



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

% **Date of order: 18th August, 2023**

+ **W.P.(C) 4928/2019 & CM APPL. 54148/2019**

SIDDHARTHA MUKHERJEE Petitioner

Through: **Mr. Ram Gupta, Advocate along with
petitioner in person**

versus

HINDUSTAN PETROLEUM CORPORATION LTD. AND ANR.

..... Respondents

Through: **Mr. Pavan Narang, Ms. Priyanka Das
and Mr. Shashvat Pant, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India, 1950 has been filed on behalf of the petitioner seeking the following reliefs:

“a. To issue Writ of Mandamus or any other appropriate writ(s) directing the Respondents to recall the reassignment letter dated 25.01.2019 on the grounds of it being bad in law and violative of rights of the Petitioner.

b. To pass any other writ(s), order(s) or direction(s) which this Hon'ble Court may deem just and proper under the facts and circumstances of , the case, as in India Public Sector Undertakings are regarded as Lighthouses of Equality which the respondents have dented, in the interest of justice.”



2. The petitioner has been working in the respondent No. 1 Corporation ('respondent Corporation' hereinafter) since 1986. In 2019, the petitioner was transferred and reassigned to another location *vide* reassignment letter No. MNZ.KG.PERS/T dated 25th January, 2019. However, the said relocation was refused by the petitioner on apprehension that he has been assigned to the job of a stenographer.
3. The petitioner requested the respondent Organization to allot him another job profile, but the same was denied. On 2nd March 2019, the petitioner received another letter bearing No. HR-NZ/MB as a reminder about the reassignment and directed him to report at the reassigned location.
4. Thereafter, the petitioner made a representation *vide* letter dated 23rd April, 2019 and stated the reasons for not joining the office. In the reply, the petitioner was apprised of the reasons for the said relocation and he was directed to join the office. Thereafter, the respondent Corporation started marking him absent and stopped disbursing the salaries since March, 2019.
5. Aggrieved by the same, the petitioner filed the instant petition.
6. The learned counsel appearing for the petitioner submits that the petitioner joined the respondent Corporation as a Clerk-cum-Typist in Grade M and was holding the post of Chief Administrative Superintendent before the said relocation.
7. It is submitted that the relocation letter does not mention any provision/clause providing power to the respondent Organization to issue directions of such nature.



8. It is submitted that the petitioner holds a degree in B.Com (Hons.) and M.com and has been serving as Administrative Superintendent till date and therefore, cannot be absorbed as a stenographer.

9. It is submitted that the petitioner had been going to the previous office and had started marking his attendance in the staff register, however, the same was removed in order to prevent the petitioner from being marked present. Thereafter, the petitioner started marking his presence in the visitor's register.

10. It is submitted that since February, 2019 the respondent Corporation had started deductions from the salaries, resulting in non-disbursement of salaries for the months of April, May and June, 2019 and a meagre salary of Rs. 2869.42 was paid for the month of March, 2019.

11. Therefore, in view of the foregoing submissions, the petitioner seeks this Court be pleased to allow the present petition.

12. *Per Contra*, the learned counsel appearing for the respondents vehemently opposed the petition and submitted that the petitioner was posted in MB Lal Implementation Department, however, the department was closed down and therefore, the petitioner was relocated to a different location *vide* letter No. MNZ.KG.PERS/T dated 25th January, 2019.

13. It is submitted that the petitioner was reassigned to 'Cluster C' and as per the Career Development Policy ('CDP' hereinafter) of the respondent Corporation, the employees falling in the said category are mandated to work in different roles and the petitioner was not assigned the role of stenographer.



14. It is submitted that the petitioner refused to accept the reassignment order, ultimately refusing to join the new office. Therefore, the respondent Corporation sent the said communication through speed post and the same was received by the petitioner on 7th February, 2019. It is submitted that the petitioner did not join the relocated office despite several communications sent by the respondent Corporation.

15. It is submitted that the petitioner had made a representation before the respondent Corporation however, he was advised to report to the authority for taking up his new assignment with immediate effect, failing which, the respondent Corporation warned that disciplinary action shall be taken against the petitioner.

16. It is also submitted that the petitioner did not respond to any communication sent by the respondent Corporation and continued visiting the old office to mark the attendance in the office register thereby flouting rules/norms of the respondent Corporation and acting in a manner prejudicial to the interest and discipline of the Corporation.

17. It is further submitted that the respondent Corporation was disbursing the salaries of the petitioner in good faith, but was constrained to stop the same due to deliberate non-compliance of the orders despite multiple reminders sent by the respondent Corporation.

18. It is submitted that the petitioner was absent from the office from 8th February, 2019 to 12th May, 2019 and the salaries for the said time period has not been disbursed by the respondent Corporation in accordance with the principle of 'no work no pay'. It is further submitted that the petitioner had



failed to provide any reasonable justification for such absence and therefore is not entitled to the salaries for the said time period.

19. It is submitted that this Court *vide* order dated 8th May, 2019 had directed the respondent Corporation to disburse salaries to the petitioner from March 2019. However, the respondents had preferred an LPA No. 367/2019 against the order, whereby the Division Bench of this Court set aside the order dated 8th May, 2019 and referred back the matter to the single judge bench *vide* order dated 29th May, 2019.

20. Hence, in view of the foregoing submissions, the respondent prayed that the instant petition, being devoid of any merit, is liable to be dismissed.

21. Heard the learned counsel for the parties and perused the records.

22. The petitioner has filed the instant application seeking issuance of writ of mandamus for recalling the reassignment letter dated 25th January, 2019 and has contended that he was serving as the Chief Administrative Superintendent before the relocation and cannot be reassigned to the post of stenographer as the said position requires certain qualification and skills which the petitioner does not possess.

23. As per the material on record, the relocation of the petitioner was ordered due to shutdown of the department where the petitioner was earlier working, and therefore, the respondent Corporation transferred the employees engaged in the said department. After relocation, the petitioner was directed to join the new location, but directions were not complied with despite multiple reminders sent by the respondent Corporation and the



petitioner kept visiting the earlier office location, despite clear directions to report at the new office.

24. In the earlier order passed by this Court, the predecessor bench had disposed of the matter and allowed the prayer, thereby, directing the respondent Organization to disburse the salaries due towards the petitioner despite deliberate absence from the office. The said order is reproduced hereinbelow:

“Accordingly, in view of the statement made by learned counsel for the respondents, I hereby dispose of the present petition and make it clear that the petitioner shall not be posted to the post of Stenographer. I further make it clear that the salary from March, 2019 onwards shall be disbursed in the account of the petitioner.”

25. The respondent Organization had preferred an LPA against the aforesaid order passed by the predecessor bench where the Division Bench set aside the order and referred back the matter to single bench to decide whether the petitioner is entitled for salaries of two months i.e. April and May, 2019. The order passed by the Division Bench is reproduced herein:

“1. The present appeal arises out of an order dated 08.05.2019 passed by a learned Single Judge of this court by which the writ petition being W.P.(C) 4928/2019 filed by the respondent has been allowed. The following prayers were sought in the writ petition filed by the respondent :

“(a) To direct the respondents to start the payment of salary against the work done till the time the issue of reassignment is decided and stay the re-assignment order dated 25.01.2019.

(b) To issue writ of mandamus or any other appropriate writ(s) directing the respondents to recall the reassignment letter dated



25.01.2019 on the grounds of it being bad in law and violative of rights of the petitioner.”

2. After some hearing, it is agreed that the following lines of the order dated 08.05.2019 passed by a learned Single Judge of this court may be set aside and the matter may be remanded back to the learned Single Judge to decide whether the respondent is entitled to two months' salary or not:

“.....I further make it clear that the salary from March, 2019 onwards shall be disbursed in the account of the petitioner.”

Both parties will make submission before the learned Single Judge in this regard. List before the learned Single Judge on 20.08.2019”

26. On perusal of the aforesaid order, it is clear that the Division Bench had referred back the matter to this Court for fresh adjudication. It is not in contention that the respondent Corporation had disbursed the salaries to the petitioner for the initial time period despite non-reporting to the relocated office, but the salaries for the month of March and April were not disbursed due to wilful disobedience with the directions of the respondent Corporation.

27. The principle of ‘no work no pay’ is well settled and prevails as the settled law in the cases where the employee does not report to the workplace. Initially, the said principle was evolved in context with the right to strike, but over a period of time, it has included other contexts where there has been a deliberate attempt on part of the employees to wilfully disobey the directions of the employer.

28. In the event the employer deliberately absents from the work without admirable motivation, they relinquishes the right to get compensated when



they did not perform the duty entrusted on them. In ***State of Haryana v. O.P. Gupta, (1996) 7 SCC 533*** the Hon'ble Supreme Court upheld the said principle and held as follows:

“7. This Court in Paluru Ramkrishnaiah v. Union of India [(1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : (1989) 2 SCR 92] (SCR at p. 109 : SCC p. 556, para 19) considered the direction issued by the High Court and upheld that there has to be “no pay for no work”, i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virender Kumar, G.M., N. Rlys. v. Avinash Chandra Chadha [(1990) 3 SCC 472 : 1991 SCC (L&S) 62 : (1990) 14 ATC 732] (SCC p. 482, para 16).”

29. In ***Airports Authority of India v. Shambhu Nath Das, (2008) 11 SCC 498***, the Hon'ble Supreme Court reiterated the principle of ‘no work no pay’ and set aside the order passed by the Division Bench of the Calcutta High Court whereby the Court had allowed payment of arrears for the period the employee had not worked. The relevant paragraph of the judgment is reproduced herein:

“8. This order of the learned Single Judge has been set aside by the Division Bench vide the impugned order dated 21-3-2007 with the observations that the order of the High Court in CR (W) No. 5715 of 1986 which had directed that the respondent



be paid 50% of the back wages for the period from 17-10-1985 to 10-11-1995 should be complied with.

9. The learned counsel for the appellant has pointed out that as the respondent had not attended to his duties for almost 15 years despite having been called upon to do so repeatedly, the direction of the Division Bench to grant him back wages from 17-10-1985 to 10-11-1995 was clearly not justified on the principle of “no work no pay”. She has pointed out that the appellant Authority would have been fully justified even if it had dismissed the respondent from service, but on the contrary, a huge benefit had already been given to him as he had been taken back in service despite having remained absent for almost fifteen years.

10. The learned counsel for the respondent has, however, supported the judgment of the Division Bench. We are of the opinion that in the light of the fact that the respondent did not report for duty for 15 years, there was no justification whatsoever to grant him any back wages on the general principle that nobody could be directed to claim wages for the period that he remained absent without leave or without justification. We also find that the judgment dated 13-8-1999 which had attained finality had directed as under:

“(a) Insofar as the salary of the writ petitioner is concerned during the period he stayed away from the work, the respondent Airports Authority of India, is directed to consider the matter sympathetically and, if it is permissible under its rules, allow to him half of the salary and other benefits.”

11. This claim was considered by the competent authority and rejected for valid reasons. We are, thus, unable to endorse the High Court's order for payment of 50% back wages for the period from 17-10-1985 to 10-11-1995 which are far in excess of the directions in the order dated 13-8-1999. We accordingly allow this appeal, set aside the order of the Division Bench and restore the order of the learned Single Judge dated 15-4-2004.”



30. On perusal of the aforesaid paragraphs, it is crystal clear that the position of law is settled with regards to the payment of salaries when the employee deliberately absences from the workplace without providing sufficient and reasonable grounds for such absence.

31. In the instant case, it is evident that the petitioner deliberately abstained from joining the new location, and kept visiting the old office to mark his attendance in the officer register. It is also clear that the respondent Corporation had tried their level best to convince the petitioner to join the relocated office, however, the petitioner was adamant on his stance and kept on sending representations requesting quashing of the order passed by the respondent Corporation in due accordance with law.

32. On perusal of material on record, it is also clear that the petitioner is currently working in 'Cluster C' and even though there is no particular role assigned to the employees in the clusters, the CDP clearly envisages that the employees working under Cluster 'C' are required to perform all the jobs pertaining to the categories includes both clerical and secretarial jobs.

33. In the earlier hearings in the instant petition, the respondent Corporation had given assurances that the petitioner shall not be deployed as a stenographer and had concurred to the contention that the petitioner does not possess the requisite skill and qualification for being appointed as the stenographer, however, the petitioner still took considerable time to join the relocated position, therefore, establishing the fact that the he flouted the rules of the Corporation and the same can only be held as a deliberate



attempts to not comply with the orders issued by the respondent Corporation.

34. At last, it is pertinent to look into the rules governing the employees of the respondent Corporation. The clause 33A (3) part 1 of the Certified Standing Orders applicable to the petitioner states that the competent authority has powers to deduct wages for the period of absence. The said provisions as adopted by the Corporation are in compliance with the provisions of Payment of Wages Act, 1936 and stand as the rule of law. The clause 33A (3) part 1 is reproduced herein:

"Competent Authority reserves the right to deduct wages for period of absence on account of absence in accordance with the principles of provisions of Payment of Wages Act, 1936."

35. On perusal of the aforesaid provision and in light of the foregoing discussion, it is evident that the respondent Corporation is empowered to deduct wages/salaries of the employees on account of absence from the office. In the instant case, the petitioner had chosen not to join the relocated office and did not reply or act upon the directions despite several reminders sent by the respondent Corporation. Therefore, it is established that the respondent Corporation rightly decided to not disburse the salaries for the period where the petitioner was wilfully absent without any reasonable justification.

36. Therefore, this Court does not find any merit in the case of the petitioner and the instant petition, being devoid of any merit, stands dismissed.



37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 18, 2023
gs/av

Click here to check corrigendum, if any