

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

Before:

The Hon'ble Justice T. S. Sivagnanam

and

The Hon'ble Justice Hiranmay Bhattacharyya

FMA 254 of 2019

With

I.A. CAN 3 of 2021

**Gautam Majumder (since deceased) represented by
Puspita Majumder & ors.**

Vs.

The Institution of Engineers (India) & ors.

For the Appellants : Mr. Rananeesh Guta Thakurta,
Ms. Senjuti Sengupta Advocates

For the Respondents : Mr. Soumya Majumder,
Mr. Asit De,
Ms. Sormi Dutta,Advocates

Heard on : 02.03.2022

Judgment on : 18.04.2022

Hiranmay Bhattacharyya, J.:-

1. The instant appeal is at the instance of the respondent no. 3 in the writ petition and is directed against an order dated August 10, 2018 passed by a learned Single Judge in WP 25115 (W) of 2017. By the order impugned the order of the learned Tribunal setting aside the order of dismissal was set aside. The writ petitioner/the Institute was directed to pay Rs. 3 lakhs to the appellant.
2. The appellant was employed under the Institution of Engineers (India) (for short “the Institution”). The appellant was guilty of being a habitual absentee. His service was terminated on 31st December, 2003. In June, 2006 the workman collected employment experience certificate as well as provident fund dues. Long thereafter, sometimes in December, 2008 he made a representation to the conciliation officer purporting to raise an industrial dispute. The workman applied under Section 10(1B) of the Industrial Disputes Act, 1947 challenging the order of termination and prayed for reinstatement along with back wages.
3. The Labour Court, by an order dated July 28, 2014 found the domestic enquiry to have been improper and invalidated the same by setting aside the enquiry report. Thereafter, evidences were led by the parties and the Labour Court passed the award dated December 30, 2016 directing reinstatement in

service with 50% back wages and other consequential benefits. The said order was the subject matter before the Writ Court.

4. By the order impugned the learned Writ Court set aside the award passed by the Labour Court and directed the writ petitioner to pay monetary compensation to the appellant herein. Being aggrieved the respondent no. 3 in the writ petition preferred the instant appeal.
5. The learned Counsel for the appellant contended that the learned Writ Court ought not to have set aside the award passed by the fact finding forum. He contended that the scope of interference by a Writ Court in exercise of its power of judicial review is very limited. He, further, submitted that the earlier writ petition being WP no. 8140 (W) of 2015 filed by the present writ petitioner was dismissed and the contention of the appellant was upheld in the said writ petition. He, further, submitted that the order dated June 8, 2015 passed on the earlier writ petition attained finality and as such the grievances raised by the writ petitioner in the instant writ petition was barred by *res judicata*.
6. Mr. Majumder appearing for the writ petitioner/respondent submitted that the findings in the award are perverse. He submitted that the appellant was dismissed on the ground that he was a habitual absentee. He submitted that the workman was allowed to resume duty and for maintaining

correct record of duration of service adjustment of leave due to the delinquent was made. He submitted that such action on the part of the writ petitioner could not be construed to be grant of leave.

7. The learned Single Judge after taking into consideration the deposition of the workman in cross examination before the Labour Court on July 28, 2016 rightly observed that the workman before the Labour Court admitted that he did not avail of the opportunity to show cause. The learned Single Judge after considering the documentary evidences on record arrived at a finding that the said documentary evidence go to show that the workman has been allowed to resume his duties in employment. The learned Single Judge rightly applied the ratio of the judgments of the Hon'ble Supreme Court in *Madhya Pradesh vs. Harihar Gopal* reported in 1969 SLR 274 (SC) and *State of Punjab vs. Bakshish Singh* reported at (1998) 8 SCC 222 and held that the purport of exhibited documents are neither sanction nor grant of leave to the workman but were only for maintaining a correct record of the duration of service and adjustment of leave to delinquent employee.
8. On the question regarding that the instant writ petition was barred by the principles of *res judicata*, the learned Single Judge after going through the issues involved in the earlier writ petition as well as issues involved in the writ petition held that the issue involved in the earlier writ petition was whether

disciplinary proceedings were duly conducted against the workman. The learned Single Judge rightly observed that any other observations which are not relevant to the decision on that issue cannot be said to be binding upon the parties in the instant writ petition so as to attract the bar of *res judicata*. The learned Single Judge further held that the findings of the learned Tribunal are perverse as the same were based on no evidence. Though the scope of interference by a Writ Court in exercise of powers of judicial review is limited but it is well settled that in case the findings of the Tribunal are perverse or there has been a violation of principles of natural justice, the Writ Court can interfere with such findings in exercise of its powers of judicial review.

9. This Court, thus, finds no reasons to interfere with the findings of the learned Single Judge in so far as setting aside of the award passed by the Labour Court is concerned. However, considering the length of service rendered by the original appellant, this court feels that the monetary compensation directed to be paid by the learned Single Judge should be enhanced.
10. During the pendency of the instant appeal the original appellant left for heavenly abode on September 6, 2020. His widow is prosecuting the instant appeal after being substituted in place and stead of her deceased husband. More than three and a half

years have elapsed since the learned Single Judge directed the monetary compensation to be paid but has not yet been paid.

11. In course of hearing of this appeal, the court made a request to the respondent to suggest a particular figure of monetary compensation which will be inclusive of all claims. Mr. Majumder, learned advocate for the Institution placed on record a communication dated 24.01.2022 wherein it is stated that the said Institution is agreeable to pay a sum of Rs. 3,50,000/-. However, taking note of the above factual position and the length of service rendered by original appellant this court is of the considered view that the amount of monetary compensation directed to be paid by the learned Single Judge is to be enhanced to meet the ends of justice. This Court is also informed that the other substituted heirs of the deceased original appellant are his sons who are majors and will not claim any share in the monetary compensation and the compensation will be enjoyed only by the widow. In view thereof we deem fit and proper to enhance the compensation to Rs. 5,00,000/- (Rupees Five Lakhs) only. We accordingly direct that the respondent no. 1 shall pay a sum of Rs. 5,00,000/- (Rupees Five Lakhs) only to the widow of the deceased original appellant namely Pushpita Majumder in full and final settlement towards the claim of the original appellant. In addition thereto, the Institution shall also release the sum which is lying to the credit of the original appellant with the

respondent no. 1 Institution in favour of Pushpita Majumder who is the widow of the original appellant. The amount as per the direction of this court shall be paid within a period of 8 weeks from the date of this order.

12. The impugned order is modified only to the extent as indicated above. The instant appeal accordingly stands disposed of. There shall be, however, no order as to costs.
13. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

(P.A.- Sanchita)