin duty till 29.06.1988 on the ground that appropriate orders were awaited from the competent authority. The respondent no.2 once again went on unauthorized leave from 06.07.1988 till 06.07.1989, claiming that he was unwell. When he subsequently reported back for duty on 07.07.1989, he was yet again not permitted to rejoin duty on the same ground till 29.01.1992 and his wages for these periods of absence in 1987 and 1992 were withheld by the petitioner.

3. Aggrieved thereby, the respondent no.2 raised an industrial dispute seeking payment of his salary for the periods between 29.07.1987 to 28.06.1988 and 07.07.1989 to 29.01.1992. The basic premise of respondent no.2's claim was that since it was the petitioner itself, which had prevented him from discharging his duties, he could not be denied his wages for the said period. On the other hand, the petitioner opposed the claim by contending that the respondent no.2 was guilty of repeatedly taking unauthorized leave from duty and, therefore, the petitioner was justified in not permitting him to rejoin duty without seeking appropriate orders in this regard from the competent authority. It was therefore urged that the petitioner could not be faulted for withholding respondent no. 2's salary for the periods when he did not discharge his duty.

4. The Labour Court, after considering the rival submission of the parties, has allowed the claim of the respondent no.2 by observing as under:

“6. ISSUE NO.1

It is admitted case of the parties that on first occasion, the applicant had reported for duty on 29.07.87 but he was allowed to resume his duties only on 28.06.88. Similarly on the second occasion, the applicant was not allowed to join his duties on 07.07.89 in spite of the fact that he had submitted the joining report. He was ultimately permitted to resume his duties on 30.01.92.

7. It is admitted by the University during cross-examination of MW1 Sh. K. C. Gogia (on 18.08.89) that the applicant was on medical leave upto 06.07.89 and that he had submitted his joining report on 07.07.89. Of course absence from duty without proper sanction of leave may amount to a serious misconduct particularly when the absence is quite wrong. In this particular case, the University was at liberty to take Disciplinary action against the applicant for his alleged unauthorised absence from duty and by way of punishment could have withheld his salary for the period of his absence or even for the period subsequent thereto when he had reported for duty. However, in this particular case, the University of Delhi has not taken any disciplinary action against the applicant. But, at the same time, has not paid his salary for the period as claimed by him except for 41 days i.e., 17.6.88 to 26.06.88. It is not even the case of the University that the applicant was pretending some sickness or that he was not really sick. Thus, if the University had not permitted the applicant to resume his duties, he cannot be blamed for the same and the University cannot withhold the salary of the applicant after the date he reported for duties.

8. The applicant is, therefore, entitled to an amount of Rs.63,500/- less salary for 41 days which has been paid to the applicant after filing of this claim.

The University of Delhi is directed to pay the amount aforesaid to the applicant forthwith. Issue No.1 is decided accordingly.”

5. Assailing the said award, the present petition has been filed by the Employer-University of Delhi.

6. In support of the present petition, learned counsel for the petitioner has reiterated its submissions before the Labour Court. By drawing my attention to the two memorandums dated 10.05.1989 and 09.08.1989 issued to the respondent no.2, he submits that the said respondent was habitually absent from duty without seeking requisite permission from the petitioner. In fact, in the light of the respondent no.2's claim that he was taking such leaves owing to medical reasons, the petitioner had even directed him to appear for a medical examination to ascertain the veracity of his claim, but the respondent failed to report for the same. He further contends that once the respondent no.2 had, without any demur, accepted his salary for the period of 41 days during which he had discharged duties, he was estopped from raising any claim of this nature for the remaining period. He submits that the Labour Court, instead of appreciating the fact that despite his repeated absence from duty the petitioner had not taken any disciplinary action against him, has allowed the respondent's claim by directing payment of salary for the periods during which he did not discharge his duties. He, therefore, prays that the impugned award be set aside.

7. Per contra, learned counsel for the respondent no.2, while supporting the impugned award, submits that the respondent no.2's

cross-examination clearly records that he had promptly reported for medical examination, in compliance with the memorandum dated 10.05.1989. She, therefore, submits that the petitioner's contention that the respondent no.2 had not complied with the aforesaid direction under the memorandum dated 10.05.1989, is incorrect. She further submits that once the respondent no.2 continued to be in the petitioner's employment, he could not be denied wages for the period when, despite his willingness, he was not permitted to discharge duty by the petitioner. She submits that the Labour Court was fully justified in directing the petitioner to pay wages to the respondent no.2 for these periods and, therefore, prays that the present petition be dismissed.

8. I have considered the submissions of the learned counsel for the parties and, with their assistance, perused the record.

9. From a perusal of the record and the submissions made at the Bar, it is evident that it is the petitioner's own case that notwithstanding the fact that respondent no.2 had reported for duty on 29.07.1987, the petitioner had not permitted him to rejoin service till 29.06.1988. It is also admitted that during the said period, the respondent no.2 continued to be in the petitioner's service; was never issued any order prohibiting him from discharging duties; was not suspended from service; was never subject to any disciplinary action for his absence during the said period, which he claimed was because of his medical problems. Similar is the position qua the subsequent period between 07.07.1989 till 29.01.1992. I am, therefore, unable to accept the petitioner's plea that, despite the willingness of the

respondent no.2 to discharge duties, the withholding of his wages for the aforesaid periods was justified as the petitioner was awaiting appropriate orders from the competent authority.

10. I have also considered both the memorandums dated 10.05.1989 and 09.08.1989, on which heavy reliance has been placed by the learned counsel for the petitioner, but find that neither of them forward the petitioner's case in any manner. In fact the memorandum dated 10.05.1989 only required the petitioner to report for medical examination, which he did, as is evident from his cross-examination wherein he made a specific statement to the effect that he had duly reported for medical examination, as and when he had been directed to do so. Similarly, the second memorandum dated 09.08.1989 was a mere warning to the petitioner to refrain from taking unauthorised leaves from duty in the future. I thus find that nothing turns on either of these memorandums insofar as it concerns the claim of the respondent no.2 as allowed by the Labour Court vide the impugned award.

11. I also do not find any merit in the petitioner's contention that the respondent no.2, having accepted salary for the period of 41 days during which he had discharged duties, was now estopped from raising this claim for the simple reason that it is the petitioner's admitted case that the payment of wages for 41 days was made to the respondent no.2, only after the claim petition had been filed and the matter was pending adjudication before the Labour Court. Rather I find that the payment of wages for this period has been duly accounted for in the directions made under the impugned award.

12. For the aforesaid reasons, I find absolutely no reason to differ with the well-reasoned award passed by the Labour Court. Accordingly, the present petition, being meritless, is dismissed with no order as to costs.

JANUARY 08, 2020
SSC

REKHA PALLI, J

