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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3481/2025, CM APPLs 16280-16281/2025**

M/S WALSONS SERVICES PVT. LTD.Petitioner

Through: Mr. M.P. Sinha, Advocate.

Versus

SH. PARAS NATH YADAV & ANRRespondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
06.05.2025

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1. The present writ petition is filed under Articles 226 and 227 of the Constitution of India, whereby the petitioner seeks setting aside of the impugned award dated 11.12.2023 passed by Labour Court-I, Rouse Avenue Court, Delhi. Vide the impugned award, the petitioner/management was directed to reinstate the workman/respondent No.1 herein, with continuity of service and other consequential benefits alongwith payment of 50% back wages.
2. Briefly put, the facts of the present case are that the workman/respondent No.1 was employed by the petitioner/management in the capacity of a Security Guard w.e.f. 17.11.2006 and his last drawn salary was Rs.13,000/- per month. It is the case of the petitioner that vide Movement Order dated 12.08.2014, the petitioner transferred respondent



No.1 from *M/s Vishal Mega Mart* to *M/s Om Telecom Logistics Pvt. Ltd., Mundka, New Delhi*. However, respondent No.1 preferred proceedings before the Labour Department on the grounds of illegal termination of services, pursuant to which the impugned award came to be passed.

3. At the outset, Mr. Sinha, learned counsel appearing for the petitioner states that the petitioner is not aggrieved by the directions qua reinstatement. It is submitted that, in fact, the services of respondent No.1 were never terminated, however, challenge is confined only to the portion of the impugned award whereby payment of 50% back wages to respondent No.1 was directed.

4. Learned counsel for the petitioner contends that the Id. Labour Court-I erred in concluding that respondent No. 1's employment was illegally terminated inasmuch as vide the Movement Order dated 12.08.2014, respondent No.1 was merely transferred and his services were never terminated. Subsequently, respondent No.1 failed to report for duty at the new site, as a result of which, the petitioner issued another notice dated 14.08.2014. Attention of the Court is drawn to the cross-examination of respondent No.1 before the Labour Court to submit that respondent No.1 admittedly received the aforesaid order dated 12.08.2014 which also bears his receiving on the same date. It is also pointed out that in the impugned award, the Labour Court answered issue No.2 framed by it in favour of the petitioner inasmuch as the Movement Order dated 12.08.2014 transferring respondent No.1 was received by respondent No.1 and in light of the same, it is contended that respondent No.1 was concededly transferred instead of termination of his services. Despite the petitioner/management participating in the conciliation proceedings, it is stated that respondent No.1 referred the



dispute of termination to the Labour Department.

5. A perusal of the record would show that the employee-employer relationship between the parties is not disputed. Concededly, the conciliation proceedings were instituted by the workman in July, 2014, that is, after his employment came to be terminated on 03.07.2014, whereafter the Movement Order came to be issued on 12.08.2014. While the petitioner has argued that the workman/respondent No.1 admitted in his cross-examination that he received the Movement Order dated 12.08.2014, it is pertinent to note that the same was issued after the commencement of the conciliation proceedings and received by the workman during its pendency. It is only subsequently that respondent No.1/workman was informed of reporting to another establishment. Notably, the stand of respondent No.1 remained that though he accepted the said offer and even reported for duty at the new location, he was not allowed to join the duty. Even though the petitioner has claimed that it was respondent No.1 who failed to comply with the Movement Order and abandoned his job despite admittedly receiving the aforesaid order, the Labour Court rightly noted in the impugned award that no evidence was produced by the petitioner/management to show any payment of dues or any steps by way of inquiry or issuance of show cause notice taken towards the workman in pursuance of the alleged non-compliance of joining duty. On the other hand, the workman/respondent No.1 had adequately placed on record documents to support his claim.

6. Pertinently, the petitioner has not challenged the impugned award on the aspect of reinstatement. It has only contested the grant of 50% back wages to the workman. Furthermore, the finding as to the illegal termination of services of the workman has not been denied except with bald assertions.



There is nothing on record to show that the services of the workman/respondent No.1 were not terminated on 03.07.2014, prior to the initiation of the conciliation proceedings and a subsequent Movement Order is seemingly in the nature of an afterthought to escape the liability of illegal termination under the Industrial Disputes Act, 1947. Moreover, while the workman testified in his affidavit before the Labour Court that he has not been gainfully employed since the termination, the management/petitioner did not dispute the same with cogent material.

7. Coming to the only question at hand as to the grant of 50% back wages, it is a settled position in law that the payment of back wages is not awarded blindly upon an order granting reinstatement but is to be determined as per the facts and circumstances of each case and in light of the evidence adduced by the workman inasmuch as he should not be gainfully employed after his wrongful termination. Even though the initial burden is on the workman to substantiate his unemployment, the employer is required to dispute the same or prove the workman's employment elsewhere in the meantime. While determining the quantum of back wages, factors such as the length of service, the financial condition of the employer as well as misconduct on part of the workman, if any, may be considered. [Ref: Rajasthan SRTC v. Phool Chand, reported as **(2018) 18 SCC 299**, Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, reported as **(2013) 10 SCC 324** and U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, reported as **(2006) 1 SCC 479]**

8. In light of the aforesaid facts and keeping in mind the settled position of law, this Court is of the considered opinion that the Labour Court was right in granting reinstatement alongwith 50% back wages. Thus, I find no



grounds to interfere with the impugned award. Accordingly, the present petition is dismissed and disposed of alongwith the pending applications.

MANOJ KUMAR OHRI, J

MAY 6, 2025/ik