

6th September, 2023
(D/L No.01)
(SKB)

W.P.A. 5961 of 2018

Sushma Rastogi and others
Versus
Union of India and others

Mr. Arup Kumar Lahiri,
Mr. Udayan Datta
... for the petitioners.

Mr. Partha Ghosh
... for the Union of India.

1. Heard Mr. Arup Lahiri, learned advocate for the writ petitioners and Mr. Partha Ghosh learned advocate for the respondents Union of India and its officials at length. The instant writ petition is now taken up for passing appropriate order.
2. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioners have challenged the authority of the respondents in treating the period from 31st July, 2009 to 10th April, 2013 as 'no work no pay' in respect of the deceased employee Rakesh Kumar, who is the predecessor-in-interest of the present writ petitioners.
3. The facts leading to filing of the instant writ petition has a chequered history. Originally the predecessor-in-interest of the present writ petitioners, namely; Rakesh Kumar, was employed as a 'Daptari' in

CRPF. During his lifetime, a departmental enquiry was initiated and pursuant to such departmental enquiry, the said Rakesh Kumar was dismissed from his service by an order dated 31st July, 2009. The writ petitioners challenged the said order of dismissal by filing W.P.14938(W) of 2009 and during the pendency of the said writ petition, the delinquent Rakesh Kumar died and the present writ petitioners being his legal heirs have been substituted in the said writ petition. The said writ petition was disposed of on 8th July, 2015 by a co-ordinate Bench of this Hon'ble Court with a direction to the respondent authorities to revisit the enquiry report by the disciplinary authority. Even after revisiting, the respondent authority found the delinquent Rakesh Kumar guilty of the charge framed against him and again imposed a punishment of dismissal from service vide order dated 26th February, 2016.

4. The present writ petitioners being the legal heirs of the said deceased Rakesh Kumar again carried the matter before this Hon'ble Court by filing W.P.8838(W) of 2016 and by an order dated 20th June, 2016, the said writ petition was allowed thereby setting aside the order of punishment as passed against the deceased employee Rakesh Kumar. In the said writ petition, the co-ordinate

Bench of this Court further directed the respondent authorities to pay the family pension, gratuity and other benefits to the present writ petitioners in accordance with law and in compliance with the said order dated 20th June, 2016 as passed by the co-ordinate Bench of this Court, the respondent authorities passed an Office Order dated 24th September, 2016 of which para 4(ii) has been impugned before this court.

5. For effective disposal of the instant writ petition, the relevant portion of para 4 of the order dated 24th September, 2016 is reproduced hereinbelow in verbatim:

“4.(II) Dismissal order issued vide this office order No. P.VIII-2/2007-EC.II dated 31/7/2009 and 26/2/2016 is hereby cancelled and the intervening period between from the date of issue of dismissal order i.e.31/7/2009 to date of death i.e.10/4/2013 be treated “AS SUCH” and condonation granted for pensionary benefits to NOK. He will not be entitled for any pay and allowances for the said period keeping in view the principle of “NO WORK NO PAY”.”

6. Mr. Lahiri, learned advocate for the writ petitioners drawing attention to the aforementioned portion of the order dated 24th September, 2016 contended that the respondent authorities have committed serious error of law in considering the period 31st July, 2009 to 10th April, 2013 as a period of ‘no work no pay’. It is contended by Mr. Lahiri that the respondent authorities ought to have considered the period 31st July, 2009 to 10th April, 2013 as ‘on duty’ period

since the predecessor-in-interest of the present writ petitioners i.e. Rakesh Kumar could not work during the said period because of the dismissal order issued by the respondent authorities, which was subsequently set aside by a co-ordinate Bench of this Court on 20th June, 2016 as passed in W.P.8838(W) of 2016. It is thus contended by Mr. Lahiri that for considering the aforementioned period as 'no work no pay' in respect of the deceased employee, the respondent authorities have violated the principles of natural justice for which the writ jurisdiction of this Court may be invoked.

7. In support of his contention, Mr. Lahiri places his reliance upon the reported decision of *North Delhi Municipal Corporation Vs. Dr. Ram Naresh Sharma and others* reported in *AIR 2021 SC 3795*. The relevant portion of which is as under:

“In such circumstances, the principle of ‘No Work, No Pay’ cannot be raised by the employers, as it is they who had obstructed the doctor from discharging his service. For support we may cite *Dayanand Chakrawarthy v. State of Uttar Pradesh* (2013)7 SCC 595: AIR 2013 SC 3066) where this Court speaking through Justice S. J. Mukhopadhyaya rightly held that:

“48.....If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of “no pay no work” shall not be applicable to such employee”.”

8. Mr. Lahiri, thus, argues that it is a fit case for issuing a writ of mandamus upon the respondent authorities to treat the period from 31st July, 2009 to

10th April, 2013 as 'on duty' period of the deceased employee, Rakesh Kumar.

9. Per contra, Mr. Ghosh, learned advocate for the respondent authorities, submits before this Court that the present writ petition should be dismissed *in limini* in view of the suppression of material facts. It is contended by Mr. Ghosh that pursuant to the order dated 20th June, 2016 as passed in W.P.8838(W) of 2016, all benefits have been given to the present writ petitioners and one of the legal heirs has been provided with employment in CRPF as a die-in-harness case. It is further contended that since the impugned order dated 24th September, 2016 as passed by the respondent authorities have been passed in consonance with the order dated 20th June, 2016 as passed in the earlier writ petition, the writ petitioners cannot claim any further benefit by filing this writ petition.
10. On perusal of the entire materials placed before this court and after hearing the learned advocates for the contending parties, it reveals to this court that so far as the punishment of the deceased employee Rakesh Kumar is concerned, that has been set aside by a co-ordinate Bench of this Court by its order dated 20th June, 2016 as passed in W.P.8838(W) of 2016. In the said order, a direction was passed

against the respondent authorities for payment of the family pension, gratuity and other benefits to the family members of the said deceased employee being the writ petitioners herein. In the said order, however, no order has been passed that the respondent authorities are not required to pay any arrear emoluments payable to the deceased employee Rakesh Kumar during his lifetime to the present writ petitioners.

11. From the order dated 24th September, 2016, it reveals that the commandant of the respondent authorities has deducted the benefits from the period 31st July, 2009 to 10th April, 2013 on the principle of 'no work no pay' but while issuing such order, he has miserably failed to visualize that during the aforesaid period, the deceased employee could not perform his duties because of the order of dismissal passed by the respondent authorities and not on his own volition.

12. Such being the position, this court is of considered view that the respondent authorities have violated the principles of natural justice in passing the order to treat the period 31st July, 2009 to 10th November, 2013 as 'no work no pay' which is absolutely illogical and against the dictum of the Hon'ble Supreme Court as passed in the reported

judgment of North Delhi Municipal Corporation(supra).

13. As a result, the instant writ petition succeeds. The respondent authorities are hereby directed to consider the period 31st July, 2009 to 10th April, 2013 as 'on duty' of the deceased employee Rakesh Kumar and the emoluments and other benefits as available for the said period to the said deceased employee Rakesh Kumar be disbursed to the present writ petitioners within a period of two months from the date of communication of this order.
14. With the aforementioned observation, the instant writ petition is disposed of.
15. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Partha Sarathi Sen, J.)