

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty

&

The Hon'ble Justice Partha Sarathi Chatterjee

APOT 384 of 2024
IA NO. GA 1 of 2024
WITH
RVWO 15 of 2024
WPO 37 of 2107

West Bengal Transport Corporation Limited and Anr.
Versus
Suvra Kumar Dey and Ors.

<i>For the Appellants</i>	:	<i>Mr. Mainak Ganguly, Adv., Mr. Niladri Bhattacharjee, Adv., Ms. Debalina Chattaraj, Adv..</i>
<i>For the State</i>	:	<i>Mr. Bhaskar Prasad Vaisya, Adv., Mr. Nilay Baran Mondal, Adv..</i>
<i>For the respondent no.1 [In person]</i>	:	<i>Mr. Suvra Kumar Dey.</i>
<i>Hearing is concluded on</i>	:	<i>7th January, 2025.</i>
Judgment On	:	14th January, 2025.

Tapabrata Chakraborty, J.

1. The present appeal has been preferred by the West Bengal Transport Corporation Limited (hereinafter referred to as WBTCCL) and its Managing Director (hereinafter referred to as MD) challenging the order

dated 16.01.2024 passed by the learned single Judge in the writ petition being WPO 37 of 2017 preferred by Suvra Kumar Dey (hereinafter referred to as Suvra) and the order dated 01.10.2024 passed by the learned single Judge in the review petition being RVWO/15/2024 preferred by the appellants herein.

2. This case has a chequered history. Suvra while working in the post of a Clerk in WBTCL submitted a representation as regards his promotion to the post of Superintendent. As the same was not considered, he preferred a writ petition being WP 1788 of 2008 which was disposed of by an order dated 13.06.2011 directing the MD to consider his grievance. Pursuant thereto, the MD passed an order dated 22.06.2011 directing *inter alia* that Suvra will be deemed to have been promoted to the post of Superintendent - B with effect from 01.11.2006 and to the post of Superintendent -A with effect from 01.11.2007 with notional benefits and the actual effect of the benefit of promotion will be allowed with effect from 01.07.2011. Suvra thereafter submitted a representation dated 23.06.2011 requesting the MD to keep the said order in abeyance as he would be approaching the Hon'ble High Court for redressal. Upon receipt of the said representation, the MD *vide* memo dated 24.06.2011 recalled the entire order dated 22.06.2011. Thereafter, Suvra submitted two representations on 01.08.2011 and 02.08.2011 informing that he would accept the order of promotion without prejudice to his rights and contentions. However, the said representations were rejected by an order dated 02.09.2011. Aggrieved thereby, Suvra preferred a writ petition being WP 866 of 2011. Upon contested hearing, the

same was disposed of by an order dated 09.10.2013 setting aside the order dated 02.09.2011 and directing that Suvra shall continue to serve in the post of Superintendent Group-A and shall draw salary and other benefits for the said post in terms of the earlier order dated 22.06.2011. By the said order, the MD was also directed to consider the question of grant of full cash benefit to Suvra independently. As the said order was not being complied with Suvra was constrained to prefer a contempt application. Ultimately thereafter an order was passed by the MD on 16.12.2016 observing that Suvra is not entitled to any cash benefit for the period from 01.11.2006 to 30.06.2011 as he did not work during the said period. Aggrieved by the said order, Suvra again preferred a writ petition being WPO No. 37 of 2017. The same upon contested herein was disposed of by an order dated 16.01.2024 setting aside the order dated 16.12.2016 and directing the appellant to release the differential arrear amount of pay and emoluments commensurate to the post of Superintendent-B for the period from 01.11.2006 to 31.10.2007 and to the post of Superintendent-A from 01.11.2007. Aggrieved by the said order the appellants preferred a review application and the same upon contested hearing was dismissed by an order dated 01.10.2024 and the contempt application filed by Suvra was directed to be listed. Subsequent thereto, the present appeal has been preferred.

3. Mr. Ganguly, learned advocate appearing for the appellant submits that Suvra had practiced fraud and had obtained an order suppressing material facts and the Hon'ble Court was misled to pass the order impugned. Fraud is an anathema to judicial review proceedings. Suvra was not ready

and willing to face the examination stipulated for such promotion. A perusal of the initial representation submitted by Suvra for promotion was not a representation to allow him to participate in the examination for promotion. He has miserably failed to establish that he wanted to compete in the promotion process. He in fact chose to confuse the issues through a series of litigations ostensibly to shy off from the examination. The Hon'ble Court was thus misled and the respondents were directed to consider his claim for promotion. Consequently, the MD was also misled and mistakenly he passed an order granting promotion to Suvra. In support of such contention reliance has been placed upon the judgment delivered in the case of *Bharat Singh and Ors. Vs. State of Haryana and Ors.*, reported in (1988) 4 SCC 534.

4. He argues that the learned single Judge erred in law in directing the appellants to pay actual benefits of promotion being oblivious of the fact that Suvra did not render actual service in the promotional posts with effect from the dates on which he was granted promotion. In such circumstances, the principle of '*no work and no pay*' would be applicable. Suvra also could not demonstrate that he was willing to render service but was illegally prevented. Such arguments, as advanced, were glossed over by the learned single Judge and no finding was returned on the same. Such infirmity warrants interference of this Court.

5. Suvra, appearing in person denies and disputes the contention of the appellants and submits that fraud had in fact been practiced by the appellants. In the writ petition being WP No. 866 of 2011 the appellants were directed to grant an opportunity of hearing. Accordingly, the MD by a letter

dated 15.06.2015 intimated that the hearing would be held on 19.06.20215 and accordingly Suvra attended the office of the MD on 19.06.2015, as would be explicit from the document annexed at page 138 of the stay application. Suvra was heard by the MD on 19.06.2015 but when the order was communicated Suvra was surprised to note that the order passed was dated 15.06.2015. Prior to grant of opportunity of hearing, MD had made up his mind to reject his claim. Such act is *ex facie* vindictive and *mala fide*.

6. Refuting the arguments of Mr. Ganguly that Suvra cannot claim actual benefits on the principle of '*no work no pay*', he submits, drawing the attention of this Court to the documents annexed at pages 194 to 199 of the stay application, that due to administrative convenience and interest of the company he was given the responsibility and duty to deal with all insolvency matters and also to deal MACC cases similar to the responsibility of the Office Superintendent.

7. We have heard the learned advocates appearing for the respective parties and considered the materials on record. The appeal has been preferred challenging the order dated 16.01.2024 passed in WPO 37 of 2017 and the order dated 01.10.2024 passed in RVWO/15/2024. However, the order dismissing the review application is not appealable.

8. The argument that Suvra had practiced fraud was urged by the appellants for the first time in the review petition and that too without appropriate pleadings and as such the learned single Judge rightly discounted such allegations moreso when, fraud in civil or criminal proceedings need to be established beyond reasonable doubt.

9. The documents annexed at pages at pages 194 to 199 of the stay application reveal that Suvra was asked to discharge the duties of the post of Superintendent. The veracity of the said documents has also not been disputed by the respondents.

10. The argument of Mr. Ganguly, that Suvra had never applied for promotion and that no such application was on record is also not acceptable since the MD himself in the first order dated 22.06.2011 arrived at a finding that *'the candidature of Suvra was not considered at all for the lapses of the office though he had very much applied and that he was deprived and that his juniors were made to rise above him'*. The writ petition being WPO No. 37 of 2017 was heard upon exchange of affidavits wherein the respondents/appellants herein in the affidavit-in-opposition categorically stated in paragraph 6 that *'From the records available before the respondent corporation during the hearing conducted on 13th June, 2011 it was seen that though the application of the petitioner was received in the Nonapukur office on 9th June, 2006 but unfortunately it could not be traced anywhere in the office thereafter'*. The said writ petition was heard and the Hon'ble Court also returned a finding that *'It is also not open at this stage to the respondent no. 4 to raise the issue of clearing of competitive examination by the petitioner. In neither of the two orders dated 22nd June, 2011 and 2nd September, 2011, the question of the petitioner not having cleared the competitive examination was raised. Since the Managing Director of the company himself found in the order dated 22nd June, 2011, that there was lapse on the part of the company in not giving promotion to the petitioner. I do not think that question can be revived in*

this proceeding by raising this point for the first time in affidavit-in-opposition. The respondents cannot be permitted to improve their case in their affidavit on a point which was never raised by them earlier’.

11. In the said conspectus, the appellants cannot reinvigorate a class of claims which has been shut out permanently. Accordingly, no interference is called for in the present appeal.

12. The appeal and the connected application are, accordingly, dismissed.

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

Urgent photostat certified copy of this judgment, if applied for, be handed over to the parties on compliance of necessary formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)