

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 773 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

West Bengal Surface Transport Corporation Ltd.

Now described and known as West

Bengal Transport Corporation Ltd. & Anr.

Vs

Bhaskar Ghosh & Ors.

With

M.A.T. 774 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

West Bengal Surface Transport Corporation Ltd.

Now described and known as West

Bengal Transport Corporation Ltd. & Anr.

Vs.

State of West Bengal & Ors.

For the Appellants

: Mr. Samrat Sen, Sr. Adv.,
Mr. Niladri Bhattacharjee
Mr. Soham Bandopadhyay
Ms. Angana Dutta

For the Private Respondent

: Mr. Dilip Kumar Samanta
Mr. Biswapriya Samanta
Mr. Debapriya Samanta

For the State

: Mr. Pantu Deb Roy (through V.C.)
Mr. Subrata Guha Biswas

Heard on

: July 31, 2024

Judgment on

: July 31, 2024

DEBANGSU BASAK, J.:-

1. Report as called for by the order dated July 10, 2024 filed in Court be taken on record.

2. Copy of the report is circulated amongst the learned advocate appearing for the parties in Court.

3. Learned Assistant Additional Advocate General appearing for the appellants submits that by the impugned judgment and order, learned Single Judge directed payment of back wages to the private respondent from the date of dismissal till the date of issuance of the letter dated June 22, 2020 excepting for the period from April 22, 2003 and May 18, 2010 within a period of six weeks from the date of communication of the impugned judgment and order.

4. Learned Assistant Additional Advocate General submits that, the private respondent was engaged as a driver by the appellant no. 1. Private respondent was disqualified from driving any vehicle due to his licence being impounded by the Motor Vehicles Department. Consequently, such period of time should be added to the period of time that the private respondent is not entitled to his back wages.

5. Learned Assistant Additional Advocate General draws the attention of the Court to the report submitted in Court today and submits that, such licence was restored on October 14, 2010. Consequently, according to him, private respondent is not entitled to back wages for the period from March 6, 2003

being the date on which the accident occurred till October 14, 2010 when the licence was restored. He also points out that there is another period of time for which the private respondent is not entitled to the back wages, namely the period between June 22, 2020 when the private respondent was asked to join his duties and July 9, 2020 when the private respondent actually joined his duties.

6. Learned Assistant Additional Advocate General further submits that, the departmental proceedings are pending against the private respondent and the arrangement of payment should abide by the final decision in the departmental proceedings.

7. Learned Assistant Additional Advocate General further submits that he is restricting his contentions to the period of time as submitted in view of the concession given by his clients before the learned Single Judge.

8. Learned advocate appearing for the private respondent, on instructions from the private respondent who is present in Court submits that, the period to which learned Assistant Additional Advocate General alluded to, may be added to the period for which the private respondent is not entitled to back wages. He also submits, on instructions, that the payment may be directed to abide by the decision to be taken in the pending departmental proceedings.

9. There is a departmental proceeding pending as against the private respondent.

10. In the writ petition, the issue was the entitlement of the private respondent to receive back wages. Learned Single Judge directed back wages to be paid from the date of the dismissal from service till the issuance of the letter dated June 22, 2020, excepting for the period between April 22, 2003 and May 18, 2010.

11. However, in our view, the private respondent is not entitled to receive back wages for the period from March 6, 2003 being the date on which the accident occurred and his licence got impounded on March 8, 2003 till October 14, 2010 when his licence was restored. Such period of time between March 6, 2003 and October 14, 2010, private respondent suffered a legal inability to discharge his duties as a driver and, therefore, should not be permitted to receive back wages for such period.

12. Furthermore, for the period between June 22, 2020 when the private respondent was asked to rejoin his duties and July 9, 2020 when he actually rejoined his duties, he is not entitled to back wages since he did not discharge his duties. The employer was not at fault for either of the two periods noted above for which the private respondent did not discharge his duties.

13. There is a departmental proceeding pending. Therefore, it would be appropriate to direct that the payments that may be made by the appellants to the private respondent in terms of this order will abide by the result of the departmental proceedings.

14. Appellants will no doubt make payment in terms of this order within six weeks from date.

15. **M.A.T. 773 of 2024 and M.A.T. 774 of 2024** along with connected applications in both the appeals are, therefore, disposed of without any order as to costs.

(Debangsu Basak, J.)

16. I agree

(Md. Shabbar Rashidi, J.)

S.D.