

(1999) 04 CAL CK 0075

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 427 of 1999

M/s. ABL Ltd., Durgapur, Burdwan

APPELLANT

Vs

Radha Gobinda Ghatak and Others

RESPONDENT

Date of Decision : 13-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 107

Constitution of India, 1950 — Article 136, 14, 21, 226

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 15(2)

Citation : (2000) 2 CALLT 302 : (1999) 1 CHN 645 : (2000) 86 FLR 721 :
(2000) 1 LLJ 686

Hon'ble Judges : Satyabrata Sinha, J; Samarendra Nath Bhattacharjee, J

Bench : Division Bench

Advocate : Mr. Partha Sarathi Sengupta, Ms. Debjani Sengupta and Mr. Dwaipayan Sengupta, for the Appellant; Mr. Monotosh Mukherjee and Mr. Amalendu Chakrabarty, for the Respondent

Judgement

S.B. Sinha, J.—This appeal is directed against a Judgment and order dated 21.1.99 passed by a learned single Judge of this Court whereby and whereunder the writ petition filed by the 1st respondent herein questioning an award dated 30.6.97 passed by the 9th Industrial Tribunal, Durgapur in case No. X-4/1994 was allowed.

2. The basic fact of the matter is not in dispute.

3. The 1st respondent was working with the appellant herein since 12th October, 1972. The 1st respondent on the ground of his illness went on medical leave from 7.2.98 to 14.2.98. He allegedly submitted his joining report but according to the respondent No.1 such joining report had not been made to a person authorised in that regard in terms of two circulars issued by the appellant. The terms and conditions of service of the workmen were governed by the Standing Order of the Company certified under the Industrial Employment (Standing Orders) Act, 1946. Clause 2 of section C of the said certified standing order deals

with termination of employment of the workman. Clause 2(iii) of the said section states :

"Any workman who :

(a) absents himself without seeking permission for more than eight consecutive days;

(b) Having been laid off falls to report without sufficient reason within 8 days of the posting of recall notices or of being otherwise duly notified,

shall be deemed to have left the service of the company of his own accord and the same shall be intimated to the workman concerned in writing and he ceases to be an employee of the company provided, however, no explanation satisfactory to the management is adduced forthwith."

4. Section G of the said standing order deals with leave and holidays. Clause 11 whereof reads thus :--

"If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless-

(a) he returns within eight days of the expiry of the leave and

(b) explains to the satisfaction of the Manager his inability to return before the expiry of his leave."

5. Misconduct of the workmen has been enumerated in appendix "A" which includes :

"Frequent late coming, frequent absence without permission or absence without permission or overstaying the sanctioned leave without sufficient grounds and proper and satisfactory explanation."

However, it has been laid down :

"No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him and to adduce evidence, if any, in his favour at an enquiry to be held for this purpose."

6. The matter relating to the alleged absence of the 1st respondent was considered by the Company and a decision was taken to treat the same as absence from duties.

7. On or about 15.2.89 a letter of termination was Issued against the 1st respondent on the ground of his abandonment of service since 7.1.1989 which was the date for joining in the duties in the following term :--

"Further to our letter No. 10/Absent./164 dated 12th December, 1988 and 10/Absnt./200 dated 27th December, 1988, in absence of your action to adduce satisfactory explanation for your continued unauthorised and uninformed

absence on and from 7th January, 1989 on expiry of your sick leave, you by your own conduct. In terms of Certified Standing Orders of the Company are deemed to have abandoned your services on your own accord. Accordingly, your name is being removed from our rolls with immediate effect.

You are advised to settle your accounts with the Company in arrangement with our Accounts Department immediately on receipt of this Letter on obtaining clearance certificate from your Departmental Head."

8. The case of the 1st respondent herein, however, is that he submitted his letters on 7.1.89, 9.1.89, 10.1.89, 11.1.89, 13.1.89 and 14.1.89 praying for permission to join his duties. The said letters were marked as exhibits 30 to 38 before the learned Tribunal below. One of the receipts of letter dated 9.1.89 is marked as exbt. 14. Another letter being dated 11.1.89 was sent under Certificate of Posting and was marked as exbt. 39 before the learned Tribunal below. Another letter dated 7.1.89 being exbt. 40 was sent to the Manager (Engineering & Drawing) who was the departmental head of the 1st respondent.

9. It is on record that the 1st respondent's letters dated 7.1.89 and 11.1.89 had been received by the appellant as would appear from the evidence of Sri S.B. Pal, the appellant's witness No.2. The learned Tribunal below has also accepted the fact that the 1st respondent had submitted various representations, and such a finding to that effect has also been arrived at by the learned trial Judge.

10. The 1st respondent, however, raised an Industrial dispute inter alia, on the ground that he was dismissed from services as a measure of punishment which had been imposed upon him by way of victimisation.

11. On or about 8.4.94 the State of West Bengal being the appropriate Government, in exercise of its power conferred upon it u/s 10(1)(c) read with section 12(5) of the Industrial Disputes Act referred the following issue for adjudication before the Tribunal below :--

"Whether termination of service of Shri Radha Coblinda Ghatak, Assistant Printing man is justified? What relief, if any, he is entitled to?"

12. The appellant herein filed a written statement wherein a plea was taken that the 1st respondent himself has abandoned his services.

13. The 1st respondent filed an application for grant of interim relief In terms of section 15(2)(b) of the Industrial Disputes Act where to an objection was filed by the appellant on or about 17.8.94 stating :

"That the statements and allegations made in para 2 of the said petition are baseless and untrue and the employers deny the same. The employers however state that the employers did not dismiss the workman from services. On the contrary, the workman left his service of his own accord. It is further stated that mere financial crisis can not be Just ground for allowing Interim relief to the workman."

14. However, the appellant filed an application for amendment of the written statement on or about 30th September, 1996, inter alia, by inserting paragraph 5A therein which is to the following effect :--

"Without prejudice to the aforesaid, the employer state that by the wrongful conducts of unauthorised absence without leave and/or prior permission and/or attempting to obtain leave of absence by fake pretence and/or disobedience to the lawful order of the Employer as more fully stated hereinafter, the said Ghatak committed misconduct within the meaning of clauses-II, sub-clause (1), (8), (37) & (38) of the Schedule "A" to the certified standing orders and thereby earned his dismissal of the service."

15. In the said application, however, the respondent No. 1 did not make any prayer for adduction of any Independent evidence for the first time before the Tribunal to prove the charge of misconduct but merely stated that it reserves its right to prove the said misconduct before the appropriate authority and craves leave for the same. The 1st respondent did not object to such amendment as would appear from paragraph 3 of his objection which is to the following effect :--

"That your petitioner simply for that reason doesnot challenge the amendments stated in para 5 and request the Hon"ble Tribunal to accept the same."

16. However, the said amendment was allowed on the day on which the final arguments were heard whereafter the award was reserved. The appellant, however, did not obtain any leave to adduce evidence with a view to prove the misconduct of the 1st respondent for the first time before the learned Tribunal adduced evidence. The learned Tribunal answered the reference holding that the 1st respondent herein has abandoned his services. The learned trial Judge in terms of his judgment dated 21.1.99 held that it was a case of dismissal as also a case of retrenchment. The learned trial Judge went into the merit of the matter and inter alia came to the conclusion that the purported action on the part of the appellant herein in terminating the services of the respondent No. 1 was wholly Illegal and being contrary to the principles of natural Justice and, thus, directed his reinstatement with full back wages.

17. Mr. Partha Sengupta, the learned counsel appearing on behalf of the appellant submitted that in view of the fact that the appellant had amended its written statement, it must be held to have been granted leave to adduce evidence for the first time before it for the purpose of proving the charge of misconduct against the 1st respondent. The learned counsel submitted that keeping in view the fact that both the parties had agreed that the letter of termination amounts to dismissal on misconduct, the learned trial Judge erred in holding that the same was a case of retrenchment and at the same time he had gone into the merit of the matter and held that the dismissal of the 1st respondent was also Illegal. According to the learned counsel keeping in view the various decisions of the Apex Court in Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, Sabttri Motor Service Put. Ltd. V. State of West Bengal

reported In 1976 (33) FLR 14 and Lachman Das v. I.E. Newspapers Ltd. reported in 1977 (34) FLR 130, the appellant had no other option but to proceed on the basis that the respondent No.1 herein has committed misconduct as the Tribunal could not enlarge the scope of reference.

18. Mr. Sengupta would urge that as both parties had gone into the trial and the learned Tribunal below having arrived at a finding that the 1st respondent has abandoned; his services, the learned trial Judge gravely erred in allowing the writ application by directing to reinstatement of the 1st respondent with full back wages without taking into consideration that one of the witnesses examined on behalf of the appellant had stated that the post held by the workman at the time of his termination of his service was not In existence as would appear from page 201 of the Paper Book and there also exists evidence of the workman contra which is at page 182 thereof. On this issue Mr. Sengupta would urge that the learned trial Judge did not address Itself and, thus, only course left upon to this Court would be to remit the matter back to the Tribunal.

19. Our attention has also been drawn to a letter of the 1st respondent addressed to the Deputy Labour Commissioner dated 7.4.92 which was proved by the 1st respondent himself wherein it was stated that he could not Join his duties owing to the resistances offered by his creditors, and on that basis it was submitted that the learned trial Judge ought not to have held that the 1st respondent did not abandon his services. The learned counsel pointed out that the Industrial disputes was raised by the 1st respondent after 3 years and this aspect of the matter has also not been considered by the learned trial Judge and by reason of such delay in raising the dispute the 1st respondent has disentitled himself from obtaining back wages. Reference in this connection may be made to Lachman Das v. Indian Express Newspapers Ltd. reported in 1977 (34) FLR 130, National Engineering Industries Ltd. Vs. Hanuman, and J.K. Steel Ltd. Vs. Union of India (UOI),

20. The learned counsel further submitted that in view of the fact that the award was passed by the learned Tribunal below in Its favour, the appellant being not a person aggrieved, could not have filed a writ application questioning the same and, thus, the learned trial Judge committed grave error in holding that appellant had not questioned the findings of the Tribunal. According to the learned counsel, with a view to uphold the award, the appellant was entitled to question the findings of the learned Tribunal below which was against it. In this connection reliance has been made to J.K. Synthetics Ltd. Vs. J.K. Synthetics Mazdoor Union, , Ramanbhai Ashabhai Patel Vs. Dabhi Ajitkumar Fulsinji and Others, and Sangam Press Limited Vs. The Workmen, .

21. Mr. Sengupta would urged that as the appellant had power to cause cessation of relationship of employer and employee by and between it and the 1st respondent either by way of termination of service or by dismissing therefrom, it can take recourse to either of the said power. Reliance in this connection has been placed on J.K. Steel Ltd. Vs. Union of India (UOI), Mr. Sengupta would also

urge that a dismissal cannot be a retrenchment and in support of his aforementioned submission reliance has been placed on *Jitendra Singh Rathor v. Shri Batdyanath Ayurved Bhawan Ltd.* reported in 1984 Lab & 1C 554.

22. Dr. Manotosh Mukherjee, the learned senior counsel, appearing on behalf of the respondent, on the other hand, submitted that the positive case of the appellant had all along been that the 1st respondent had abandoned his services. According to the learned counsel various documents exhibited before the Tribunal below would go to show that the- 1st respondent had no intention to abandon his service. It has been submitted that once it is held that such retrenchment would amount to a termination of service, the learned Tribunal below must be held to have acted illegally in passing the impugned award. In support of the said contention reliance has been placed on *The State Bank of India Vs. Shri N. Sundara Money*, The learned counsel submits that keeping in view the decisions of the Apex Court in *Santosh Gupta Vs. State Bank of Patiala*, *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, it must be held that if termination of service of a workman is brought about by reason whatsoever it would be a retrenchment except in the case of termination by way of punishment, voluntary retirement, retirement of workman on reaching the age of superannuation or termination of the service on the ground of ill health. The learned Counsel pointed out that in view of the decisions of the Apex Court in *D.K. Yadav Vs. J.M.A. Industries Ltd.*, and *Uptron India Limited Vs. Shammi Bhan and Another*, there cannot be any doubt whatsoever that such an order of termination without complying with the principles of natural justice would be wholly illegal. The learned counsel contends that in view of the decisions of the Apex Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, and *Shambhu Nath Goyal Vs. Bank of Baroda and Others*, it was for the appellant herein to apply for adduction of evidence at the first Instance which having not been done, the learned Tribunal below could not have gone into the said question. The learned counsel has also relied upon various decisions to show that in case a termination of service is found to be illegal, full back wages can be directed to be paid. Reliance in this connection has been placed on *M/s. Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa* reported in AIR 1977 SC 31. *Union of India and another Vs. Babu Ram Lalla*, *The State of Punjab and Others Vs. Bakshish Singh*, and *Amar Singh v. Pepsu Roadways Transport Corporation and Anr.* reported in 1987(10) SLR 756. The learned counsel further submitted that the appellant cannot be permitted to approbate and reprobate and in support of his aforementioned contention reliance has been placed on *R.N. Gosain v. Yashpal Dhir* reported in AIR 1992 SCW 3337.

23. Having considered the rival submissions of the learned counsel for the parties, it appears to us, that both the tribunal as also the learned trial Judge committed a manifest error. The learned Tribunal below, in the facts and circumstances of this case, could not have held that the appellant has voluntarily abandoned his services. The Certified Standing Orders referred to hereinbefore

clearly show that Clause 11 of section G itself confers an opportunity to the concerned workman to explain to the satisfaction of the Manager his inability of return before the expiry of his leave and only then, he loses his lien. Complying of the principles of natural Justice, thus, Is Inherently embedded in the Standing Order Itself.

24. From the evidences on record particularly the note-sheet dated 14.2.89 which was marked as Exbt. D It was evident that the appellant proceeded on the basis that there was an abandonment of service.

25. As noticed hereinbefore, even in its objection to the 1st respondent's application u/s 15(2)(b) the appellant had taken a definite stand that the workman has abandoned his services. Whether on the face of such admission the appellant would have made a volteface and contend that the services of the 1st respondent had been terminated for commission of misconduct? The answer to this question must be rendered in negative. It may be true that the 1st respondent did not object to such amendment but the learned Tribunal below appeared to have misdirected himself in so far as he failed to take into consideration the fact that In view of an admission made by the appellant herein to the effect that the 1st respondent himself has abandoned his services, they could not have been permitted to resile therefrom and contend that he was guilty of a misconduct.

26. In Heeralal Vs. Kalyan Mal and Others, the Apex Court following the decision of a Division Bench consisting of three Judges in the case of Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., , inter alia, held that the judgment of a two judge bench in Akshaya Restaurant Vs. P. Anjanappa and Another, was rendered per incuriam and thereby held that no amendment can be allowed whereby and whereunder a party would resile from an admission. The Apex Court also explained its decision in Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, Even if such an amendment was allowed, the learned Tribunal below being not bound by the strict law of evidence ought to have considered the entire materials on records for the purpose of coming to the conclusion that the appellant herein cannot take recourse to the plea of dismissal of services on the ground of alleged misconduct of the 1st respondent herein nor could it be held that it had proved such a case.

27. In D.K. Yadav Vs. J.M.A. Industries Ltd., , the Apex Court has clearly held :

"The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstance of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

28. It is a fundamental rule of law that no decision must be taken which will effect the right of any person without first being Informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice.

29. It proceeded :--

"The law must therefore be now taken to be well settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result In civil consequences would have to answer the requirement of Article 14. So It must be right, Just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-Judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative Inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative Inquiry. It must logically apply to both."

30. In Uptron India Limited Vs. Shammi Bhan and Another, , the Apex Court again upon taking into consideration a large number of decisions held that such a provision in the Standing Order cannot be take recourse to without complying with the principles of natural Justice and the same would be violative of Articles 14, 16 and 21 of the Constitution of India. The learned Judges did not agree with the decision in Scooters India and Others Vs. Vijai E.V. Eldred, holding :--

"In view of this observation, the question whether the stipulation for automatic termination of services for overstaying the leave would be legally bad or not, was not decided by this Court in the Judgment relied upon by Mr. Manoj Swarup. In that judgment the grounds on which the interference was made were different. The Judgment of the High Court was set aside on the ground that it could not decide the disputed question of fact in writ petition and the matter should have been better left to be decided by the Industrial Tribunal. Further, the High Court was approached after more than six years of the date on which the cause of action had arisen without there being any cogent explanation for the delay. Mr. Manoj Swarup contended that it was conceded by the counsel appearing on behalf of the employee that the provision in the Standing Orders regarding automatic termination of services is not bad. This was endorsed by this Court by observing that :

"Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order."

This again cannot be treated to be a finding that provision for automatic termination of services can be validly made in the Certified Standing Orders. Even otherwise, a wrong concession on a question of law, made that cannot

constitute a just ground for a binding precedent. The reliance placed by Mr. Manoj Swarup on this Judgment, therefore, is wholly out of place."

31. In this view of the matter we are of the considered opinion that the exercises by the learned trial Judge to arrive at a finding that the order of dismissal passed by the appellant was violative of the principles of natural justice was wholly unnecessary. It is true as has been submitted by Mr. Sengupta that an order of dismissal cannot be said to be retrenchment but In the Instant case, there cannot be any doubt whatsoever that it is a case of retrenchment and not dismissal. The very submission of Mr. Sengupta to the effect that In view of the reference made by the appropriate Government the employer had no other option but to take recourse to the plea of commission of misconduct on the part of the workman clearly goes to show that such a plea was taken by way of an afterthought. The said plea was not genuine and despite concession by the workman, the same ought to have been rejected by the learned Tribunal.

32. It is now well settled that in view of the decision In *The State Bank of India Vs. Shri N. Sundara Money*, *Santosh Gupta Vs. State Bank of Patiala*, and *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, that retrenchment includes every kind of termination except the exceptions noted hereinbefore. In any event, the appellant did not file any application before the Tribunal below to prove misconduct. The Tribunal allowed it to lead evidence presumably in view of the decision of the Apex Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, .

33. It is, furthermore evident from the decisions in *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another*, *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, and *Shambhu Nath Goyal Vs. Bank of Baroda and Others*, that even in a case where a plea of misconduct has been taken, the Tribunal shall not advise the management as to what action it should take and if it intends to adduce evidence, it must make up its mind at the early stage and file an application therefore without any unreasonable delay.

34. It is true that In the instant case, no enquiry was held but the management was only entitled to adduce evidence to show that its action was justified but without filing of any application for adduction of Independent evidence to prove the charges of misdemeanour against the delinquent employee, it could not have been permitted to do so. In fact, the order dated 7.12.94 of the Tribunal clearly shows that no amendment was taken up for consideration along with the final argument on the merit of the case.

35. However, In this case, the appellant in view of its own written statement (prior to amendment) wherein specific plea was taken that the 1st respondent has himself abandoned his services and, thus, evidence could have been adduced by it only to the said effect. The plea of abandonment of service had not been

altogether given up but only an alternative plea was taken In. Such alternative pleas on the own showing of the appellant were contradictory to or inconsistent with each other. The appellant, thus, in the peculiar facts of this case could not have adduced evidence to prove the alleged misconduct on the part of the 1st respondent as cessation of employment of the workmen was not based upon a plea of misconduct. The decisions of the Supreme Court referred to herein clearly postulates that the employer can take benefit of the law laid down by the Apex Court where from the very beginning contention has been put forward that the workmen although committed a misconduct, either no enquiry was held prior to passing of the order of dismissal on the enquiry was a defective one. Here in this case, the appellant has sought to approbate and reprobate which It cannot be permitted to. In any event the alternative pleas taken by the appellant mutually destructive.

36. The submission of Mr. Sengupta to the effect that as the 1st respondent In his letter dated 7.4.92 addressed to the Deputy Labour Commissioner, had stated other reasons for not being able to join, cannot by itself be a ground to hold that the order of termination Is bad as thereby no reasonable opportunity had been afforded to him particularly in view of the findings of the-learned Tribunal although took note of the said letter, did not place any reliance thereupon presumably in view of the fact that it is admitted case of the parties that the other overwhelming evidences clearly proved that the 1st respondent had made attempts to join his services but allegedly he did not report to the concerned officer in view of certain circulars. It is not necessary for us to enter into the aforementioned dispute although in fairness to Dr. Mukherjee it must be placed on record that the learned counsel had tried to show that the Head Time-Keeper in his evidence had clearly shown his ignorance about the effect of the said circulars.

37. In view of our findings aforementioned, it is not necessary for us to consider as to whether the appellant could exercise its power of dismissal or whether the Tribunal could enlarge the scope of the reference?

38. The only question which remains for our consideration Is as to whether It was proper for the learned trial Judge to direct reinstatement of the 1st respondent with full back wages. Mr. Sengupta submitted that the High Court while in exercise of its power under Article 226 of the Constitution should not do so although the Supreme Court has such a power while exercises Its Jurisdiction under Article 136 of the Constitution of India fn an appeal from the award of the tribunal. In this view of the matter we need not deal with the rival contentions raised by the learned counsel as regards principle for grant of back wages. Such a question, would evidently fall for consideration before the learned Tribunal. The learned counsel appears to be correct having regard to the facts and circumstances of this case.

39. Several factors may be taken into consideration while granting reliefs to a workman. It is for the Tribunal to consider the same upon analysing the

evidences on records. It may direct reinstatement with full back wages or it may not grant the full back wages. It may also grant compensation in lieu of reinstatement.

40. Dr. Mukherjee had relied upon a decision of the Apex Court in *The State of Punjab and Others Vs. Bakshish Singh*, . In that case a suit was filed and it was held that the appellate Court in view of section 107 read with Order 41 Rule 33 of the CPC may exercise the Same power as that of the learned trial Judge. The Apex Court held :--

"It will thus be seen that the trial Court as also the lower appellate Court had both recorded the findings that the period of absence from duty having been regularised and converted into leave without pay, the charge of absence from duty did not survive. Once It was found as a fact that the charge of unauthorised absence from duty did not survive, we fail to understand how the lower appellate Court could remand the matter back to the punishing authority for passing a fresh order of punishment were obtained under duress during departmental proceedings which have not been set aside by the lower appellate Court, we are of the view that there was no occasion to remand the case to the punishing authority merely for passing a fresh order of punishment."

41. In this case Court Is exercising its power of Judicial review. From the records it appears that conflicting materials have been brought on records as regards delay on the part of the respondent No.1 in raising a dispute and the existence of the post. The parties must have joined Issues on other counts also. It is in this situation we are of the opinion that a question as to what relief the 1st respondent would be entitled to, should be decided by the learned Tribunal below. However, keeping in view the fact that this Court had merely directed payment of a sum of Rs. 10,000/- at the time of hearing of the stay matter. We are of the view that the appellant should pay a further sum of Rs. 25,000/- to the 1st respondent within two weeks from date so as to ameliorate his difficulties for the time being. The learned Tribunal below should dispose of the matter within six weeks from the date of receipt of a copy of this judgment.

42. For the reasons aforementioned the appeal is allowed in part and to the extent mentioned hereinbefore and the appeal and writ application are disposed of with the following further directions :

(a) Although the appeal succeeds in part, the appellant must bear the costs of the respondent.

(b) The amount paid by the appellant to the 1st respondent shall be adjusted from his back wages or compensation as may be determined by the learned Tribunal below.

S.N. Bhattacharjee, J.

43. I agree.

44. Appeal allowed