

25.08.2023

rpan/03

FMA 1349 of 2021

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IA No.: CAN 1 of 2021

Krishna Chandra Das

– *Versus* –

The Union of India & Others

Mr. Surajit Samanta.

Mr. Biswajit Samanta,

Ms. Sohini Samanta

... for the Appellant.

Ms. Rama Ghosh Dastidar

... for the UoI/Respondent no.1.

Mr. Bhabani Prasad Mondal,

Mr. Sukanta Mondal

... for the Respondent nos.2 & 3.

The present appeal has been preferred challenging an order dated 4th February, 2021 passed by the learned single Judge in a writ petition being WPA 4881 of 2020.

Shorn of unnecessary details, the facts are that the writ petitioner/appellant herein joined the branch of M/s. Instrumentation Ltd. (hereinafter referred to as the Company) at Calcutta on 17th February, 1982. Thereafter he was deputed to the Durgapur site office of the Company with effect from 1st January, 1993. Such engagement was terminated by an order dated 23rd November, 1999. Challenging the said order of termination the appellant preferred a writ petition, being W.P. No.18356 (W) of 2003. The said writ petition was disposed of by an order dated 25th April, 2013 without interfering with the order of termination but the learned single Judge directed the respondents to grant Voluntary Retirement Scheme (in short, VRS) to the appellant and to disburse the benefits

as given to other casual workers. The said order was challenged by the Company in an appeal, being FMA 487 of 2014. The said appeal was disposed of by an order dated 18th November, 2014 without interfering with the order passed by the learned single Judge pertaining to termination of the appellant and modifying the order to the extent that the Company should consider the appellant's claim for benefits under VRS at par with his colleagues similarly circumstanced. Pursuant to the order dated 18th November, 2014 the Company issued a memo dated 13th February, 2015 calculating the VRS compensation treating the appellant to have worked for six years and issued a cheque of ₹5813/- which was refused to be accepted by the appellant. Thereafter, challenging such calculation, the appellant again approached this Court by a writ petition, being WPA 4881 of 2020 which was dismissed by an order dated 4th February, 2021. The said order is the subject-matter of challenge in the present appeal.

Mr. Samanta, learned advocate appearing for the writ petitioner/appellant herein submits that the appellant rendered service in the Company for a period of 17 years but without any reason whatsoever his VRS benefits have been calculated on a purported plea that he had worked only for six years. The Company cannot now take a stand that the appellant had worked for only six years when upon considering the rival contentions of the parties the learned single Judge in the first writ petition as well as the Hon'ble Appeal Court in FMA 487 of 2014 came to a

definite finding that the appellant had worked for 17 years. In view thereof, the Company is under an obligation to disburse the VRS benefits to the appellant on the basis of 17 years of service rendered by him and at par with similarly circumstanced people.

Drawing our attention to a document dated 21st September, 1989, issued by the Branch Manager of the Company, Mr. Samanta submits that the authorities themselves have admitted that the appellant had worked as a casual employee from 17th February, 1982 to 29th February, 1984 and accordingly, the Company now cannot exclude the said period towards calculation of the benefits under VRS. The learned single Judge erred in law in rejecting the writ petition upon arriving at a finding that the appellant's claim involves disputed questions of fact.

Mr. Samanta has also drawn our attention to the calculation made by the Company in respect of one Bhaskar Roy, who is similarly situated with the appellant and submitted that a different yardstick has been applied in respect of the appellant.

Per contra, Mr. Mondal, learned advocate appearing for the Company/respondent nos.2 and 3 submits that the Company has never conceded that the appellant discharged 17 years of continuous service. Such fact would be evident from the document dated 28th February, 1984 wherein it has *inter alia* been stated that after holding an interview of the appellant on 28th February,

1984 a contract was awarded to the appellant for running and maintenance of the Company's transit lounge at Calcutta. Such contractual engagement cannot be construed to be service rendered by a casual employee.

He submits that the issue as regards 17 years of service, as agitated by the appellant, was neither decided in the first writ petition nor in the appeal preferred against the same. The termination order was not interfered with and the issue as regards calculation and disbursement of VRS benefits was relegated to the authorities for consideration. In strict compliance of such order, the authorities calculated the VRS benefits rightly taking into consideration the period of six years' service rendered by the appellant as a casual employee at Durgapur unit.

In reply, Mr. Samanta submits that the document dated 28th February, 1984 which has been relied upon by the Company is a sham document. The appellant, in fact, had worked as a casual employee all along from 17th February, 1982 till date of his termination.

Mrs. Ghosh Dastidar, learned advocate enters appearance on behalf of the respondent no.1.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Neither in the earlier round of litigation nor in the second writ petition from which this appeal arises, the appellant had challenged the document dated 28th February, 1984. On the contrary the appellant in the

second paragraph of the writ petition being WPA 4881 of 2020 stated that he '*was appointed as a contractor of the transit lounge at 9, Mayfair Road, Calcutta – 19*'. The issue as to whether engagement of the appellant with effect from 1st March, 1984 till he was sent to the Durgapur Unit can be considered as contractual engagement or engagement as casual employee involves disputed questions of fact which cannot be decided without leading evidence on the issue.

From the records it appears that the appellant served at Durgapur Unit as a casual employee for a period of six years and taking into consideration the said period the authorities have calculated the benefits available to the appellant under VRS.

The document dated 21st September, 1989 was a confidential communication amongst officers of the Company and the contents of the same cannot be treated a sacrosanct moreso, when no documents have been produced by the appellant pertaining to the period mentioned in the said document. From the appellant's letter dated 23rd February, 2015 it appears that Mr. Bhaskar Roy was granted the benefits by way of a settlement arrived at in an appeal preferred by the said Company, being FMA 859 of 1991.

Mr. Samanta has strenuously argued that the issue that the appellant had rendered 17 years of service cannot be treated as a disputed question of fact in view of the observations made in the first writ petition as well as the

observations made in the appeal. We are, however, unable to accept such argument as advanced. A composite reading of the said orders would reveal that the issue towards disbursement of VRS benefits taking into consideration the service rendered by the appellant was relegated to the authorities for consideration. There is no decision in the said orders that the appellant had rendered continuous service for 17 years.

In the said conspectus, the learned single Judge arrived at a finding that the matter involves disputed questions of fact and we do not find any infirmity in the same.

For the reasons discussed above, the appeal and the connected application are 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.)