

29.08.2022
DL-5
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 7818 of 2022

Sm. Debashmita Dutta
Vs.
State Bank of India & Ors.

Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta
....for the petitioner.

Mr. Subrata Kumar Sinha
....for the respondent nos.1 to 5.

The petitioner is an employee of State Bank of India (in short SBI). On 16th November, 2018, the petitioner was transferred from Jagannath Chowk Branch, Paschim Midnapore to Panchkhuri Branch, also in Paschim Midnapore, where the petitioner was to join as the Customer Assistant. The petitioner says that she had joined Panchkhuri Branch on 3rd December, 2018, which is not disputed by SBI.

Records reveal that the petitioner made a representation on 17th January, 2019, which appears at page 10 of the report filed on behalf of the respondent nos.1 to 5. The following portion is extracted from the said representation:-

“Sir, I am once again appealing you Sir my posting in a branch within Midnapore town. As I am in a trauma, I am unable to attend office and

requesting you to grant unlimited sick leave until my request is granted.”

It is, therefor, apparent that after 16th January, 2019, the petitioner did not work at Panchkhuri Branch or at any other branch of SBI. SBI also says so. SBI issued a notice on 14th December, 2020 holding that the petitioner has voluntarily left the job. The said notice appears at page 49 of the writ petition. The petitioner challenged the said termination by filing a writ petition, being WPA 11464 of 2020. The said writ petition was disposed of by an order dated 19th January, 2021. It appears from the said order that the petitioner had worked at Panchkhuri Branch till 16th January, 2019. The petitioner, as recorded in the said order, also claimed to have gone to the branch on 12th November, 2020, but was prevented from joining thereat. The petitioner by a letter dated 10th December, 2020 which is at pages 47-48 of the writ petition has, however, claimed that she went to join Panchkhuri Branch on 10th December, 2020, but was not allowed to do so by the Branch Manager. The admitted facts, therefor, show that the petitioner did not work between 17th January, 2019 and 9th December, 2020. Although the notice dated 14th December, 2020 was set aside by the order dated 19th January, 2021, the petitioner

was permitted to join Panchkhuri Branch within 7 days from that date without allowing any back wages for the period between 17th January, 2019 and 9th December, 2020 or 12th November, 2020 after quashing the notice dated 14th December, 2020. The petitioner as appears from her own averment had joined Panchkhuri Branch on 23rd January, 2021, as she is asking for arrear salary up to 22nd January, 2021.

On behalf of SBI, it is stated that the petitioner was absent in an unauthorised manner from 17th January, 2019. The petitioner has claimed to have gone to the Panchkhuri Branch on 10th December, 2020. Treating the assertion of the petitioner to be correct, SBI has treated the petitioner to be absent from duty in an unauthorised manner between 17th January, 2020 and 10th December, 2021. Salary and emoluments except for this period have been paid. The salary and emoluments for this period have been refused as the petitioner did not work for this period.

The petitioner has not been able to show even prima facie that she was not under unauthorised absence between 17th January, 2019 and 9th December, 2020. No leave application or sanctioned leave for this period is available. On the contrary, the

petitioner's representation dated 17th January, 2019 and that dated 10th December, 2020 speak otherwise.

The issue of unauthorised absence and that the employee is not entitled to any salary for such period on the principle of "no work no pay" has been considered by the Hon'ble Supreme Court in the judgment reported in **(2006) 9 SCC 583** (S. C. Saxena v. Union of India & Ors.). This concept of "no work no pay" is often defined as *dies non*. In the instant case, the petitioner has not shown anything to have been prevented from working between 17th January, 2019 and 10th December, 2020. Following the ratio laid down in **(2019) 7 SCC 564** [Chief Regional Manager, United India Insurance Company Limited vs. Siraj Uddin Khan], the petitioner is not entitled to any salary between 17th January, 2019 and 9th December, 2020.

After considering the petitioner's case in the perspective as aforesaid, I find that the petitioner having not worked between 17th January, 2019 and 9th December, 2020 is not entitled to any arrears of salary and other emoluments for the said period. This period shall be treated in the petitioner's case as *dies non*.

The petitioner will be, however, entitled to all benefits that have accrued to her on or before 16th

January, 2019 and on and from 10th December, 2020 and shall be paid all the benefits, if not already paid, within 30th September, 2022.

The writ petition is accordingly disposed of without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)