

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

WPCT 48 OF 2019

Ashis Kumar Ghosh
-Versus-
Union of India & Ors.

For the Petitioner : *Mr. Jayak Gupta,*
Mr. Brotindro Mullick,
Ms. Suprity Dutta Mukherjee,
Ms. Poulomi Paul Maity.

For the UoI/ Respondents : *Mr. Pulakesh Bajpayee,*
Mr. Kushi Prasun Chatterjee.

Hearing is concluded on : *2nd January, 2025.*

Judgment On : **7th January, 2025**

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred challenging an order dated 03.05.2019 passed by the learned Tribunal in the original application

(in short, OA) being OA 350 of 2018. By the said order the learned Tribunal refused the petitioner's prayer for back wages.

2. The petitioner's case is that he was appointed in a Group-'D' post against ex-serviceman quota vacancy in the year 1985. Subsequent thereto, a charge sheet was issued against him on 19.12.1988 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the 1968 Rules). The said charge sheet was withdrawn on 16.02.1990 and a fresh charge sheet was issued on 13.09.1990. On the basis of the same, an enquiry was conducted and the Enquiry Officer (in short, EO) submitted a report exonerating him from the charges. However, a re-enquiry was ordered thereafter under Rule 10 of the 1968 Rules. In the said enquiry, the EO arrived at a finding that the petitioner was guilty of the misconduct alleged. Accepting the said report, the disciplinary authority (in short, DA) imposed a penalty of dismissal on 02.08.1994. Aggrieved by the said order, he preferred a statutory appeal on 16.09.1994. During the pendency of the same, he approached the learned Tribunal challenging *inter alia* the order of punishment. The learned Tribunal allowed the said application and aggrieved thereby, the respondents preferred a writ petition being WPCT 225 of 1999 which was disposed of by an order dated 11.08.1999 remanding the OA for a fresh hearing. On remand, the learned Tribunal dismissed the OA by an order dated 01.10.2002. Challenging the same, the petitioner again preferred a writ petition being WPCT 361 of 2003 which was disposed of by an order dated 18.12.2012 directing the respondents to reinstate the petitioner with continuity of service, forthwith. As regards entitlement of the

petitioner towards back wages, the Hon'ble Court was of the opinion that the said issue needs to be considered by the Tribunal as there was no material before the Court to decide the same. Accordingly, the Hon'ble Court remanded the OA to the learned Tribunal only for the limited purpose of ascertaining on affidavits as to whether the petitioner is entitled to the back wages and other consequential benefits from 02.08.1994 till his reinstatement. Pursuant to the said order the petitioner was reinstated in service with continuity *vide* memo dated 30.04.2013 and 07.05.2013. Subsequent thereto, the learned Tribunal disposed of the OA by an order dated 27.11.2015 with a direction upon the respondents to consider the petitioner's claim towards back wages and to pass a reasoned order in accordance with the decision rendered by the Hon'ble Supreme Court in the case of *Commissioner, Karnatak Vs. C. Muddaiah*, reported in (2007) 2 SCC (LS) 748. Pursuant to such direction, the respondent no. 3 passed an order on 15.06.2018 refusing the petitioner's prayer for back wages. Aggrieved thereby, the petitioner preferred OA 350 of 2018 and the order passed in the same has been impugned in the present writ petition.

3. Mr. Gupta, learned advocate appearing for the petitioner submits that the petitioner was exonerated of the charges alleged against him in the charge sheet dated 13.09.1990. The order of re-enquiry passed thereafter by the railway authorities was held to be untenable in the writ petition being WPCT 361 of 2003. The order dated 18.12.2012 passed in WPCT 361 of 2003 was admittedly not challenged by the respondents and as such the same had attained finality. In view thereof, the order of dismissal from

service on the rudiments of such re-enquiry passed on 02.08.1994 was an order of wrongful termination of service and in view thereof, the respondents are under an obligation to pay the back wages of the petitioner from the date of dismissal, i.e., 02.08.1994 till his reinstatement on 18.03.2013. In support of such contention reliance has been placed upon the judgments delivered by the Hon'ble Supreme Court in the cases of *Manorma Verma (SMT) Vs. State of Bihar and Ors.*, reported in 1994 Supp (3) SCC 671 and *Kumari Sarita Thakur Vs. Union of India (UOI) and Ors.*, reported in 1994 Supp (2) SCC 395.

4. Drawing our attention to the judgment delivered by the Hon'ble Supreme Court in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.*, reported in (2013) 10 SCC 324, he argues that in cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee and there is no justification to give premium to the employer of its wrong doing by relieving it of the burden to pay to the employee his dues in the form of full back wages. Considering the principles enunciated in *Deepali Gundu Surwase (supra)*, the Hon'ble Supreme Court in the case of *Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed and Ors.*, reported in (2019) 17 SCC 184 issued order towards payment of back wages.

5. Mr. Gupta further submits that the learned Tribunal erred in law in granting weightage to long pendency of the OA preferred by the petitioner from the year 1995 till 2002 while considering the petitioner's claim towards back wages moreso when such delay was not attributable to the petitioner

and when in the earlier round of litigation while relegating the issue for consideration to the competent authority, the learned Tribunal in the order dated 27.11.2015 did not specify such rider. It would be explicit from the sequence of facts that the petitioner did not adopt any dilatory tactics. The order of re-enquiry and the consequential order of dismissal on 02.08.1994 were challenged contemporaneously in an original application. In view thereof, the respondents could not have withheld the back wages on a purported plea of '*no work no pay*'. In support of such contention reliance has been placed upon the judgment delivered by the Hon'ble Supreme Court in the case of *Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited*, reported in *AIR 2016 Supreme Court 157* and a judgment delivered by a co-ordinate Bench of this Court in the case of *Punjab National Bank versus Avik Kumar Sinharay and Others*.

6. Mr. Bajpayee, learned advocate appearing for the respondents submits that the Hon'ble Court in the earlier writ petition being WPCT 361 of 2003 directed the learned Tribunal by an order dated 27.11.2015 to consider the petitioner's claim for back wages in accordance with the judgment of the Hon'ble Supreme Court delivered in the case of *Commissioner, Karnataka (supra)*. In the said order dated 27.11.2015, the learned Tribunal arrived at a finding that it was imperative to ascertain as to whether the petitioner '*was willing to work but was illegally and unlawfully prevented from working*'. It would be explicit from the order thereafter passed by the competent authority on 15.06.2018 that the petitioner miserably failed to establish that he was willing to work. In view thereof, the petitioner's prayer was rightly

refused and there is no infirmity in the order impugned. Reliance has been placed upon a judgment delivered in the case of *Union Territory, Chandigarh versus Brijmohan Kaur*, reported in (2007) 11 SCC 488.

7. Mr. Bajpayee argues that the petitioner's entry into service was on the rudiments of a fake certificate. Such fact renders his very appointment to be void *ab initio*. The gravity of the charge, the nature of misconduct disentitles the petitioner to back wages moreso when the petitioner was in a position to maintain his family during the period from his dismissal till reinstatement since his wife was also employed under the railways during the said period.

8. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

9. It is no longer *res-integra* that direction towards payment of back wages is a discretionary power which has to be exercised by a Court keeping in mind the facts in its entirety and neither a straight jacket formula nor a rule of universal application can be laid down in such cases. It is well settled that reinstatement and payment of back wages are two independent issues and order of reinstatement does not mean that the petitioner would automatically become entitled to back wages. The disbursement of back wages is dependent upon the facts and circumstances of the case. There can be no precise formula nor any '*cast iron rule*' for grant of back wages.

10. A perusal of the order dated 18.12.2012 passed in WPCT 361 of 2003 would reveal that the order of re-enquiry and the order of dismissal

were set aside primarily on the ground that the DA instead of remitting the matter to the earlier EO appointed a different EO. Neither the gravity of the charge nor the materials on the basis of which the respondents alleged that the petitioner had practiced fraud were scrutinized. In the order dated 27.11.2015 passed in OA 304 of 1995, the learned Tribunal observed *inter alia* that it was imperative to ascertain whether the petitioner was willing to work. The said parameter allegedly could not be established by the petitioner in course of hearing before the competent authority though in the pleadings, the petitioner had specifically averred that during the period from the date of dismissal till reinstatement he was not employed anywhere else. However, on the other hand, the fact that the respondents did not prefer any appeal against the order dated 18.12.2012 passed in WPCT 361 of 2003 cannot be brushed aside and the issues involved in the same cannot be reinvigorated. The petitioner after reinstatement in the year 2013 had already retired from his services on 30.11.2018 and it also cannot be argued that the petitioner's family was not in a position to survive during the period from the date of dismissal till reinstatement since admittedly the petitioner's wife was employed under the railways. In the said conspectus, the learned Tribunal ought not to have totally denied back wages to the petitioner. In our opinion, a balance would be maintained through issuance of a direction upon the respondents to disburse 50% of the back wages.

11. Accordingly, the order impugned is modified and the writ petition is disposed directing the respondents to disburse 50% of the back wages to the petitioner pertaining to the period from the date of dismissal, i.e.,

02.08.1994 till the date of reinstatement, i.e., 18.03.2013, within a period of four weeks from the date communication of this order.

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

13. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)