$~3

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

\+ W.P.(C) 6692/2019

AKHIL KAUSHAL .....Petitioner

Through: Mr. Ajit Kakkar, Advocate

versus

KEMPINSKI AMBIENCE HOTEL AND ORS. .....Respondents

Through: Ms. Kittu Bajaj, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

<u>O R D E R</u>

% **30.03.2026**

1. The present petition arises out of the order dated 23.10.2018 passed by the learned Labour Court-XIX, *Dwarka* Courts, New *Delhi* in Misc. DJ No.369/2017, whereby the claim of the petitioner seeking reinstatement along with back wages and consequential benefits, came to be dismissed.

2. Briefly, the petitioner was employed as an “Information Technology Executive” with the respondent/management and was drawing wages of Rs.30,000/- per month, and his services came to be terminated. The learned Labour Court, however, upon appreciation of the material on record, returned a categorical finding that the petitioner had voluntarily left the services and, consequently, declined the relief of reinstatement and back wages.

3. The challenge raised in the present petition lies in a narrow compass. This is for the reason that the controversy, as originally projected, does not survive in its entirety, and stands substantially narrowed in view of the

orders passed by this Court in the earlier round of proceedings between the parties.

4. It is material to note that when the matter was earlier taken up by this Court, the proceedings culminated in an order dated 05.09.2019, wherein the Court observed as stated hereunder:-

> "***After some arguments, learned counsel for the petitioner on instructions from the petitioner who is present in the court, submits that the petitioner would be satisfied in case the respondents are directed to release his provident fund dues and pay him 11 days salary towards his leave encashment along with his salary for the notice period between 21.02.2013 to 20.03.2013 when he was prevented from discharging duties and issue him a fresh experience certificate by correcting the typographical in the same.*** *The said certificate uses the word 'her' instead of 'him' making it difficult for the petitioner to secure a fresh appointment elsewhere. He further, submits that the respondents have also not paid him the salary from 01.02.2013 to 19.02.2013, during which period, he had discharged his duties.*
>
> *Learned counsel for the respondents who appears on advance notice submits on instructions that in order to amicably resolve the matter, the respondents are willing to pay to the petitioner 11 days salary towards leave encashment along with one month's salary for the notice period between 21.02.2013 to 20.03.2013. She further submits that a fresh experience certificate would be issued to the petitioner by correcting the typographical error in the experience certificate already issued to him. The fresh experience certificate would be issued to the petitioner within one week and the payments as directed hereinabove, would be made to the petitioner within six weeks. It is however, made clear that in case the petitioner has not been paid salary for the period 01.02.2013 to 19.02.2013 as claimed by him, the respondent will pay the same, unless it has been adjusted against the dues payable by the respondent in which case the petitioner, will be duly informed how the said adjustment has been made.*
>
> *It will be open for the petitioner to take legal recourse in case he is aggrieved by the reason to be indicated by the respondent for non-payment of salary to him for the period between 01.02.2013 to 19.02.2013.*

The petition is disposed of in the aforesaid terms along with the pending application."

(emphasis added)

5. A perusal of the said order would show that the petition came to be disposed of upon a consensual arrangement between the parties, thereby obviating the need for any further adjudication on merits at that stage. The terms of the said arrangement, as recorded in the order, reflect that the relief sought was confined only to 11 days' salary, and the respondents had agreed to pay to the petitioner 11 days' salary towards leave encashment along with one month's salary for the notice period between 21.02.2013 to 20.03.2013.

6. A plain reading of the said order would show that this Court did not find merit in the petitioner's claim so as to warrant interference with the impugned award. The relief was confined to a limited monetary encashment, which, in effect, signifies that the claim for reinstatement and back wages did not find favour with the Court. The aforesaid aspect assumes significance, as it delineates the contours within which the present controversy is required to be examined. Once the Court, at an earlier stage, has not found it necessary to interfere with the impugned award, and has confined the relief to a limited financial component, the scope of the present proceedings cannot be expanded to revisit the entire claim afresh.

7. Later, a Review Petition No. 430/2019 came to be filed by the respondents, seeking review of the order dated 05.09.2019. It was contended that the offer of one month's salary already stood included in the salary for the period between 01.02.2013 to 19.02.2013, and the same was inadvertently, not noticed at the time of passing of the earlier order.

8. Upon consideration of the aforesaid submissions, this Court vide order dated 14.10.2019 observed that the parties were not *ad idem* on the terms of consent, and consequently, the order dated 05.09.2019 came to be recalled, with the writ petition being taken up for consideration thereafter. The observations are set out hereinbelow:

> "*3. Learned counsel for the respondents submits that they had in order to amicably resolve the matter offered to pay one month's salary to the petitioner, which included his salary for the period between 01.02.2013 to 19.02.2013 which fact was not noticed at the time of the passing of the aforesaid order dated 05.09.2019.*
> *4. Issue notice. Learned counsel for the petitioner accepts notice.*
> *He does not dispute the stand of the respondents that the respondents were including his unpaid salary for the period between 01.02.2013 to 19.02.2013 in the one month's salary which the respondents had offered to him.*
> *5. In these circumstances, it is evident that there is an error apparent on the face of the record as the parties were not ad idem on the terms of the consent. The order dated 05.09.2019 is recalled and the writ petition is taken up for consideration.*
> *6. The review petition stands disposed of.*"

9. On a cumulative reading of the aforesaid orders, one aspect clearly emerges, namely, that the relief stood confined to a limited monetary encashment.

10. Learned counsel for the petitioner submits that the petitioner was drawing wages of Rs.30,000/- per month, and that even on a limited computation, 11 days' salary would come to approximately Rs. 10,000/-. It is contended that having regard to the facts of the case, the petitioner is entitled to a higher amount.

11. *Per contra*, learned counsel for the respondents submits that the petitioner had worked only for a limited period and had himself tendered resignation, and therefore, no further relief is warranted. It is submitted that

the findings returned by the learned Labour Court are based on appreciation of evidence and do not call for interference.

12. This Court has considered the submissions and perused the record. The scope of interference under Articles 226 and 227 of the Constitution of India is well settled. The findings returned by the learned Labour Court, being findings of fact based on appreciation of evidence, cannot be interfered with unless shown to be perverse or contrary to law. The scope of a writ petition under Articles 226 and 227 of the Constitution of India is limited to the extent of the Court determining if the impugned order is perverse, without jurisdiction, or passed without following the principles of natural justice. In this regard, reference can be made to *Syed Yakoob vs. K.S. Radhakrishnan and Ors.*[1].

13. At the same time, keeping in view the peculiar facts and circumstances, the tenure of the petitioner was limited, he joined the respondents on 02.05.2012 and was kept on a probationary period of six months, and after the completion of the said period, his appointment with the respondents was confirmed on 02.11.2012. Thereafter, after working for an year, he rendered his letter of resignation dated 19.02.2013 to the Manager. In view of the above, and the fact that the dispute pertains to the year 2013, this Court is of the view that the ends of justice would be met by balancing the equities between the parties and awarding a consolidated amount.

14. Accordingly, the present petition is disposed of by directing the respondents-management to pay a lump sum compensation amount of Rs.50,000/- to the petitioner-workman in view of the final settlement. Upon

[1] 1963 SCC OnLine SC 24

payment of the aforesaid amount, no further claims shall survive between the parties.

15. The petition is disposed of in above terms.

MANOJ KUMAR OHRI, J

MARCH 30, 2026

sn