

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Subrata Talukdar**

**And**

**The Hon'ble Justice Jay Sengupta**

**APOT/33/2019**

**With**

**WPO/683/2001**

**Mala Sanyal (Ghosh)**

**Versus**

**The Secretary, Department of Labour & Ors.**

**For the Appellant**

: Mr. Soumya Majumder

Mr. Rananeesh Guha Thakurta

Ms. Senjuti Sengupta

...Advocates

**For the Respondent No. 3**

: Mr. Anant Kumar Shaw

Mr. Ravi Kumar Dubey

Mr. Mainak Ganguly

...Advocates

**For the State**

: Ms. Tapati Samanta

...Advocate

**Heard on**

: 13<sup>th</sup> August, 2021

**Judgment on**

: 27<sup>th</sup> September, 2021

**Jay Sengupta, J.**

1. This appeal is directed against an order dated 23<sup>rd</sup> August, 2018 passed by the Hon'ble Single Judge, thereby dismissing the writ petition being W.P. No. 683 of 2001 filed by the present appellant. In the writ petition, the appellant had challenged an order dated 27<sup>th</sup> February, 1997 passed by the learned 2<sup>nd</sup> Labour Court, West Bengal in a proceeding initiated by her against the respondents, the Capital Electronics and two others under Section 33 C (2) of the Industrial Disputes Act, 1947.

2. The appellant/writ petitioner was employed by the respondent concern as a casual employee in 1979. Subsequently, disputes arose with regard to stock verification in the record section for which the appellant was suspended and thereafter, dismissed from service with effect from 7<sup>th</sup> July, 1982. She raised an industrial dispute and the learned 2<sup>nd</sup> Industrial Tribunal, West Bengal passed an award on 30<sup>th</sup> March, 1989, directing her reinstatement in service immediately, with full back wages. In 1989, the appellant filed an application under Section 33 C (2) of the said Act for computation of benefits in terms of the award for the period 1981 to October 1989. This was allowed by an order dated 5<sup>th</sup> April, 1990 for a sum of Rs. 48,937/-. The appellant moved the Court of the learned Magistrate for recovery of the said amount. The appellant filed a second application under Section 33 C (2) of the said Act before the learned Labour Court claiming dues from November, 1989 to May, 1992. On 18<sup>th</sup> March, 1994, the learned

Court passed an order in her favour. This was challenged by the employer before this Court. By a judgment and order dated 22<sup>nd</sup> August, 1996, this Court, *inter alia*, directed the learned Labour Court to consider the materials afresh. The appellant filed a third application under Section 33 C (2) for computation of dues from June, 1992 to November, 1995. By an order dated 27<sup>th</sup> February, 1997, this claim was rejected on the ground that the workman had refused the management's offer of reinstatement as showroom manager in 1994. This was challenged by the appellant in a writ application. However, the writ petition was dismissed on 23<sup>rd</sup> August, 2018 on the ground that the appellant did not want to resume duties as a showroom manager in terms of the concern's purported offer dated 25.06.1994.

**3.** Learned senior counsel appearing on behalf of the appellant submitted as follows. The prime question was about the interpretation of the term 'reinstatement'. The word 'reinstatement' meant restoration of status quo ante. Therefore, compliance of the award would mean putting back the appellant in service in the capacity of a sales girl at the Howrah branch, the post and the place from where she was terminated. On the definition of the word 'reinstatement', reliance was placed on a Division Bench of the Hon'ble Karnataka High Court in R. S. Manier, Sub-Registrar vs. The State of Mysore, (1969) 1 LLJ 486 and a decision passed by the Hon'ble Supreme Court in Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) & Ors., (2013) 10 SCC 324. Non compliance of the award, as was well settled, was a continuing breach. Besides, the management's purported offer on 25<sup>th</sup> June, 1994 to post the appellant as a

showroom manager at Howrah Branch could only be viewed as a design not to comply with the award. The very nature of the offer to the post of a showroom manager manifested that it was not an offer of reinstatement. Therefore, the learned Labour Court erred in rejecting the claim application under Section 33 C (2) of the said Act and thus, permitting the breach of the industrial award to continue. The order of the Hon'ble Single Judge should also be set aside on the same ground.

**4.** Learned counsel appearing on behalf of the respondent no. 3/company, submitted as follows. This was a case where the appellant/writ petitioner, after obtaining the initial award from the learned Labour Court, decided that she would not work and yet keep on receiving salary for the same by exploiting such award. First, the appellant was employed by the concern at its head office at the JL Nehru Road Branch. She worked there as a sales girl. Thereafter, she was transferred to the concerned Howrah branch. As regards the place of posting, this Court, by its order dated 22<sup>nd</sup> August, 1996 passed in the earlier writ application specifically clarified that in the eye of law there was no distinction between Capital Electronics and Capital Electronics (Howrah). All the units were actually different places owned by the same firm. A firm was at best a juristic person. Only the natural persons behind a firm were legally entitled to initiate or defend any legal action for or against the firm. Thus, it was not open to the appellant to keep on harping that she would join a post only at a specific location. At no point was the appellant asked to join the post of showroom manager. Rather, she was directed to join her duties by reporting to the showroom

manager of the VIP Road showroom, admittedly by a letter dated 24.06.1994. By then, the gramophone unit where the appellant was earlier working at Howrah had become defunct. The appellant, by a letter dated 05.07.1994, refused to join her duties at that showroom. The appellant made an application dated 7<sup>th</sup> July, 1997 under Section 29 of the said Act for implementation of the award of reinstatement. By a detailed report dated 17<sup>th</sup> June, 1998, the Assistant Labour Commissioner, *inter alia*, observed that the prosecution under Section 29 would not stand against the company. Accordingly, the Labour Department, Government of West Bengal decided not to lodge a prosecution under Section 29 of the Act. It was pertinent to mention that the 2<sup>nd</sup> Industrial Tribunal was pleased to direct the company to reinstate the appellant, but at no point of time any specific direction was passed by it to reinstate her at the Howrah unit only. By a letter dated 23<sup>rd</sup> January, 1989, the company asked the appellant to join her duty at VIP Road. By a letter dated 25<sup>th</sup> December, 1991, the company again offered employment to the appellant stating, among other things, that her posting, salary and duty would remain the same. A similar letter dated 6<sup>th</sup> January, 1992, offering employment at the VIP Road branch, was sent to her by the company. But, on all such occasions the appellant refused to join such service. Lastly, the company gave a similar offer to her by a letter dated 25<sup>th</sup> June, 1994 to join her duties and report to the showroom manager, VIP Road Branch. But, the appellant yet again refused to join such employment. Once the appellant had voluntarily refused to join such service, she could not claim that she was not reinstated in service by her employer and

continue to make monetary claims by abusing the provisions of Section 33 C (2) of the Industrial Disputes Act. This is more so, in view of the fact that the order dated 22<sup>nd</sup> August, 1996 passed by this Court setting aside the orders dated 5<sup>th</sup> April, 1990 and 18<sup>th</sup> March, 1994 passed by the learned Labour Court, was neither challenged by the appellant herein nor complied with by approaching the learned Labour Court for reconsideration. On the contrary, the appellant found it more convenient to make successive applications under Section 33 C (2) of the said Act. Therefore, it could be safely held that the appellant abandoned her right to seek reinstatement and her conduct in not reporting for duties disentitled her even to back wages. On this, reliance was placed on State of M.P. vs. Anees Khan, (2014) 8 SCC 900. On the contrary, the decisions cited on behalf of the appellant were passed in different facts and circumstances and were not at all relevant in the present case. Even at the cost of repetition, it must be reiterated that the true intent of the appellant was to enjoy monetary benefit by abusing due process of law and, more significantly, without venturing out to work.

**5.** Learned Counsel appearing on behalf of the State reiterated the submissions advanced on behalf of the Respondent No. 3.

**6.** We heard the learned counsel/s appearing on behalf of the appearing parties and perused the petition of appeal, the stay application, the impugned order and other documents including the notes of arguments filed on behalf of the respective parties.

**7.** The word 'reinstatement' would undoubtedly mean restoration of status quo ante. However, such reinstatement would have to be understood in the backdrop of the particular facts and circumstances of this case.

**8.** It is the case of the respondent no. 3 that the concerned gramophone unit at its Howrah branch had become defunct. Therefore, if the appellant/workman had to be put to a similar job, as the one she was engaged at, at the Howrah branch, then she could fairly be employed at the VIP Road branch. Accordingly, on several occasions she was offered a similar job at the concerned VIP Road branch. But, the appellant refused to accept it.

**9.** In this context, it is quite significant that, by its order dated 22<sup>nd</sup> August, 1996 passed in the earlier writ application being Matter No. 2650 of 1994, this Court held that in the eye of law, there was no distinction between Capital Electronics and Capital Electronics (Howrah) and that all the units were actually different places owned by the same firm. This finding was never challenged by the appellant. Therefore, there is much merit in the submission of the respondent no. 3 that it was no more open to the appellant to keep on harping that she would join a post only at a specific location, i.e. at Howrah.

**10.** Besides, it is not that the appellant always worked at the concern's Howrah branch. In fact, when she had joined the concern, she was first employed at the J.L. Nehru Branch.

**11.** Moreover, unlike the claim of the appellant that she was asked to join the post of showroom manager at the VIP Road branch, the appellant was in

fact offered to join her duties by reporting to the showroom manager at the said showroom, admittedly by a letter dated 24.06.1994.

**12.** In the present case, the nature of work appears to be more closely relatable to the term 'reinstatement' as used by the learned Labour Court than the place or location of such work. This is more so, in view of the unchallenged order of this Court passed on 22<sup>nd</sup> August, 1996 in Matter No. 2650 of 1994 holding, among other things, that in the eye of law there was no distinction between the concerned Capital Electronics and its other unit, Capital Electronics (Howrah).

**13.** In view of the above, it was a substantial compliance of the Learned Labour Court's order of reinstatement that the respondent no. 3 offered the appellant a similar employment at its VIP Road branch.

**14.** In our view, since the appellant had voluntarily refused to join such service as was offered by the respondent no. 3, she could not claim that she had not been reinstated in service by the employer and keep on making monetary claims under Section 33 C (2) of the Industrial Disputes Act.

**15.** Therefore, we do not find any illegality in the order passed by the Hon'ble Single Bench.

**16.** Accordingly, **APOT 33 of 2019** stands **dismissed**.

**17.** All parties are to act in terms of the copy of the judgment downloaded from the official website of this Court.

**18.** Urgent Photostat certified copies of this judgment shall be supplied to the parties, if applied for, upon compliance of all formalities.

**I agree,**

**(Subrata Talukdar, J)**

**(Jay Sengupta, J)**

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