

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

**Present:**

**The Hon'ble Justice Subrata Talukdar**

**And**

**The Hon'ble Justice Ananda Kumar Mukherjee**

**IA NO GA/1/2022  
WITH  
CC/3/2021  
IN  
APO/37/2022**

**IN THE MATTER OF:  
RAJANVIR SINGH KAPUR  
VS  
TRIPTI RANJAN ROY**

**APO/43/2022  
IN  
WPO/288/2020  
IA NO GA/1/2022**

**IN THE MATTER OF:  
WEST BENGAL TRANSPORT CORPORATION LTD. AND ORS.  
VS  
TRIPTI RANJAN ROY AND ORS.**

For the Appellants

: Mr. Abhrotosh Majumder  
Mr. Niladri Bhattacharjee  
Ms. Deblina Chattaraj  
Mr. Aditya Chaturvedi  
Ms. Angana Dutta

For Respondent : Mr. Deb Dutta Basu  
For State Respondents : Mrs. Chama Mookherjee  
Ms. Sujata Ghosh  
Heard on : 18.05.2022  
Judgment on : 22.07.2022

**Subrata Talukdar, J.:-** These two appeals are connected in nature. APO 37 of 2022 arises out of a contempt application number CC 3 of 2021. CC 3 of 2021 in turn arises out of the alleged non-compliance by the appellants of the parent Order dated 19<sup>th</sup> October, 2020 in the writ petition being WPO 288 of 2020. The appellant before this Court is the West Bengal Transport Corporation Limited (for short the Corporation) represented by its Managing Director (the *MD*).

The contesting respondent in both the appeals is the writ petitioner in WPO 288 of 2020 who is the applicant in CC 3 of 2021, one Tripti Ranjan Roy.

By the parent Order dated 19<sup>th</sup> October, 2020, the Hon'ble Single Bench primarily dealt with the question of payment of salaries to the writ petitioner for the period between 28<sup>th</sup> January, 2020 and May, 2020. It would be relevant to note that the writ petitioner was served with a show-cause notice on 28<sup>th</sup> May, 2020 for an alleged event of delinquent behaviour which took place on the 27<sup>th</sup> of January, 2020 on the Bus Route Joka to Digha of which the writ petitioner was the Conductor.

The stand of the writ petitioner before the Hon'ble Single Bench and also before this Court is to the effect that the writ petitioner was *verbally asked not to report for work* from 28<sup>th</sup> January, 2020.

The appellant/the Corporation has submitted before this Court that the writ petitioner is a contractual employee and the reason for withholding payment of salaries is connected to the fact that his Attendance Register was not signed during the period in issue, i.e. January, 2020 to May, 2020.

Upon noticing the opposing contentions of the parties, the Hon'ble Single Bench made it clear that there was no official communication of any charge relating to the Departmental Proceeding (for short *DP*) proposed to be held against the writ petitioner for the period between January to May 2020. The Hon'ble Single Bench further held that since the communication dated 28<sup>th</sup> May, 2020 can be treated to be the first *official* direction requiring the writ petitioner's abstention from work in view of the *DP* proposed, it must be inferred that till 28<sup>th</sup> May, 2020, there was no official reason requiring the writ petitioner to stay away from work.

To the above reasoning disclosed in the order of the Hon'ble Single Bench dated 19<sup>th</sup> October, 2020 (*supra*), the writ petitioner in this appeal has relied on the additional ground that the Standing Orders (for short *SOs*) of WBTC only provide for adoption of disciplinary action against an employee in the event of an unauthorised absence for more than seven days which shall amount to a Major Misconduct.

It is therefore submitted by the writ petitioner in this appeal that since no official steps were taken against him till 28<sup>th</sup> May, 2020, the writ

petitioner is eligible for receiving his monthly salaries for the period January, 2020 to May, 2020.

In the context of the above stated discussion, it would be next relevant to notice the solemn order of the Hon'ble Single Bench dated the 19<sup>th</sup> of October, 2020, also holding that since there is no order of suspension against the writ petitioner for the period January to May 2020, there is no question of paying subsistence allowance to the writ petitioner for the period January to May 2020. Accordingly, the Hon'ble Single Bench directed that the writ petitioner be paid his regular salaries for the months January, 2020 to May, 2020 and, in view of the show-cause notice of the proposed *DP* issued against the writ petitioner on 28<sup>th</sup> May, 2020, the writ petitioner be paid subsistence allowance with effect from 1<sup>st</sup> June, 2020 until the *DP* stands formally concluded.

Challenging the non-execution by the appellant of the Order dated 19<sup>th</sup> October, 2020, the writ petitioner instituted contempt proceedings by way of CC 3 of 2021. By the Order dated 17<sup>th</sup> February, 2022 in CC 3 of 2021, the Hon'ble Single Bench was, *inter alia*, pleased to reiterate its directions dated 19<sup>th</sup> October, 2020 with an additional direction to pay costs to the writ petitioner. In the meantime during pendency of the present appeals, *viz.* APO 37 of 2022 and APO 43 of 2022, the Appellants/the Corporation have passed the final order in the *DP*. The final order in the *DP* was passed on the 3<sup>rd</sup> of September, 2020. By the said final Order dated 3<sup>rd</sup> of September, 2020, the Disciplinary Authority (for short *DA*) of the writ petitioner treated the period in issue, i.e. 28<sup>th</sup> January, 2020 to May, 2020

as *dies-non*, also holding the writ petitioner to be wilfully absent from duties on and from 28<sup>th</sup> January, 2020.

This Court has been informed that pursuant to the Order dated 17<sup>th</sup> February, 2022 in CC 3 of 2021, the writ petitioner has been paid subsistence allowance in terms of the parent Order dated 19<sup>th</sup> October, 2020 of the Hon'ble Single Bench.

Having heard the parties and considering the materials placed, this Court finds that the Hon'ble Single Bench while directing payment of the salaries of the writ petitioner for the period January, 2020 to May, 2020 also noticed the fact that the writ petitioner has been proceeded against departmentally with effect from June, 2020. The Hon'ble Single Bench by the Order dated 19<sup>th</sup> October, 2020 also took notice of the fact that since proceedings have been already initiated against the petitioner the show-cause notice dated 28<sup>th</sup> May, 2020 cannot be set aside without addressing the merits of the matter.

In the present appeals the final order dated 3<sup>rd</sup> of September, 2021 in the *DP* is not under challenge. Now the final order has been passed on the 3<sup>rd</sup> of September, 2021 and the period in issue, i.e. 28<sup>th</sup> of January, 2020 to May, 2020 has been treated as *dies-non*.

This Court must recognise the fact that the issue of payment of regular salaries for the period January, 2020 to May, 2020 stands interwoven with the final order in the *DP* which has treated the said period to be *dies-non* and is not under legal challenge in the present appeals. For such reason, expression of any final opinion directing payment of salaries

for the period January to May 2020 in the present appeals in the teeth of the final order in the *DP* without affording the parties the benefit of an adjudication of the final order in the *DP*, may not be a legally permissible exercise for the simple reason that a final opinion in the present appeals on the above aspect may have the effect of prejudging the merits of the final order in the *DP* itself.

Furthermore, it is now open to the writ petitioner to challenge the finding of *dies-non* in the final order and, on the success of such challenge, the writ petitioner shall be entitled to all service benefits pertaining to the said period beginning 28<sup>th</sup> of January, 2020.

This Court, therefore, having regard to the fact that the Hon'ble Single Bench by its Order dated 19<sup>th</sup> of October, 2020 recognised the pendency of the *DP* as well as the legal requirement of the *DP* to be concluded in accordance with law, permits the writ petitioner to take all points while filing a challenge to the final order in the *DP* dated 3<sup>rd</sup> of September, 2021.

**IA NO GA/1/2022 with APO/37/2022 with APO 43 of 2022 with IA NO GA/1/2022 stand accordingly disposed of.**

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**I agree.**

**(Ananda Kumar Mukherjee, J.)**

**(Subrata Talukdar, J.)**