

08.09.20203

Item No. 8

Ct. No.12.

PG

F.M.A. 662 of 2019
With
IA No. CAN 2 of 2018 (Old CAN 9475 of 2018)
With
IA No. CAN 3 of 2020 (Old CAN 1020 of 2020)

West Bengal State Electricity
Distribution Company Limited
Vs.
Uttam Kumar Saha & Ors.

Mr. Saptanshu Basu, Sr. Adv.

Mr. S.S. Koley

.....for the appellant

Mr. D.N. Bose

Ms. Kaberi Ghosh (Dey).....for the respondent no. 1

Mr. Ranjay Dey

Mr. Basabjit Banerjee.....for the respondent no. 4

The 1st respondent was an employee of the 3rd respondent. While he was in service, he met with an accident and suffered serious illness. After treatment in the hospital of the 3rd respondent, the 3rd respondent directed the 1st respondent to report for regular duty. The 1st respondent requested for lighter duty. The same was not accepted. The 1st respondent thereafter did not report for duty for more than two years. The 1st respondent by letter dated 01.07.1997 informed the Chairman of West Bengal State Electricity Board that he is resigning from service. The same was not accepted by the employer. A letter dated 6.01.2000 was served on the 1st respondent

directing him to vacate the quarters. In the said letter, it was mentioned that the 1st respondent was terminated from service w.e.f. 11.09.1997.

The 1st respondent gave two representations dated 16.05.2000 and 6.10.2001 intimating the Secretary, West Bengal State Electricity Board that he has withdrawn his resignation and requested the 3rd respondent to reinstate him into the service. No action was taken on those representations. Hence the 1st respondent filed a writ petition W.P. 25138(W) of 2005.

The appellant filed affidavit in opposition in the said writ petition and stated that 1st respondent was absent from 12.01.1995 without any intimation for more than two years. As per regulation 33(1)(iii) of the West Bengal State Electricity Board Employees' Service Regulations, the services of the 1st respondent was rightly terminated. The 1st respondent availed alternative remedy by approaching the Labour Commissioner but did not proceed with the same.

The appellant also further stated that the 1st respondent had approached the Writ Court belatedly and hence not entitled for any relief and prayed for dismissal of the writ petition.

The Learned Single Judge considering all the materials, by an order dated 27.07.2018 disposed of the writ petition by setting aside the order of

termination and directed the appellant to reinstate the 1st respondent in service. The Learned Judge also directed the 1st respondent to give a representation with regard to back wages and directed the appellant to consider the same sympathetically taking into consideration the serious illness suffered by the 1st respondent. Against the said order, the present appeal is filed.

We have heard Mr. Basu, learned senior counsel appearing for the appellant and Mr. D. N. Bose, learned counsel for the respondent no.1 and Mr. Ranjay De, learned counsel for the respondent no.4.

From the above materials and arguments of the learned senior counsel for the appellant as well as the counsel for 1st respondent, the following relevant factors are germane to decide this appeal.

The 1st respondent while in service met with an accident and suffered serious illness. After five months of treatment of 1st respondent, the 3rd respondent directed the 1st respondent to report for regular duty. The 1st respondent requested the 3rd respondent to give him light work and same was not accepted by the 3rd respondent. The 1st respondent did not report for duty without any intimation. The 3rd respondent by memo dated 02.05.1996 called upon the 1st respondent. When the 1st respondent did not report for duty, the 3rd respondent by an

order dated 11.09.1997 terminated the service of the 1st respondent with effect from 11.09.1997. According to the 1st respondent, both the memo dated 02.05.1996 and order of termination dated 11.09.1997 were not served upon the 1st respondent. In the year 2000 a letter dated 06.01.2000 was issued by the appellant directing the 1st respondent to vacate the official quarters. In the said letter, the appellant intimated that the 1st respondent was terminated from service by order dated 11.09.1997. Subsequently, the 1st respondent gave two letters 16.05.2000 and 06.10.2001 withdrawing his resignation and requested the 3rd respondent to reinstate him in the service.

From the above facts, it is seen even though the 1st respondent was aware of his termination when he received the notice dated 06.01.2000 calling upon him to vacate the quarters, he approached this Court only on 23.12.2005.

From the order impugned in the appeal, it is seen that the learned Judge has exercised his discretion and condoned the delay in approaching this Court. In view of the same, it is to be seen whether the 1st respondent is entitled to reinstatement as ordered by the learned Single Judge.

As stated above, the 1st respondent sought for lighter work and the said request was rejected. The

appellant by letter dated 19.12.1994 called upon the 1st respondent to report for duty from 12.01.1995. The 1st respondent has not denied the receipt of such letter but he did not report for duty. The 1st respondent admittedly did not report for duty. As per regulation 33(1)(iii) of the West Bengal State Electricity Board Employees' Service Regulations, the appellant is entitled to terminate the service of an employee without any notice to the employee absenting himself for two years unless the appointment order specifically provides for notice. The said Regulation reads as follows:

“33(1) Unless otherwise specified in the appointment order in any particular case, the services of a permanent employee of the Board may be terminated without notice :

- (i)*
- (ii)*
- (iii) if he remains absent from duty, on leave or otherwise, for a continuous period exceeding 2 years.”*

Both the appellant and the 1st respondent did not produce order of appointment. The 1st respondent also did not take plea that as per appointment order his services can be terminated after notice to him giving him an opportunity to put forth his case. Taking into consideration the said Regulation, the 3rd

respondent has rightly terminated the service of the 1st respondent by order dated 11.09.1997.

According to the learned counsel for the appellant, all its communications were sent to the 1st respondent only to the official Quarters. The 1st respondent is deliberately denying receipt of communication of the order of termination. Even if 1st respondent has not received the order of termination dated 11.09.1997 when it was alleged to have been sent to residential Quarters, he was aware of the same when he received letter dated 06.01.2000 to vacate the official quarter wherein date of termination order was mentioned.

For five years thereafter, the 1st respondent did not take any action challenging the order of termination. According to the first respondent, he was taking treatment in Christian Medical College, Vellore in January, 2005. 1st Respondent has not produced any material to show that he was in continuous treatment from the date of termination or at least from January, 2000 when he received the letter dated 06.01.2000.

The learned Judge has failed to consider this aspect and the learned Judge is not correct in holding that due to ill-health of the 1st respondent, he could not approach this Court earlier challenging the order of termination. The 1st respondent was absent

from the date of accident, i.e. on 24.05.1989 and subsequently, his unauthorisedly absented after his request for lighter duty was rejected on 19.12.1994.

The 1st respondent has failed to substantiate by medical records that his unauthorised absence is not wilful but only due to his illness. For the said long absence without any acceptable reason, the 1st respondent is not entitled for reinstatement.

For the above reason, the order of the learned Single Judge is set aside and the appeal is allowed.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)