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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 31.01.2020

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W.P.(C) 2147/2007

INDIAN COUNCIL OF WORLD AFFAIRS

..... Petitioner

Through Mr.Chandrachur Bhattacharyya with
Mr.Manoj Kr Dubey, Advs.

versus

HARJINDER SINGH CHADHA

..... Respondent

Through Ms.Sugandha Anand, Adv along with
respondent in person.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Articles 226 and 227 of the Constitution of India filed by the Management assails the award dated 05.05.2006 passed by the learned Labour Court, Karkardooma Courts, Delhi in I.D.No.161/06/96. Under the impugned award, the Labour Court has, after noting that the respondent/workman had been illegally terminated by the petitioner w.e.f. 01.04.1995 before being reinstated in service during the pendency of the industrial dispute, directed the petitioner to pay him full backwages for the period between 01.04.1995 and 26.09.2001.

2. The brief facts are that the respondent joined at the post of 'Air Conditioner Plant Operator' on an ad-hoc basis in the petitioner/organisation on 01.04.1986 and was subsequently confirmed in service on 15.12.1986. Claiming that his services had been illegally terminated w.e.f. 01.04.1995, the respondent raised an industrial dispute, which was referred to the Labour Court for

adjudication.

3. Before the Labour Court, the respondent claimed that despite his performance at work being to the utmost satisfaction of his superiors, his demand for overtime wages had antagonised the Administrative Officer. As a result, on 31.03.1995 when he returned to work after availing a single day leave, he was not allowed to rejoin duty by the Administrative Officer. This compelled the respondent to prefer a complaint not only before the local Police, but also to the Secretary General/President of the petitioner organisation. He further claimed that when he contacted the superior officers to discuss this issue, they advised him to remain on leave till 08.04.1995 so that the matter could be resolved. The situation, however, did not improve and, notwithstanding the repeated written requests made by the respondent or the efforts of the Conciliation Officer, the respondent was again refused permission to rejoin duty on 08.04.1995 which compelled him to raise the industrial dispute.

4. In its written statement dated 10.01.1997, the petitioner opposed the respondent's claim by contending that he had never been terminated from service but that, in fact, he had himself failed to rejoin service after being on leave till 08.04.1995; for this purpose, reference was made to the respondent's leave application dated 03.04.1995. The petitioner further urged that it had always been willing to reinstate the respondent in service, but he had failed to rejoin duty despite the petitioner's various letters entreating him to do so.

5. Even though the petitioner's written statement was filed on

10.01.1997, the respondent's rejoinder failed to specifically address the issue of rejoining duty and it was only on 26.09.2001 that the respondent finally stated his willingness before the Labour Court to rejoin duty. The record shows that pursuant to the order dated 26.09.2001 passed by the Labour Court, the petitioner issued a letter asking the respondent to rejoin duty which offer was accompanied by the caveat that the respondent would be kept on probation. The respondent, however, claims that the petitioner continued to deny him from rejoining service in September, 2001 and was ultimately reinstated on 27.01.2004, only pursuant to the Labour Court's order dated 24.01.2004.

6. The Labour Court passed the award impugned herein, by concluding that this was not a case of voluntary abandonment of service by the respondent. Furthermore, after noticing that the respondent had been permitted to join back in duty only w.e.f. 26.09.2001, the Labour Court allowed the respondent's claim for backwages for the period between 01.04.1995 and 26.09.2001. The relevant extract of the impugned award reads as under:

"Issue No.1:

During the course of the proceedings both the parties settled the matter. On 26.09.2001 the management expressed its willingness that the worker may join them. They also placed on record a copy of the memo vide which the workman was allowed to join the duties with the management with effect from 26.09.2001. However, the parties could not compromise the matter regarding the back wages. Now, the only question which is to be decided by this Court is regarding the back wages. After going through the records, I am satisfied that it was not the case of abandonment of services by the workman and now the

workman has already joined back the management with effect from 26.09.2001. The court is left with the question if he is entitled for grant of back wages and if so at what rate from 01.04.1995, the date of his termination till 26.09.2001, the date he joined back the management. The workman has affirmed on oath in his affidavit that he is unemployed and has not been able to get any alternative employment, on which there is no cross examination by the management from which it is clear that the plea of unemployment of the workman stands unrebutted and uncontroverted. Accordingly, I am of the opinion that he is entitled for full back wages along with consequential relief for the period from 01.04.1995 till 26.09.2001. Issue is accordingly decided in favour of the workman and against the management.”

7. Assailing the said award, the present writ petition has been filed by the Management/Indian Council of World Affairs.

8. It is pertinent to note that the present writ petition has been pending before this Court since February, 2007 during which period, the respondent had superannuated. On 05.09.2019, this Court after considering the fact that the respondent had not responded to the petitioner's specific offer to reinstate him in service, had set aside the direction for payment of backwages, as made in the impugned award, for the period between 01.02.1997 and 26.09.2001.

9. Today, therefore, the only question which survives for adjudication is regarding the payment of backwages for the period between 01.04.1995 and 31.01.1997.

10. In support of the petition, learned counsel for the petitioner, Mr.Chandrachur Bhattacharyya, Advocate reiterates the petitioner's submissions made before the Labour Court and contends that the Labour Court's decision to award backwages to the respondent w.e.f. 31.03.1995 was based on a mere bald statement made by him that he

had been prevented from joining duty w.e.f. 31.03.1995. This is completely contrary to the respondent's own application dated 03.04.1995 seeking leave from work till 08.04.1995 and reveals the falsity of the respondent's allegation of being prevented from rejoining duty during that period; this aspect was completely overlooked by the Labour Court. He, therefore, prays that the direction for payment of full backwages, as made in the impugned award, for the period between 01.04.1995 and 31.01.1997 be set aside as well.

11. On the other hand, Ms.Sugandha Anand, learned counsel for the respondent while supporting the impugned award submits that the petitioner's plea that it had never prevented the respondent from rejoining duty was contrary to the record and was, therefore, rightly rejected by the Labour Court. By drawing my attention to the various letters addressed by the respondent to the petitioner seeking permission to rejoin duty, she contends that the petitioner has always falsely denied the respondent's illegal termination from service. She thus contends that the Labour Court was fully justified in rejecting the petitioner's stand that the respondent had voluntarily abandoned service. She further submits that the respondent, who superannuated in the year 2014, has been suffering the pendency of the present petition for the last many years owing to the false stands taken by the petitioner which has led to him being denied even his terminal benefits. He, therefore, prays that the writ petition be dismissed.

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

13. As noted above, the only question which now survives for adjudication is regarding the backwages payable for the period between 01.04.1995 to 31.01.1997. While the admitted position is that the respondent did not discharge any duties during the period in question, the only point of dispute is regarding the party responsible for his absence from duty.

14. On this issue, the petitioner has vehemently urged that it was the respondent who voluntarily abandoned service, while the respondent has urged that he was not permitted to rejoin duty, despite his repeated requests, owing to the vindictive attitude of the Administrative Officer. The Labour Court, after appreciating the evidence on record and more specifically the oral testimony of the witnesses including that of the respondent, opined that it was not a case of voluntary abandonment of service by the respondent. While arriving at this conclusion, the Labour Court specifically noted the respondent's averment that he was neither permitted to punch-in his card on reaching work nor was he allowed to enter the petitioner's premises. Even before this Court, during the course of arguments, my attention was drawn to the statement and cross examination of the witnesses before the Labour Court. On a perusal of these statements, I find that the Labour Court was correct in holding that it was not a case of voluntary abandonment of service. Since the findings of the Labour Court are based on a correct appreciation of the evidence on record, I find no perversity or illegality therein. In these circumstances, I see no reason to interfere with the same in exercise of the writ jurisdiction of this Court under Articles 226 and 227 of the

Constitution of India.

15. Accordingly, the writ petition is disposed of by upholding the direction for payment of backwages to the respondent for the period between 01.04.1995 and 31.01.1997.

16. It is made clear that this Court has not expressed any observations on the grievances raised by the respondent relating to the non-payment of his retiral dues and has examined only the validity of the findings in the impugned award.

JANUARY 31, 2020/sr

REKHA PALLI, J