

WPA 26780 of 2013

Sibasish Chakraborty
Vs.
Durgapur Chemicals Limited & Ors.

Mr. Arijit Dey
Mr. D. R. Mukherjee
... for the petitioner

Mr. Ranjay De
Mr. Basabjit Banerjee
Mr. A. A. Bose
... for the respondents

1. Affidavit-in-reply filed in Court be taken on record.
2. The present writ petition has been filed, *inter alia*, calling upon Durgapur Chemicals Limited the respondent no.1, to issues service certificate and to disburse provident fund dues along with interest @9% p.a.
3. The petitioner claims that on the basis of a letter of appointment dated 31st December, 2009, the petitioner was appointed in the service of the respondent no. 1., and joined the Kolkata Office on 19th January, 2010. Subsequently, detailed terms and conditions of his appointment was made over to him by letter dated 26th March, 2010. The petitioner contends that the same was served upon the petitioner

sometimes in December, 2010. The signature of both the petitioner as also the Director-in-Charge appears on the said document. A copy of such document as made over in Court today by the learned advocate representing the respondent nos.1 to 4 is taken on record.

4. The petitioner claims that while in employment by transfer order dated 21st December, 2011, wrongly transcribed as 21st February, 2011, the petitioner was transferred from Kolkata to Durgapur and was advised to get release order from the head of the department at Kolkata. It is the petitioner's case that by reason of personal inconvenience, he had made a representation addressed to the Company Secretary of the respondent no. 1 and had requested him to reconsider his transfer. Records reveal that on consideration of his representation, the competent authority had advised the petitioner to comply with the order of transfer. Such fact would corroborate from the notings appearing on the petitioner's representation dated 30th December, 2011 at page 29 of the writ petition. It, however, appears that petitioner had by letter dated 31st December, 2011 tendered his resignation. By such letter, the petitioner

had also requested the respondent no.1's company secretary to permit the petitioner to spend the notice period, at Kolkata. In response to the petitioner's communication, the respondent no. 1's Company Secretary by communication in a writing dated 2nd January, 2012, had informed that since, the transfer order had already been issued, the petitioner had been released from the Kolkata Office and the petitioner having tendered his resignation the respondent no.1 was unable to accede to the petitioner's request.

5. Learned advocate representing the petitioner by drawing attention of this Court to the communication dated 25th January, 2012 submits that, since the petitioner's initial contract was limited for two years and such period having expired on 19th January, 2012, the petitioner could not have been called upon by the respondent no.1 to comply with the notice period beyond such date. It is in these facts that the petitioner by letter dated 25th January, 2012 had called upon the respondent no.1's company secretary to settle his dues. By drawing attention to the demand made by the respondent no.1 vide their communication dated 5th June, 2012, which is at page 43

of the petition it submitted that the same is de hors the contract between the parties and cannot be acted upon. In such circumstances, appropriate directions should be issued calling upon the respondent nos. 1 to 4 to finally settle the petitioner's dues and issue service certificate. Necessary steps should also be taken by the respondent no.1 to 4 to ensure disbursement of the petitioner's the provident fund dues.

6. Mr. De, learned advocate representing the respondent nos. 1 to 4 submits that, the petitioner was aware that he was appointed in a transferable job. There is no irregularity on the part of the respondent no. 1 in issuing the transfer order. The respondent no.1 had never forced the petitioner to tender his resignation. The resignation tendered by the petitioner was on the basis of his own volition. Once, the petitioner tendered his resignation, he is bound to adhere to the terms of appointment in so far as the same relates to notice pay.
7. Mr. De, however, candidly submits that the original contract period of two years was not renewed. In so far as provident fund is concerned, it is submitted that

though the respondent no. 1 was an exempted establishment, exempted under Section 17 of the Employees Provident Funds and Misc. Provisions Act, 1952, later such exemption was surrendered and the entire trust fund has been transferred to the Employees Provident Fund Organisation. Mr. De, however, could not produce any document in support thereof.

8. By placing reliance on a report dated 26th December, 2019 issued by the Deputy Secretary to the Government of West Bengal, Mr. Dey submits that at present all works at the respondent no. 1 have been temporarily suspended. Let a copy of the aforesaid report dated 26th December, 2019 be retained with the record.
9. Heard the learned advocates for the respective parties and considered the materials on record. In this case, I find that the petitioner had been appointed in the post of Junior Officer (Customs and Transport) with the respondent no. 1 as per the letter of appointment dated 31st December, 2009. The detailed terms of the letter of appointment were not only made over to the petitioner but the petitioner had also accepted and confirmed the same

and as an acknowledgement thereof, he had put his signature at the bottom of the said letter.

10. Records reveal that though, the petitioner was issued a transfer order, the petitioner refused to join the transferred post and had tendered his resignation. I find that it has been candidly submitted by Mr. De, learned advocate representing the respondent nos.1 to 4 that the original contract period of two years was not extended. Having regard to the aforesaid, I am of the view that the petitioner should not be called upon to make payment of notice pay, for the period beyond the contract. As such, the petitioner at best can liable to make payment on account of notice pay for the period between 30th December, 2011 and 19th January, 2012.

11. In view thereof, I direct the respondent nos.1 to 4 to recompute the demand on account of notice pay. Let such fresh demand be raised on the petitioner within a period of three weeks from the date of communication of this order. If such demand is made, the petitioner shall make payment thereof, to the respondent no.1 within a period of three weeks therefrom. Immediately upon receipt of the

aforesaid sum, or in the event no demand is raised within the period stipulated herein, the respondent nos.1 to 4 shall issue the service certificate, finally settled the petitioner's due and take appropriate steps for forwarding all provident fund accumulations and particulars of the petitioner's provident fund account along with the accumulation statement to the provident fund authority, with a copy thereof to the petitioner, for them to disburse the petitioner's claim. The entire process should be completed within a period of eight weeks from the date of communication of this office.

12. Since, nothing survive in the present petition, the same is disposed of accordingly. The petitioner shall be liberty to independently apply before the Provident Fund Authority.

13. 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.)