

WPA 20540 of 2023

Mohammad Wasim
vs.
Union of India & Anr.

Mr. Achintya Kumar Banerjee
Mr. Surajit Basu
Mr. Manoj Kurmi
Mr. Samudra Nil Sarkar

.....for the petitioner

Mr. Atarup Banerjee
Ms. Rashmi Bothra

...for the respondent No. 1

Mr. Arijit Banshi

.....for the respondent No. 2

The petitioner's grievance is that he has been suspended since 2015. Despite such suspension no disciplinary action has been taken against the petitioner. The prayers in the writ petition are set out as follows:

"a. A writ of an/or in the nature of Mandamus commanding the respondent authorities and their men and agents to show cause as to why the memo being no. IM(T)/529/1150 dated 08.01.2015 being annexure "P-4" in the writ application and duly issued by the respondent no. 2 shall not be set aside and/or quashed by this Hon'ble Court and if no cause has been shown by them and / or if insufficient cause has been shown by them to make the rule absolute.

b. A writ of and/or in the nature of Mandamus directing the respondent authorities and their men and agents to show cause as to why the representations and/or prayers of the petitioner under the letter dated 23.12.2022, 01.03.2023 and 13.04.2023 shall not be taken into consideration by the authority and if no cause has been shown or if insufficient cause has been shown by them to make the rule absolute.

c. A writ of and/or in the nature of Mandamus directing the respondent authorities and their men and agents to immediately allow the petitioner to resume/re-join his duty as Cleaner in Indian Museum, Kolkata, after considering the letters/applications dated 23.12.2022 and 01.03.2023 and 13.04.2023 and by quashing the memo being no. IM(T)/529/1150 dated 08.01.2015 without any further delay.

d. A writ of and/or in the nature of Certiorari directing the respondent authorities to produce all the relevant records pertaining to the instant case before the Hon'ble Court so that after perusal of such records conscionable justice may be administered by setting aside any decision/decisions which adversely affect the interest and entitlement of your petitioner.

e. Rule NISI in terms of prayer (a) (b) (c) and (d) above.

f. an interim order directing the respondent authorities not to fill up the post of the petitioner which is now lying vacant as Cleaner in Indian Museum, Kolkata, till the disposal of the writ application.

g. An ad-interim order in terms of prayers (a) (b) (c) (d) and (f) above.

h. Any other and / or further order/orders, direction/directions as this Hon'ble Court may deem fit and proper in the interest of justice."

Mr. Banerjee, learned counsel appearing on behalf of the petitioner prays for setting aside and/or quashing of the impugned order of suspension dated January 8, 2015. The petitioner was working as a Group-'D' staff of the Indian Museum.

Mr. Banshi, learned counsel appearing on behalf of the Indian Museum submits that the Board of Trustees are a necessary party and they have not been arrayed as a party respondent in the present writ petition.

He further submits that the petition suffers gross suppression of material facts. On the self-same cause of action the petitioner filed WP 7826(W) of 2016. The prayers of that writ petition are set out hereinafter.

"a. A writ of or in the nature of Mandamus directing the respondent

authority to cancel, rescind and withdraw the suspension order being memo no 1m(T)/529/1150 dated 08.01.2015 and memo being no. 1M(T) 5229/13 issued by the Director (Respondent No. 3) whereby suspended the petitioner and further be pleased to direct the Respondent Authority to allow the petitioner to reinstate in service;

b. A writ of or in the nature of Certiorari do issue calling upon the respondents and each of them to certify and transmit to this court the original records of the case before this Hon'ble Court so that conscionable justice may rendered to the petitioner;

c. Rule of NISI in terms of prayers (a) and (b) made above;

d. And to pass such other order and orders as to your Lordship may deem fit and proper."

(sic)

The said writ petition was dismissed for default by an order dated May 17, 2018 passed by a Co-ordinate Bench.

Mr. Banerjee, learned counsel appears on behalf of the Union of India.

Considering the rival submissions of the parties and the materials placed on record this Court is of the view that the 2016 writ petition and the

2023 writ petition are filed substantially on the self-same cause of action. The petitioner has not disclosed the same in the present writ petition. In fact in paragraph 40 of the writ petition, the petitioner has clearly averred that no application has been made before this Hon'ble High Court on the self-same cause of action. Also very cleverly such paragraph does not find any mention on the affirmation page of the writ petition.

The petitioner has sought to agitate his grievance without applying for restoration of the previous writ petition.

In the light of the discussions hereinabove, this Court is not inclined to pass any order in **WPA 20540 of 2023**. Accordingly the same is **dismissed**.

Since no affidavits have been called for in the writ petition, the allegations contained therein be deemed not to have been admitted by the respondents.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)