IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Md. Shabbar Rashidi

WPA 24770 of 2024

Mukul Kumar Chaudhury

Vs.

The Chairman, Coal India Limited And Ors.

For the petitioner	:	Mr. Abhimanyu Shandilya, Adv. Mr. Subhendu Sengupta, Adv. Ms. Dhanasree Biswas, Adv.
For the respondent nos. 1 & 2	:	Mr. Pradip Kumar Dutta, Sr. Adv. Mr. S. M. Obaidullah, Adv. Mr. Nikhil Kr. Roy, Adv.
For the respondent nos. 3 & 4	:	Mr. Kallol Ghuha Thakurta, Adv. Mr. Dipankar Dutta, Adv.
Heard on	:	05.10.2026
Judgment on	:	05.10.2026
Uploaded on	:	06.10.2026

MD. SHABBAR RASHIDI, J.:-

1. The writ petition has been filed by the petitioner seeking the following reliefs:-

> *"a) A Writ of Mandamus directing the respondent nos. 2 and 3 to take steps for immediate revision/re-fixation of legitimate pension of the petitioner by merging the pensionable service of the petitioner in respect of CMPF nos. BKR/32/1876 and MGT/4/820;*

b) A Writ in of Mandamus directing the respondent no. 3 to take steps for payment of arrears of legitimate pension with interest after adjusting the payments already made to the petitioner;

c) A Writ of Certiorari directing the respondents to produce all the relevant documents of the case so that conscionable justice to be rendered to the petitioner;

d) Rule NISI in terms of prayers (a) and (b) above and make the Rule absolute if no sufficient causes are shown;

e) To pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case."

2. It is submitted by learned advocate for the petitioner that the authorities have illegally forfeited the pensionable service of the petitioner which he served prior to his removal from service. The said period was not taken into consideration while fixing the pension of the petitioner.

3. Learned advocate for the petitioner further submits that the petitioner has been making contributions towards his pension as well as the provident fund in the second tranche of his service. Nevertheless, the contributions so made and service rendered by the petitioner after his retirement were not taken into consideration at the time of calculation of his pension.

4. Learned advocate for the petitioner further submits that there was no provision in the extant service rules applicable to the

petitioner which provides that closure of the account of provident fund would automatically result in the closure of the pension account. He also submits that the authorities acted in an arbitrary, whimsical and unreasonable manner in denying the re-fixed/revised pension of the petitioner. Such denial on the part of the authorities is contrary to the provisions of Articles 14 and 21 of the Constitution of India.

5. Learned advocate for the petitioner also submits that the employer authorities have ignored and violated the order passed by the High Court as well as the Hon'ble Supreme Court in calculating the pension of the petitioner.

6. On the other hand, learned Senior Advocate appearing for respondent nos. 1 and 2 submits that in this case, the petitioner was removed from service and subsequently he was reinstated into service in terms of the orders passed by the Hon'ble Supreme Court. The Hon'ble Supreme Court had directed the period when the petitioner was not serving in the Coal Company to be treated as dies-non.

7. Learned Senior Advocate for respondent nos. 1 and 2 also submits that the said period of dies-non cannot be taken into consideration for the purpose of calculating the pensionable service of the petitioner. In support of his contention, learned Senior

Advocate for respondent nos. 1 and 2 relied upon ***2007 SCC OnLine MP 259 (Mahesh Kumar Shrivastava Vs. State of M.P.)*** and ***2005 SCC OnLine MP 676 (Battilal Vs. Union of India and others)***.

8. In ***Mahesh Kumar Shrivastava*** (supra), the Madhya Pradesh High Court held as follows:-

> *"8. A Division Bench of this Court reported in Batiilal v. Union of India and Ors. (supra), has held as under with regard to dies non:*
> *The authority imposing the punishment can direct how the period when the employee was out of service shall be treated. When the authority directs that the period will be treated 'dies non', it means that continuity of service is maintained, but the period treated 'dies non' will not count for leave, salary, increment and pension.*
> *9. It is clear from the judgment of this Court that dies non means continuity of service but the period will not be counted for leave, salary, increment and pension. It means that due to the order of the dies non the pension of the employee will be reduced."*

9. In ***Battilal*** (supra), the Madhya Pradesh High Court held as follows:-

> *"The authority imposing the punishment can direct how the period when the employee was out of service shall be treated. When the Authority directs that the period will be treated 'dies-non', it means that continuity of service is maintained, but the period treated as 'dies-non' will not count for leave, salary, increment and pension. In fact, FR*

54 (1) casts such a duty on the authority. It provides that when a Government Servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review, the authority competent to order reinstatement shall consider and make a specific order-
(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
(b) whether or not the said period shall be treated as a period spent on duty."

10. The said judgment also held as follows:-

"The petitioner next contended that if the period between 2.7.1994 and 20.2.2003 was treated as dies-non, it would mean that he will not get any salary for the said period and the said period will also not be treated as qualifying service for purposes of pension, and that would cause hardship to him. The petitioner was earlier compulsorily retired. He should Count himself lucky that in spite of the charge of production of fake documents for claiming benefit of LTC being proved, the Tribunal was kind enough to direct lesser punishment than compulsory retirement resulting in reinstatement. The petitioner should not expect more."

11. Learned advocate for the respondent nos. 3 and 4 has submitted that they are ready and willing to own up to the decisions taken by respondent nos. 1 and 2 in respect of calculation of pension of the petitioner.

12. The petitioner joined Coal India Limited on September 24, 1982. Subsequently, he became a member of Coal Mines Provident Fund, was allotted with a provident fund account and has been contributing to such provident fund.

13. Subsequently, the petitioner was removed from service of Coal India Limited for misconduct on account of unauthorized absence on November 29, 2000. In pursuance thereof, the petitioner was paid in respect of provident fund. However, his pension was not settled.

14. Subsequently, the petitioner was reinstated into service in terms of an order passed by the Hon'ble Supreme Court on November 9, 2009.

15. The pension of the petitioner was released by issuance of a pension payment order for his services rendered prior to his removal on September 3, 2016. Ultimately, the petitioner superannuated from service upon attaining the age of superannuation on February 28, 2017. A revised pension payment order was issued in respect of the petitioner taking into account the pensionable service rendered by the petitioner after retirement, without taking into consideration the period of service rendered by the petitioner before his reinstatement.

16. The petitioner withdrew his entire amount of provident fund as well as pension without raising any objection.

17. From the materials on record, it transpires that the petitioner joined service of Coal India Limited on September 24, 1982 and he served until November 29, 2000. Thereafter, he was removed from service on account of misconduct. In a departmental proceeding he was found to be guilty of an unauthorized absence.

18. The petitioner challenged the order passed by the disciplinary authority which went up to the Hon'ble Supreme Court in Civil Appeal Nos. 5762 and 5763 of 2009. By its judgment and order passed on August 24, 2009, the Hon'ble Supreme Court was pleased to hold to be following:-

> *"26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in access to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of*

misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.

27. Consequently, both these appeals are allowed in part. The appellants shall reinstate Respondent No. 1 forthwith but he will not be entitled to any back wages from the date of his removal until reinstatement. Parties will bear their own costs."

19. Pursuant to the order passed by the Hon'ble Supreme Court on August 24, 2009 the petitioner was reinstated into service by an

order passed on October 28, 2009 by the Chairman-cum-Managing Director, Coal India Limited. Such order directed as under :

> *"NOW, therefore, pursuant to the judgement dated 24.8.2009 of the Hon'ble Supreme Court of India Shri Mukul Kumar Chaudhuri Ex- Manager (System), is hereby reinstated in his service of the Company with immediate effect. Shri Chaudhuri shall not be entitled for any back wages for the intervening period from the date of removal from service till the date of joining on reinstatement. The intervening period from the date of removal of his service until reinstatement of his service shall be treated as "Dies-non". Dies-non does not constitute break in service but only the days treated as dies non are not counted as duty for any purpose. Accordingly Shri Mukul Kumar Chaudhuri is directed to report for duties to the post of Manager (System), NEC, Assam on or before 10-11-2009."*

20. By the said order, the Chairman-cum-Managing Director of Coal India Limited directed that the petitioner will not be entitled for any back wages for the intervening period from the date of his removal from service till the date of joining of reinstatement. The said period was directed to be treated as dies-non.

21. After the reinstatement of the petitioner into service, the pension payment order for the past services of the petitioner was issued and the petitioner started taking pension on the basis of such pension payment order in addition to the salary for his second part of his service. Thereafter, the petitioner superannuated from

service on February 28, 2018. A revised pension payment order was issued in favour of the petitioner upon taking into consideration the period of service rendered by the petitioner after his reinstatement only.

22. The petitioner is aggrieved by such revised pension order. The revised pension order has been issued taking into consideration the period of service rendered by the petitioner only after his reinstatement into service. According to the petitioner, since the period of his absence of service was directed to be treated as dies-non, the said period may not have been taken into consideration for the purpose calculation of his pension but the authorities ought to have issued a revised single pension payment order taking into consideration the period of service rendered by the petitioner prior to his removal from service and that after his reinstatement, leaving aside the period directed to be treated as dies-non.

23. As evident, the petitioner entered into the service of Coal India Limited. He was removed from service on the ground of misconduct. He challenged the findings of the disciplinary authority which went to the Hon'ble Supreme Court and ultimately he was reinstated into service in terms of order passed by the Hon'ble Supreme Court. The service of the petitioner with the Coal India Limited was the one and only service. It cannot be bifurcated into two services. The

authorities issued separate pension payment orders for the period of service rendered prior to his removal and that after reinstatement. Since a specific order was passed by the authorities that the period of absence from service was to be treated as dies-non, the entire service period of the petitioner ought to have been taken into consideration for the purpose of calculation of the pensionable service, leaving aside the period directed to be treated as dies-non.

24. A preliminary point was raised on behalf of the respondent nos. 3 and 4 that this Court had no territorial jurisdiction to entertain the instant writ petition. In reply to such contention of respondent nos. 3 and 4, the learned advocate for the petitioner relied upon a judgment of Hon'ble Supreme Court in Civil Appeal No. 3630 of 2020 to contend that after superannuation a pensioner is required to give an option for the place where such person wants to receive pension. Such place is specified by the pensioner, the Court having jurisdiction over such place where the pensioner has specified to receive the pension has got territorial jurisdiction to entertain writ petition. The Hon'ble Supreme Court in the said case held as follows:-

> *"29. Form the facts of the present case, we are of the considered opinion that part of cause of action has arisen within the territorial jurisdiction of Patna High Court. The*

deceased petitioner was continuously receiving pension for the last 08 years in his saving bank account in State Bank of India, Darbhanga. The stoppage of pension of late B.N. Mishra affected him at his native place, he being deprived of the benefit of pension which he was receiving from his employer. The employer requires a retiring employee to indicate the place where he shall receive pension after his retirement. Late Shri B.N. Mishra had opted for receiving his pension in State Bank of India, Darbhabga, State of Bihar, which was his native place, fromwhere he was drawing his pension regularly for the last 08 years, stoppage of pension gave a cause of action, which arose at the place where the petitioner was continuously receiving the pension. We, thus, are of the view that the view of the learned Single Judge as well as the Division Bench holding the writ petition not maintainable on the ground of lack of territorial jurisdiction was completely erroneous and has caused immense hardship to the petitioner."

25. In view of the discussions made, I am of the opinion that the entire service of the petitioner in Coal India Limited, both before his removal and after his reinstatement in pursuance of the order passed by the Hon'ble Supreme Court, is to be taken into consideration and a consolidated pension payment order should be issued in favour of the petitioner. The authorities, of course, will be entitled to leave out the period of absence of the petitioner from service which has been directed to be treated a dies-non.

26. In such circumstances, the respondent authorities are directed to act in accordance with the directions and observations made in this judgment for issuance of consolidated revised pension payment order taking into consideration the entire period of service except the period of dies-non. Such action shall be completed by the respondent authorities within a period of eight weeks from date.

27. The writ petition being **WPA 24770 of 2024** is, accordingly, disposed of.

28. Urgent photostat certified copy of this judgment may be supplied to the parties expeditiously, if applied for.

(Md. Shabbar Rashidi, J.)

tbsr/38