

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.121 OF 2015

(Shri Vinayak S. Vyawahare vs. Government of India, through its Secretary, Ministry of Railways and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Petitioner-in-person with Smt. S.P. Kulkarni, Advocate
(appointed) for petitioner.
Shri Pannase, Advocate h/f Shri N.P. Lambat, Advocate for
respondents.

CORAM : A.B. CHAUDHARI AND
 P.N. DESHMUKH, JJ.

DATED : AUGUST 12, 2015

Heard petitioner-in-person Shri Vinayak S. Vyawahare. He submits that the only prayer, which he is pressing before this Court, is for directing the Police Department to register first information report against 11 respondents. They are as under :

“Union Government of India, through its -

1. Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. General Manager, Central Railways, CSTS, Mumbai.

3. Divisional Railway Manager, Central Railways, Nagpur.
4. Addl. Divisional Railway Manager, Central Railways, Nagpur.
5. Sr. Divisional Personal Officer, Central Railways, Nagpur.
6. Divisional Personal Officer, Central Railways, Nagpur.
7. Sr. Divisional Mechanical Engineer, Central Railways, Nagpur.
8. Divisional Mechanical Engineer, Central Railways, Nagpur.
9. Asstt. Mechanical Engineer (C&W), Central Railways, Nagpur.
10. Asstt. Personal Officers, Central Railways, Nagpur.
11. Asstt. Personal Officer (Settlement), Central Railways, Nagpur.”

Upon asking as to whether petitioner-in-person has any other point to submit, he states that this is the only point he wants to press in this criminal writ petition for registration of first information report against 11 respondents.

On 19/3/2015, this Court had made an order asking the Standing Counsel of Indian Railways to find out whether any dues are payable to the petitioner. An affidavit was filed on 28/4/2015 by respondents stating therein that the petitioner did not join his duties for about 7 years and by that time, he was already superannuated.

By another order dated 10/6/2015 passed by this Court, Railway Department was asked to make settlement of amount payable to petitioner. The petitioner-in-person then asked this Court to decide his case finally and stated that he had no desire to receive any amount from the Indian Railways. He also stated that he would like to have legal aid for prosecuting his petition. He also stated that he had earlier engaged two Counsel from Legal Aid, but Counsel engaged by him, refused to conduct his matter. All that was recorded in the order made by this Court on 10/6/2015.

On 6/7/2015, petitioner-in-person again appeared before this Court and with intervention of this Court, Mrs. S.P. Kulkarni, Advocate was appointed by the Legal Aid Committee to represent the petitioner. Thereafter the matter was adjourned on few dates and when the petition was listed on 10/8/2015, the appointed Counsel Mrs. Kulkarni stated that despite request made to petitioner to give her instructions, he did not contact her. She was, therefore, unable to say anything on facts of the case. On that day, petitioner-in-person was absent. We, therefore, posted the matter for today as a last chance with a view that petitioner would assist Mrs. Kulkarni and at the same time, we directed learned Counsel for respondents to find out

whether petitioner would get any monthly pension. The order dated 10/8/2015 passed by this Court reads thus :

“Mrs. S.P. Kulkarni, learned Counsel for the petitioner, submits that despite instructions to the petitioner to instruct her, he has not contacted.

We place the matter on 12.8.2015, as a last chance for him to appear before this Court to assist Mrs. Kulkarni and the Counsel for the respondent is also directed to find out amount of monthly pension, if any, payable to the petitioner.”

We did not say anything on merits on that day because none was heard and tenor of the order shows that since petitioner did not appear on that date, this Court could dismiss the petition in default or as the case may be. However, petitioner-in-person now has shown us a representation dated 11/8/2015 addressed to the Hon'ble Chief Justice of Bombay High Court for transfer of this criminal writ petition and precisely, the ground mentioned in para 8 of that said representation is that on 10/8/2015 this Court gave an impression that this Court would dismiss the petition without hearing the petitioner. Copy of the said representation is taken on record and marked 'X' for identification.

We think that there is no need for us to wait for

any order on the said representation and we should instead proceed to decide the petition.

We have gone through the entire petition so also affidavit-in-reply and documents. We find from perusal of the record that petitioner was proceeded against in a departmental enquiry by the Indian Railways on certain charges and he was found guilty of charges levelled against him in the enquiry. The punishment of compulsory retirement was given to him. Thereafter he approached Central Administrative Tribunal, which allowed his original application and directed reinstatement in service with a further liberty to the Railway Department to take up fresh enquiry, if so advised. Thereafter petitioner filed another Original Application No. 2027/2011 praying for compensation in the sum of Rs.1000 crores against Indian Railways for alleged harassment and mental torture and he also had made unwarranted and repeated remarks against former Vice Chairman of Central Administrative Tribunal. The Tribunal in para 4 of the order dated 4/7/2011 held thus:

“After hearing the learned Counsel for respondents and minutely perusing the O.A., the Tribunal is of the considered opinion that the prayers are totally misconceived and not maintainable. This is purely a

vexatious litigation. The O.A. is, therefore, dismissed in limine. It is, however, clarified that if any service grievance exists, the applicant, if so advised, may approach the respondents as per law.”

The Tribunal held that the prayers made by the petitioner were misconceived and litigation was vexatious.

Be that as it may, in this petition, Indian Railways filed an affidavit dated 22/4/2015 stating that settlement dues in the sum of Rs.33,255/- were receivable by the petitioner, but then we insisted on the learned Counsel for Indian Railways to find out whether petitioner was entitled to monthly pension, pursuant to which the learned Counsel for Indian Railways has tendered before us a handwritten calculation that the petitioner would be entitled to some amount of monthly pension.

It is noteworthy that order that was made by the Central Administrative Tribunal did not speak of any award of back wages to the petitioner. However, petitioner has been insisting for payment of back wages. It is well settled that in the absence of order by the competent Court or Tribunal in the matter of back wages, the same cannot be granted. At any rate, it is the case of Indian Railways that the petitioner after the order made by Central

Administrative Tribunal on 25/9/2002 did not join the duties till he attained the age of superannuation. We think that petitioner nurtured strong grievance against his employer and there may be some justification for him to do so because ultimately the Tribunal had set aside his punishment order and he was also acquitted in the criminal case, but then it was his duty to join the duty instead of remaining away from the duty. That he did not do, perhaps under the anger that he was wrongfully dealt with by the Railway Department. We have, therefore, sympathy for the petitioner, but then the Court is unable to help the petitioner in respect of demand for damages in the sum of Rs.1000 crores against full back wages and so on and so forth because after all these things are governed by Rule of Law and not by ones own thinking. However, we find that the Indian Railways have now come with the submission that the petitioner is entitled to pension and that Indian Railways would be paying pension to him.

The controversy in the present petition is, however, about non-registration of offences against 11 respondents, who are Officers of Indian Railways. We do not think that we would be able to ask the Police Department to register any offence against respondents as

prayed for by the petitioner. The petitioner's anger is also reflected from his writing against the Vice Chairman of Central Administrative Tribunal and this Court as well, but then it is no use going direction-less. We, therefore, find that there is no substance in the criminal writ petition and hence, we make the following order :

Order

Criminal Writ Petition No.121/2015 is dismissed. We accept the statement made by the learned Counsel for Indian Railways that the petitioner would be paid pension and arrears thereof at the earliest.

The fee payable to the learned Counsel appointed for petitioner is quantified as rupees five thousand.

JUDGE

JUDGE

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