

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 7655 of 2012

Reserved on : 28.03.2024

Pronounced on: 20.06.2024

Sri Palas Guha

...Petitioner

-Vs-

The Union of India & Ors.

... Respondents

Present:-

Mr. Arindam Kar

Mr. M.A. Elahi

Ms. Snigdha Das

... for the Petitioners

Mr. Manas Kumar Kundu

...for the Respondents

Rajarshi Bharadwaj, J:

1. The instant writ petition is preferred by one Sri Palas Guha herein the writ petitioner for disbursement of his outstanding claims and service benefits.

2. The facts of the case in brief are that on 05.11.1990 the petitioner joined service with M/s Mecon Ltd herein respondent No.2 tasked with the job of project management and consultancy for the modernization of Durgapur Steel Plant, in the post of Supervisor (Railway Track) on contractual basis for two years. The petitioner during his tenure of service was allotted a quarter with specified terms and conditions.

3. The tenure of the petitioner was extended by fresh orders of appointment on 29.10.1992 for one year, on 01.11.1993 for one year and

lastly on 02.11.1994, the contractual period of service of the petitioner had been extended till 31.03.1995.

4. The petitioner along with other contractual employees preferred a writ application being C.O 20095(W) of 1994 for absorption as regular employees on 19.08.1994. The petitioner remained in the service of respondent No.2 following the order of status quo dated 16.09.1994.

5. The Learned Single Judge was pleased to pass an order on 24.06.1999 directing: *".... The interim order will be vacated with immediate effect. The Respondents will be at liberty to take recovery proceeding against the writ petitioners for all sums of money received by them under the interim order of this court..."*

The petitioner's contractual employment was terminated by respondent No.2 by letter dated 24.06.1999 with effect from 25.06.1999. Being aggrieved by order dated 24.06.1999, an appeal being MAT 2196 of 1999 was preferred. The said appeal was dismissed. The petitioner by letter dated 25.01.2011 applied for the release of sums on account of gratuity, contributory provident fund, pension and other service benefits such as retrenchment compensation, leave salary, notice pay and unpaid salary till 25.06.1999.

6. The petitioner was sent three application forms for final settlement of provident fund and gratuity dues by letter dated 20.08.2011 issued by respondent No.2. After filing up the aforesaid forms, such service dues were requested to be released by the petitioner. An amount of Rs 28,947.16/- as provident fund due was received by the petitioner on 02.02.2024. Aggrieved by the inaction of respondent No.2 in allowing retrenchment compensation, leave salary, notice pay, annual performance incentive, pay revision and other receivable dues, the present writ application is preferred.

7. Learned Counsel for the writ petitioner submits that continuity of service of the petitioner from 1990 to 1999 entitles him to all recoverable dues of leave salary, notice pay, retrenchment pay, provident fund, pay revision along with interests as applicable under Interest Act 1978. The petitioner has

been wrongfully deprived of legitimate dues on lapse of over twelve years from the date of retrenchment. The appointment letters dated 29.10.1992, 01.11.1993 and 02.11.1994 in favour of the petitioner were in respect of the same designation, all operative for one year and subject to identical conditions and terms. There was no break in the contractual service of the petitioner because extensions of service were made before the expiry of the earlier contractual period.

8. The status of the petitioner along with other employees as a regular employee rendering continuous service to respondent No.2 and thereby entitled to agreed benefits has been recognised in common order dated 26.02.2001 arising out of W.P No 1220 (W) of 1999 and W.P No. 16288 (W) of 1998 where the Learned Single Judge was pleased to record :-

“The respondent employer is directed to pay to the petitioners the difference between the emoluments to which the petitioners were entitled to and the subsistence allowance paid to them on and from the date of suspension of the petitioners until they were relieved from their duties together with interest at the rate of 12% per annum to be calculated from the due date of payment of the respective monthly emoluments as were payable to the petitioners until the actual date of payment of the difference in terms of this order.”

9. It is further stated that the claims arising out of continuous service of the petitioner have neither been disapproved nor denied by respondent No.2. He was directed to inform the particulars of his last basic pay so that the outstanding dues could be calculated and settled. In addition, respondent No.2 sought to adjust such assessed claim with ‘Penal Rent’, allegedly demanded on wrongful presumption of the petitioner’s occupancy in his allotted quarter even after being terminated from the services of respondent No.2 in June 1999.

10. Learned Counsel for respondent No.2 argues that the employment of the petitioner was on contractual basis. Since the work of modernisation of Durgapur Steel Plant could not be completed within the scheduled time for

various reasons, the tenure of service of the writ petitioner was extended till 25.06.1999. The receivable salary benefits were disbursed to the petitioner after expiry of term of every offer of appointment. The outstanding dues for the period of work namely subsistence allowance and monthly emoluments were granted to the petitioner as per solemn order dated 26.02.2001.

11. It is further submitted that as per terms of offer of appointment, the petitioner was eligible for basic salary, Dearness Allowance (fixed and reasonable), House Rent Allowance, City Compensation Allowance as applicable to place of posting, leave (earned leave, sick leave, half pay leave), Leave Salary and medical facilities as admissible under rules framed by respondent No.2. There is no whisper of sums of gratuity, annual performance incentive or pay revision in such contracts of service and thus the petitioner has been rightfully denied of such claims.

12. It is further submitted that the writ petitioner being a contractual employee was not entitled to the benefits enjoyed by regular employees. The petitioner recruited on contract basis was released from the services of respondent No.2 due to non-renewal of contract. Termination of the petitioner is not retrenchment within the meaning of Section 2(OO)(bb) of the Industrial Disputes Act 1947 and he is not entitled to retrenchment compensation as enumerated in Section 25F of Industrial Disputes Act 1947. In addition, the petitioner is not entitled to receive notice pay because he was not released prior to expiry of the period in the contract of service but remained in service even after expiry of the period of contract on the strength of interim order of status-quo dated 16.09.1994.

13. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the service rendered by the writ petitioner till his termination on 25.06.1999 cannot be treated as continuous service and therefore, he is not entitled to service benefits.

14. It is a settled principle of law that an interim order depends upon the finality of a decision; no right of continuity can be created by interim order.

In the case of **Calcutta State Transport Corporation-versus-Ranjit Bhattacharjee** reported in **2011 (5) CHN (CAL) 668** it has been held that an interim order of continuing service does not create any right of continuity of service and does not result in entitlement of all benefits. The extension of contractual employment of the petitioner beyond the expiry of contract by interim order dated 16.09.1994 cannot be interpreted as continuous service.

15. The Honorable Supreme Court in the case of **Ganesh Digamber Jambhrunkar & Ors -versus- The State of Maharashtra & Ors** reported in **2023 SCC Online SC1417** opined that working for a long period on contract basis does not create a vested legal right to be appointed in the respective posts on regular basis.

16. In the instant case, the service of the petitioner on all three occasions has been prolonged by independent and different contracts expressly stating the period of employment and work benefits and he has already received provident fund as employment benefits. The petitioner by agreeing to the terms and conditions of the contracts is thereby estopped from claiming gratuity, leave salary, notice salary, retrenchment compensation and other receivable dues.

17. In such view, the writ application being WPA No 7655 of 2012 lacks merit and the same is dismissed accordingly.

18. There will be no order as to costs.

19. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

20.06.2024

PA (BS)