

GAHC010021042018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/63/2018

THE ASSISTANT DIRECTOR (ESTABLISHMENT DIVISION) AND ANR
FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA (MINISTRY OF
HEALTH AND FAMILY WELFARE), FDA BHAWAN, 3RD AND 4TH FLOOR,
KOTLA ROAD, NEW DELHI 110002

2: THE DEPUTY DIRECTOR

FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA (MINISTRY OF
HEALTH AND FAMILY WELFARE)
NORTH EASTERN REGION
MILAN PATH
JRIPAR
PANJABARI ROAD
SIXTH MILE
GUWAHATI 781002
ASSAM

VERSUS

MRIDUL DEKA AND ANR
R/O JURIPAR, HOUSE NO. 10/B, BYE-LANE NO. 10, PANJABARI ROAD,
KHANAPARA, GUWAHATI 781022, ASSAM.

2: THE UNION OF INDIA
REPRESENTED BY THE SECY.
MINISTRY OF HEALTH AND FAMILY WELFARE
FDA BHAWAN
KOTLA ROAD
NEW DELHI 11000

Advocate for the Petitioner : MR. M PRACHA

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 01-08-2023

The instant intra-court writ appeal is preferred seeking to assail the order dated 20.12.2017, passed by the learned Single Judge in WP(C) 4686/2015, whereby the writ petition under Article 226 of the Constitution of India, preferred by the respondent No. 1 herein was disposed of in the following manner:

“15. However, considering the fact that the petitioner even after obtaining stay order from this Court on 14.08.2015 failed to join his duty for about 16 months and approached the respondent authority with a joining report only on 02.01.2017, therefore the petitioner will not be entitled to any backwages for the intervening period w.e.f. 14.08.2015 to 02.01.2017. However, considering the fact that his termination is found to be bad in law while the petitioner admittedly is again out of service since 16.03.2017, ends of justice would be seemed if he is given 50% of backwages w.e.f 17.03.2017.

16. It is also noticed that the contract appointment of the petitioner is only for 3 years w.e.f. 01.01.2015 and therefore, the same is due to come to an end on 31.12.2017. No doubt, further retention of the petitioner will be at the discretion of the respondent authority but however, such discretion should be exercised on sound principles governing employment and with an open mind.”

2. Brief facts relevant and essential for disposal of the appeal are noted hereinbelow:

The respondent No. 1 herein was employed as a Data Entry Operator by the appellant herein on contractual basis vide communication dated 21.09.2012, for a period up to 31.07.2012. He joined service on 01.10.2012. The appointment of the respondent No. 1/writ petitioner was governed by the Memorandum of Understanding signed between the employee and the Employers, i.e. Food Safety &

Standards Authority of India (FSSAI). The appointment was on periodic basis and to be renewed from time to time. Such renewal was made for a period of three years w.e.f. 01.01.2015 vide Office Order dated 31.12.2014 which *inter alia* provided that the continuance of the contractual appointment would be subject to evaluation of performance and conduct of the employee on annual basis.

An Office Memorandum dated 23.04.2015 was issued to the respondent No. 1/writ petitioner seeking his explanation regarding an act of misconduct, wherein the respondent No. 1/writ petitioner was alleged to be heard hurling an insinuation that the Deputy Director, FSSAI, was indulged in harassment of Assamese people in Nagpur. The respondent No. 1/writ petitioner furnished his explanation to the said Office Memorandum on 27.04.2015. However, the explanation, not being found satisfactory, was rejected and the contractual service of the respondent No. 1/writ petitioner was terminated vide order dated 22.06.2015. Being aggrieved, the respondent No. 1/writ petitioner filed the writ petition No. WP(C) 4686/2015 challenging the order dated 22.06.2015.

The writ petition was taken up for hearing on 14.08.2015 and, while issuing notice thereof to the respondents, the effect and operation of the order of termination was stayed. However, notwithstanding the said order dated 14.08.2015, respondent No. 1/writ petitioner continued to remain absent from duty for about a period of one year and six months and returned to resume duty only on 02.01.2017. Subsequently, on an Interlocutory Application being filed by the appellants herein seeking modification of the order dated 14.08.2015, the Court observed that the respondents (i.e. appellants herein) were at liberty not to act upon the joining report of the employee dated 02.01.2017. This direction was given on 27.02.2017, which was challenged by the writ petitioner/respondent No. 1 herein in an appeal before the Division Bench of this Court. The appeal, being WA 85/2017, was disposed of by the Division Bench by observing that as the employee

had resumed duty on 02.01.2017 and had worked up to 15.03.2017, the employer was not entitled to seek refund of the remuneration paid for the said period, and the learned Single Bench was requested to decide the writ petition on merits.

After considering the submissions of the parties, the learned Single Bench quashed the order dated 22.06.2015 and directed that the writ petitioner shall be reinstated with certain conditions as indicated. The appellant/employer has now approached this Court through this intra-court writ appeal for assailing the direction given by the learned Single Bench to the extent they were directed to pay 50% of the backwages w.e.f. 17.03.2017 to the employee/ respondent No. 1 herein.

3. Learned counsel Mr. M. K. Das, representing the appellants vehemently and fervently urged that the learned Single Bench was not justified in interfering with the order of termination because the respondent No. 1/writ petitioner being a contractual employee had misbehaved with the superior officer by hurling racist insinuations. He thus urged that the impugned order is liable to be set aside. His alternative submission was that if this Court is not inclined to interfere in the impugned order to the extent the order of termination was set aside, the fact remains that the respondent No. 1/writ petitioner was admittedly out of service from 16.03.2017. He pointed out that after the order dated 27.02.2017 modifying the interim order dated 14.08.2015 had been passed, the respondent No. 1/writ petitioner was again removed from service and he never worked on the post thereafter and, thus, the direction to pay him 50% backwages for the period, during which he did not work, cannot be said to be justified by any stretch of imagination.

4. Learned counsel Mr. T. Deori, representing the respondent No. 1/writ petitioner vehemently and fervently opposed the submissions advanced by the appellants' counsel. However, he too was not in a position to dispute the fact that

the respondent No. 1/writ petitioner had taken the liberty of not rejoining duty in spite of the interim protection granted by the learned Single Bench vide order dated 14.08.2015. Looking at this recalcitrant conduct of the writ petitioner, the learned Single Bench modified the order dated 14.08.2015 giving liberty to the employer not to act upon the joining report of the employee dated 02.01.2017. Even in the writ appeal No. WA 85/2017, all that was directed by the Division Bench was that the amount already paid to the employee for the period between 02.01.2017 to 15.03.2017 should not be recovered.

However, Mr. Deori was not in a position to dispute the factual aspect that the respondent/writ petitioner never worked on his contractual post from 17.03.2017 onwards.

5. In the background of this scenario, we are of the firm opinion that the direction given by the learned Single Bench to the appellant/employer to make payment of 50% backwages to the contractual employee for the period he did not work is totally uncalled for. We may further note that the learned Single Bench interfered in the order of termination in spite of affirming the fact that the respondent No. 1/writ petitioner admitted the fact that he had displayed outburst against his superior officer when his leave application was denied. Since the contractual period of the respondent No. 1/writ petitioner came to an end almost 5½ years ago, we are not inclined to go into the merits of the matter so as to test the validity of the order passed by the learned Single Bench on this aspect. However, in any eventuality, the direction given by the learned Single Bench to make payment of 50% backwages to the respondent No. 1/writ petitioner for the period from 17.03.2017 till the date of passing of the impugned order cannot be upheld as the same would tantamount to unduly rewarding the contractual employee for the period for which he admittedly did not perform his duties. Thus, the direction given by the learned Single Bench to the appellant/employer to make

payment of 50% backwages to the respondent No. 1/writ petitioner for the period commencing from 17.03.2017 onwards is hereby quashed and set aside.

The writ appeal is allowed accordingly.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant