

(2011) 01 CAL CK 0058
In the Calcutta High Court
Case No : F.M.A. No. 270 of 2002

Calcutta State Transport Corporation and Others	APPELLANT
Vs	
Ranjit Bhattacharjee	RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : (2011) 5 CHN 668 : (2011) 129 FLR 1083

Hon'ble Judges : Kalyan Jyoti Sengupta, J;Asim Kumar Ray, J

Bench : Division Bench

Advocate : Milan Ch. Bhattacharya and Dilip Chatterjee, for the Appellant;Manas Kr. Ghosh and Subrata Ch. Polley, for the Respondent

Final Decision : Allowed

Judgement

Kalyan Jyoti Sengupta, J.—This appeal was against the judgment and order of the learned Single Judge dated 6th August, 2001, whereby and whereunder His Lordship has been pleased to hold that the service rendered on the strength of the interim order passed by this Court by the Respondent should be reckoned as being regular service hence all benefits should be given on retirement.

2. The short fact leading to the disputes between the parties is as follows:

3. On 4th September, 1956 the Respondent/writ Petitioner joined the Appellant-Corporation in the post of Cleaner. At the time of his appointment he declared 2nd April, 1931 being his date of birth, accordingly the same was recorded in his Service Book. After joining his service in or about 1965 he appeared in the School Final Examination on 15th March, 1965 as a Private Candidate. In the Admit Card of the said Examination his date of birth was recorded as 6th April, 1939. He took his Examination through a School namely Matuary Banpur High School, Nadia. He was informed to be retiring from service on attaining his 58 years of age on 30th April, 1993 by a communication dated 15th July, 1992. On or about 23rd December, 1992 the Petitioner filed a writ application in this Court, challenging the said notice of superannuation. His contention was that his date of

birth should be 6th April, 1939 as recorded in the School Final Examination held in 1965 as stated hereinabove in lieu of 15th March, 1965 as erroneously recorded in the service records earlier. In the background of the aforesaid the learned Single Judge of this Court by an order dated 23rd December, 1992 directed the Chairman of the Appellant to resolve the said contention by passing a reasoned order. The Chairman was directed by the said order to take into consideration the authentic document such as Admit Card. In pursuance of the said order dated 23rd December, 1992 the Chairman passed a speaking order on 12 January, 1993 holding that his date of Birth as being 6th April 1939 could not be accepted, as this claim is unfounded and afterthought. The said order of the Chairman was challenged by filing a subsequent writ petition being 7174(W) of 1993 on 29th April, 1993 and the same was disposed of by an order on the same date by the learned Single Judge of this Court to consider the Petitioner's case in the light of the judgment being Annexure "G" to the said writ petition. While passing the said order His Lordship directed the Respondent authorities to maintain status quo with regard to the service of the Petitioner. The said matter was considered by the Chairman once again and after having examined the documents and materials by an order dated 29th May, 1993 rejected the said claim. It was observed by the Chairman in the subsequent speaking order that the Admit Card issued by the School concerned was not a genuine document as on enquiry being conducted the said School authority informed that No. student by the name of the writ Petitioner/Respondent did appear as claimed. It was also observed if date of birth as claimed by the writ Petitioner /Respondent is accepted then it shall be presumed that the writ Petitioner/Appellant was a minor at the time of entry in the service. It appears that in spite of disposal of the said matter the Appellant allowed the Respondent/writ Petitioner to continue in the service. It appears that on 13th December, 1996 another writ petition was filed for obtaining relief and promotion. The learned Single Judge of this Court while disposing of the third writ petition directed the Managing Director to consider the Petitioner's case. Pursuant to the said order dated 13th December, 1996 the Managing Director by an order dated 9th January, 1997 held that the Writ Petitioner/Respondent was not entitled to promotion as he had already superannuated. The said speaking order dated 9th January, 1997 was never challenged. The Chairman of the Appellant by an order dated 13th January, 1997 discontinued his service with effect from 17th January, 1997 treating the excess period of service from 1st May 1993 to 13th January, 1997 as being re-employed. This period could not be counted with the total length of service. No. financial benefit should be given for the excess period except the wages he had already received.

4. It appears that pursuant to the said order of retirement on 12th September, 1997 the Respondent/writ Petitioner received an amount of Rs. 1,29,213/- as final payment of Contributory Provident Fund and also his own share of Provident Fund. However, the writ Petitioner demanded the amount of gratuity, leave salary and for counting the excess period of service with total length of service

rendered earlier.

5. In the background as aforesaid the Petitioner filed the 4th Writ petition challenging the order of Chairman of the Appellant dated 13th January, 1997, and claiming, reliefs of gratuity, leave salary and counting of excess service with the total length of service and increment.

6. On the back ground as aforesaid the learned Trial Judge passed the aforesaid judgment and order.

7. Mr. Milan Bhattacharya learned Counsel appearing for the Appellant contends that the direction of the learned Trial Judge in the impugned judgment and order is absolutely unsupportable under the law.

8. He submits that services rendered by virtue of the interim order cannot be counted under any circumstances treating the same being regular service. When two successive orders resolving the age dispute are remaining valid and subsisting and not set aside the direction of the Trial Judge is unsustainable. The Petitioner is deemed to have retired on 30th April, 1993. After expiry of the said date, service rendered by him, so to say, is not continuation of service and it is rather excess service rendered and this happened because of the interim order passed by this Court. This period of service cannot be counted with the legitimate length of service to make entitlement to his Provident Fund amount, leave salary, gratuity increment or for that matter promotion. However, wages he has received during this period beyond 30th of April, 1993 has not been recovered and can not be recovered. Thus he cannot get any amount whatsoever except his legitimate dues of gratuity and other amount reckoning his legitimate service period.

9. The learned Counsel for the Respondent/ writ Petitioner submits that when this Court allowed by the interim order to continue serve this period should be treated to be legitimate service. Even after passing of the speaking order in terms of the order of Justice Susanta Chatterji (as His Lordship then was) the Respondent/writ Petitioner allowed to continue his services. Hence the Appellant is estopped from contending illegality of this period of service and it should be treated as explained above and all benefits should be given. Hence the judgment and order of the learned Trial Judge should not be interfered with.

10. We have considered the contention of the respective learned Counsel for the parties in this appeal and we have carefully gone through the fact of the case. It appears points which have fallen for consideration in the appeal are:

(i) Whether the services rendered by the Respondent/writ Petitioner by virtue of the interim order creates any legitimate right in order to get all the service benefits or not?

(ii) Whether the Appellant's allowing the writ Petitioner/ Respondent to continue his services amounts to waiver or estoppel or not even after attaining retirement age?

11. Justice Chatterji (as His Lordship then was) passed an order on 29th April, 1993 asking the Appellant to consider the representation of the Petitioner and with this order of status quo with regard to the service of the Petitioner was to be maintained in the meantime. The said matter was to be considered within a period of three months from the date of communication of the order. It appears that the sentence "status quo be maintained in the meantime" has to be understood and interpreted in the context of the status of the Petitioner's service on the date of passing of the order and it was to be maintained till the decision is taken.

12. According to us this order is passed as an interim measure and such an order always depends upon the decision which ultimately was to be taken. To put it differently if the Petitioner was found to be retired prematurely then his service of this period has to be taken to be regular and continuous one. On the other hand if it is found he was asked to be retired on due date of retirement after determination of age dispute then this period can never be treated as a regular. This sort of order is passed by the Court keeping in view of the balance of convenience and inconvenience, balance of convenience and inconvenience can very well be understood in the context of the factual aspect that in the event Petitioner on that date were compelled to remain out of services and he ultimately is found to be retired prematurely then he had to be paid all amount of salary without any service being rendered. In that case Appellant herein might have suffered loss. On the other hand if he is allowed to continue in services and ultimately is found retired on attaining age of retirement No. one would stand to suffer, as he would be paid for services rendered.

13. In this circumstances as above, we while accepting the contention of Mr. Bhattacharya the services rendered by virtue of the interim order cannot be said to be a continuous one particularly when he was found to have retired on due date after determination of age of dispute. We are unable to accept the contention of the learned Counsel of the Respondent/writ Petitioner that this interim order of continuing service creates any right of continuity of service resulting in entitlement of all the benefits. Hence the direction of the learned Trial Judge in this regard is not supportable under the law. We, therefore, hold that this writ Petitioner/Respondent is not entitled to anything else except the wages he had already received admittedly No. amount of gratuity, leave salary for this period are admissible.

14. But we noticed that even after decision in terms of the order of Justice Chatterji the Appellant allowed the writ Petitioner to continue in services till 1997. We are unable to find any reason as to why he was allowed to be retained in services. He should have been asked to retire the moment decision was taken. In any view of the matter the Appellant has allowed to work even after the prescribed period of three months in terms of the order of Justice Chatterji. This Court accept the same since he has already rendered services and received the salary. We hold that the Appellant has taken correct decision to treat the

Respondent/writ Petitioner as being re-employed person on and from 1st May, 1993 till 13th January, 1997. In view of the discussion as above we are unable to sustain the order of the learned Single Judge.

15. We accordingly set aside the same. We direct the Appellant to release the due amount of gratuity, leave salary treating his service period till 30th April 1993.

16. The appeal is thus allowed.

There will be No. order as to costs.