

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE**

Present:

**The Hon'ble Justice Rai Chattopadhyay**

***WPO 421 of 2020***

***Basudev Tiwary***

***Vs.***

***The State of West Bengal & Ors.***

**For the Petitioner** : Mr. Debdutta Basu

**For the State Respondent** : Mr. Sirsanya Bandyopadhyay

**For the Respondent**

**Nos. 2 to 6** : Mr. Soumya Majumder  
: Mr. Niladri Bhattacharjee  
: Ms. Deblina Chattaraj

**Judgment on** : **05.05.2026**

**Rai Chattopadhyay, J. :-**

- 1.** In this writ petition, the petitioner has challenged part of order of the 4<sup>th</sup> respondent/Managing Director of the Corporation dated June 26, 2020. He has also prayed for release of his actual salary and pay for the period from February 14, 2005 to May 31, 2015, with interest and other consequential benefits, stating that the same has been arbitrarily and illegally withheld by the respondent/Corporation, in violation of the Amended Standing Order as applicable.
- 2.** Before dealing with the grounds pleaded by the writ petitioner, it is necessary that the relevant background facts narrated in the writ petition to have culminated into the instant writ petition may be mentioned.
- 3.** The writ petitioner has been a permanent employee of the respondent/Corporation since from August 1981 and served as

a tram driver [No. 293/641]. In the month of February 2005, when he was posted at Tollygunge Tram Depot, he obtained medical leave due to his illness, from February 14, 2005. He left his work place and took abode at his native place. He continued contacting and informing about his health to the Depot authorities and after recovery approached them in order to resume his duties, though restrained and refused. He has never been allowed to join in service again.

4. On April 27, 2015, the petitioner has been issued a show cause notice by the 6<sup>th</sup> respondent/Deputy Managing Director of the Corporation alleging intentional absence of the petitioner from February 14, 2005 and therefore his liabilities under the “Leave Rules” of the Corporation. The petitioner gives reply vide his letter dated May 26, 2015 expressing his willingness to join in duties, requesting for issuance of order for resumption of duty and to start regular departmental proceeding against him, as per law. According to him, despite approaching the respondent authority on several occasions requesting to allow him to resume duty, he has been forcefully and illegally refused to join on each occasion.
5. After his reply to the said show cause notice, the petitioner has been issued a charge-sheet dated September 23, 2015, served on him in July 2016. The petitioner has replied to the same vide letter dated July 18, 2016 stating therein inter alia that in terms of the Amended Standing Order Clause- 13, the petitioner can be suspended maximum for 7 days upon issuance of the charge-sheet and therefore he needs to be issued with the order of resumption of duty immediately.
6. The petitioner’s first writ petition was W.P. No. 867 of 2016, which he filed thereafter, claiming the subsistence allowance. The Court has allowed him to be granted with the subsistence allowance though the said order was made effective only during the contempt proceeding. Vide letter dated May 18, 2017, the petitioner has been allowed to resume duty. Before issuance of the said letter the respondent authority started departmental proceeding against the writ petitioner. Pursuant to the order of the Inquiry Officer dated January 3, 2017, the petitioner has

submitted his documents and list of witnesses before the said office. However, even before any further proceeding being made the petitioner has retired on attaining his age of superannuation on October 31, 2018.

7. After his superannuation the writ petitioner has submitted his letter dated February 4, 2019, before the 4<sup>th</sup> respondent/Managing Director requesting him to cancel/withdraw the charge sheet and to release the salary for the period from February 2005 to May 2017 [period of his staying apart from the duty], after adjusting the amount paid on account of subsistence allowance. No response by the respondent as regards this has led the petitioner to file his second writ petition being W.P. No. 238 of 2019, seeking withdrawal of the charge-sheet dated September 23, 2015 and release of salary from April 27, 2015 to May 18, 2017 [that is from the date of issuance of show cause notice, to the date of issuance of the order for resumption of duty].
8. During the period when W.P. No. 238 of 2019 was pending, the 6<sup>th</sup> respondent, vide his order dated October 25, 2019, dropped the charge-sheet and released full salary to the writ petitioner from June 1, 2015 to September 22, 2015. The petitioner was also paid the salary after adjustment of the amount of subsistence allowance for the period September 23, 2015 to May 18, 2017. Therefore, the writ petitioner has been released with the entire salary and pay for the period from June 1, 2015 to May 18, 2017, after deduction of the amount of subsistence allowance [that is, from after reply given by the petitioner to the show cause notice on May 26, 2015 till the date when the respondent issued a formal order to the petitioner for resumption of duty].
9. The writ petition No. W.P. No. 238 of 2019 has been disposed of vide the Court's order dated November 29, 2019, in which the petitioner states that the Court has directed him to approach the respondent/Managing Director for consequential benefit for the period mentioned in the writ petition and hence the same has been released in favour of him.

- 10.** The petitioner's third writ petition is W.P. No. 5 of 2020, in which he has prayed for the relief that he be released with the salary from February 14, 2005 to May 31, 2015 [that is for the rest of the disputed period for which allegedly no salary has been paid to him and he has been restrained to join in duties in spite of his own efforts]. The Court in its order dated January 14, 2020, directed the respondent/Managing Director to consider the petitioner's representation dated November 19, 2019. The said respondent has passed an order dated June 26, 2020, finding inter alia therein that the writ petitioner being absent in duty during the period from February 14, 2005 to May 31, 2015, would not be entitled to salary for the said period and also to pension. Hence the relevant portion of the said order of the respondent/Managing Director dated June 26, 2020, is under challenge in the instant writ petition, which the petitioner has prayed to be set aside.
- 11.** So far as the period from June 1, 2015 to May 18, 2017 is concerned [that is, from after reply given by the petitioner to the show cause notice on May 26, 2015 till the date when the respondent issued a formal order to the petitioner for resumption of duty], the petitioner has no dispute after due receipt of the amount of salary less the subsistence allowance. His discontent and grievance are with respect to the period earlier to the same, during which, he says that he has been restrained by the respondent to join in duty. On February 14, 2005, the petitioner did not show up to join in duty which he says that he underwent medical leave from that date, being physically infirm. "Article of Charge – I" in the charge-sheet dated September 23, 2015 shows that the petitioner was advised to take rest till February 18, 2005, by the Medical Officer. However, excepting the charge-sheet, the writ petitioner has not been able to produce a single piece of paper on record, in support of his contention as above. Therefore, even on the basis of the charge-sheet as above, the petitioner's illness subsisted till February 18, 2005 and not beyond. Not only at the said relevant point of time, but also at any subsequent period, no material is forthcoming to show either his sufferance of illness or his prayer before the authority for sanction/extension of leave. Similarly, his contentions about

efforts being made by him to inform the authority from time to time or to join in duty after recovery, are also unsupported with any material, or even any dates thereof. These facts are eloquent in support of the finding of the respondent/ Managing Director in the impugned order dated June 26, 2020, that the writ petitioner has absented in duty for the quoted period without permission or sanction and only unauthorizedly; hence he would not be eligible for any benefit whatsoever for the said period.

- 12.** In this regard strong argument has been made by Mr. Basu learned advocate for the writ petitioner that since the charge-sheet and the enquiry proceeding as a whole have been withdrawn by the respondent authority, the petitioner could not get opportunity to prove his innocence. What he could not prove in the enquiry proceeding could have substantiated with relevant document/s before this Court, at least by those which the petitioner has submitted before the Inquiry Officer pursuant to his order dated January 3, 2017. On the basis of those, the Court could have come to a decision about the arbitrariness or illegality in the conduct of the respondent authority, if not about the facts whether the writ petitioner was actually restrained to join in his duty or not. In the circumstances withholding of the relevant documents by the writ petitioner is fatal to his case.
- 13.** It has been emphasized during argument that the petitioner has been time and again restrained from joining in duty. Though the Court finds from records and the submissions of the learned advocates, that still he waited for ten long years only to be faced with a show cause, without taking recourse under the law to secure his rights, for such a long period of time. It is he who has to establish before this Court firstly about existence of his legal, statutory or Constitutional rights and thereafter about violation of any of those at the instance of the respondent authority. The writ petitioner appears to be unsuccessful as against the said well settled principles and yardsticks in law.
- 14.** Arguments have also been made that the petitioner has already been treated by the respondent as on duty for the quoted period

of time, as he has been granted increment and gratuity on superannuation, taking into account the said entire period of time. This turns out to be a real weak piece of argument in so far as for the best interest of the employee, in case the employer decides to grant notional effect to the unauthorized period of his absence, the same does not by itself tantamount to regularization of the alleged unauthorized period of absence. Actual salary is subject to discharge of duty by the employee actually or not being able to do so, being arbitrarily restrained or for reasons beyond his control. This fact is however, subject to proof on evidence. No such evidence or material is available in this case on record. Therefore, while exercising the power of judicial review, this Court is not to find any infirmity in the impugned order dated June 26, 2020, in which it has been found that the writ petitioner's prayer is unsustainable as he has absented willfully and did not discharge any duty during the quoted period of time. Further it is submitted for the petitioner that withdrawal of charge-sheet tantamount to condonation of absence of the petitioner if any and regularization of his period of absence. This argument is also unsustainable. Imputation of charges may not be there any further after withdrawal of the charge-sheet, however, to be eligible for salary for the admitted period of absence, the petitioner is duty bound to prove in terms of the settled law as stated above.

- 15.** The writ petitioner has actually tried to shift the burden on the respondent and make its inaction or negligence, the foundation of his own case. It is argued that the respondent has never acted within a reasonable time, as against the alleged dereliction of duty by him. That, there has been inordinate delay in issuance of the show cause notice or the charge-sheet. That the respondent has never explained any reason for such excessive delay though only for the said reason the proceeding could not be concluded before retirement of the writ petitioner and he could not prove unworthiness of the imputation of charges against him. That he has also never been suspended in terms of the Rules but allowed to work since after resumption of duty. Violation of the Amended Standing Order has also been argued as the respondent has continued with the petitioner and

not discharged him after 14 days of his alleged continuous absence.

16. Be that as it may, the Constitutional writ remedies would be available to the writ petitioner only upon his being able to prove the foundational fact of violation of his legal rights or any of those at the instance of the respondent. As discussed earlier, the writ petitioner here has not been successful to do the same in this case. His case cannot be discounted on the basis of any shortfall committed by the respondent in the entire process. The petitioner's case has to stand on its own merits and otherwise it is bound to fail.
17. It is further pertinent to note that the jurisdiction exercised by this Court under Article 226 of the Constitution is discretionary and equitable in nature, and cannot be invoked merely on the basis of alleged procedural lapses or administrative inaction on the part of the respondent authority. The petitioner must establish a clear and enforceable legal right coupled with a corresponding duty on the respondent, and demonstrate that such right has been infringed in a manner warranting judicial intervention. In the absence of cogent evidence substantiating his claim of wrongful restraint from duty or entitlement to salary for the period of absence, no mandamus can be issued in his favour. Mere assertions, unsupported by documentary proof, cannot form the basis for grant of relief in writ proceedings. Therefore, in the facts and circumstances of the present case, the petitioner having failed to discharge the burden of proof cast upon him, is not entitled to any relief, notwithstanding any alleged procedural irregularities on the part of the respondent authority.
18. Mr. Basu for the writ petitioner has relied on the following two judgments:
  - a. ***Jamia Masjid versus Sri K.V. Rudrappa (since dead) by Legal Representatives and Others*** reported at (2022) 9 SCC 225;
  - b. ***State of Maharashtra and Another versus National Construction Company Bombay and Another*** reported at (1996) 1 SCC 735.

19. Those judgments appear to be distinguishable in this case. The reliance placed by the petitioner on ***Jamia Masjid (supra)*** and ***National Construction Company (supra)*** is misplaced, as both decisions operate in materially different factual and legal contexts from the present case. In ***Jamia Masjid (supra)***, the Supreme Court dealt with issues concerning adjudication of title and the scope of civil court jurisdiction, where parties had led evidence and the dispute turned on substantive rights established on record. Similarly, in ***National Construction Company (supra)***, the Court considered contractual and arbitral disputes involving enforceable claims arising from agreements between parties, where rights and liabilities were determined on the basis of proved facts and governing contractual terms. In contrast, the present case arises in writ jurisdiction, where the petitioner has failed at the threshold to establish any foundational facts demonstrating violation of a legal right, particularly his entitlement to salary during the disputed period or wrongful prevention from duty. Unlike the cited cases, which proceeded on established factual matrices and enforceable rights, the instant matter suffers from a complete lack of evidentiary support for the petitioner's claims, rendering those precedents inapplicable and distinguishable.
20. The respondent's arguments are inter alia that in this case there is admission by the petitioner of his absence and no material in support of his claim of any forceful restraint by the respondent to allow him to join; that the petitioner has not been able to bring on record any triable issue in this case or any violation of his legal or Constitutional rights; that in none of his earlier writ petitions the present petitioner has salary for the period as quoted above; hence, now it is a belated prayer and barred by constructive res-judicata, for which it is not sustainable; that this Court in the order dated November 29, 2019 has pronounced the relief allowable to the writ petitioner though the petitioner's representation dated November 14, 2019, which the respondent has considered pursuant to the said order of the Court, is beyond the scope of the said order. A judgment of the Supreme Court in ***State of U.P. versus Nawab Hussain*** reported at (1977) 2 SCC 806, has been referred to.

The Court has held there that the principle of constructive res judicata applies even to writ proceedings under Article 226. This means that a party cannot raise in a subsequent proceeding a ground or claim which ought to have been raised in an earlier proceeding between the same parties but was not. If such a plea was available and could have been taken earlier, it is deemed to have been constructively in issue and decided against the party. The Court emphasized that litigation must attain finality, and successive writ petitions cannot be used to agitate new grounds arising from the same cause of action. Thus, a second writ petition is barred not only on matters actually decided but also on matters that could and should have been raised earlier, preventing abuse of judicial process and multiplicity of proceedings. In the factual background of the present case as discussed above, the stand of the respondent appears to be reasonable and justified without any apparent arbitrariness, illegality or infirmity in the decision making process by the same.

21. The Supreme Court in the judgment of State of ***U.P. v. Charan Singh*** reported at **(2015) 8 SCC 150** denied salary for a long period where the employee did not actually work. In ***Airport Authority of India v. Shambhu Nath Das*** reported at **(2008) 11 SCC 498** back wages denied applying “no work no pay” principle, where the employee had not worked during the period. In the case of ***Jacob Thudipara v. State of Madhya Pradesh*** reported at **(2022) 7 SCC 764** the Supreme Court reaffirmed that if the employee did not perform duties, monetary benefits may be denied. There are numerous other verdicts of the Constitutional Courts to uphold the said principle on the basis of the specific facts and circumstances of the respective cases. The principle of “no work no pay” is a well-settled doctrine, premised on the equitable notion that payment of salary is intrinsically linked to the discharge of duties by an employee. Salary is not a bounty, but a consideration for services rendered, and in the absence of actual work, entitlement to wages does not ordinarily arise unless the employee is able to demonstrate that he was willing to work but was unlawfully prevented from doing so by the employer. In the present case, the petitioner has admittedly remained absent

from duty for the disputed period and has failed to substantiate, by any cogent material, that such absence was either duly sanctioned or that he was arbitrarily restrained from resuming his duties. In such circumstances, the claim for salary for the said period runs contrary to the foundational requirement of the doctrine, and cannot be sustained in law.

22. It is equally settled that exceptions to the doctrine of “no work no pay” arise only in cases where the employee establishes that the failure to perform duties was attributable to the employer’s illegal or unjustified action, such as wrongful suspension, termination, or denial of opportunity to work. The burden to prove such exceptional circumstances squarely lies on the employee. Mere allegations, unaccompanied by evidence, cannot displace the normal rule. In the instant case, the petitioner has not discharged this burden, nor has he demonstrated any enforceable right that was infringed so as to attract judicial intervention. Therefore, applying the settled doctrinal principles, this Court finds no justification to depart from the rule of “no work no pay,” and the petitioner’s claim for salary for the period of unauthorized absence is liable to be rejected.
23. In view of the foregoing discussions, this Court is of the considered opinion that the petitioner has failed to establish any enforceable legal or constitutional right warranting interference under writ jurisdiction. The factual foundation of his claim remains unsubstantiated, particularly with respect to his alleged illness, sanctioned leave, or wrongful restraint from discharging duties during the disputed period. The settled principles governing burden of proof, coupled with the doctrine of “no work no pay,” clearly operate against the petitioner, who has neither demonstrated actual performance of duty nor proved circumstances justifying an exception to the said rule. Furthermore, the petitioner cannot derive any advantage from alleged procedural lapses or delay on the part of the respondent, as his claim must stand independently on its own merits. The precedents relied upon are distinguishable, and the bar of constructive res judicata, as recognized in ***State of Uttar Pradesh v. Nawab Hussain*** reported at (1977) 2 SCC 806

**(supra)**, further reinforces the unsustainability of belated and fragmented claims. Accordingly, this Court finds no arbitrariness, illegality, or infirmity in the decision-making process of the respondent authority.

- 24.** Hence, no ground is available for interference into the decision of the respondent/Managing Director dated June 26, 2020. The writ petition, being devoid of merit, is therefore liable to be dismissed.
- 25.** Writ petition No. WPO 421 of 2020 is dismissed without any order as to cost. Applications pending therewith if any, also stands disposed of.
- 26.** Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Rai Chattopadhyay, J.)**