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(2012) 10 CAL CK 0094

In the Calcutta High Court

Case No : Writ Petition 17576 (W) of 2011, CAN 8753-55 of 2012, WP 2491 (W) of 2012, WP 2492 (W) of 2012 and WP 283 (W) of 2012

Bidyut Kumar Panja — APPELLANT

Vs

The West Bengal Board of Primary Education and Others
 Siddhartha Samanta Vs The State of West Bengal and Others — RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Citation : (2012) 10 CAL CK 0094

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : S.B. Bhunia and Mr. Asim Kumar Roy, for the Appellant;L.K. Gupta, Mr. Rajib Kumar Acharya, Advocate for the Council, Mr. Subit Kumar Sanyal, Advocate, Mr. Angshuman Patra, Advocate, Mr. Ratul Biswas, Advocate for the P.M.D.P. Council, Mr. Tapan Kumar Mukherjee, Ld. AGP, Mr. Joytosh Majumder , Mr. Bikash Kumar Mukherjee, Advocate for the State, Mr. P.K. Bhattacharya, Advocate for the State in WP 17576 (W) of 2011, Mr. Subrata Talukdar, Advocate and Mr. Abdul Momen, Advocate for the State in WP 283 (W) of 2012, for the Respondent

Final Decision : Dismissed

Judgement

Sambuddha Chakrabarti, J.—Mojammel Molla, a Lower Division Assistant (for short ''LDA'') at the District Primary School Council, Purba Medinipore was transferred by a memo dated October 17, 2011 to the post of LDA attached to the office of the District Primary School Council, Bankura. Sri Bidyut Kumar Panja an LDA at the District Primary School Council, Purba Medinipore was likewise transferred to the same post at the of the District Primary School Council, Bankura. Challenging this order of transfer they filed two writ petitions being W.P. No. 17579(W) of 2011 and W.P. No. 17576(W) of 2011 respectively.

2. Subsequently, the two petitioners filed a representation before the appropriate authorities, inter alia, praying for withdrawing and canceling the said transfer

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order and not to give effect to the impugned office memo.

3. By an order dated December 22, 2011 the President of the West Bengal Board of Secondary Education rejected the prayer for review of the order of transfer. Aggrieved by this order both the petitioners decided to file two more writ petitions being W.P. No. 2491(W) of 2012 and W.P. No. 2492(W) of 2012 respectively.

4. Smt. Mithu Sengupta (Halder), an LDA at the District Primary School Council, Bankura, by a memo dated October 17, 2011 was transferred to the same post attached to the office of the District Primary School Council, Purba Medinipore and Siddhartha Samanta, also an LDA at the District Primary School Council, Bankura, was likewise by the same memo transferred to the same post attached to the office of the District Primary School Council, Purba Medinipore. Both of them filed representations to the appropriate authorities with a prayer similar to that made by their counterparts in Purba Medinipore. Aggrieved by the order of transfer they filed two writ petitions being W.P. No. 284(W) of 2012 and WP. No. 283(W) of 2012 respectively.

5. These six writ petitions are pending for final disposal.

6. In the meantime the petitioners have taken out certain applications praying for release of their salaries. According to the petitioners a learned single Judge of this Court by an order dated, January 20, 2012, had been pleased to direct that no coercive step should be taken against the petitioners and subsequently this court had stayed the impugned memo dated October 17, 2011 until further orders. The grievance of the petitioners is that despite this order the employer has failed to release their salaries from the month of November 2011 and they have been prevented from withdrawing the salaries since then. Accordingly the applicants prayed for an order as mentioned before.

7. The respondents nos. 5 and 6 have contested the application by filing an affidavit-in-opposition to each of the applications filed by the petitioners. The contention of the respondents being similar in all the affidavits they are treated collectively. According to the answering respondents the writ petitioners were lawfully and for the interest of education had been transferred from one district primary school council to another and that the respondent no. 6 by a memo dated October 20, 2011 released the petitioners in the afternoon of that very date in order to enable them to join their new places of posting. Their Last Pay Certificates were also forwarded to the appropriate authority at their new places of posting. A very categorical case of the respondents is that on October 20, 2011 in the afternoon the order of release was sought to be served upon the petitioners; but they refused to accept the same and they left the office by about 2:30 p.m. without intimation to the office. After that the release orders were sent to the residential addresses of the petitioners through registered post with acknowledgement cards on October 21, 2011 for compliance of the aforesaid report and the same have come back with different postal endorsements on the

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envelopes. The respondent no. 5 by a memo dated October 24, 2011 intimated those facts to the petitioner and requested them to hand-over the relevant files and documents with the keys of the almirah to the office of the authority issuing the said memo in the interest of the primary teachers service. Thereafter, the council had published a notification in a Bengali daily on November 7, 2011 incorporating the above facts for information of all concerned. The notification also contained a stipulation that in the event of not acting in terms of the aforesaid order of transfer and order of release appropriate actions would be taken against the erring petitioners. The respondents have further very mentioned that the order of release was issued by the respondent no. 5 prior to the order of the learned single Judge of this Court. They have interpreted the order dated November 18, 2011 as one for not taking any disciplinary measure against the petitioners for the non-compliance of the order of transfer and the order of release. Admittedly the petitioners have not joined the transferred post and therefore, they have not worked and rendered their duties and as such they are not entitled to ask for any salary since October 20, 2011. The respondents prayed for the dismissal of the applications.

8. In their replies both Mojammel Molla and Bidyut Kumar Panja have taken a point that the petitioners are still in service and they cannot be deprived of their salaries. According to them even if any disciplinary proceeding is initiated against them they are entitled to 75 per cent. of the salary and stoppage of salary is more coercive than disciplinary proceeding. According to them the release orders are infructuous. They assert that the release orders have not been served upon them and the question of joining to the posts to which they have been transferred is untenable in view of the order of the learned single Judge on January 20, 2011 and that they on repeated occasions appeared before the office of the Council but the authorities have refused to allow them to join.

9. At the hearing of these applications Mr. Bhunia, the learned senior counsel for the writ petitioners/applicants, have vehemently submitted that in view of the order passed by the High Court the question of their joining does not arise. According to him the Court had specifically directed that the petitioners should not be required to join their transferred posts for a period of four weeks and the order of transfer shall remain stayed for the said period which have been extended from time to time. In such view of the matter, according to him, the petitioners could not join their new places of posting and for that they cannot be penalised by not releasing their salaries.

10. Mr. Gupta, the learned senior counsel appearing for the respondents nos. 5 and 6, has submitted that the petitioners not having rendered any work are not entitled to be released any salary from the government exchequer. The Court''s order, according to Mr. Gupta, is being misinterpreted and no coercive action should be taken against them does not mean that the employer should be obliged to release the salary in favour of an absentee employee.

11. Having heard the learned advocates for the parties I do not think that this is

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a case where the Court should direct release of salaries of the petitioners at this stage. The fact remains that the petitioners have not rendered any work for about a year. The respondents'' contention that the release orders were sought to be served upon the respective petitioners but could not be served as they had left their office without any intimation and the subsequent despatch of the said release orders by registered post have not been denied in their affidavit-in-reply. Mr. Bhunia has submitted that an addressee may be absent on an occasion in his house and the envelope may go back to the sender with the endorsement ''absent''. The fact, however, remains that he was found absent twice as per the postal endorsement and in one case the postal authorities had left a notice asking the addressee to collect the envelope from the post office and this was not done. That the petitioners had definite knowledge about orders of release is beyond doubt.

12. I hold that the order of the learned single Judge is not being properly interpreted by the petitioners. The petitioners have sought to interpret the interim order passed by the learned single Judge as giving liberty to the petitioners that they should not be required to join their transferred places of posting ignoring that this part of the sentence was preceded by a conditional clause which very specifically says that "in the event the petitioner has not yet been released from his post in which he is working at present, ...". Thus, the liberty to the petitioners not to join the new post was conditional upon the respondents authorities not issuing the order of release before the date on which this order was passed by this Court. The release order was issued long before the order was passed by this Court.

13. The basic concept of pay is the compensation to an employee for the services rendered by him. By whatever name it is called it is basically the compensation of the labour that he puts in for his employer. The employer provides employment and pays the remuneration and the employee performs the work during the period he is supposed to do the work. The right to receive salary accrues in favour of an employee in consideration of the service rendered by him.

14. In the case of State of Rajasthan and Another Vs. Mohammed Ayub Naz, the Supreme Court had accepted the principle of no work no pay which was earlier expressed in the case of Bank of India Vs. T.S. Kelawala and Others,] and held that deliberate abstention from work by whatever method will entitle the management to deduct wages of the employees notwithstanding absence of any stipulation in the contract of employment or the service rules or regulation etc.

15. If the petitioners want to make out a case that the release orders were not served upon them one wonders why they did not join their original places of posting. That they ever tried to join their original place of posting has not been pleaded in the applications at all. On the contrary only a statement in the reply has been made that the petitioners had requested the authorities to allow them to join. But this is without any supporting document. Any prudent man will either seek permission to join in writing or, if refused, would send a protest letter. This

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is all the more so, as court cases filed by them were pending. The Court never directed that the petitioners must not join their new places of posting. The Court merely granted them a liberty not to join if a certain condition as mentioned in the order had been fulfilled. Apart from the fact that the condition precedent was not satisfied and thereby disentitling the petitioners to take advantage of the conditional order they could still go to their new places of work and join.

16. The further submission of Mr. Bhunia has been very justly countered my Mr. Gupta that the prohibition from resorting to any coercive step against the petitioners amounted to nothing more than taking any disciplinary action against them. I find sufficient force in this submission as this order was passed in the wake of a public notification in a Bengali daily wherein the defaulting petitioners were cautioned with disciplinary measures. Mr. Bhunia''s submission that there is nothing more coercive than stoppage of salary is perhaps a misplaced one as the Court in that case would have specifically directed the respondents to go on paying the salaries in spite of the fact that they did not join either of the two places.

17. If the petitioners at the final hearing of the writ petitions can justify their respective stands the Court passing the final order shall at that stage may take this aspect into consideration. But at this stage directing the respondents to release the salaries to the petitioners would amount to paying too a high premium to the petitioners who have not rendered any work at either of the places.

18. The applications are thus dismissed.

19. There will, however, be no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

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