

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPEAL SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Prasenjit Biswas

WPCT 1 of 2023

Union of India & Ors.

Versus

Pritam Biswas

For the Petitioners : *Mr. Sudipto Kumar Mazumdar, Ld. DSGI,*
Mr. Ajoy Kumar Singhania.

For the Respondent : *Mr. Kalyan Sarkar,*
Mr. Satyam Sarkar.

Hearing concluded on : *17th February, 2025.*

Judgment on : **20th February, 2025.**

Tapabrata Chakraborty, J.

1. The above writ petition has been preferred by the Union of India and its functionaries challenging the order passed by the learned Tribunal on 27.06.2022 in the original application (in short, OA), being OA 119 of 2017.

2. The learned Tribunal by the order impugned in the present writ petition has held that the Pritam Biswas (hereinafter referred to as Pritam) should be deemed to have completed three years of service as on the date of the next termination, i.e., on 20.01.2017, counting the period of service from 28.10.2013, i.e., the date on which he joined the service. In other words, the learned Tribunal was of the opinion that Pritam's service on and from the date of his engagement i.e., on 28.10.2013 till the date of termination on 20.01.2017 should be construed as continuous service and that in view thereof, the order of termination dated 20.01.2017 could not have been passed on the basis of Rule 8(1) of the Gramin Dak Sevak (Conduct and Service) Rules, 2011 (hereinafter referred to as 2011 Rules) and accordingly, the learned Tribunal quashed the said order of termination dated 20.01.2017.

3. Shorn of unnecessary details, the facts are that Pritam participated in a selection process initiated by an open advertisement dated 28.06.2013. Thereafter he was issued a provisional appointment letter-cum-offer of appointment dated 14.08.2013 and accordingly he joined on 28.10.2013. Subsequent thereto, Pritam's engagement was terminated by an order dated 17.05.2016. Challenging the same Pritam preferred OA 773 of 2016. The same

along with other matters were heard and disposed of by a common order dated 02.09.2016 setting aside the order of termination dated 16.05.2016 observing *inter alia* that it would be open to the respondents to proceed to disengage the applicant by adopting the procedure prescribed under the 2011 Rules. Pursuant to the said order Pritam was reinstated and show cause notice was issued on 13.12.2016 and upon considering the reply furnished, a fresh termination order was passed on 20.01.2017. Challenging the same, Pritam approached the learned Tribunal but his application was dismissed by the learned Tribunal on 03.09.2019. Aggrieved thereby, Pritam preferred a writ petition being WPCT 1 of 2019. The same was disposed of on 20.02.2020 setting aside the order impugned and the matter was sent back on remand to the learned Tribunal directing consideration of the issue as to whether '*the period of engagement commencing from date of set aside termination (17th May, 2016) to second termination on 20.1.2017, would be period of new service? If it is not, inevitable conclusion is that petitioner is deemed to have been in continuous service*'. Upon such remand the learned Tribunal passed the order impugned in the present writ petition. As Pritam's application was heard analogously with other similar matters, the dates of engagement and termination at some places differ.

4. The sole contentious issue which thus arises for consideration is as to whether the period of engagement of Pritam commencing from the date on which the first order of termination (17.05.2016) was set aside till the date the

second order of termination was passed (20.01.2017) would be a period of new service.

5. Mr. Mazumdar, learned Deputy Solicitor General appearing for the petitioners argues that the order of termination dated 17.05.2016 was passed pursuant to a vigilance enquiry in which serious irregularities and illegalities were noted including misappropriation of money and large-scale corruption. The entire selection process stood maligned due to corrupt practices. In view thereof, the very engagement of Pritam was a nullity and upon setting aside the order of termination, the learned Tribunal did not grant any fresh lease of life to Pritam inasmuch as liberty was granted to the petitioners to proceed to disengage them. The termination order was set aside only on the limited ground of denial of an opportunity of hearing and as such the period of service rendered till such order of termination was passed cannot be counted as actual service.

6. He further argues that in the order of the learned Tribunal dated 02.09.2016 there is no observation and or direction to reinstate Pritam and in the absence of such direction the period of engagement prior to issuance of the order of termination dated 17.05.2016 cannot be counted as actual service rendered.

7. According to Mr. Mazumdar, the learned Tribunal by the order impugned erred in law in directing reinstatement. Such direction suffers from a jurisdictional error. The initial appointment was illegal and such illegality

continues and the length of such illegality cannot confer any right to appointment. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court. In support of the arguments advanced reliance has been placed upon an unreported judgment delivered in the case of *Amrit Yadav versus State of Jharkhand & Ors.*. Reliance has also been placed upon the judgments delivered in the cases of *Himachal Pradesh State Electricity Board Ltd. Versus Mahesh Dahiya*, reported in (2017) 1 SCC 768, *State of Bihar and Ors. Versus Chandreshwar Pathak*, reported in (2014) 13 SCC 232, *Government of Andhra Pradesh and Ors. Versus K. Brahmanandam and Ors.*, reported in (2008) 5 SCC 241, *Deputy Commissioner, Kendriya Vidyalaya Sangathan and Ors. Versus J. Hussain*, reported in (2013) 10 SCC 106, *Union of India and Ors. Versus P. Gunasekaran*, reported in (2015) 2 SCC 610, *Union of India and Ors. Versus Ex Lac Nallam Shiva*, reported in (2017) 15 SCC 270, *Regional Manager, Rajasthan State Road Transport Corporation Versus Sohan Lal*, reported in (2004) 8 SCC 218 and *Deputy General Manager (Appellate Authority) and Ors. Versus Ajai Kumar Srivastava*, reported in (2021) 2 SCC 612.

8. Mr. Sarkar, learned advocate appearing for Pritam denies and disputes the contention of Mr. Mazumdar and submits that the petitioners did not challenge the order of the learned Tribunal dated 02.09.2016 and complying with the said order Pritam was reinstated and paid salaries and that as such it cannot be argued that the service rendered prior to such termination

cannot be counted as actual service rendered. The said order of termination having been set aside the petitioners cannot deny continuity of service.

9. He argues that a perusal of the two orders of termination would reveal that the contents of both the orders are same. Having complied with the order of the learned Tribunal dated 02.09.2016 and having reinstated Pritam, the petitioners could not have passed the second order of termination again under Rule 8 of the 2011 Rules. The said rule could have been applied only had the service of Pritam was of less than three years. In view thereof, the learned Tribunal rightly quashed the second order of termination.

10. The first argument of Mr. Mazumdar that as there was no direction in the order dated 02.09.2016 to reinstate Pritam, the period of service rendered by him till the issuance of the order of termination on 17.05.2016 and again till the issuance of the second order of termination on 20.01.2017 cannot be treated as continuous service, is not acceptable to this Court. The learned Tribunal in our opinion had rightly discounted such argument and had come to a correct conclusion that the second order of termination on 20.01.2017 could not have been passed under Rule 8(1) of the 2011 Rules since by the time the said order was passed Pritam had rendered more than three years of service and since the earlier order of the learned Tribunal dated 02.09.2016 setting aside the earlier order of termination was not challenged by the petitioners herein.

11. The second argument of Mr. Mazumdar that the learned Tribunal by the impugned order could not have directed reinstatement is also not acceptable to this Court. Such argument cannot be advanced at this stage inasmuch as the Hon'ble High Court remanded the matters to the learned Tribunal only on the limited ground as to whether the period of engagement commencing from date of set aside termination (17th May, 2016) to second termination on 20.01.2017, would be period of new service. The said order of remand was also not challenged by the petitioners. As the order of initial termination was set aside, there was no cessation of service.

12. 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 the observations made in the facts of a particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases. There is no dispute as regards the proposition of law laid down in the judgments upon which reliance has been placed by the petitioners, however, the same are distinguishable on facts. In the case of *Amrit Yadav (supra)* the selection process was quashed as the same was violative of Articles 14 and 16 of the Constitution of India. In the case of *Himachal Pradesh State Electricity Board Ltd. (supra)* imposition of a penalty of compulsory retirement was questioned. In the case of *State of Bihar and Ors. (supra)* a backdoor appointment without advertisement was held to be unsustainable. In the case

of *Government of Andhra Pradesh and Ors. (supra)* the Court held that mandamus cannot be issued for regularization of services of an employee. In the cases of *Deputy Commissioner, Kendriya Vidyalaya Sangthan and Ors. (supra)*, *Ex Lac Nallam Shiva (supra)*, *Sohan Lal (supra)* and *Ajai Kumar Srivastava (supra)* the scope of judicial review in disciplinary proceeding and the proportionality of punishment imposed was discussed. In the case of *P. Gunasekaran (supra)* it was held that only in cases of perversity, a disciplinary proceeding can be interfered with.

13. The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned, warranting interference of this Court.

14. The writ petition, being WPCT 1 of 2023 is, accordingly, dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Prasenjit Biswas, J.)

(Tapabrata Chakraborty, J.)