

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 315 OF 2013
Ashok Kumar Gope
-Versus-
Union of India & Ors.

With
WPCT 316 OF 2013
Prosanjit Das
-Versus-
Union of India & Ors.

With
WPCT 317 OF 2013
Indrajeet Mahato @ Indrajit Mahato
-Versus-
Union of India & Ors.

With
WPCT 323 OF 2013
Abinash Mahato @ Abinash Chandra Mahato
-Versus-
Union of India & Ors.

With
WPCT 324 OF 2013
Jagadish Gope
-Versus-
Union of India & Ors.

With

WPCT 325 OF 2013
Dhananjay Mahato
-Versus-
Union of India & Ors.

With
WPCT 327 OF 2013
Shashi Kumar Nag
-Versus-
Union of India & Ors.

With
WPCT 328 OF 2013
Bhubaneswar Mahato @ Bhubneswar Mahato
-Versus-
Union of India & Ors.

For the Petitioner(s) : *Ms. Malabika Saha,*
[In all the matters] *Ms. Aphiha Khan.*

For the UoI/Respondents : *Mr. Sauvik Nandy,*
[In all the matters] *Mr. Pradyat Saha.*

Hearing is concluded on : *15th January, 2025.*

Judgment On : **22nd January, 2025**

Tapabrata Chakraborty, J.

1. Eleven persons preferred separate original applications challenging the disciplinary proceedings and the orders passed in the same. As identical

points of fact and law were involved in the said original applications, the same were heard analogously. The original application (in short, OA) being OA 1431 of 2010 preferred by Jaydev Prasad Mondal was heard as the leading case and all the OAs were dismissed by an order dated 26th September, 2022. Challenging the said order eleven separate writ petitions have been preferred and the above eight writ petitions have been heard analogously.

2. This case has a chequered history. The writ petitioners were initially engaged as daily rated casual labour on 27.02.1989 in the unit of PW1 Manoharpur but after 47 days, their services were terminated due to expiry of sanction on 14.04.1989. They were again appointed as fresh appointees on 25.05.1989 and terminated on 23.07.1990 alleging that they had been obtained appointment on the basis of forged and fake certificates. Challenging the said orders of termination, the petitioners along with others raised an industrial dispute which was referred before the learned Central Government Industrial Tribunal No. I, Dhanbad (hereinafter referred to as the CGIT) and was registered as reference case no.87 of 1991. Upon contested hearing, an award was delivered on 18th December, 1992 directing the management to reinstate the petitioners with effect from their respective dates of termination and to pay them full back wages. The said order was duly complied with by the Railways. Surprisingly thereafter, disciplinary proceedings were initiated against the petitioners *vide* charge-sheet dated 11th August, 1994. An enquiry was conducted and the petitioners were again dismissed by respective orders dated 30th December, 2002. The said

order passed by the disciplinary authority (in short DA) was challenged by the petitioners before the learned Tribunal and by a composite order dated 24th January, 2003, the dismissal orders were quashed and the DA was directed to consider the matter afresh on the basis of the materials already on record and to pass a reasoned order. Aggrieved by the said order, the respondents preferred writ petitions but the same were not entertained. The DA thereafter passed an order on 23rd July, 2007 imposing a punishment from dismissal of service. Aggrieved by the said order statutory appeals were preferred but the same were also dismissed by an order dated 2nd February, 2010. Challenging the said orders the respective writ petitioners preferred separate original applications before the learned Tribunal. The orders passed in the same have been impugned by filing the present writ petitions.

3. Ms. Saha, learned advocate appearing for the petitioners submits that the petitioners were terminated by an order dated 21st July, 1990 on the basis of a vigilance report alleging that they had been appointed on 25.05.89 on the basis of fake certificates. Upon contested hearing, the CGIT set aside and quashed the orders of termination. The respondents thereafter reinstated the petitioners with back wages. In view thereof, the respondents had no jurisdiction to initiate a fresh proceeding *vide* charge sheet date 11.08.1994 on the basis of the self-same allegation/charge.

4. She argues that the appointment of the petitioners on 25.05.1989 was a fresh recruitment from open market. Such appointment was not based upon any certification of prior engagement. Such fresh recruitment was illegally construed to be a re-engagement. The factum of appointment of

the petitioners in the year 1989 in the unit of PW-1 Manoharpur was admitted by the prosecution witness, namely, Rama murthy. Mr. D.K. Ghosh, who worked in PW-1(C)/ BNDM, issued certificates pertaining to the petitioners' earlier engagement but he was not examined by the prosecution and that as such the finding that the petitioners managed forged and fake certificate for getting appointment on 27.02.1989 is based on no evidence.

5. She further argues that the final order of the DA dated 13th December, 2002 was set aside in the earlier round of litigation and the DA was directed to finally consider the materials already available in the file and pass a reasoned and speaking order but the petitioners' claim was again rejected mechanically. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmities warrant interference of this Court.

6. She submits that in paragraphs 16 to 22 of the order impugned the learned Tribunal had paraphrased different orders passed by the Hon'ble Supreme Court and dismissed the OAs abruptly by a cryptic order. The petitioners' challenge against the disciplinary proceeding was turned down without appropriate reasons. In view thereof, the order impugned is not sustainable in law. In support of the arguments reliance has been placed upon the judgments delivered in the cases of *B.C.Chaturvedi vs. Union of India and Ors*, reported in (1995) 6 SCC 749, *State of Bikaner vs. Nemi Chand Nalwaya*, reported in (2011) 4 SCC 584, *Managing Director, ECIL, Hyderabad vs. B.Karunakar*, reported in (1993) 4 SCC 727 and an

unreported judgment delivered by the Hon'ble High Court of Jharkhand at Ranchi in the case of *O.Madhava Rao vs. Union of India and Ors.*

7. Mr. Nandy, learned advocate appearing for the respondents denies and disputes the contention of the petitioners and submits that there is no specific challenge to the charge sheet, the inquiry report, the order of the DA in the OAs and the same were not maintainable in view of an adequate and efficacious remedy available to the petitioner under Rule 25 of the 1966 Rules.

8. He argues that it is not a case that the petitioners had been found guilty on the basis of mere surmises. Their guilt stands established through the specific findings in the report of the enquiry officer as well as in the order of the DA. It is also not a case that the petitioners were not granted adequate opportunity to defend themselves. In course of enquiry they were furnished all the documents upon which reliance was placed and was also allowed to cross-examine the prosecution witnesses and in the said conspectus the argument of violation of natural justice is not sustainable.

9. He argues that that the petitioners' appointment on 25.05.1989 was not on the basis of any fresh recruitment from open market. They were re-engaged on the basis of the certificates of past engagement. In a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the DA. In exercise of the power of judicial review, Court cannot reappreciate the evidence and come to any different or independent finding on the evidence already on record. It is also not a case that the authorities have acted *mala fide* or in an arbitrary or

unreasonable manner and as such question of interference in the present writ petition does not occasion.

10. Drawing our attention to the orders impugned, Mr. Nandy submits that the same do not prejudice the petitioners' claim in any manner inasmuch as on their miscellaneous applications filed in connection with the original applications the respondents were directed to pay the subsistence allowances and such payment has already been made and as such nothing remains to be adjudicated upon in the present writ petition.

11. He contends that the orders of termination passed in the year 1990 were orders of termination simpliciter. The setting aside of the said orders of termination did not in any manner debar the respondents from initiating fresh disciplinary proceedings.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record.

13. The CGIT while considering the challenge against the orders of termination observed *inter alia* that '*the notice of termination does not disclose any ground for dispensing with the service of the concerned workmen. But the pleading of the management discloses that the services of the concerned workmen were dispensed with as they produced fake casual labour certificates at the time of their engagement. The notice of termination indicates that termination of service of the concerned workmen was termination simpliciter*'. The termination that was set aside by CGIT Tribunal was a termination simpliciter and that as such there was no bar to initiate

fresh disciplinary proceeding and it was open to the respondents to scrutinize the certificates on the rudiments of which the petitioners were granted such appointments on and from 27.02.1989. The order did not scuttle the right of the respondents to initiate the disciplinary proceedings.

14. The petitioners have not been able to dislodge the argument of Mr. Nandy that the appointment on 25.05.1989 was in fact a re-engagement and not a fresh appointment by an independent selection process. Sanction towards 47 days engagement expired on 14.04.1989 followed by re-engagement on 25.05.1989. In view of the proximity of the two selection processes it cannot be accepted that an Ex-Casual labour certificate was not a requirement for the appointment on 25.05.1989 moreso when in course of enquiry the petitioners have admitted that at the time of their appointment they have submitted '*Ex-Casual labour certificate*' for the period of service rendered by them in PWI(C)/ BNDM during the period from 24.05.1983 till 23.06.1984. In course of cross-examination the petitioners upon perusal of the muster sheet of PWI(C)/ BNDM for the said period from 24.05.1983 till 23.06.1984 have admitted that their names were not there. Though it was the specific case of the petitioners that one Mr. D.K. Ghosh had issued certificates in their favour but when the same were sent for verification in the Unit of PWI(C)/ BNDM it was endorsed that '*no such person as mentioned in the certificate worked in this Unit since opening of this Unit*'.

15. It had been the categoric case of the petitioners that their appointment to the post of Gangman on 25.05.1989 was on the basis of a fresh recruitment from the open market as would be explicit from the

contents of paragraph 4B of the writ petition. Disputing such fact the respondents in the affidavit-in-opposition stated, *inter alia*, that ‘the applicant was engaged as daily rated casual labour on and from 27.02.1989 in the unit of PWI/MOU as per DRM (Engg) CKP’s Office letter No.WA/TLR/Engg dt 27.01.89 on the strength of Ex-Casual labour certificate issued by PWI construction BNNDM unit and worked upto 14.04.89. i.e. 47 days. On expiry of the sanction, their services were dispensed with w.e.f. 15.04.1989 and thereafter they were re-engaged w.e.f. 25.05.1989 on receipt of sanction. That the Divisional Railway Manager (Engg), South Eastern Railway, Chakradharpur under his office letter No. WA/TLR/Engg dated 27.01.1989 issued notification for engagement of 90 casual labour on daily rated basis under PWI/MOU for Antistalling drive for a period of two months from the date of their engagement subject to no fresh faces are engaged. It was further stated that ‘Accordingly criteria were laid down that Ex-Casual labour of any and/or project of the railway will be appointed and notice was displayed in the notice board of Permanent Way Inspector/MOU’s (PWI/MOU) Unit. The said applicant submitted the Ex-casual labour certificate issued from from Permanent Way Inspector, (construction) /Bondamunda (PW1/Con/BNNDM) unit which indicates that the said applicants had worked in the Unit of PWI/C/BNNDM from 24.03.1983 to 23.01.1984. The applicant was engaged as daily rated casual labour on and from 27.02.89 in the unit PW1/MOU on the strength of fake Ex-casual labour certificate issued by PW1/Con/BNNDN’.

16. In the said sequence of facts, the argument of Ms. Saha that the petitioners' appointment on 25.05.1989 was on the basis of fresh recruitment from open market is not acceptable. Records support the contention of the respondents that the petitioners were engaged for 47 days from 27.02.1989 to 14.04.1989 and due to lack of sanction their engagement could not be continued and as such, steps were taken to re-engage the persons on proof of the fact that they had rendered service as casual labour prior to their engagement in the month of February, 1989. Such fact also stands fortified when the petitioners themselves had stated before the enquiry officer that such Ex-Casual labour certificate was a requirement for engagement on 25.05.1989.

17. It would be explicit from the order dated 23.07.2007 that before the DA the petitioners urged, *inter alia*, that their 'appointment on 20.05.89 was fresh i.e. without any authority of any Ex-casual labour certificate'. Such argument was rightly discounted observing that 'during enquiry on 22-12-97 in reply to QS No. 2 & 3 you had categorically mentioned that you could know from reliable source about the appointment of casual labour in the unit of PWI/MOU and first preference was given to the Ex-Casual labour of PWI/MOU and then other units of Ex-Casual labour'.

18. All the issues urged on behalf of the petitioners before the DA were considered and findings were returned. The petitioners were granted due opportunity of hearing before the enquiry officer. The first order passed by DA on 21.10.2002 was set aside by the learned Tribunal as the same was a cryptic one and the matter was relegated for a fresh decision. Accordingly,

the petitioners' claim was considered afresh and the DA passed the final order 23.02.2007. The said order was also tested in a statutory appeal and in the said conspectus, it cannot be argued on behalf of the petitioners that there had been any violation of the principles of natural justice or that the findings arrived at by the DA and the appellate authority were based on extraneous considerations.

19. 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 by the petitioners but the same are distinguishable on facts.

20. It is well settled that what can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. The scope of judicial review is very narrow and limited and such jurisdiction should be exercised sparingly and only in appropriate cases where the judicial conscience of the Court dictates. The impugned order does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

21. For the reasons discussed above, we are not inclined to interfere with the impugned order of dismissal of the OAs and the writ petitions are, accordingly, dismissed.

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

23. 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.)