

24.08.2023
rpan/04

IA No.: CAN 1 of 2023 [Restoration]
in
WPCT 13 of 2023
Union of India & Others
– Versus –
Madhusudan Mukhopadhyay

Mr. Nilanjan Bhattacharya,
Mr. Rahul Sarkar,
Ms. Dipika Sarkar
... for the Petitioners.
Mr. Madhusudan Mukhopadhyay
... Respondent in-person.

The present writ petition has been preferred challenging an order dated 30th September, 2022 passed by the learned Tribunal in the original application, being O.A. 350/01234/2020.

Records reveal that the writ petition was dismissed for default by a co-ordinate Bench of this Court on 1st March, 2023. For restoration of the writ petition, the petitioners have filed an application, being IA No.: CAN 1 of 2023.

Upon hearing the parties and considering the materials on record, we are satisfied with the explanation given towards the absence of the learned advocate for the petitioners before the Court on 1st March, 2023 when the matter was dismissed for default. Accordingly, the order dated 1st March, 2023 is recalled and the writ petition is restored to its original file and number and the same is taken up for final hearing.

The application for restoration, being IA No.: CAN 1 of 2023 is disposed of.

Mr. Bhattacharya, learned advocate appearing for the petitioners submits that the learned Tribunal erred in law in observing that the respondent was a regular Console Operator and was drafted/deployed to perform duties of an Instructor and that such arrangement is as good as deputation.

According to him the respondent was holding the post of Console Operator, which is a single cadre post and that as such he was not entitled to training allowance and that the petitioners have mistakenly granted the training allowance to the respondent for the period from 15th February, 1993 till 9th July, 2014.

Drawing our attention to the letter dated 9th July, 2013 issued by the Vigilance Officer (A) addressed to the Principal, ZRTI / Bhuli, Mr. Bhattacharya submits that the respondent was originally selected for the higher post of Console Operator, ZRTI/ Bhuli, redesignated as Computer Instructor and that he was neither in ex-cadre post nor in deputation at training institute. As such, he was not entitled to training allowance at any stage since induction in ZRTI/Bhuli with effect from 18th February, 1992. The learned Tribunal had glossed over such arguments, as advanced and has not returned a finding on the said issues and such infirmity on the face of the records warrants interference in the present writ petition.

Mr. Mukhopadhyay, the respondent appearing in-person submits that the petitioners themselves granted training allowance and thereafter illegally recovered the same from his salary from August, 2014 till his retirement in the year 2019. The petitioners did not respond to the repeated representations submitted by the respondent and such illegal recovery was a continuing wrong.

He further submits that the Railway Board Vigilance sought for clarifications from the General Manager Vigilance as to how Mr. Mukhopadhyay was responsible in getting training allowance which he was supposedly not entitled to. The training allowance was allowed to him the month of February, 1993, however, no reason was disclosed as to why the Eastern Railway Vigilance advised deduction from his pay from the month of February, 1992. The said clarifications, as sought for, were, however, not answered by the competent authority.

He argues that he had neither misrepresented nor suppressed any material fact and he cannot be held responsible towards such payment. The recovery was iniquitous and harsh and as such there is no infirmity in the directions contained in the order impugned. In support of such contention he has placed reliance upon the judgment delivered in the case of ***State of Punjab and Ors. vs. Rafiq Masih (White Washer) & Ors.***, reported in (2015) 4 SCC 334.

Heard Mr. Bhattacharya, learned advocate for the petitioners and the respondent, appearing in person and considered materials on record.

Upon considering the detailed arguments, as advance and taking into consideration the materials on record, the learned Tribunal came to a finding that the action of the petitioners herein was contrary to the Railway Board Circular No. RBE 21 of 2003 which conferred right upon the respondent towards training allowance and as such the training allowance was rightly granted and recovery of the same was unreasonable, arbitrary and bad.

The petitioners have not come out with a case that the respondent was in any way responsible for disbursement of the training allowance. Records do not reveal that there was any fault or misrepresentation on the part of the respondent. The training allowance for the period from 15th February, 1993 till 9th July, 2014, which had been recovered, was granted to the respondent by the competent authority upon being satisfied about the respondent's entitlement and as such the learned Tribunal rightly held that the recovery was unreasonable and arbitrary.

Upon dealing with all the factual issues, the learned Tribunal arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned. The scope of judicial review is very narrow and

limited and such jurisdiction should be exercised sparingly and only in appropriate cases where the judicial conscience of the Court dictates. The impugned order does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

For the reasons discussed above, the writ petition, being WPCT 13 of 2013 is dismissed.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)