

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

**WPA 8023 of 2020
Bhaskar Ghosh
Versus
The State of West Bengal & Ors.**

With

**WPA 15698 of 2021
West Bengal State Surface Transport Corporation & Anr.
Versus
The State of West Bengal & Ors.**

Mr. Dilip Kumar Samanta : For the petitioner in WPA 8023 of 2020
For the workman in WPA 15698 of 2021

Mr. Santanu Chatterjee : For the WBSTC in WPA 8023 of 2020
For the petitioners in WPA 15698 of 2020

Heard on : 17.01.2024

Judgment on : **17th January 2024.**

Raja Basu Chowdhury, J:

1. The aforesaid writ petitions concern both challenge and implementation of the award dated 19th November, 2019 passed by the Learned 7th Industrial Tribunal, Kolkata in case no. 12 of 2012.

2. One, Bhaskar Ghosh (hereinafter referred to as the “workman”) had joined the services of the West Bengal Surface Transport Corporation (hereinafter referred to as the “Corporation”) as a driver vide letter of appointment dated 27th November, 2001. The appointment of the workman was confirmed by letter dated 21st December, 2002 and according to the said workman, he continued in service till 6th March, 2003.
3. Incidentally, on 6th March, 2003 at about 6.15 p.m. the workman, while driving a bus owned/managed by the Corporation met with a road accident with a private car (TATA Sumo) near the traffic signal of Belvedere Road, Alipore, adjacent to a Maruti Showroom. The accident ultimately, resulted in the death of an on-duty traffic constable of Kolkata Police. A criminal case was started against the workman and on 8th March, 2003, a traffic officer of the Corporation took custody of the driving license from the workman and had submitted the same before the Lal Bazar Fatal Squad of Traffic Police. Subsequently, the Corporation had issued a show cause notice calling upon the said workman to explain why an enquiry shall not be initiated against him on the following grounds:
 - a) that he intentionally did not inform the Corporation about the said incident which occurred on 6th March 2003 and continued to act as a driver of the respondent no. 3.

b) that he refused to join the duty in spite of instruction in this regard and thereby he committed misconduct of dereliction of duty.

4. By a letter dated 23rd July, 2003, the workman replied to the show cause notice denying all material allegations brought against him enclosing therewith the letter dated 21st July, 2003 addressed to the Labour Commissioner, requesting for conciliation and settlement of the matter in dispute. It appears that both the workman as also the Corporation had appeared before the Labour Commissioner. The matter, however, could not be settled. Following the aforesaid, a charge sheet was issued against the workman on 16th February, 2009 which was also replied to by the workman on 18th March, 2009 with a request to the management not to proceed with the disciplinary proceeding until disposal of the conciliation proceeding. In the interregnum, the workman was acquitted in the criminal proceeding initiated against him by the Learned Judicial Magistrate, 7th Court at Alipore, South 24 Parganas, arising out of the accident which occurred on 6th March, 2003.
5. Records reveal that a further charge sheet dated 3rd September, 2010 was again issued which was also promptly responded to by the workman. Subsequently, however, on the basis of a certificate issued by the Labour Commissioner, as regards pendency of the conciliation proceeding, an application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “said Act”) was filed by the workman on 23rd February, 2012, complaining refusal of

employment by the Corporation with effect from 15th May, 2003, before the Learned 7th Industrial Tribunal, Kolkata. The same was registered as case no. 12 of 2012.

6. The Corporation duly participated and contested the said proceeding by filing written statement. The said proceeding ultimately culminated in an award dated 19th November, 2019, whereby, the Learned Tribunal was, *inter alia*, pleased to hold that the workman had been able to prove his case and as such, is entitled to get an order of reinstatement in service with full back wages with effect from the date of termination of service by way of refusal of employment, i.e. on and from 15th May, 2003 and all consequential benefits, if any, accrued thereon.
7. While, the writ petition being WPA 15698 of 2021 has been filed challenging the aforesaid award, the writ petition being WPA 8023 of 2020 has been filed praying for a direction upon the Corporation to make payment of full back wages from the date of termination.
8. Mr. Chatterjee, learned advocate appearing for the Corporation in WPA 15698 of 2021, on instruction, submits that the Corporation only intends to challenge the portion of the award, insofar as the same directs payment of back wages. He submits that the Corporation had never refused employment to the workman. It is the workman, who had stayed away. The workman was otherwise aware that he could not discharge his duties as a driver with the Corporation since, his driving license had been revoked by the Deputy Commissioner of Police vide order dated 22nd April, 2003. He submits that although, the workman had preferred

an appeal, the Principal Secretary, Transport Department, Government of West Bengal, as the Appellate Authority had disposed of the same by an order dated 23rd August, 2004 thereby, upholding the order of revocation of the license passed by the Deputy Commissioner of Police.

9. By drawing attention of this Court to the order dated 18th May, 2010, it is submitted that it is only pursuant to the order passed by a Coordinate Bench of this Court in WPA 17546 of 2004 that liberty was granted to the workman to apply for renewal of his license. In the given facts, it is submitted that there was no justification for the learned Tribunal to direct payment of back wages. By placing reliance on the document forming Annexure P-1 to the writ petition, it is submitted that notwithstanding repeated requests being made, calling upon the workman to join and report for duty, he did not join.
10. Mr. Chatterjee, however, fairly submits that after the award was passed, the Corporation, as a model employer, in part compliance of the direction passed by the Learned Tribunal vide order dated 19th November, 2019, had directed the workman vide communication dated 22nd June, 2020 to report to the Depot Manager (Salt Lake Depot) for discharging his duties and responsibilities. It was made clear in such letter that the aforesaid would be without prejudice to the challenge to the award dated 19th November, 2019. Pursuant to the aforesaid, the workman had since, reported for duty to the Depot Manager (Salt Lake Depot) on 16th July, 2020 and is continuing since then.

11. *Per contra*, Mr. Samanta, learned advocate appearing for the workman, submits that the order for disbursal of back wages had been passed as and by way of consequential relief. Since, the Corporation does not seek to challenge the award insofar as the same declares refusal of employment by the Corporation, he confines his submissions to the extent of consequential relief only. By referring to the pleadings and award, it is submitted that the workman had specifically pleaded in his application before the Tribunal that he was unemployed and had lost everything and in fact was on the verge of starving to death with his family. Not only such statement has been made in the application but an affidavit in chief to that effect has also been filed. Although, the Corporation had contested the proceeding, the Corporation did not lead any evidence to disprove the case made out by the workman. By placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya***, reported in **(2013) 10 SCC 324**, it is submitted that in case the Tribunal concludes that there has been refusal of employment and the workman is in a position to demonstrate that he had remained unemployed since the date of refusal of employment, back wages which flow as a natural consequence thereof, cannot be denied.

12. He, however, acknowledges the fact that the workman did not have requisite driving license until, the order dated 18th May, 2010 passed by the Coordinate Bench of this Court which authorized the workman for applying for renewal of his license, as such he restricts his claim for

back wages for the period from 18th May, 2010 when the Coordinate Bench of this Court authorized the petitioner to seek renewal of his driving license. He submits that his Hon'ble Court in exercise of its power of judicial review should not altogether, interfere with the direction for grant of consequential relief and his client should be afforded with back wages from the date of refusal of employment till the date he joined the services excepting the period for which he did not have the requisite license.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case I find that the workman employed with the Corporation was involved in an accident which resulted in the fatal injury of a traffic constable on duty. The said constable ultimately succumbed to death.
14. At the instance of the workman, a conciliation proceeding was initiated in connection with refusal of employment and ultimately, the workman had filed a case before the Learned 7th Industrial Tribunal, Kolkata which was registered as case no. 12 of 2012. On contest, the same culminated in an award dated 19th November 2019, whereby, the Learned Tribunal was, *inter alia*, pleased to hold that the workman had been able to prove his case as regards refusal of employment and as such he is entitled to be reinstated in service with full back wages with effect from the date of termination by way of refusal of employment, i.e., 15th March, 2003.

15. Records reveal that the Corporation had since, by a communication dated 22nd June, 2020, in pursuance to the aforesaid award passed by the Learned Tribunal and without prejudice to its right to challenge such award, had called upon the workman to report to the Depot Manager, Salt Lake Depot. The workman pursuant to the aforesaid communication dated 16th July, 2020 had reported to the Depot Manager, Salt Lake Depot. I find that although, the writ petition being WPA 15698 of 2021, has been filed challenging the award, Mr. Chatterjee only questions the portion of the award to the extent the same directs payment of back wages. As such, I have confined the enquiry to the aforesaid portion of the award which directs payment of back wages.
16. Upon going through the award and the materials on record it would appear that the workman had been able to discharge his initial onus as regards non employment. The Corporation, however, did not take any steps apart from cross examining the workman to disprove the same by bringing on record, cogent evidence. Having regard to the aforesaid, it cannot be said that the finding arrived at by the Tribunal are based on no evidence or is perverse. However, taking note of the submissions of Mr. Samanta, who on instructions from his client, who is personally present in Court, having agreed to accept the back wages except for the period from 22nd April, 2003 when the license of the workman was revoked by the competent authority and the period when liberty was granted by the Coordinate Bench of this Court vide order dated 18th May, 2010 in WPA 17546 of 2004 to apply for renewal of license, I am of the

view that the Corporation should forthwith make payment of the back wages to the workman from the date of dismissal till the date of issuance of letter dated 22nd June, 2020, except for the period between 22nd April, 2003 and 18th May, 2010, for which the workman has voluntarily agreed to give up, within a period of 6 weeks from the date of communication of this judgment.

17. In view of the aforesaid, nothing further survives to be decided in both the writ petitions. It is, however, made clear that disposal of the aforesaid writ petitions shall not, in any way, impinge upon the rights of the parties to proceed in accordance with law, if they are otherwise entitled to in respect of any other cause, which do not form subject matter of the present case.
18. With the aforesaid observations and directions, the writ petitions being WPA 8023 of 2020 and WPA 15698 of 2021 are accordingly ***disposed of.***
19. There shall be no order as to costs.
20. Urgent photostat certified copy of this judgment if applied for be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)