
(2010) 02 CAL CK 0056
In the Calcutta High Court

Case No : C.A.J. (OS) A.P.O. No. 65 of 2002 and W.P. No. 2099 of 1993

Asit Ranjan Chakroborty

APPELLANT

Vs

Steel Authority of India Ltd.

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Citation : (2010) 2 CALLT 392 : (2010) 4 LLJ 442

Hon'ble Judges : Kalyan Jyoti Sengupta, J; Kalidas Mukherjee, J

Bench : Division Bench

Judgement

1. This appeal is directed against the judgment and order of the learned single Judge of this Court by which the writ petition was dismissed. In the writ petition the Petitioner in substance prayed for quashing and/or setting aside the order of termination dated July 14, 1980 and also another communication dated February 4, 1993 and also asked for other benefits namely restoring seniority and also to pay a sum of Rs. 4,71,625/- allegedly due and payable to the Petitioner by the Respondent due to wrongful termination from the service of the Petitioner.

2. The fact for filing the writ petition by the Petitioner is stated hereunder:

The Petitioner was a staff of clerical grade of first Respondent and he was posted at Jagannath Ghat Stock Yard on November 1, 1976 as senior Assistant, thereafter transfer order followed on February 10, 1978 from Jagannath Ghat Stock Yard to 4, India Exchange Place, Calcutta. He made several representations against the said order of transfer for withdrawing the same. However, his representations were turned down by the Personnel Manager. It is alleged that the said order of rejection of the representation is without any reason. Therefore, he filed another representation for reconsideration of his prayer. But such action was resulted in rejection. Since then the Petitioner started absenting himself from duty and on the ground of unauthorised absence he was proceeded with disciplinary action and enquiry was held and on considering of all the aspects conditional order was issued to the effect that in the event he failed to resume duty within certain time his service will stand

terminated.

3. However, he did not resume. Therefore order of termination took place and this took place in the year 1980.

4. He did not challenge at that point of time the said order of termination rather he made a request in writing to engage him in any suitable post.

5. Considering his prayer in the year 1983 he was re-employed and thereafter he continued to render services on the reemployment.

6. After having been engaged as above in the year 1993 (sic 1983) he challenged the said order of transfer and also consequential benefits including the seniority position etc.

7. It has been contended in the writ petition that order of termination is invalid and illegal as the same was not issued by the appointing authority and other ground was also raised. The said petition was resisted by filing affidavit in opposition taking the point of maintainability on the ground of delay and laches and it has been contended by the Respondent that after having accepted the order of termination and subsequently offer of re-employment the said order of transfer cannot be challenged. Naturally question of restoring seniority and other benefits did not and could not arise.

8. The learned Trial Judge it appears that he has dismissed the writ petition not only on the ground of delay but also on the ground of estoppel and waiver. It is observed that after having accepted re-employment preceded by acceptance of order of nomination he challenged after 15 years in the writ jurisdiction is not maintainable.

9. The learned Counsel for the Appellant submits that the learned Trial Judge failed to appreciate the real grievance of the Petitioner that earlier order of termination of the year 1980 was not sustainable in law and acceptance of re-employment was under a compelling circumstances as he had no option but to accept the same but it was the understanding that the Petitioner should be reinstated in the work in the form of reemployment as has been used in the order. Actually the said order of termination was not passed in accordance with law as the Learned Trial Judge failed to appreciate factual circumstances. According to him there cannot be any estoppel as against the Constitutional provision namely right to livelihood. Therefore, the order of termination should be set aside and all consequential benefit should be given after the judgment and/or impugned order having been set aside.

10. Mr. Narayan Bhattacharyya, learned Counsel for the Respondent submits that the Petitioner cannot abuse the mercy extended by the Respondent. His past conduct was highly undisciplined as such he was disciplined with appropriate proceedings. After giving him opportunity of being heard the order of termination was passed and indeed said order of termination was accepted and it will be reflected in the letter of the Petitioner dated December 17, 1982 at page 43 of

the paper book. Pursuant to his request he was reappointed on fresh terms and conditions and with the scale of pay of Rs. 595/- to 1065/-. If this letter of reappointment is looked into minutely then it would appear that it was a fresh appointment and earlier appointment had come to an end. After this reappointment was made in the year 1983 and in spite of the said order of termination being passed in 1980 no challenge was made. After accepting this reappointment almost after ten years the present writ petition was filed. He further submits that apart from the Petitioner being guilty for inordinate and unexplained delay in filing the writ petition he is estopped from challenging the said order of termination. Such challenge is also a bar on the principle of acquiescence and acceptance of the order of termination and at present the Petitioner cannot be allowed to turn down and say otherwise overlooking the factum of reappointment. Now after all these he should not be encouraged to resurrect a closed chapter. In support of his submission he has relied on the following authorities:

Sudhir Vishnu Panvalkar Vs. Bank of India, State of Punjab and others Vs. Krishan Niwas, and Suneeta Aggarwal Vs. State of Haryana and Others, .

11. We have heard the learned Counsel for the parties and we have considered all the aspects of the matters. It appears from the records admittedly the Petitioner was terminated from service in the year 1980. The said order of termination was not challenged, on the contrary on receipt of the said order of termination the Appellant wrote a letter dated December 17, 1982 and the relevant portion of the contents of the letter is set out hereunder:

As I am now jobless and have felt the consequence of my misfortune I request you to be kind enough and allow me a chance to prove my ability by reappointing me.

I shall remain ever grateful to you if you kindly re-examine my appeal and allow me to serve under this organization.

12. The tenor of the said letter unmistakably suggest that there is no whisper or challenge against the said order of termination rather the Petitioner acted with remorse and pleaded for mercy so to say. The Respondent while responding to this letter made a fresh appointment on 7/8 November, 1983. The letter of appointment shows fresh terms and conditions embodied therein. Pursuant to this letter of appointment he joined services. After joining services the Petitioner tried to reopen the issues with regard to the said order of termination taking various pleas. He made several representations and appeals and his representation and appeals were considered by the Respondent on February 4, 1993. It was specifically mentioned that the restoration of his seniority or order of termination should not be withdrawn or recalled. It was made clear to him that in view of fresh appointment having been taken earlier benefit cannot be restored.

13. It seems to us that the said representations were made hoping to have a

fresh cause of action so that he can reopen the entire thing before the Court of law. We are of the view that the learned trial Judge has examined this aspect appropriately and in our view rightly done so that after having taken benefit of reappointment he is estopped from challenging the earlier order which was duly accepted by him and it was reflected in his own language as quoted above. The plea of estoppel has been applied by Hon''ble Supreme Court in the case of State of Punjab and Ors. v. Krishan Niwas (supra). In paragraph 4 it is recorded that by act and conduct if one accepts the correctness of the order and acted upon it he cannot be allowed to turn down and say otherwise. We respectfully accept this observation of the Hon''ble Apex Court as quoted above.

14. The Petitioner in this case as it appears, that after obtaining reappointment he tried to raise the closed chapter and such a conduct is not approved by the Hon''ble Apex Court. In case of Suneeta Agarwal v. State of Haryana and Ors. (supra) in paragraph 4 it is stated as a proposition of law that the party concerned can be estopped by his own conduct from challenging any action taken earlier.

15. In any view of the matter once the order of termination is passed and having been accepted the master and servant relationship in connection with the earlier engagement comes to an end. When this relationship is disrupted and/or extinguished no benefit can be claimed. Accordingly, the attempt of the Petitioner to unsettle the settled issue cannot be encouraged by the Competent Court of law. We feel that the Learned Trial Judge has rightly approached and in right direction while refusing such a prayer.

16. In any view of the matter with the passage of time the Petitioner was dismissed from the services and was reappointed in the fresh engagement, as was frantically begged by him.

17. Under such circumstances this relief sought for in the writ petition consequently in the appeal cannot be granted because of being engaged afresh on fresh terms and conditions after due retirement from services, the master and servant relationship has come to an end. However, when the matter was pending before this Court the Court has to examine the same aspect in different angle. Under these circumstances and in view of the changed situation we cannot pass any order except to give liberty to the Petitioner to make a representation. The Respondent No. 2 will consider this representation in accordance with law. His decision will be independent and Petitioner should be given an opportunity of being heard. In the event of such representation is made within a period of one month from the date of receipt of the copy of this order such representation may be considered in accordance with law within a period of three months from the date of communication of such representation. However, this order should not be treated and accepted to be a precedent in any manner whatsoever.

Urgent xerox certified copy of this order, if applied for, be made available to the parties.