

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 920 OF 2017
(Arising out of SLP(C) No. 26404/2015)

S.M. MATLOOB .. APPELLANT(S)

VERSUS

INDIAN COUNCIL OF CULTURAL .. RESPONDENT(S)
RELATIONS (ICCR) THR.
DIRECTOR GENERAL

O R D E R

1. Leave granted.
2. This appeal is directed against the judgment and order of the High Court of Delhi in W.P.(C) No. 5226 of 2014, dated 21.05.2015 whereby the High Court had granted 50% of back wages to the appellant and denied full back wages to him on the ground that the appellant had to share the blame for his long absenteeism from his duties.

3. The only contention raised by the appellant appearing in person is that the High Court ought to have granted full back wages having come to the conclusion that the respondent passed an wrongful order of compulsory retirement against the appellant.

4. The High Court had observed that the appellant had gone to join his duties in terms of transfer order dated 20.05.2004 but he was prevented from joining at the Regional Office, Lucknow which was evident from letter dated 24.05.2004 issued by the Director of the Regional Office, Lucknow. The High Court further observed that the appellant had been availing legal remedies against the transfer order passed by the respondent by filing a suit in the a Civil Court and then filing writ petition probably due to some wrong legal advise.

5. However, in the circumstances of the case, the High Court found that the appellant ought not to have been compulsorily retired for alleged willful absenteeism from duties since the appellant had in fact gone to join duties but was prevented from joining duties. As regards, the back wages, the High Court held that the appellant should be granted 50% back wages instead of full back wages on the ground that the appellant must share blame for his long absenteeism from duties. In the facts of the case we find it difficult to uphold the findings of the High Court. In fact the High Court itself had observed that the appellant was prevented from joining his duties upon transfer and further found that the allegation of willful absenteeism for a period of two months was not justified. The High Court having found that the appellant was compulsorily retired, it is difficult to attribute absenteeism for any period thereafter.

6. Learned counsel appearing for the respondent submitted that the appellant even after being compulsorily retired kept on challenging the order of transfer. We find that this may be due to incorrect advise. Whatever it is, it has no bearing on the question of grant of back wages. It is no doubt that the appellant attained the age of superannuation on 01.06.2014 and had been paid an amount of Rs.6,63,273/- by way of implementation of the High Court's order for granting 50% back wages. It is also not disputed that the total amount of back wages comes to Rs. 12,96,272/-. The order of compulsory retirement of the appellant having been set aside we see no reason why the appellant ought to have been granted only 50% of back wages. The appellant was found to have been absent for a period of two months only because he was prevented from joining his duties at Lucknow. It is not disputed that the

respondent had led no evidence to show that the appellant was gainfully employed at any other place.

7. In the circumstances of the case, we set aside the order of the High Court to the extent it grants only 50% back wages. We direct that the appellant shall be paid full back wages for the entire period.

8. The appeal is allowed accordingly.

.....J.
[S.A. BOBDE]

.....J.
[L. NAGESWARA RAO]

NEW DELHI,
JANUARY 24, 2017.

ITEM NO.10

COURT NO.9

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 26404/2015

(Arising out of impugned final judgment and order dated 21/05/2015 in WPC No. 5226/2014 passed by the High Court Of Delhi At New Delhi)

S.M. MATLOOB

Petitioner(s)

VERSUS

INDIAN COUNCIL OF CULTURAL RELATIONS (ICCR)
THR. DIRECTOR GENERAL

Respondent(s)

(With appln.(s) for permission to file the written submission-cum Rejoinder and permission to appear and argue in person and office report)
(FOR FINAL DISPOSAL)

Date : 24/01/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. S.M. Matloob, In-person

For Respondent(s) Me. M.D. Jangra, Adv.

Mr. R.C. Kaushik, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Indu Pokhriyal]
Court Master

[Signed order is placed on the file]