

23.05.2025
Item No.13
Ct. No.01
RP/SM

MAT/389/2025
with
IA NO: CAN/1/2025
+
CAN/2/2025

Union of India
VS
Ajay Kumar Jolly AND ORS.

Mr. Dibashis Basu
Ms. Garima Rajada

....For the Appellant

Mr. Soumya Majumder
Mr. Victor Chatterjee

....For the Respondent No.1

Mr. Ranajay De
Mr. B. Banerjee
Mr. A.A. Bose

....For Jute Corporation of India

1. We have perused the affidavit filed in support of the application for condonation of delay and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation. Accordingly, CAN 1 of 2025 is allowed and delay in filing the appeal is condoned.
2. This intra-Court appeal filed by the Union of India and others is directed against the order dated 5th December, 2024 passed in WPA 20564 of 2021. The said writ petition was filed by the respondent no.1 herein praying for a writ of certiorari to quash the communication dated 26.11.2021 issued by the Secretary, Ministry of

Textiles and treat the appointment of the writ petitioner in the post of Chairman-cum-Managing Director of the respondent no.2, namely, Jute Corporation of India Limited, on immediate absorption basis. The learned writ Court has allowed the writ petition and directed the appellants to fix the pay structure of the writ petitioner in terms of the advertisement. Aggrieved by such order and direction the Union of India represented through the Secretary, Ministry of Textiles has filed this appeal. The Jute Corporation of India, who was the third respondent in the writ petition has been impleaded as the second respondent and other two departments, namely, Department of Public Enterprise, Ministry of Finance and Public Enterprise Selection Board have been impleaded as the respondent nos.3 and 4, who were respondent nos.4 and 5 in the writ petition.

3. We have elaborately heard the learned advocates appearing for the parties and carefully perused the materials placed on record.
4. The short issue, which falls for consideration in the instant appeal, is whether the writ petitioner's appointment in Jute Corporation of India should be treated on re-employment basis or on immediate absorption basis. If the appointment of the writ petitioner is treated as on immediate absorption basis

then the writ petitioner would receive pay protection of the Central Government and his pay scale would be fixed at the initial stage of the scale of pay adopted by Jute Corporation of India. Therefore, we are to look into the facts of the case as to how and in what manner the notification for appointment to the said post was made and the terms and conditions thereof.

5. The Ministry of Heavy Industries and Public Enterprises Department, Department of Public Enterprises, Government of India issued the Office Memorandum dated 14th December, 2012 with regard to finalization of terms and conditions including pay fixation in respect of Board level executives of CPSEs, revised procedure thereof. At the relevant point of time the writ petitioner was working in the post of Commodore of Indian Navy and in the year 2017 considering the fact that there was lack of career prospects for advancement in service the writ petitioner applied for pre-mature retirement from Indian Navy. His application was kept pending/processed. In the year 2018 the vacancy in the post of Chairman-cum-Managing Director was notified by the Department of Personnel and Training (Public Enterprise Selection Board), Government of India. In terms of the said notification the date of vacancy was to accrue from 1st February 2019. Clause 2 of the notification deals with

the Employment Status which states that the applicant must, on the date of application, as well as on the date of interview, be employed in a regular capacity- and not in a contractual/ad-hoc capacity-in one of the Central Public Sector Enterprise; Central Government including the Armed Forces of the Union and All India Services; State Public Sector Enterprise and Private Sector in company where the annual turnover is Rs.500 crore or more. Clause 6 of the notification deals with condition of immediate absorption for central government officers. It was stated therein that the central government officers, including those of the Armed Forces of the Union and the All India Services, will be eligible for consideration only on immediate absorption basis. Since the notification mandated that on the date of application as well as on the date of interview the applicant should be employed, the writ petitioner applied for selection to the post of Chairman-cum-Managing Director while he was in service of Indian Navy. On 27.06.2018 the Public Enterprise Selection Board selected and recommended the writ petitioner for appointment as the Chairman-cum-Managing Director of Jute Corporation of India. The writ petitioner prematurely retired from government service at the age of 53 years on 30.06.2018. Thus, the writ petitioner was a regular employee in the Indian Navy on the date of application as well as on the date of interview and

also on the date when the Public Enterprise Selection Board selected and recommended the writ petitioner for appointment as Chairman-cum-Managing Director of Jute Corporation of India. The Ministry of Textiles, Government of India by letter dated 17th December, 2018 addressed to the Chief (Personnel and Admin), Jute Corporation of India Ltd. that the competent authority has approved the recommendation of Public Enterprise Selection Board for appointment of the writ petitioner to the post of Chairman-cum-Managing Director in Jute Corporation of India Ltd. with effect from 1st February, 2019 for a period of five years or till the date of superannuation, whichever is earlier. Jute Corporation of India Limited was requested to take further appropriate action under intimation to this Ministry. The writ petitioner joined the post on 1st February, 2019. By draft appointment order dated 12.2.2019 the pay structure of the writ petitioner was fixed by fixing pay on immediate absorption basis. Thus, all along all the authorities were clear in their mind that the appointment of the writ petitioner was on permanent absorption basis. Subsequent communication from the Ministry was issued on 6th March, 2019 advising the writ petitioner to forward the revised draft terms and conditions since some were covered under DPE OM NO.2(34)/12/12-DEP-(WC)-GL-XX/12 dated 14th December, 2012. This office

memorandum provides modalities for pay fixation for the permanent absorption basis and/or re-employment.

6. The Jute Corporation of India by communication dated 08.01.2020 sent the terms and conditions of appointment of the writ petitioner to the Ministry mentioning appointment to be on immediate absorption basis but fixing the pay at initial stage of pay scale. By communication from the Ministry of Textiles, Government of India (Jute Section) dated 12th September, 2020 the Jute Corporation of India was informed that the matter of fixation of terms and conditions in respect of the Chairman-cum-Managing Director has been consulted with DPE twice and the same was examined by IF Wing of this Ministry and IF Wing while examining the matter has stated that as per advice of DPE the appointment of CMD, JCI will be on re-employment basis. Accordingly, the pay of the writ petitioner was directed to be regulated in the pay scale of Rs.1,60,000-2,19,000 after deducting the pension component drawn by the writ petitioner. By communication dated 29.12.2020 the Ministry addressed the Jute Corporation of India Ltd. stating that there was a gap of seven months between premature retirement of the writ petitioner from Indian Navy and joining to the post of Chairman-cum-Managing Director and, therefore, the case was to be treated as re-

employment basis. It is rather curious as to how such stand could be taken by the Ministry of Textile when the notification, which was issued in February 2018 clearly mentioned it to be on immediate absorption basis. The notification further states that on the date of interview as well as on the date of selection the application should be in government service which condition was fulfilled by the writ petitioner. It was thereafter on 30.06.2018 the writ petitioner retired prematurely from service from the Indian Navy at the age of 53 years and after which it is the Department who was dragging the matter by sending various communications and allegedly delayed seven months cannot be attributable to the writ petitioner but to the department themselves. The Ministry having advised Jute Corporation of India Limited to treat the employment of the writ petitioner on re-employment basis, the Jute Corporation of India was unnecessarily addressed the Ministry to treat the appointment of the writ petitioner as on re-employment basis in place of immediate absorption. Therefore, the first respondent herein had failed to provide the writ petitioner the aforementioned relief.

7. As noted above, the advertisement/notification, which was issued for immediate absorption basis and the writ petitioner acted on the said notification and the conditions contained therein and participated in the

selection and he also gave undertaking in terms of the employment notification. That apart, the selection and recommendation of the writ petitioner was finalized before the date of premature retirement of the writ petitioner from Indian Navy. Therefore, it is clear that the delay, which is now sought to be put against the petitioner, cannot be fastened on the writ petitioner but the appellant alone can also be held responsible for the delay.

8. More or less an identical issue was considered by the High Court of Delhi in the case of Uma Kant Sadhav & Anr. vs. Union of India Neutral Citation Number: 2023:DHC:3122 and the writ petition was allowed and the order which was impugned therein was set aside and the respondents therein were directed to refix the pay and allowances of the petitioners without any deduction towards the pension earned by them on account of their past service with the government and refund the amounts deducted from the pay of the petitioners with simple interest @ 6% per annum from the date of deduction till actual payment. Since this order was not complied with a contempt case being Cont.CAS(C)249/2024 was filed and the Court by order dated 29.05.2024 necessary demand drafts were handed over to the petitioner in Court and the matter stood disposed of accordingly. Against the order passed

by the High Court of Delhi an appeal was preferred by the Union of India and others before the Hon'ble Supreme Court of India in Special Leave Petition (Civil) Diary No.49598/2023 and the same was dismissed by order dated 25.01.2024.

9. One more aspect which we need to point out is that had the petitioner been employed in any other organization as mentioned in Clause 2(a)(c)(d) of the employment notification issued in February 2018 then the writ petitioner could have been treated to be a case of the technical resignation, however, that is not feasible when the applicant is holding the post in the armed forces. In any event, the appellant and the other respondents cannot change the terms and conditions of the appointment after selection was made and recommendation was done and the delay which is said to have been caused from the date on which the writ petitioner was resigned till the date he was issued appointment order is not attributable to the petitioner.
10. For the above reasons, the appellants are made any grounds to interfere with the impugned order. Accordingly, the appeal and the connected application fail and are **dismissed**.

11. It is told that the writ petitioner is going to be superannuated and/or retired from service on and from 31.05.2025. Therefore, there will be a direction on the appellant and the respondent nos.2 and 3 to compute the retiral benefits of the writ petitioner by treating the writ petitioner to have been appointed as the Chairman-cum-Managing Director of Jute Corporation of India Limited on permanent absorption basis. Since the pension has to be paid to the writ petitioner, such computation shall be done prior to his retirement i.e. 31.05.2025.

12. Urgent Photostat copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]