



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 29th October, 2021

Pronounced on: 8th April, 2022

+ LPA 762/2019

M K SAINI

..... Appellant

Through: Mr. Vimal Wadhawan, Advocate.

versus

INDRAPRASTHA POWER GENERATION
COMPANY LTD & ORS

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Tania Ahlawat, Mr.
Nitesh Kumar Singh and Ms. Palak
Rohmetra, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

Review Petition 140/2021 in LPA 762/2019 (filed by Respondent seeking review of order dated 22nd February, 2021)

1. Indraprastha Power Generation Company Ltd. [hereinafter, “**IPGCL**”] seeks review of the judgment dated 22nd February, 2021, whereby IPGCL has been directed to pay the Appellant – Shri M.K. Saini emoluments from 1st February, 2013 to 8th May, 2014 (excluding allowances payable on actuals or in lieu of services rendered).

2. During the course of hearing, *vide* order dated 3rd September, 2021,



IPGCL was directed to inform to the Court – the amount of salary paid to the Appellant, and the period for which, it was paid. In terms of the said directions, IPGCL filed an additional affidavit dated 25th October, 2021.

3. Mrs. Avnish Ahlawat, Standing Counsel for IPGCL, raises the following contentions:

3.1. There are errors apparent on the face of the record in paragraph no. 9 of the impugned order – where the Court has erroneously recorded the submissions of IPGCL. It was neither the case of IPGCL in its counter-affidavit, nor was it argued before the Court that the Appellant did not work with IPGCL. Rather, IPGCL had contended that for the period in question, the Appellant did not work at his new place of posting viz. the Safety Department, (PPS-III) Bawana, Pragati Power Corporation Ltd. [hereinafter, “**PPCL**”], despite several directions issued to him.

3.2. In light of the afore-noted palpable wrong premise, the Court came to an erroneous conclusion in paragraph no. 10 of the impugned order, wherein it has been observed that there was nothing on record to show that the Appellant was called upon to join back on duty of IPGCL during the period in question

3.3. In such circumstances, she submits that the principle of ‘no work, no pay’ disentitles the Appellant for emoluments for the period in question – as he did not work at his new place of posting with PPCL. It is further argued that for the said period, in absence of any stay on the transfer order dated 23rd October, 2012, the Appellant could have only been called upon to join his new place of posting at



PPCL, and not at IPGCL.

3.4. The Court's opinion that the principle of 'no work, no pay' is inapplicable, is based on an erroneous premise. The Appellant was repeatedly called upon to join his new place of posting with PPCL. Therefore, there is an error apparent on the record, which renders the impugned judgment liable to review by this Court.

4. We have given anxious consideration to the submissions advanced by Mrs. Ahlawat.

5. The undisputed fact is that on 23rd October, 2012, the Appellant was transferred from IPGCL to PPCL. The said transfer order was quashed by the learned Single Judge of this Court *vide* judgement dated 07th April, 2015. The impugned order before us, delivered by a coordinate bench, taking note of the quashing of such transfer order, has held that the effect of quashing meant that "...that it was a nullity from its inception...".

6. In such circumstances, the Court has held that the principle of 'no work, no pay' would have no application. In that light, the Court made certain observations – which have been noted in paragraphs no. 9 and 10 of the impugned order, which are strenuously assailed to be erroneous. For the sake of clarity, the same are reproduced hereinbelow:

"9. The counsel for the respondents has argued, that since the appellant did not do any work for the respondents IPGCL from 1st February, 2013 to 8th May, 2014, being the period for which the emoluments are claimed, the appellant, following the principle of 'no work, no pay', is not entitled to any emoluments and the case of the appellant does not fall in any of the exceptions to the said principle. On inquiring, the basis of the aforesaid proposition, the counsel for respondents states that he must have written it on the basis of some judgment but neither is the



judgment available with him nor is he able to give the citation thereof.

10. *We are unable to agree. Once there is nothing to show that the respondents IPGCL, in spite of the order of transfer of the appellant to PPCL, called upon the appellant, at any time during 1st February, 2013 to 8th May, 2014, to join back duty of the respondents IPGCL, the principle of 'no work, no pay' cannot be invoked. The appellant could not have rendered any work for the respondents IPGCL during the said period, owing to the respondents IPGCL having transferred the appellant to PPCL and which transfer was ultimately quashed vide judgment dated April, 2015 in W.P. (C)579/2013 and which judgment has attained finality. Thus, irrespective of controversy with respect to the medical leave of the appellant, once there is nothing to show that the appellant was given an opportunity to work and did not work, the principle of 'no work, no pay' cannot be invoked."*

7. The thrust of Ms. Ahlawat's contentions has been that the Court erroneously recorded the stated case of IPGCL. However, in our view, this does not appear to be correct, and in any event, it would not have any impact on the outcome of the case. It must be stressed that the Appellant is seeking a direction for release of salary for the period in question, from IPGCL – which is the sole contesting Respondent in the present LPA. Therefore, it was IPGCL's counter affidavit that was taken into consideration. IPGCL was to defend its own actions and could not deny the emoluments on account of the Appellant not working for PPCL.

8. Nevertheless, the transfer order has been held to be a "nullity", and thus, IPGCL cannot be permitted to argue that since the Appellant did not do any work for PPCL, no emoluments are payable. As already observed in the impugned order, the principle of 'no work, no pay' cannot be applied where an employee was illegally kept out.

9. Therefore, the premise of the review does not disclose any fundamental error(s) apparent on the face of record, which would merit



allowing the review.

10. The other contentions, as urged by Mrs. Ahlawat, touch upon the merits of the case, which cannot be examined, as IPGCL cannot be permitted to re-argue its case.

11. In view of the above, the Court finds no merit in the instant Review Petition.

12. Dismissed.

CM APPLs. 29710-12/2021

13. In view of the foregoing, above captioned applications also stand disposed of.

SANJEEV NARULA, J

RAJIV SHAKDHER, J

April 08, 2022
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