

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 14727 of 2006

Saroj Kumar Guha
Versus
The State of West Bengal & Ors.

For the petitioner : Ms. Mousumi Bhowal
Mr. Aman Gupta
Mr. Ishan Bhattacharya

For the State : Mr. Jayanta Samanta
Mr. Kushal Biswas

Heard on : 2nd April, 2024

Judgment on : **2nd April, 2024.**

Raja Basu Chowdhury, J:

1. The petitioner had joined as Junior Assistant with the respondent no.2 on contractual basis in the Mainak Tourist Lodge at Siliguri, a unit of the West Bengal Tourism Development Corporation Limited.
2. It is the petitioner's case that the contractual appointment was extended from time to time until a show-cause notice dated 9th July, 1992, was issued.
3. Following the aforesaid, by a letter dated 16th August, 1992, the service of the petitioner was terminated. No departmental

proceeding was held. The petitioner preferred an appeal against the order of termination. Since, the same was kept pending, the petitioner was compelled to move this Hon'ble Court by filing a writ petition which was registered as C.O. No. 3292 (W) of 1993.

4. By an order dated 17th December, 1998, a Coordinate Bench of this Court was, *inter alia*, pleased to dispose of the said writ petition by directing the Manager, Mainak Tourist Lodge to dispose of the appeal filed by the petitioner within six weeks from the date of communication of the order, after giving personal hearing to the petitioner.
5. Despite communication of the aforesaid order, since, no steps were taken by the respondents to dispose of the appeal, the petitioner was compelled to file yet another writ petition, being WP No. 7824 (W) of 1999.
6. By an order dated 3rd July, 2002, a Coordinate Bench of this Court being satisfied with the case made out by the petitioner was, *inter alia*, pleased to set aside the order of termination dated 16th August, 1992, and at the same time by putting the petitioner under deemed suspension without any back wages, granted liberty to the respondents to conduct a regular enquiry by giving him appropriate charge-sheet in accordance with the service Rules and to conduct the disciplinary proceeding by affording adequate opportunity of hearing to the petitioner. It was further provided that question of payment of back wages as also

the question of payment of subsistence allowance to the petitioner during the period when the petitioner was put under deemed suspension in terms of the said order, would be decided by the respondent authority.

7. By the selfsame order the Coordinate Bench had also made it clear that in case the petitioner is exonerated from the charges, the respondent authority should consider his case for permanent employment. Pursuant to the aforesaid, a regular enquiry was conducted and the Managing Director of the West Bengal Tourism Development Corporation Limited after following due procedure and by an order dated 24th July, 2003 was, *inter alia*, pleased to hold that since, the original contract of the petitioner had expired on 31st March, 1992 and was not extended beyond such date though, he had continued in his job till his termination on 9th July, 1992 without any formal valid extension, the termination notice minus the stigma issued to the petitioner stands valid considering the absence of any written extension of terms of employment beyond 31st March, 1992. By the selfsame order, it was further provided that the petitioner shall not be entitled to any back wages though he shall only be entitled to subsistence allowance @ 50% as ordered by the Hon'ble High Court upto the month of July, 2003.
8. Records reveal that the Managing Director of the respondents had categorically provided in the said order that since, the West

Bengal Tourism Development Corporation was already over-staffed and for the present no new regular appointment is being issued, his prayer for fresh appointment cannot be considered for the present. However, it was provided that his candidature may be considered along with other candidates in future as per rules.

9. Challenging the failure on the part of the respondents to absorb the petitioner in service notwithstanding the petitioner being exonerated from the charges, the present writ petition has been filed. During the pendency of the writ petition, by an order dated 5th February 2024, an affidavit was called for from the respondents so as to disclose whether any appointment has been made in the West Bengal tourism development Corporation Ltd subsequent to 24th July, 2003, in the post of casual junior assistant/junior assistant or in like or any other similar post. Pursuant to the aforesaid, the respondents have filed an affidavit.

10. From the aforesaid it would appear that subsequent to 2003, appointment for the post of contractual junior assistant was made through a recruitment notice in the year 2018, where the qualification required was a 3/4 years full time degree in Hotel Management from a recognized University with 2 years experience in the hotel industry being desirable. Since, according to the respondents, the petitioner did not satisfy the eligibility criteria, nor did he apply for the same, his case was not

considered. I have ascertained from the petitioner's advocate who acknowledges that the petitioner did not make any application in the year 2018.

11. In the interregnum this Court had directed the respondent no. 3 to file an affidavit and disclose whether back wages had actually been disbursed in favour of the petitioner. Pursuant to the aforesaid the respondents have filed yet another affidavit and have disclosed that the entire back wages have not been disbursed in favour of the petitioner.
12. Ms. Bhowal, learned advocate representing the petitioner by placing reliance before this Court a judgment delivered by the Hon'ble Supreme Court in the case of ***Jayantibhai Raojibhai Patel v. Municipal Council, Narkhed & Ors.***, reported in **(2019) 17 SCC 184** and the judgment delivered in the case of ***Allahabad Bank & Ors. v. Avtar Bhushan Bhartiya***, reported in **(2022) 13 SCC 202** submits that since, the termination order itself was bad, the petitioner is entitled to back wages for the respondents having not reinstated or absorbed the petitioner in service.
13. I have ascertained from the parties that the petitioner had already reached the age of superannuation on 12th January, 2024.
14. Having regard to the aforesaid, I find it difficult to issue any further direction on the respondents to either absorb the

petitioner or to accommodate the petitioner in service. It may, however, be relevant to note that the order of termination dated 16th August, 1992, terminating service of the petitioner was set aside. Although, a disciplinary proceeding had been conducted, the Managing Director of the respondents in his order dated 24th July, 2003 had concluded that the termination notice minus stigma stands valid. In my view once, the order of termination having been set aside, the same could not be considered to be valid by the respondents.

15. Be that as it may, since, the order of termination dated 16th August, 1992 was set aside, in my view the respondents cannot be permitted to deny the petitioner back wages for the period at least upto 24th July, 2003, when the final order was passed. I must note that though the employer is entitled to consider all aspects before confirming an employee, however, non-issuance of order of extension could not have stood in the way of the respondents to confirm the petitioner in service. The reasons provided for non-confirmation do not appear to be convincing. However, since, by this time the petitioner has already reached the age of superannuation, I am of the view that directing the respondents to reconsider the petitioner's case would be an academic exercise. Further since, the petitioner did not render any service subsequent to passing of the final order dated 24th

July, 2003 no benefit for the period beyond 24th July, 2003 can be extended to the petitioner.

16. I, however, find from the record that the Managing Director has only permitted subsistence allowance @ 50%. Having regard to the date of passing the Final order and for reasons discussed herein above, I direct the respondent no.3 to make payment of the back wages payable to the petitioner minus the subsistence allowance already paid to the petitioner, if any, for the period upto 24th July, 2003.

17. At this stage, Mr. Samanta, learned advocate representing the respondents' places before this Court a cheque drawn in the name of the petitioner for a sum of Rs.6713/- dated 19th March, 2024, *inter alia*, claiming the same constitutes the 50% of the balance subsistence allowance. I am, however, of the view that the respondents should be directed pay back wages and accordingly, I direct the respondent no.3 to make payment of the balance amount of back wages to the petitioner along with the computation sheet and other terminal benefits, as may be available to him in law for the period upto 24th July, 2003, within a period of six weeks from the date of communication of this order after deducting the sum, if any, already paid. The back wages and terminal benefits including gratuity payable in favour of the petitioner shall carry interest @ 10% per annum. For reasons noted hereinabove, the cheque produced by Mr. Samanta

in Court today is returned to him for the respondents to re-compute and disburse the terminal benefits in favour of the petitioner as directed above.

18. With the aforesaid observations and or directions the writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be made over to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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