

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 257 of 2011

Ashis Kumar Banerjee

VS.

The State of West Bengal & Ors.

For the Petitioner : Mr. Bikash Ranjan Neogi,
Mr. Guddu Singh,
Ms. Annya Neogi, Advocates

For the State : Mr. Tapan Kr. Mukherjee, AGP
Ms. Sangeeta Roy, Advocates

Heard & Judgement on: *August 23, 2023*

DEBANGSU BASAK, J.

1. The writ petitioner is aggrieved by an order dated December 16, 2010 passed in OA 7239 of 2008 by the West Bengal Administrative Tribunal.

2. Learned advocate appearing for the petitioner submits that, the writ petitioner is entitled to back wages on his reinstatement. The discharge from service of the writ petitioner, was set aside by the Tribunal by the

order dated December 7, 2005. The writ petitioner, thereafter, approached the Tribunal with prayer for back wages by way of OA 7239 of 2008 which resulted in the impugned order dated December 16, 2010. He contends that, the Tribunal erroneously refused to grant back wages to the writ petitioner by the impugned order. He relies on **(2019) 7 SCC 564 [Chief Regional Manager United Insurance Company Ltd. Vs. Siraj Uddin Khan]** and submits, on reinstatement, an employee is entitled to consideration for payment of back wages. In the facts and circumstances of the present case, since, the discharge of the petitioner was held to be illegal, and since the petitioner was prevented from rendering the services, the petitioner is entitled to the back wages.

3. Learned senior advocate appearing for the State submits that, the writ petitioner prayed for back wages along with his reinstatement in the first round of litigation. He refers to the order dated December 7, 2005 rendered by the Tribunal in TA 429 of 1998. He submits that, the claim for back wages was not allowed by the Tribunal. The writ petitioner did not prefer any appeal against the order dated December 7, 2005 rendered by the Tribunal in TA 429 of 1998. He contends that the parties are bound by the order dated December 7, 2005. He contends that, since the writ petitioner raised the issue of back wages in TA 429 of 1998, and since, the same was not granted, and since the order dated December 7, 2005 attained finality, the writ petitioner is not entitled to raise the issue of back wages any further.

4. We find from the records made available to Court that the writ petitioner was selected for appointment to the post of constable. The writ petitioner was undergoing a probation of two years as a constable. During

such period of probation, he was found unsuitable and discharged from service.

5. The discharge order was assailed by way of a writ petition being CO 3716(W) of 1992. Such writ petition was subsequently transferred to the Tribunal and renumbered as TA 429 of 1998.

6. TA 429 of 1998 was disposed of by an order dated December 7, 2005 by the Tribunal.

7. The Tribunal noted in the first paragraph of its order dated December 7, 2005 that, the writ petitioner, *inter alia*, sought payment of all arrears of salaries and allowances subsequent to the reinstatement of the writ petitioner in service.

8. By the order dated December 7, 2005, the order of discharge made as against the writ petitioner was set aside. The respondents were directed to reinstate the writ petitioner within 6 weeks from the date of communication of this order. The order is silent on the count of back wages.

9. The writ petitioner was subsequently reinstated. However, no back wages was paid.

10. Aggrieved by the action of the authorities in not paying back wages, the writ petitioner approached the Tribunal again by way of OA 7239 of 2009 which was disposed of by the impugned order.

11. By the impugned order, the Tribunal, directed that even if the petitioner was not entitled to claim back wages, but, authorities can take that period into consideration at the time of calculation of retiral benefit of the petitioner and for no other purpose.

12. Chief Regional Manager United Insurance Company Ltd. (supra), is of the view that, back wages cannot be claimed for

WP.ST 257 of 2011

unauthorized absence or absence without justification. However, back wages can be claimed when engaged in service. It also observed that, setting aside of order of termination, will not result in an automatic entitlement to back wages. The claim for back wages is required to be adjudicated in accordance with law.

13. Applying such principles to the facts of the present case, the writ petitioner claimed reinstatement along with back wages in TA 429 of 1998. The order of discharge as against the writ petitioner was quashed in TA 429 of 1998. The prayer for back wages was not granted. The parties are governed by the order dated December 7, 2005 passed in TA 429 of 1998. None of the parties in such proceeding challenged the same before any forum. In fact, the State authorities allowed reinstatement of the writ petitioner.

14. The claim for back wages, therefore, being raised in TA 429 of 1998 and not being granted, and the writ petitioner accepting such non-grant, we are afraid we are not in a position to allow the writ petitioner to rake up the same issue on the principle of *res judicata*.

15. In such circumstances, we find no merit in the present writ petition.

16. WP.ST 257 of 2011 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

17. I agree.

(Md. Shabbar Rashidi, J.)