

12.06.2025
Item No.02
Court No.11
Avijit Mitra

MAT 488 of 2024
with
IA No.CAN 1 of 2024
with
IA No.CAN 2 of 2024
with
IA No.CAN 3 of 2025

The Director, Government of West Bengal,
Department of Health Services
- Versus -
Kalachand Ghatak & ors.

Mr. T.M. Siddique, A.G.P.,
Mr. Wasim Ahmed,
Md. Ziaur Rahman
...for the appellant
Mr. Raghunath Chakraborty,
Ms. Mohona Das
...for the respondent nos.1 & 2

The present appeal has been preferred by the Director, Government of West Bengal, Department of Health Services challenging the judgment dated 21st August, 2023 passed by the learned single Judge in a writ petition being WPA 21887 of 2022 which was preferred by the son, namely, Kalachand Ghatak (hereinafter referred to as Kalachand) and the daughter, namely, Aruna Mukherjee (hereinafter referred to as Aruna) of Sachipati Ghatak (hereinafter referred to as Sachipati), *inter alia*, praying for issuance of necessary direction upon the respondents therein to reconstruct the service book of Sachipati for the purpose of releasing/disbursing the

pensionary/retiral benefits available to the legal heirs of Sachipati.

By the said judgment impugned the learned single Judge was pleased to allow the writ petition directing *inter alia* that the respondent no.7, the Special Officer (Pension) Government of West Bengal ‘to disburse the entire retiral/pensionary benefits of Late Sachipati Ghatak, an ex-employee of the Katwa Sub-Divisional Hospital, Paschim Burdwan, calculating such pensionary benefits by applying the appropriate scales for the entire period till the demise of Late Sachipati on December 28, 1981. Such disbursal shall be effected within two months from the date of communication of this order to the respondent no.7’. The respondents were also directed ‘to consider as to whether either of the petitioners is entitled to family pension on the demise of Late Sachipati on December 28, 1981. Upon deciding on such issue, a communication in that regard shall be made to the petitioners by the respondent-Authorities, within one month from date’.

The case of the writ petitioners being the respondent nos.1 and 2 herein was that Sachipati, who was an ambulance driver of Katwa Sub-Divisional Hospital, Burdwan died in-harness on 28th December, 1981. In the year 1983, Sachipati’s wife, namely, Bhakti Rani Ghatak (hereinafter referred to

as Bhakti) submitted an application for compassionate appointment of Kalachand. A Three Men Committee was constituted but thereafter no follow up steps were taken and as such, Aruna brought the matter to the notice of the West Bengal Commission for Women and at the behest of the Commission, the respondent no.4 herein intimated by a memo dated 28th May, 2015 that the claim for grant of compassionate appointment was rejected in view of delay. Kalachand and Aruna thereafter preferred an original application (hereinafter referred to as OA) being OA 606 of 2016 claiming pensionary benefits and compassionate appointment. The said OA was disposed of by an order dated 28th November, 2018 without granting the reliefs as prayed for. Aggrieved thereby, the OA applicants preferred a writ petition being WP.ST 5 of 2019 and by an order dated 25th February, 2019 the order of the learned Tribunal was set aside and the matter was remanded granting liberty to the parties to exchange their pleadings. Upon such remand, the OA was finally heard and disposed of by an order dated 3rd September, 2019 directing the respondent no.6 herein to decide the identity of the applicants and the length of service of Sachipati and to take steps for reconstruction of Sachipati's service book for disbursement of pensionary benefits. As no steps were being taken,

Kalachand and Aruna approached the Hon'ble Lokayukta by filing an affidavit on 19th October, 2020 and in the same, an order was passed on 29th December, 2021 requesting the Secretary, Finance Department, Government of West Bengal to expedite the matter as the dispute was long pending. As no steps were taken, Kalachand and Aruna were again constrained to approach this Court by filing a writ petition being WPA 21887 of 2022. The judgment delivered in the same has been impugned in the present appeal.

Mr. Siddique, learned Additional Government Pleader appearing for the appellant argues that save and except the document as annexed at page 23 of the paper book being a memo dated 16th August, 1983 issued by the Sub-Divisional Medical Officer, Katwa, S.D. Hospital, Burdwan there is no document on record from which it may be inferred that Sachipati continued in service and ultimately died in-harness. A mere statement by a particular officer that Sachipati had died in-harness, in the absence of relevant records, cannot justify the grant of any pensionary benefit to the heirs of the deceased.

Mr. Siddique contends that the writ petitioners had miserably failed to prove that Sachipati was a permanent employee of the hospital and they could not produce any document to that effect. They also

failed to dislodge the doubt which arises as to whether Sachipati's service continued in service after 18th May, 1965 till his demise on 28th December, 2023. Such arguments, as advanced, were glossed over by the learned single Judge and no finding was returned.

Mr. Siddique contends that the learned single Judge failed to appreciate that to prove the existence of any fact, the burden of proof lies on that person who desires any Court to give judgment as regards any right or liability dependent on the existence of facts which he asserts. In the present case, it had been the consistent stand of the appellant that service records pertaining to Sachipati's continuance in service for the period from 18th May, 1965 till his death on 28th December, 1981 are not available. In view thereof, the writ petitioners need to establish that Sachipati did render service subsequent to 1965. It is a well settled principle of law that a person who sets up a plea of existence of any relationship of employer-employee, the burden would be upon the said person to establish such fact. The heirs of the deceased have miserably failed to produce any document whatsoever as regards the alleged rendition of service by Sachipati subsequent to 18th May, 1965. In support of the arguments, reliance has been placed upon the judgments delivered in the cases of

Workmen of Nilgiri Cooperative Market Society Ltd. Vs. State of Tamil Nadu & ors. reported in (2004) 3 SCC 514, *Manager, Reserve Bank of India, Bangalore, Vs. S. Mani & ors.* reported in (2005) 5 SCC 100 and *Ambika Prasad Thakur & ors. Vs. Ram Ekbal Rai (dead) by his legal representatives & ors.* reported in 1965 SCC OnLine SC 52.

Mr. Chakraborty, learned advocate appearing for the writ petitioners being the respondent nos.1 and 2 herein submits that the State functionaries have admitted that Sachipati died in-harness as would be explicit from a memo dated 2nd August, 1984 issued by the P.A. to the Director of Health Services, Government of West Bengal, in response to a memo dated 22nd June, 1984 pertaining to the prayer of Bhakti. In the said memoranda dated 22nd June, 1984 and 2nd August, 1984 it has been categorically admitted that Sachipati was an ex-ambulance driver of Katwa Sub-Divisional Hospital, Burdwan and that he had worked in the said hospital till 18th May, 1965 and was even paid salary up to 18th May, 1965 when he was on deputation at Asansol, L.M. Hospital. In view thereof, it was rightly observed by the learned single Judge that the burden lies on the employer to establish that Sachipati was terminated or retrenched or left service prior to his demise or that he did not render any service after 18th May, 1965. The heirs of

the deceased cannot be made to suffer for non-maintenance of service records of the deceased.

He contends that apart from the said memoranda dated 22nd June, 1984 and 2nd August, 1984 there are further documents which would clearly establish that Sachipati had rendered service till the date of his death in the year 1981. In support of such contention reliance has been placed upon the memo dated 15th April, 2008 issued by the respondent no.6 and the memo dated 6th January, 2021 issued by the appellant. The authenticity of none of the said documents has been disputed by the State functionaries.

Mr. Chakraborty submits that a perusal of the final order passed by the learned Tribunal would reveal that there was no doubt in the mind of the Tribunal as regards the fact that Sachipati was an ex-employee under the Department of Health and accordingly observing *inter alia* that '*since there is dearth of records and as it appears from the reply that service book could not be reconstructed due to non-availability of instructions from higher authority*', the learned Tribunal disposed of the application directing the respondent no.6 to pass an order upon arriving at a finding as regards the identity of the heirs and the length of service of Sachipati. In view thereof, the appellant cannot turn back and claim that it is not

incumbent upon the State authorities to establish that Sachipati was not in service at least from 1965 till the date of his death. Once no order of termination or dismissal is produced, the State authorities, upon admitting that Sachipati died in harness, cannot take a plea that Sachipati did not work after the year 1965. In support of the arguments advanced, reliance has been placed upon the judgments delivered in the cases of *Basic Shiksha Parishad and another Vs. Sugna Devi (SMT) and others*, reported in (2004) 9 SCC 68, *Tulshiram Sahadu Suryawanshi and another Vs. State of Maharashtra*, reported in (2012) 10 SCC 373 and *Vijay Narain Singh Vs. Supdt. of Police, Bijnore (U.P.) and others*, reported in 1994 Supp (2) Supreme Court Cases 56.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the memo dated 22nd June, 1987 and 2nd August, 1984 reveal that Sachipati was an ex-ambulance driver of Katwa Sub-Divisional Hospital and that he had died in-harness. The authenticity of the memo dated 2nd August, 1984 had not ever been disputed by the appellant. It is also not the case of the appellant that Sachipati had ever been terminated from service. It would be pertinent to note the averments made by the appellant in the reply filed

before the learned Tribunal while contesting the OA. In paragraph 15 of the reply it has been categorically stated that '*I submit that the Service Book of the deceased is not available and no new Service Book has been reconstructed due to unavailability of instructions from higher authority and adequate information for reconstruction of Service Book is available*'. The order dated 3rd September, 2019 passed by the learned Tribunal observing *inter alia* that it was incumbent upon the appellant to reconstruct the service records of Sachipati was not even challenged by the appellant before the appropriate forum. The State authorities on the basis of the materials on record had not been able to expose suspicious circumstances for the burden to shift upon the heirs of the deceased to dispel the doubts.

In the said conspectus and citing the provisions of illustration (d) of Section 114 of the Indian Evidence Act, the learned Tribunal rightly arrived at a finding that the burden lies on the employer to establish that Sachipati was terminated or he left service prior to his demise. The fact that Sachipati had rendered service as an ex-ambulance driver under Katwa Sub-Divisional Hospital, Burdwan up to 18th May, 1965 and that he was even disbursed salary pertaining to such period has not been disputed. For

non-availability of records pertaining to the service rendered by Sachipati since 18th May, 1965, his heirs cannot be made to suffer.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards the proposition of law laid down in the judgments upon which reliance has been placed on behalf of the appellant. However, the same are distinguishable on facts. The judgment delivered in the case of *Workmen of Nilgiri Cooperative Market Society Ltd. (supra)* pertains to an industrial dispute as regards permanency in service and other benefits of the members of the Union and the reference was to whether the non-employment of the workmen was justified. In the said conspectus it was held that a person, who sets up a plea of existence of employer and employee relationship, has to discharge such burden. In the judgment delivered in the case of *Manager, Reserve Bank of India, Bangalore (supra)*, the issue which came up for consideration was as to whether the workmen had been able to establish that

they had completed 240 days of service and in the backdrop of such fact and circumstances it was observed that it was upon the claimant to lead evidence to show that he had in fact work for 240 days. In the case of *Ambika Prasad Thakur & ors.* (*supra*) the issue was as to whether if a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forwards and backwards may be drawn. However, in the facts of the said case as there was a considerable gap of time the Court observed that it was not safe to assume that the state of things during 1894 to 1905 existed during 1845 to 1863.

The learned single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error in the judgment impugned.

Accordingly, the appeal and the application for stay being CAN No. 2 of 2024 are dismissed and the application for bringing on record additional documents being CAN No.3 of 2025 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)