

\$~11

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

+ LPA 93/2021

MANMOD SHANKAR Appellant

Through: Mr.Javed Ahmad, Adv with
Appellant in person.

versus

LIC OF INDIA & ANR. Respondents

Through: Mr.Kamal Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **04.03.2021**

CM APPL. 8699/2021 (for exemption)

1. Allowed, subject to all just exceptions and as per extant Rules.
2. The application is disposed of.

LPA 93/2021, CM APPL. 8700/2021 (for condonation of 90 days delay in filing the appeal) & CM APPL. 8701/2021 (for condonation of 21 days delay in re-filing the appeal)

3. This intra court appeal impugns the common judgment dated 29th June, 2020 of dismissal of W.P.(C) 6214/2019 preferred by the respondent Life Insurance Corporation of India (LIC) as well as of dismissal of W.P.(C) 6310/2019 filed by the appellant, both with respect to the award dated 11th February, 2019 of the Labour Court, in an industrial dispute raised by the appellant qua the order dated 23rd July, 2016 of the Disciplinary Authority of the respondent LIC of removal of appellant from service.

4. The Labour Court though directed reinstatement of the appellant but without back wages. While respondent LIC was aggrieved from the direction for reinstatement, the appellant was aggrieved from the denial of back wages.

5. We have, at the outset, enquired from the counsel for the appellant, whether the respondent LIC has preferred any appeal against the impugned judgment.

6. The answer is in the negative.

7. We have heard the counsel for the appellant qua interference, if any, required in this appeal with the consistent findings of the Labour Court as well as the Single Judge, of the appellant being not entitled to any back wages.

8. Though the counsel for the appellant, on enquiry as to what reasons prevailed with the Labour Court for denying back wages to the appellant despite granting the relief of reinstatement, states that no reasons whatsoever are to be found in the award of the Labour Court but a perusal of the award shows that the reasons which prevailed with the Labour Court, were (i) that Section 11A of the Industrial Disputes Act, 1947 empowers the Labour Court to interfere with the quantum of punishment, in appropriate cases, though discretion in this respect is to be exercised judiciously, only in cases where punishment is harsh and disproportionate to the gravity of misconduct of the workman / official concerned; (ii) the misconduct committed by the appellant was of disobedience of the transfer order dated 21st March, 2015 and not joining the transferred post in spite of being relieved from the erstwhile posting on 1st April, 2015 and remaining absent from duty w.e.f 2nd April, 2015; (iii) a detailed departmental inquiry was conducted in a fair

and proper manner, following the principles of natural justice; (iv) the Disciplinary Authority of respondent LIC, before passing the order of removal of service, had issued a show cause notice and granted an opportunity to the appellant to represent his case against the punishment and only thereafter imposed the major penalty of removal from service; (v) that the unauthorised absence from duty is not a kind of misconduct involving moral turpitude or indulging in corrupt practices, warranting imposition of penalty of dismissal from service; (vi) the appellant had already rendered 27 years of unblemished service and the punishment of removal from service was harsh and disproportionate; and, (vii) ends of justice would be met, if punishment of removal from service was set aside and the appellant ordered to be reinstated into service, however without any pecuniary/monetary benefits during the intervening period i.e. from the date of his removal from service till publication of the award.

9. The counsel for the appellant has drawn our attention to paragraph 18 of the impugned judgment of the Single Judge affirming the denial of back wages to the appellant and in which paragraph, the Single Judge has relied upon ***Rajasthan State Road Transport Corporation Vs. Phool Chand*** AIR 2018 SC 4534 and reproduced certain paragraphs thereof, *inter alia* holding (i) that workman has no right to claim back wages, as of right; (ii) it is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from service, he was not gainfully employed anywhere and had no earning to maintain himself and his family; and, (iii) in some cases the Court may decline to award back wages in its entirety, whereas in some cases it may award partially, depending upon the facts of each case, by exercising the judicial discretion. The counsel for the

appellant has contended that in the present case, there was no plea of the respondent LIC or any finding, of the appellant being gainfully employed and thus as per the dicta in *Phool Chand* supra relied upon by the Single Judge, the appellant was/is entitled to back wages.

10. We are unable to agree. What the aforesaid judgment lays down is, that there is no right in a workman to claim back wages for the period for which he has not worked and back wages are to be denied where the workman is shown to be employed elsewhere and/or even otherwise in the facts of the case. The facts which have prevailed with the Labour Court as well as with the Single Judge for denying back wages to the appellant in the present case, notwithstanding the appellant being not employed elsewhere, are that though the appellant was guilty of misconduct but the punishment of removal from service, considering his past service, was disproportionate to the misconduct. When these reasons have prevailed for denying the back wages, the factum of whether the appellant was employed elsewhere or not, is irrelevant. *Phool Chand* supra nowhere lays down that a workman would always be entitled to back wages unless shown to be gainfully employed elsewhere.

11. We may also record that on enquiry, it has been informed that the appellant, on 30th June, 2020 has attained the age of superannuation and has, during the pendency of the writ petitions before this Court, received full wages under Section 17B of the Industrial Disputes Act and is now, consequent to the award of reinstatement in service which has been affirmed by the Single Judge, is receiving pension.

12. No case for interfering with the discretion, found to have been lawfully and properly exercised by the Labour Court as well as by the Single Judge, is made out.

13. Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MARCH 4, 2021
SU ..