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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 26.09.2023

% LPA 655/2023, CM APPL. 49941-49944/2023

HARJINDER SINGH CHADHA

..... Appellant

Through: Mr. Ajai Kumar and Mr. Rishpreet Singh, Advocates.

versus

INDIAN COUNCIL OF WORLD AFFAIRS

..... Respondent

Through: None.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****SATISH CHANDRA SHARMA, CJ. (ORAL)**

1. The present LPA is arising out of impugned interim order dated 05.09.2019 passed by the Learned Single Judge in W. P. (C) NO. 2147/2007 titled "*Indian Council of World Affair Vs. Harjinder Singh Chadha*", by which the Learned Single Judge has partly allowed the Writ Petition *vide* interim order dated 05.09.2019 preferred by Indian Council of World Affairs against the Labour Court Award dated 05.05.2006. The Appellant *vide* the impugned interim order was denied backwages between 01.02.1997 to 26.09.2001.

2. The Tribunal while passing the aforesaid Award, directed the Employer to pay full backwages to the Appellant for the period between 01.04.1995 till 26.09.2001 and the Employer being aggrieved by the said Award had preferred a Writ Petition which has been partly allowed *vide* the impugned interim order by the Learned Single Judge.

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3. The undisputed facts of the case reveal that the Appellant Workman was appointed on the post of Air Conditioning Plant Operator in the Pay Scale of Rs. 330-1-380-EB-12500-EB-15-560 on 01.04.1986. Thereafter, he was confirmed on the said post of Operator on 15.12.1986 in the same scale of pay in the services of Respondent Organization.

4. As per the contention of the Appellant, he was performing extra duties in addition to his normal working hours on Over Time Allowance (“OTA”) basis, and he claimed overtime allowance for the extra work put in by him amounting to him Rs. 2800/- for the period of 1992-1994.

5. The Appellant Workman further contended that on account of repeated claims of overtime allowance, the Management with the vindictive attitude issued a Memo alleging misconduct charges against the workmen and finally, the services of the Workman were put to an end with effect from 01.04.1995.

6. Being aggrieved by the said termination of his services, the Appellant Workman, thereafter, took shelter of the statutory provisions i.e., Section 12(4) as contained under the Industrial Disputes Act, 1947 (“ID Act”). However, the conciliation proceedings resulted in failure, and, in those circumstances, the dispute was forwarded to Labour Court in exercise of powers conferred under Section 10(1)(c) and Section 12(5) of the ID Act for adjudication.

7. *Vide* order dated 13.08.1996, the dispute was referred to the Ld. Labour Court with the following terms of reference-

“Whether the services of Shri Harjinder Singh Chadha have been terminated illegally and/or unjustifiably by the Management and if,



so, to what relief is he entitled and what directions were necessary in this respect?”

8. The facts of the case further reveal that during pendency of the case before the Learned Labour Court, the Appellant was allowed to join his duties with the management with effect from 26.09.2001 and an Award was passed on 05.05.2006 by the Learned Labour Court in the matter *vide* which the Appellant was granted full backwages along with consequential reliefs for the period from 01.04.1995 till 26.09.2001.

9. The Management being aggrieved by the aforesaid Award preferred a Writ Petition bearing no. W.P.(C) 2147/2007 titled ***M/s Indian Council of World Affairs v. Shri Harjinder Singh Chadha***. before this Court and brought it to the notice of the Learned Single Judge that in the Month of March, 1995, the Workman made false complaints with the police against the Officials of the Management and an enquiry took place in the matter on 31.03.1995. Furthermore, the Workman absented himself from duty with effect from 01.04.1995 and did not report on duty.

10. The Respondents further submitted that the Workman later on submitted a letter for grant of leave and leave was sanctioned with effect from 03.04.1995 to 08.04.1995, and, thereafter, also the Workman did not report for the duty.

11. The Respondents have further stated that in spite of repeated letters/notices and various opportunities given to him, the Workman did not report on duty, on the contrary, took shelter of the provisions of the ID Act and finally it resulted in an Award of backwages with consequential relief from 01.04.1995 till 26.09.2001.



12. The Respondents also brought to the notice of this Court that a specific stand was taken before the Labour Court also while filing a written statement that the Workman was not reporting on duty and a written statement dated 16.01.1997 which was filed before the Labour Court, the Employer categorically stated that the Workman should report on duty, however, the Workman did not report on duty. The Workman finally reported on duty on 26.09.2001 and in the year 2006, an Award was passed on 05.05.2006 granting backwages to the Workman, meaning thereby backwages for the period with effect from 01.04.1995 to 26.09.2001. In those circumstances, a Writ Petition was preferred before this Court by the Respondent Employer and the Learned Single Judge has partly allowed the Writ Petition. The operative paragraph of the impugned interim order as contained in Paragraph Nos. 9 to 13 reads as under:

“9. I have considered the rival contentions of the parties and find merit in the petitioner’s contention that once the petitioner had in its written statement made a categoric offer to the respondent asking him to resume duty, the respondent cannot claim any backwages for any period thereafter as despite the offer, it is the respondent who neither joined back duty nor made any complaint to the Labour Court, where the matter was pending adjudication about the petitioner not permitting to resume duty.

10. It is pertinent to note that even the replication filed by the respondent is silent on the aforesaid aspects. In these circumstances, I have no hesitation in accepting the petitioner’s contention that the respondent was not entitled to backwages for the period after 01.02.1997 i.e., after excluding a period of two weeks from the date of offer, within which period the respondent ought to have resumed duty. The finding of the learned counsel insofar as it grants backwages to the respondent between 01.02.1997 to 26.09.2001 is, therefore, set



aside.

11. However, there is merit in the respondent's contention that the petitioner having not permitted the respondent to resume duty till 24.01.2004 despite a categorical statement before the Court on 26.01.2001, to reinstate the respondent was liable to pay wages for the period between 26.09.2001 till the date the respondent was actually reinstated.

12. Learned counsel for the petitioner prays for and is granted one week's time to get instructions to file an affidavit of a responsible officer on the two aforesaid aspects. Response, if any, by the respondent be filed within next three days.

13. At request, list on 26.09.2019."

13. This Court has carefully gone through the written statement filed before the Labour Court and the documents on record. The undisputed facts make it very clear that the Labour Court has failed to appreciate the fact that it was the Workman who did not report on duty in spite of number of opportunities granted to him by the Employer and, therefore, it was a case of abandonment, the question of granting backwages in the peculiar facts and circumstances of the case by the Labour Court have rightly been set aside.

14. In the considered opinion of this Court, the Employer rightly from day one made all sincere efforts by issuing letters informing Labour Authorities that the Workman is not reporting on duty. The Complaint Inspector was also intimated by letter dated 08.08.1995 that the Appellant should report on duty and he is absenting from work.

15. It was not a case where the Workman was not permitted by the Employer to Work, and it was the Employee who was willfully not joining the duties on some pretext or the other. Therefore, the Learned Single Judge was justified in setting aside the Award to the extent the backwages from



01.02.1997 to 26.09.2001 have been granted.

16. The undisputed facts of the case further reveal that there was an unconditional offer of reinstatement made by the Employer right from day one. The offer made by the Employer also finds place in the written statement filed before the Labour Court and, therefore, by no stretch of imagination, the Workman is entitled for backwages from 01.02.1997 to 26.09.2001 and, therefore, the Labour Court has erred in law and facts in granting backwages from 01.04.1995 to 26.09.2001 to the Workman and the Learned Single Judge was justified in partly allowing the Writ Petition preferred by the Employer *vide* the impugned interim order

17. The written statement filed on behalf of the Management before the Labour Court dated 16.01.1997 included reference to letter dated 20.02.1996 and 10.10.1996. The Letters were written to the Workman to report on duty. The Management also extended the opportunity even before the conciliation proceedings that the Workman should report on duty, however, the Workman with defiant attitude did not report on duty and Labour Court has ignored this vital fact while delivering the Award. In the considered opinion of this Court, the Learned Single Judge *vide* the impugned interim order was justified in declining backwages from 01.02.1997 to 26.09.2001 to the Workman. Therefore, the impugned interim order delivered by the Learned Single Judge does not warrant any interference by this Court.

18. Grant of backwages is not automatic in Labour disputes; grant of backwages depends upon various factors.

19. The facts of the present case reveal that in spite of there being offer made on 26.09.2001 again to reinstate the Workman, the Workman was not



permitted to join till 24.01.2004, and, therefore, for the period with effect from 26.09.2001 to 24.01.2004, the Workman is entitled for backwages and in those circumstances, the Learned Single Judge was justified in holding that the Workman would be entitled for backwages with effect from 26.09.2001 till the period he has actually been reinstated.

20. The other important aspect of the case reveals that the present LPA is only against interim order and the matter was finally decided by the Learned Single Judge on 31.01.2020.

21. This Court does not find any reason to interfere with the impugned interim order passed by the Learned Single Judge. However, the Workman shall be free to assail the final order dated 31.01.2020 that was passed by the Learned Single Judge in accordance with law.

22. With the aforesaid, the present LPA stands disposed of.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

SEPTEMBER 26, 2023