

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO 202 of 2019 with
WPO 441 of 2018
IA GA 2 OF 2021
GA 2 OF 2021
THE BOARD OF TRUSTEES, KOLKATA PORT TRUST AND ORS.
Versus
ABHISHEK MUKHERJEE

APOT 81 of 2021 with
IA GA 1 OF 2021
MUKUND KELKAR AND ANR.
Versus
ABHISHEK MUKHERJEE AND ORS.

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK
AND

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

Date : 18th July, 2024.

Appearance :
Mr. Abhrajit Mitra, Sr.Adv.
Mr. Ashok Kumar Jena, Adv.
...for the appellants
Mr. Soumya Mazumdar, Adv.
Ms. Ashmita Chakraborty, Adv.
Mr. Joydeep Mishra, Adv.
...for the Respondent
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The Court: The appeal is at the behest of the Kolkata Port Trust Authorities. The appeal is directed against the judgment and order dated October 1, 2019 allowing the writ petition.

In the impugned judgment and order, learned Single Judge set aside the disciplinary proceedings initiated against the private respondent. Learned

Single Judge held that the private respondent was entitled to receive the full salary less than the amount paid as subsistence allowance during the period of suspension. Learned Single Judge granted monetary benefit to the private respondent to be paid within a period of three months from the date of judgment and order. Leave was also granted to the petitioner to proceed against the private respondent under the service rules concerning his general behaviour, if situation so demands.

In course of hearing of the present appeal, it transpires that :

- (i) Private respondent is a medical doctor.
- (ii) He is pursuing MD courses presently.
- (iii) Private respondent joined the appellant as a Senior Medical Officer on probation for two years by the appointment letter dated June 21, 2016.
- (iv) Disciplinary proceedings were initiated against the private respondent.
- (v) Such disciplinary proceedings were assailed in the writ petition which resulted in the impugned judgment and order.

Apart from such disciplinary proceeding being the subject matter of the writ petition, there is another disciplinary proceeding against the appellant. The first disciplinary proceeding related to alleged unethical activity of the private respondent qua as doctor. The second disciplinary proceeding is with regard to the alleged wrongful receipt of subsistence allowance.

Private respondent tendered his resignation with effect from August 1, 2022.

Private respondent is not willing to work with the appellant any further. Private respondent is pursuing his MD courses. Acrimonious litigation between the appellant and the private respondent or its continuance will not sub-serve any of the parties or the interest of justice.

In order to put an end to the acrimonious litigation between the contesting parties, it would be appropriate to record observations and issue the directions :-

- (i) Private respondent agrees to forego the gratuity and leave encashment subject to his resignation with effect from August 1, 2022 being accepted by the Authorities,
- (ii) Consequently, we direct the Authorities to accept the resignation of the private respondent with effect from August 1, 2022,
- (iii) The appellant will not proceed with any departmental proceeding as against the private respondent.
- (iv) So far as subsistence allowance received by the private respondent till July 31, 2022 is concerned, the appellant will not claim any refund of the same.
- (v) Since the private respondent is not insisting upon full salary as directed by the impugned judgment and order, the same will not be paid by the appellant.

- (vi) Since acceptance of the resignation is directed by the Court, Authority need not proceed with any vigilance or other formalities in issuing the release letter. It is made clear that Authority will issue the release letter within a fortnight from date.

In view of the aforesaid directions, APO 202 of 2019 along with all connected applications is disposed of without any order as to costs.

In view of the directions in APO 202 of 2019, nothing survives in APOT 81 of 2021. Consequently, the same is disposed of along with all connected applications.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

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