

**(2017) 07 CAL CK 0059**  
**In the Calcutta High Court**  
**Case No : 552 of 2016**

Goutam Basu

APPELLANT

Vs

Naba Ballygunge Mahavidyalaya & Ors

RESPONDENT

---

**Date of Decision :** 21-07-2017

**Acts Referred:**

**Citation :** (2017) 07 CAL CK 0059

**Hon'ble Judges :** Arindam Sinha

**Bench :** SINGLE BENCH

**Advocate :** Bikash Ranjan Bhattacharya, ?Goutam Chakraborty, ?Amal Kr. Sen

**Final Decision :** Dismissed

---

## Judgement

1. The writ petitioner obtained order dated 21st December, 2015 in his writ petition. The Government of West Bengal, Education Directorate having had requested the Principal of Naba Ballygunge Mahavidyalaya to submit afresh extract of Governing Body Resolution to the issuing office for grant of pay fixation and other benefits without any condition as stipulated in Governing Body Resolution dated 3rd May, 2014 and the college not having done so, he had filed the writ petition. The offending part of the said resolution is extracted below:

"Regarding arrear salary it is unanimously resolved that the Governing Body has no objection if the Court gives direction to the DPI, Govt. of West Bengal (CS Branch) for disbursement of arrear salary and disbursement be made as and when arrear salary will be received by the college from the SPI, Govt. of West Bengal."

The writ petition was disposed of with, inter alia, the following directions: "As noted above, the disciplinary proceedings conducted afresh pursuant to the said judgment, delivered the finding that the petitioner was honourably acquitted. The State, it appears from the memo dated 13th April, 2015 issued by it, would like to deal with the matter at their instance without any condition imposed as stipulated by the Governing Body of the College. The college is directed to

forthwith pass an appropriate resolution in terms of the requirement under the said memo dated 13th April, 2015 without imposing any condition or observation or opinion or any other such and forward the same forthwith to the concerned authority of the State regarding the petitioner's claim of pay-fixation and arrears of salary. The college is expected to do what is required within a period of four weeks from the date of communication of a copy of this order obtained from the website of this Court, to be made by the petitioner."

2. An application for contempt was filed and moved by the writ petitioner alleging non-compliance with the directions made. The named alleged contemnor is the Principal and Secretary to the Governing body of the college which, in turn, filed and moved a review application. In the fitness of things this court first heard the review application which is being dealt with by this judgment.

3. Mr. Bhattacharya, learned senior advocate appeared on behalf of the review applicant. He submitted, there was a subsequent discovery, made by his client, of the fact that in the period when the writ petitioner stood dismissed from service, he had pursued studies as a regular candidate to obtain Master's degree in Law. To demonstrate the same he referred to a certificate issued to the writ petitioner by Fakir Mohan University. According to him, the applicant while having had pursued his studies to successfully appear as a regular candidate and obtain the degree in the period he stood dismissed from service, that period could not be treated to have been spent by him as on duty to entitle him to get arrears of salary. This could not be pointed out at the time of disposal of the writ petition and, therefore, review of the said order sought.

4. Mr. Chakraborty, learned advocate appeared on behalf of the writ petitioner and submitted clause G(a)(i) read with clause G(b) of section 12 in the First Statutes would have to be interpreted as a mandate upon the college that when its employee, such as his client, who was dismissed from service and thereafter reinstated as honourably acquitted, such employee would be entitled to full pay and allowances for the period in between.

5. He relied on the following cases:

"i) S.M. Saiyad vs. Baroda Municipal Corporation reported in 1984 SC 1829, in particular paragraphs 5 and 6. Here it will be useful to extract the following from the said judgment :-

"5. .... On this lean ground we find it difficult to depart from the normal rule that on dismissal order being found to be invalid and the direction for reinstatement having been given the workmen would be entitled to full back wages, unless the same can be denied on some relevant grounds....."

6. Appellant enrolled himself as an advocate after taking requisite educational qualification on January 20, 1972. It was pointed out to us that the appellant admitted that he was earning Rs. 150/- p.m. since he started his legal practice. It was, therefore, urged that no back wages for the period January 20, 1972 to

October 26, 1976 should be awarded. We are not impressed. Undoubtedly the respondent will be entitled to deduct the amount which the appellant was admittedly earning from the back wages payable to him. The question is from what date deduction at the rate of Rs.150/- p.m. should be permitted."

ii) Om Prakash Goel vs. The Himachal Pradesh Tourism Development Corporation Ltd. Shimla & Anr. reported in AIR 1991 SC 1490 in particular to paragraphs 7 and 8 and 9 therein. This Court, however, finds that the said judgment though refers to S. M. Saiyad (supra) but was passed at the suggestion of the parties therein.

iii) W.P. 2284 and WP 5902 both of 1986 decided by a Division Bench of the High Court of Bombay by judgment dated 29th February, 1988 ( Santosh Dattaram Nadkarni vs. New India Industries Ltd . & Anr.), to paragraph 7 therein which is reproduced below :-

"7. There is further no reason why the employee should be deprived of his full wages till date. To deny him even a part of the wages is to inflict punishment on him for no fault of his. On the other hand it will amount to encouraging the union-bosses and the other workmen to persecute dissent. In fact the employee is entitled to interest on the amount. We are however refraining from awarding it, since he will receive the amount in a lump-sum."

iv) The case of M.V. Chauhan vs. State of Gujarat decided by a learned single Judge of the Gujarat High Court by judgment dated 7th October, 1999. The particular rule under consideration in that case is set out in paragraph 4 of the judgment. It will be useful to reproduce the said paragraph and a portion of paragraph 6 of that judgment :-

"[4] In a case falling under clause [2] the period of absence from duty shall be treated as a period spent on duty for all purposes."

... ..

"6. ... .. With these orders, it also directed that the entire period of absence from duty during suspension upto the date of retirement is to be treated as the period spent on duty uninhibitedly. The purpose for which such period is to be treated on duty was not restricted to any specified purpose. Once an uninhibited order of treating the entire period of absence from duty as spent on duty is made, the consequence must follow, as envisaged in the scheme of Rule 152, in entitling full pay and allowance to the incumbent as in case of period of absence from duty is deemed to be spent on duty for all purpose."

6. Mr. Sen, learned advocate, Additional Government Pleader submitted that a resolution of the college without imposition of any condition would enable the issuing office to do the needful.

7. In reply Mr. Bhattacharya submitted, none of the decisions relied upon were in aid of the writ petitioner. The First Statutes did not enable the writ petitioner to

have obtained study leave to pursue regular studies. Therefore, for the period in which the writ petitioner had pursued his studies, he was not available to serve. As such he was not entitled to arrears. This is because clause G(b) of section 12 in the First Statutes say that the entire period of absence from duty shall be treated as a period on duty. The said period in relation to the writ petitioner cannot be said to have been spent on duty and treated as such by reason of the aforesaid facts subsequently discovered.

8. The Calcutta University First Statutes, 1979, in chapter 13 provide for, inter alia, Leave, Discipline and Conduct. Section 9 clause (g) and section 12G clauses (a) and (b) being relevant are reproduced below:

"S.9(g) Subject to the foregoing general principles the following kinds of leave may be granted to the employee:- i) Casual leave ii) Earned leave iii) Half-pay leave iv) Commuted leave v) Medical leave vi) Leave in extraordinary circumstances vii) Maternity leave viii) Hospital leave ix) Quarantine leave x) Leave preparatory to retirement xi) Special disability leave"

S.12G. (a) when the suspension of an employee is held to have been unjustifiable or not wholly justifiable, or when an employee who had been removed or dismissed or suspended from service is reinstated, the authority shall grant to him for the period of his absence from duty: (i) If he is honourably acquitted the full pay and allowances to which he would have been entitled if he had not been dismissed, removed or suspended: (ii) If otherwise, such proportion of pay and allowances as the authority concerned may prescribe. b) In a case falling under item (1) of Clause (a) the entire period absence from duty shall be treated as a period spent on duty. In a case falling under item (ii) of Clause (a) the period may be treated as duty or leave as the authority concerned may direct."

9. On a plain reading of the said provisions reproduced above it is clear that the petitioner having been honourably acquitted, on his part fulfilled the requirement thereof to be entitled to full pay and allowances. The mandate of the provisions, to treat the entire period of absence from duty as period spent on duty, is on the employer. In *S.M. Saiyad* (supra) the Supreme Court was not impressed with the plea that no back wages for the period in which the appellant admitted to have started legal practice should be awarded. Since the appellant had admitted his income from such practice to have been Rs.150/- per month, the respondent was entitled to deduct the said amount but even then the question remained as to from when such deduction should be permitted. The petitioner here has not admitted to having earned by reason of having obtained Master's degree in Law, by practice or otherwise and so there is no question of entitlement to deduction but that the entire pay and allowances is to be paid to him. *Santosh Dattaram Nadkarni* (supra) and *M. V. Chauhan* (supra) may not be applicable to this case since the former appears to be distinguishable on facts and the latter by reason of an order made in that case directing that the entire period of absence from duty during suspension up to the date of retirement is to be treated as period

spent on duty uninhibitedly.

10. The fact is the petitioner was wrongfully dismissed from service and, therefore, honourably acquitted and reinstated. In that time he did something constructive in having had improved himself academically. This Court being of the view that the mandate of the concerned provision is upon the employer to treat the entire period as spent on duty, is also of the view that such is justifiably so since the petitioner was made to be absent from duty. No condition can be imposed by the college under the First Statutes, regarding time spent by its employee while prevented from serving by a wrongful order. This court is unable to accept the interpretation of the provision as urged by the review applicant and adjudicate as to what would constitute time spent on duty when the provision says it shall be treated as such.

11. The other contention regarding leave also cannot be accepted. The petitioner, if was not wrongfully dismissed from service, would have continued to serve in that period. Whether or not while serving he would have wanted to improve himself academically and accordingly apply for leave when such leave could not be had, is a situation in the realm of speculation.

12. For the reasons aforesaid this court finds the review application to be devoid of merit and the same is accordingly dismissed. The contempt application be listed for hearing on 4th August, 2017.