

07 **06.07.
2022**
Ct. No. 04
Ab

MAT 289 of 2021
with
IA No. CAN 1 of 2021
Indian Bank and others
Vs.
Sandipta Gangopadhyay.

Mr. Ashim Kumar Routh,
Mr. Sandeep Pal Choudhury,
Ms. Diya Nandi.

... for the appellants

Mr. Shuvro Prakash Lahiri,
Mr. Rajesh Naskar.

... for the respondent.

The disquiet employee of the appellant/bank is still knocking the doors of the Court to get the legitimate due crystallized in the form of the judgments passed in the earlier round of litigation.

The fact emanates from the instant case pertains to the deemed suspension of the writ petitioner/respondent having arrested in connection with the criminal case. He was put under suspension indefinitely, which constrained him to approach this Court by filing the writ petition challenging the action of the authorities being in violation of the relevant Rules.

The writ petition being WP 7288(W) of 2015 was disposed of by the Single Bench upon setting aside the continuance of suspension and permitted the writ petitioner/respondent to join such duty that may be assigned by the appellant/bank by the beginning of the month of May 2015. It was further observed that the writ petitioner/respondent would be entitled to regular salary and emoluments from the day the writ petitioner/respondent resumes his duty in the following:

“The indefinite period of suspension in case of the petitioner must end with immediate effect. Accordingly, the appellate order impugned dated

March 18, 2015 and the decision of the bank to continue the suspension of the petitioner are set aside and the petitioner is permitted to join such duties as the bank may assign to the petitioner by the beginning of May, 2015.

It will be open to the bank to transfer the petitioner to some other branch or assign such duties that may not involve any contentious matter. The petitioner should be communicated his next place of posting within a period of a week from date. The petitioner will be entitled to the regular salary and emoluments from the day the petitioner resumes his duties.”

The appellant/bank assailed the said order in an intra-court appeal being FMA 3541 of 2015 and there was a dissent amongst the Members of the Division Bench and the matter was referred to third Judge. The third Judge by an order dated 30th August 2019 held that the prolonged suspension is opposed to the process focused in the constitutional mandates and any curtailment of the employee's right from enjoyment of the benefits pertaining to the service cannot be perceived. Ultimately, the third Judge accepted the ultimate decision of the Single Bench and directed the appellant/bank to disburse the benefits pursuant to the said order.

It is not in dispute that the writ petitioner/respondent resumed duty at the fag end of the month of October 2019. However, the grievance was raised in the second writ petition that despite the order passed in an earlier round of litigation, the writ petitioner/respondent has not been paid the salary and all benefits in terms thereof.

The Single Bench upon noticing the facts and the arguments advanced before it held that Regulation 15(1) of the Allahabad Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 is attracted in the instant case and, therefore, the period commencing from May 2015

until the date of reinstatement shall be considered as period “spent on duty” in accordance with the said Regulations. The Single Bench further imposed costs upon the bank for unreasonably withholding such benefits despite the order of the Court.

The appellant/bank has filed the instant appeal and it is contended by the learned Advocate for the appellants that since the writ petitioner/respondent resumed duty in the year 2019, he is not entitled to the regular salary as well as the benefits from the month of May 2015, as directed by the Single Bench.

The learned Advocate for the respondent submits that the claim is from the date of resumption of the duty and till date the salary as well as the benefits have not been disbursed to the said respondent by the appellant/bank.

In view of the aforesaid stand having taken, the only point, which fell for consideration is whether the writ petitioner/respondent is entitled to the regular salary as well as all the benefits of service from the month of May 2015 or from the date when he resume duties in terms of the order of the Court passed in an earlier round of litigation.

As indicated above, the Single Bench in unequivocal terms held that the continuance with the order of deemed suspension is opposed to the relevant Rules and cannot be allowed to continue perpetually. It was further held that despite the deemed suspension the disciplinary proceeding was never initiated and, therefore, the employee cannot be put to peril nor can be deprived of the rightful claim.

The Counsels for both parties tried to reply upon the different provisions of the Regulations governing the field, which appears to have been relied upon by the Single Bench in the impugned order in holding that such

Regulations permits the period from May 2015 to the resumption of the actual duty to be treated as 'on duty'.

There appears to be a fallacy in the aforesaid submission for the simple reason that the order of the Court, which is unambiguous, explicit, clear and crystallizes the rights, cannot be overridden by the Regulations. Once the Court has held that the benefits of regular service and emoluments would reckon from the date when the writ petitioner/respondent resumes his duty, the same has to be considered and interpreted in such fashion. The point, which was available to the parties, having not taken cannot be permitted to be taken in a second round of litigation by applicability of the constructive *res judicata*. The order of the Court binds the parties thereto and once the Court has held that the salary as well as the emoluments attributable to the said post shall be disbursed from the date of resumption of the duty, even if the Regulations says otherwise, does not whittle down the efficacy and bindings of the said order upon the parties unless the said order is set aside and/or modified in a validly instituted proceeding.

It is beyond cavil of doubt that the appellant/bank cannot deny the regular salary as well as the emoluments attached to the said post to the writ petitioner/respondent from the date of resumption of the duty and having done so cannot receive the blessings from the Court.

At this juncture, our attention is drawn to the fact that the order of the Single Bench by which the writ petitioner/respondent was permitted to join duty on and from May 2015 was stayed by the appellate court and the said order of stay continued. It is one thing to say that despite the order having passed permitting the writ petitioner/respondent to join duty, he did not join the duty, but it is totally different when the resumption of

duty was interdicted by an order of stay passed by the appellate court. Ultimately, the appellant/bank could not succeed in the appeal and the order of the Single Bench was upheld with categorical finding that the benefits as directed shall be disbursed to the writ petitioner/respondent.

The learned advocate for the appellants is very much vocal in his submission that the interim order passed in the appeal has no consequential benefits extended to the writ petitioner/respondent as it merged with the final order of the appeal.

We are unable to accept the aforesaid proposition of law for the simple reason that the appellant/bank filed the appeal and secured an order of stay therein, which was operative till the final order is passed therein. They ripped the benefit of the interim order in postponing and/or denying the resumption of duty by the writ petitioner/respondent and having unsuccessful at the final stage of the appeal cannot take advantage thereof. This is an apparent case of approbating and reprobating for the simple reason that the benefit of the interim order is sought to be usurped despite having failed in the appeal. If the person, who was successful before the Trial Court, could not rip the benefit of the order because of the order of stay having granted by the appellate court and the appellant/bank ultimately failed to get success in the said appeal, it cannot enure to its benefits rather the equity remains that the respondent who emerged successful must get the benefits of the original order.

In view of the aforesaid fact, since the writ petitioner/respondent was prevented from joining the duty on and from the month of May 2015 because of the interdict, he cannot be deprived of the benefits of the said order, which was uninterfered with by the Division Bench of this Court in the appeal filed by the appellant/bank.

The appellant/bank cannot take advantage of the pendency of the appeal instituted at their behest and the order of stay passed therein after having lost in the appeal at the final stage of the said proceeding. Therefore, we do not feel that the impugned order deserves any interference where the benefits have been directed to be disbursed to the writ petitioner/respondent on and from the month of May 2015.

Such being the stand of the appellant/bank in denying the rightful and legitimate claim of the writ petitioner/respondent and it appears to us that the instant appeal has been filed with an intent to prolong and/or delay the joining of the writ petitioner/respondent and denying the benefits to the writ petitioner/respondent in terms of the judicial order passed in an earlier round of litigation.

We, thus, feel that it is a fit case where the appeal should be dismissed with further costs, which is assessed at Rs.1,00,000/-, to be paid to the writ petitioner/respondent within three months from date.

The appeal is dismissed.

After the order is pronounced, the learned advocate for the appellants prays for stay of the operation of the order. After hearing him, we do not think it fit to accede the prayer of the appellants. Hence, the prayer of the appellants is rejected.

In view of the dismissal of the appeal itself, the connected application being CAN 1 of 2021 has become infructuous and the same is also dismissed.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

