
(2013) 03 CAL CK 0043

In the Calcutta High Court

Case No : R.V.W. No. 5 of 2011 with C.A.N. No. 660 of 2011 with W.P.C.T. No. 189 of 2006

Dhurjati Prasad Das

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 2 CALLT 18 : (2013) 2 CHN 523

Hon'ble Judges : Prasenjit Mandal, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Dhurjati Prasad Das, for the Appellant; P. Dasgupta and D. Sengupta, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application for review is directed against the judgment dated May 15, 2007 passed by this Division Bench in W.P.C.T. No. 189 of 2006 arising out of the judgment and order dated November 30, 2004 passed by the learned Central Administrative Tribunal, Calcutta Bench in O.A. No. 1197 of 1996 and Misc. Application No. 311 of 1996. C.A.N. No. 660 of 2011:--

This C.A.N. application is for condonation of delay. Since by the order dated April 3, 2012, the applicant was directed to file a supplementary affidavit incorporating certain facts elaborately for condonation of delay and the applicant has complied with such directions, upon consideration of the grounds for delay and of the merit of the matter under challenge, the application for condonation of delay stands allowed.

R.V.W. No. 5 of 2011 with W.P.C.T. No. 189 of 2006:--

2. The applicant has sought for review of the judgment dated May 15, 2007 passed by this Division Bench on the ground that the said judgment contains errors apparent on the face of the record.

3. While disposing of the O.A. No. 1197 of 1996 and the Misc. Application No. 311 of 1996, the learned Central Administrative Tribunal, Calcutta Bench held that the applicant remained absent from duties for a period for which no leave was sanctioned to him. The applicant for review remained absent from duty in an unauthorized manner frequently from time to time. Even, he did not join the duty till the O.A. was filed. Accordingly, the period of unauthorized absence from duty was treated as "dies-non" by the respondents by following the principle of "no work no pay". The original application was accordingly dismissed and the said misc. application was also disposed of.

4. Being aggrieved, the applicant filed the writ petition being W.P.C.T. No. 189 of 2006 which was dismissed by this Division Bench by the judgment dated May 15, 2007.

5. Now, the question is whether our judgment dated May 15, 2007 contains any error apparent on the face of the record.

6. Upon hearing the applicant in person and the learned Advocate for the respondents and on going through the materials on record, we find that the applicant has prayed for a writ of mandamus commanding the respondents to forbear from giving effect or further effect to the impugned orders being Annexures P/5, P/7, P/8 & P/10.

7. By the Office Order dated April 23, 2003, Annexure P/5, the competent authority of the Council decided that the applicant was deemed to have resigned from the Council's service w.e.f. the forenoon of December 29, 1991, the date from which he was absent continuously and did not report for duty thereafter.

8. The Annexure P/7 being a letter dated July 3, 2003 issued to the applicant on behalf of the Central Research Institute for Jute & Allied Fibres (henceforth shall be called as "CRIJ&AF") lays down that the competent authority of the Council has been pleased to decide that by the continuous absence of the applicant from December 29, 1991 without any intimation, without submitting leave application and not reporting to duty thereafter, he has been deemed to have resigned from service from the aforesaid date.

9. The Annexure P/8 is the judgment and order passed by the learned Central Administrative Tribunal in O.A. No. 1197 of 1996 and Misc. Application No. 311 of 1996 dated November 30, 2004.

10. The Annexure P/10 is the letter of the CRIJ&AF to the effect that the applicant is not entitled to any salary for the unauthorized absence from duty and also the same period cannot be counted towards his past service.

11. While dismissing the said W.P.C.T. No. 189 of 2006, we had held that the applicant did not apply for leave. Nor did he explain as to why was he unable to resume the service. The conduct of the applicant, it was held, proves that he had abandoned the service. The writ applicant was as such not entitled to any pay and allowances, increments, promotions, etc. since December 29, 1991.

12. During the argument, the applicant in person has contended that there was no question of abandonment of service and in fact, the respondents/opposite parties did not contend that the applicant had abandoned the service.

13. On the other hand, Mr. P. Dasgupta, learned Advocate appearing for the respondents, has contended that the findings of the decision of this Division Bench is based on the materials on record, i.e., Annexures P/5, P/7, P/8 & P/10 and that the unauthorized absence from duty was rightly treated as "dies-non" by the respondents by following the principle of "no work no pay" and as such, he has supported our judgment.

14. Upon due consideration of the grounds of review and all the materials on record, we are of the view that the decision dated April 23,2003 was not the subject-matter of challenge in the O.A. No. 1197 of 1996. The Tribunal did not express any opinion as regards legality of the decision dated April 23,2003. It was as such not necessary for us to observe that the applicant had abandoned his service. We were not minded to grant any relief. We could have done so merely by dismissing the writ petition. We are as such of the view that the sentence that "the conduct of the writ applicant proves that he had abandoned the service" should be deleted from our judgment.

15. Accordingly, the sentence to the effect that "the conduct of the writ applicant proves that he had abandoned the service" appearing at inner page No. 6 of the impugned judgment is expunged from our judgment dated May 15, 2007. No other or further interference is possible according to us.

16. The application for review is allowed to the extent indicated above.

17. There will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on compliance of all formalities.

Girish Chandra Gupta, J.

I agree.