

Form No.J(2)

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

Present :

THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA 25130 of 2010

With

CAN 1 of 2016 (Old No. CAN 375 of 2016)

With

CAN 2 of 2018 (Old No. CAN 5710 of 2018)

Pronay Kumar Indra

Vs.

The State of West Bengal & Ors.

For the petitioner	:	Mr. Bikash Shaw
For the NBSTC	:	Mr. Amal Kumar Sen Mr. Sabyasachi Mondal

Heard on	:	28.11.2023
----------	---	------------

Judgment on	:	28.11.2023
-------------	---	------------

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, not only calling upon the respondents to release the pensionary benefits but also challenging the orders dated 29th August, 2009 and 24th June, 2010, whereby, pursuant to a domestic enquiry conducted by the respondents, the petitioner was only directed to be disbursed certain limited benefits consequent upon his superannuation.
2. Shorn of unnecessary details, the facts are that the petitioner was engaged with the North Bengal State Transport Corporation (hereinafter referred to as the "Corporation") as a conductor. While

on duty, a surprise check was conducted by checking personnel at tinbatti more on 20th April, 1994 and it was alleged by the checking personnel that the petitioner had not issued tickets to three several passengers even after receiving money from them. This led to initiation of a domestic enquiry by issuance of a charge sheet dated 8th June, 1994. Simultaneously, with the issuance of the charge sheet, the petitioner was placed under suspension. After the aforesaid enquiry was conducted, the Managing Director of the Corporation by an order dated 19th December, 1994, dismissed the petitioner from service with effect from the date of the said order. Although, the petitioner had preferred a statutory appeal against the aforesaid order, the Appellate Authority while rejecting the petitioner's appeal had affirmed the order of punishment by passing its order dated 24th January, 1996.

3. Challenging the aforesaid orders, the petitioner had filed a writ petition before this Court which was registered as CO no. 7213 (W) of 1996. On contest, the said writ petition was dismissed by judgment and order dated 7th February, 2002.
4. Being aggrieved, the petitioner had preferred an appeal which registered as FMA 1833 of 2003. By a judgment and order dated 3rd February, 2009 which was later corrected by an order dated 27th February, 2009, the Division Bench of this Court was, *inter alia*, pleased to set aside the order of punishment by granting liberty to the Corporation to proceed further on the basis of the charge sheet

under reference and to conclude the same within a period of two months from the date of communication of such order. As a sequel, the aforesaid orders passed by the Appellate Authority and the Hon'ble Single Judge were also set aside.

5. In terms of the order passed by the Hon'ble Division Bench of this Court, by an order dated 27th February, 2009, the petitioner was reinstated in service of the Corporation with immediate effect and was allowed to resume his duties.
6. Admittedly, on 28th February, 2009, the petitioner stood superannuated. Notwithstanding the aforesaid, by a communication in writing dated 11th August, 2009, the petitioner was directed to appear before the Managing Director of the Corporation for personal hearing in connection with the disciplinary case no. 156 of 1994 which had been initiated against him. Immediately upon receipt of the aforesaid communication the petitioner, in response of the above by letter dated 19th August, 2009, while calling the respondents to release his retiral benefits, reminded them that he had already been superannuated from service of the Corporation on 28th February, 2009 and as such he prayed that he may be exonerated from the charges leveled against him in connection with the aforesaid disciplinary case.
7. Records reveal that on 29th August, 2009, the Managing Director of the Corporation taking note of the representation made by the petitioner was, *inter alia*, pleased to dispose of the disciplinary

proceeding by providing that the petitioner shall not get anything other than subsistence allowance during the period of suspension and that the entire period i.e. from the date of dismissal to the previous date of his joining vide interim order will be treated as E.O.D. and that his retirement benefits shall be released accordingly.

8. Pursuant to the aforesaid, the respondents by an order dated 24th June, 2010 had determined the retiral benefits payable to the petitioner and had disbursed the same in terms of the recordings made in the aforesaid order.
9. Being aggrieved with not only reinitiation of disciplinary proceeding beyond the date of superannuation but also in passing the orders impugned, the present writ petition has been filed.
10. Mr. Shaw, learned advocate appearing for the petitioner at the very outset, submits that once the Division Bench of this Court had provided for a time frame within which the disciplinary proceeding was to be disposed of, it was the duty of the respondents to adhere to such time line. Admittedly, in this case, such time line had not been followed. The reinitiation of proceeding by the respondents had been made not only much beyond the time prescribed by the Division Bench of this Court but also after the petitioner had been superannuated. He submits that the rules of the Corporation do not permit continuance of disciplinary proceeding beyond the date of superannuation. The petitioner, therefore, had become entitled to

receive his retiral benefits, *inter alia*, including his arrear salary which had fallen due.

11. By placing reliance on page 18 of the affidavit-in-opposition filed by the respondents, it is submitted that the respondents have even wrongfully deducted the gratuity payable to the petitioner. He submits that 14 years 11 months and 24 days have been deducted from the service career while computing his gratuity and such fact would corroborate from the document being annexure R-3 of the affidavit-in-opposition filed on behalf of the Corporation. By referring to paragraph 14 of the affidavit-in-opposition it is submitted that the Corporation had framed a regulation, namely, North Bengal State Transport Corporation Employees' Pension Regulation, 1990 which had only been published in the Official Gazette on 29th August, 2000.
12. Admittedly, when the aforesaid notification was published, the petitioner was under wrongful termination which later came to be set aside, as such the time line (6 months) provided in the aforesaid notification, for exercise of option from Contributory Provident Fund (CPF) to General Provident Fund (GPF), may not be strictly applicable insofar as the petitioner is concerned.
13. By referring to page 63 of the writ petition, he submits that although, the petitioner had opted for pension, his option form was not processed by the respondents. In support of his contention that once, an option is exercised the respondents are bound to

adhere to the same, notwithstanding the expiry of the original period for exercise of such option, reliance has been placed on a judgment delivered by the Division Bench of this Court in the case of ***Lila Sarangi v. State of West Bengal***¹ and the judgment delivered by the Hon'ble Supreme Court in the case of ***Calcutta State Transport Corporation & Ors. v. Ashit Chakraborty & Ors***². It is submitted that since, the enquiry was not completed on account of jurisdictional error, the respondents are bound to compensate the petitioner and are bound to make payment of backwages, which the petitioner is legitimately entitled to. In support of his aforesaid contention, he has placed reliance on the following judgments:

- ***Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Others***.³
- ***Jayantibhai Raojibhai Patel versus Municipal Council, Narkhed & Ors***.⁴

14. Mr. Sen, learned advocate appearing for the Corporation submits that the original enquiry had been set aside on technical grounds. He, however, candidly submits that the timeline provided by the Division Bench of this Court for concluding the enquiry could not be followed in this case. He also could not identify any service rule which authorised continuance of Disciplinary Proceeding beyond the date of superannuation.

¹ 2008 SCC OnLine Cal 329

² 2023 live law SC 419

³ (2013) 10 SCC 324

⁴ (2019) 17 SCC 184

15. Having regard to the aforesaid, he submits that even if this Hon'ble Court is of the view that the enquiry stands vitiated, the same does not permit the petitioner to be entitled to backwages as a matter of course. The petitioner has not disclosed the period for which backwages have been claimed. There is also no averment in the petition that when the petitioner was suffering the order of dismissal, he was otherwise not gainfully employed. Since, the petitioner has not even pleaded that he was not otherwise gainfully employed when he was suffering the order of dismissal, no relief in the form of backwages should be granted in his favour.
16. In support of his aforesaid contention, he has placed reliance on a judgment of the Hon'ble Supreme Court in the case of ***Rajasthan State Road Transport Corporation, Jaipur v. Phool Chand***⁵. It is still further submitted that at no point of time, the petitioner sought to exercise the option. The claim made by the petitioner that he had exercised the option is absurd and no reasonable person of ordinary prudence would accept the same. The judgments relied on by the petitioner with regard to grant of backwages as also claim for GPF is distinguishable from the facts of this case. Admittedly, it was not in dispute that the option had been exercised in the case cited by the petitioner unlike the present case. In the facts as noted above, no relief should be granted to the petitioner.

⁵ (2018) 18 SCC 299

17. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case it is noticed that pursuant to a charge sheet issued on 8th June, 1994, a domestic enquiry was initiated against the petitioner. Simultaneously, the petitioner was also suspended. On conclusion of the domestic enquiry, the Disciplinary Authority by an order dated 19th December, 1994 had awarded an order of dismissal. Although, the petitioner had challenged the same by filing a statutory appeal, the Appellate Authority did not accede to the petitioner's prayer and on the contrary affirmed the same. Challenging the aforesaid order of punishment, a writ petition was filed before this Hon'ble Court. Although, the petitioner did not succeed before the Hon'ble Single Bench of this Court, however, on an appeal being preferred by the petitioner, the Division Bench of this Hon'ble Court by an order dated 3rd February, 2009 later corrected on 27th February, 2009, while setting aside the order of dismissal granted liberty to the Corporation to proceed further on the basis of the charge sheet already issued on the petitioner.

18. Pursuant to the aforesaid direction passed by the Hon'ble Division Bench, the Corporation by an order dated 27th February, 2009 reinstated the petitioner by reserving liberty to proceed against him in the disciplinary proceeding. Unfortunately, the Corporation despite being afforded with an opportunity to proceed against the petitioner in terms of the direction issued by the Hon'ble Division

Bench did not do so, within the time specified. It was only on 11th August, 2009 that a notice of hearing was given. In response to the same, the petitioner appears to have called upon the authorities while reminding them of his superannuation to release the retiral benefits and expressing therein that he does not have anything to add.

19. Records reveal that by an order dated 29th August, 2009, the Managing Director of the Corporation while continuing to assume jurisdiction of the Disciplinary Authority had observed and directed as follows:-

“1. He will not get anything other than S.A. during the period of suspension.

2. The entire period i.e. from the date of dismissal to the previous date of his joining vide Interim Order will be treated as E.O.L. His retiral benefits be released accordingly.”

20. The primary question that falls for consideration in the instant case is whether the Managing Director of the Corporation who was the Disciplinary Authority of the petitioner can continue to exercise the jurisdiction of a Disciplinary Authority of the petitioner beyond the date of superannuation of the petitioner. It is well-settled that in absence of a master-servant relationship and in absence of any rule prescribing continuance of any departmental proceeding or conclusion thereof, beyond the date of superannuation no such jurisdiction can be exercised by the Disciplinary Authority. In the present case, there is, however, another difficulty. Notwithstanding

the Division Bench of this Hon'ble Court permitting the respondents to continue and complete the departmental proceeding against the petitioner within the time prescribed, the same had not been done. Although, the petitioner was reinstated pursuant to the direction issued by the Hon'ble Division Bench, no enquiry as directed by the Hon'ble Division Bench was re-initiated or concluded within the time specified in the order passed by the Hon'ble Division Bench.

21. Having regard to the aforesaid it can safely be concluded, not only did the Managing Director of the Corporation not have any jurisdiction to proceed against the petitioner beyond the date of superannuation of the petitioner, he was otherwise incapable of continuing with the proceeding and awarding any punishment on the petitioner, for having failed to comply with the direction passed by the Division Bench of this Court. The same leads to a situation where the enquiry proceeding though initiated validly stood abruptly concluded consequent upon superannuation of the petitioner. Since, the proceedings stood abruptly concluded, the charges levelled against the petitioner could not be proved.

22. In this case, it is noticed that Mr. Sen, learned advocate representing the Corporation by placing reliance on the judgment delivered in the case of Rajasthan State Road Transport Corporation (supra) has argued that in absence of any pleadings made by the delinquent that he was not gainfully employed during the tenure when he was suffering an order of dismissal, no back wages should

be awarded, I, however, find that the case at hand to be some what different. While in the case of ***Rajasthan State Road Transport Corporation, Jaipur*** (supra), a validly held domestic enquiry was under challenge wherein the charges against the delinquent was proved and the interference in the said case was limited to the quantum of punishment inflicted, the present facts show a completely different picture. In this case the enquiry had been brought to an abrupt end. The charges therefor, could not be proved. Consequential orders issued by the Managing Director of the Corporation dated 29th August, 2009, in my view, is in excess of jurisdiction and the same cannot be sustained and is accordingly set aside.

23. As a sequel thereof, the order dated 24th June, 2010 cannot be sustained, insofar as, the same seeks to curtail the benefits payable to the petitioner. It is true that in the present case no averment has been made by the petitioner that he was not gainfully employed during the period when he was suffering the order of dismissal, however, taking note of the fact that the respondents have chosen not to conclude the proceeding, despite being afforded with an opportunity to conclude the same, I am of the view, that denying the petitioner the back wages in its entirety would be unjust, especially when the petitioner had no role in the respondents' not concluding the proceeding and was not responsible therefor. Taking into consideration the entirety of the facts and non-involvement of the

petitioner in the abrupt termination of the enquiry proceeding, I am of the view that the petitioner should be paid 75 per cent of the back wages, less the subsistence allowance already paid in his favour.

24. It is also noticed that the respondents while computing gratuity had unjustifiably denied the benefit of 14 years, 11 months and 24 days. Having regard to the aforesaid, the respondents are directed to re-compute the retiral benefits payable to the petitioner, inter alia, including gratuity. Insofar as the petitioner's claim on account of conversion of CPF to GPF, I am of the view, that there is no material on record to sustain the same. No documents have been placed before this Court to demonstrate that the petitioner had made any application before the authority for exercising his option. The judgments cited by Mr. Shaw in support of his contention as regards his claim of GPF, are otherwise distinguishable on facts. It is well-settled that a judgment is an authority of what it decides, a slight variation in facts may alter the final outcome. The same do not assist the petitioner.

25. The respondents are, thus, directed to recompute the retiral benefits payable to the petitioner on the basis of the observations made hereinabove and disburse the same in the petitioner's favour within a period of six weeks from the date of communication of this order. The petitioner shall be entitled to interest at the rate of 10 per cent per annum on the retiral benefits, to the extent the same was withheld and not disbursed earlier.

26. With the above observations/directions, the writ petition is disposed of. In view of disposal of the writ petition, the connected applications being CAN 1 of 2016 (Old No. CAN 375 of 2016) and CAN 2 of 2018 (Old No. CAN 5710 of 2018) seeking early disposal of the writ petition having become infructuous also stands disposed of.
27. There shall, however, be no order as to costs.
28. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

Saswata/Sanjib
Assistant Registrar (Court)