

(1997) 08 CAL CK 0015

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction F.M.A.T. 371 of 1997

M/s. Burn Standard Co. Ltd. and Ors

APPELLANT

Vs

Tarun Kumar Chakraborty

RESPONDENT

Date of Decision : 14-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 CALLT 15

Hon'ble Judges : Samir Kumar Mookherjee, Acting C.J.; Amitava Lala, J

Bench : Division Bench

Advocate : Mr. Sundarananda Pal, Mr. Prosinjit Bose and Mrs. Rita Mukherjee, for the Appellant; Mr. A.P. Sarkar, Mr. Kalyan Bandopadhyaya and Miss Hiranya Choudhury, for the Respondent

Judgement

S.K. Mookherjee, A.C.J.

1. This appeal is directed against an order of a learned single Judge dated 22nd December, 1995 passed in C.R. No. 19272 (W) of 1984. The learned single Judge by the said order, Inter alia. directed that the writ petitioner should be deemed to be in service with effect from 23rd May 1984, but could be allowed to earn salaries from 22nd October, 1984 as Deputy Manager, Accounts (Project) in the appellant No. 1 Company. The writ petitioner it is pertinent to note, reported for work on 22nd October, 1994 and allegedly have been assured by the Chief of Personnel and Administration that he would be treated to have join his duty on and from 22nd October, 1994. Since the petitioner in spite of the aforesaid factual position and in spite of having reported for duty every day was not allowed to join nor any salary was being paid and since all his attempts including by serving demand of justice prove abortive and because of his release by the previous employer, was compelled to move an application for writ praying amongst others for writ of Mandamus directing the respondents, the appellants herein, not to interfere with or restrain him in joining his office and for payment of full salary with effect from 22nd October, 1984, in terms of his letters of

appointment dated 23rd May, 1984 and also 18th September, 1984.

2. Before us on behalf of the appellants, in substance the only point which has been very strenuously urged is that since the petitioner did not render any service in the appointed post till the date of his appointment in terms of an order of this Division Bench on 16.5.1997 (actual joining having been made on 19.5.1997), he could not be said to be entitled to any salary for the period 22nd October, 1984 to 18th May, 1997. There is no dispute that the petitioner was not allowed to join though the appellants sought justification for their action on the basis of specific preventive orders passed against the appellants by this court in different proceedings and/or refusal of permission to the appellants to allow the petitioner to join.

3. The relevant orders which had been relied upon on behalf of the appellants may be detailed as follows:--

(a) In C.R. No. 4543 (W) of 1982, at the instance of Burn Standard Officers' Association, B.C. Basak, J. On 13.8.1984, passed an interim order, inter alia, to the following effect:--

"Meanwhile no appointment by way of direct recruitment is to be made in respect of non-selection post without giving a notice of at least seven days to the petitioners' Association. If there is any objection raised by the Association then the Association shall be at liberty to mention this matter before this court."

(b) On an application by the Company in the aforesaid writ proceeding seeking leave to allow the writ petitioner to join in the non-selection post, on 20th August, 1985, the application was disposed of with "no order".

(c) In C.O. No. 13315(W) of 1985, filed by the writ petitioner, respondent with a prayer for direction to pay his salaries with effect from 22nd October, 1984, U.C. Banerjee, J. on 18.9.1985, inter alia, passed the following Interim order:--

"In the meantime respondents are directed to pay salary to the petitioner including the arrears if any as admissible in law." On an appeal from the said order filed by the present appellants being F.M.A.T. No. 3416 of 1985, the said order was stayed on 8.7.1986. The said appeal and the application have ultimately been disposed of on 11.4.1989, by directing that C.R. No. 19272 (W) of 1984 and C.R. No. 13315 (W) of 1985 be heard analogously and expeditiously. By the order impugned in the instant appeal N.K. Mitra, J. disposed of both the writ petitions in the aforesaid manner.

4. We have carefully considered the effect of the aforesaid orders, the respective cases of the parties and the settled legal position. There cannot be any controversy that a person is not entitled to salary or wages for a period when no service had been rendered by him. The basic tenet is "no pay for no work". Reference may be made to the cases of Syndicate Bank and another Vs. K. Umesh Nayak, Paluru Ram Krishnaiah & Ors. v. Union of India, reported in , Bank of India Vs. T.S. Kelawala and Others, , Gestetner Duplicators Pvt. Ltd. Vs.

Commissioner of Income Tax, West Bengal, . In the instant case, the terms of the orders of court as adumbrated here in above are explicit enough to show that the writ petitioner/respondents appointment having been made earlier than the dates of issuance of the said orders could not be said to have been interrupted by the effect of the said orders. Even the plea of the appellants of hovering under a misconception and abortively approaching this court bona fide for a clear permission cannot exonerate them from the liability of paying the petitioner with effect from his attempted date of joining, namely 22nd October, 1984. The belated appraisal of the appellants is of no consequence as the delivery of the judgment by the learned trial Judge, which is under appeal before us, had been made in the absence of counsel for both the parties, a fact which is well sustained by materials on records:

5. We do not. however, find any reason to Interfere with the order of the learned trial Judge. The appeal, therefore, falls and is dismissed. in the facts of the present case each parry will bear his own cost.

A. Lala, J.—In concurring with the Hon''ble Acting Chief Justice 1 feel that I should add few paragraphs in support of His Lordship's findings.

2. The learned trial Judge made two observations in holding in favour of the writ petitioner which are as follows:--

(a) There was absolute lack of due diligence on the part of the appellant company to allow the writ petitioner to Join his post on "28th October, 1984 and/or thereafter;

(b) That the company Introduced a new promotion rules with effect from 1st September, 1988 superseding all previous Promotion Rules and the writ petitioner in any way could not be affected by the new Promotion Rules when admittedly, his appointment was duly made on 23rd May, 1984 under the then existing Rules, 1977.

3. At the Initial stage of the hearing for the application for appeal the appellant company did not oppose in allowing the respondent/writ petitioner in joining service and has given effect of order of joining on 19th May, 1997.

4. At the time of final hearing of the appeal the appellant company also not pressed second point as aforesaid as to the applicability of the new Promotional Rules and thereby conceded that since the respondent was given appointment prior to 1988 his service should be regulated as per the earlier Promotional Rules i.e. Rules of 1977.

5. Hence remaining question before the appeal court is to consider correctness of the first observation of trial court.

6. Mr. Sundarananda Pal and Mr. Prasenjit Bose, learned counsels appearing for the appellant company submitted that there was no lack of due diligence on the part of the company so that the respondent can be entitled for back wages.

There was no unfair motive on the part of the appellant to restrain the respondent in joining service. In fact the appellant company was restrained by various Courts' orders. On the other hand, the respondent was not also very diligent in performing his performance. For an example they said that though the impugned judgment and order was passed on 22nd December, 1995, the respondent intimated the company about the order only on 29th January, 1997. In this context, the appellant also added, that the employee is gainful employee for the period and he has not suffered any prejudice during the period.

7. We have carefully considered the Judgments cited by the appellants, as aforesaid, on the well known principle of "no work no pay" and found that these judgments have no bearing with the present situation. Each case has to be considered on the basis of the fact and fact of the case cannot be fit in the judgments.

8. Mr. Arun Prakash Sarkar, learned counsel appearing for the respondent has drawn our attention to the affidavits of the appellant company before the trial court which comprise following categorical statement :

"...The company was in a delame Inasmuch as the order of appointment which was passed in favour of the writ petitioner much prior to the order dated 13th August, 1984 and as such, the company assuming that the order dated 13th August, 1984 may not be attracted in allowing the writ petitioner to join in this said post and duly made several correspondence with the writ petitioner.

(xiii) That for the abundant precaution the company also seek for expert opinion from the counsel when the writ petitioner came to join in the post in or about October, 1984 and the company was advised by their learned Advocates not to allow Sri Tapan Kumar Chakraborty the writ petitioner Join in the said post without taking leave from His Lordship the Hon"ble Mr. Justice B.C. Basak in pursuance of the order dated 13th August, 1984 in C.R. No. 4643 (W) of 1982".

9. It appears that the said order was passed for a limited period. The original writ petition made by the concerned Officer's Association was withdrawn for non-prosecution in 1988. Moreover misconception of law is no ground to oppose the legitimate claim of the respondent. Under the circumstances it cannot be said that there was no absolute lack of due diligence on the part of the company which can disentitle the respondent in getting back wages.

10. So far the incidental point of gainful employment of the respondent is concerned, the appellant did not make out such case either before the trial court or before the appeal court with any material particulars. Mere indication of the occupation of the writ petitioner as "service" or "consultant" in the affidavits, at the time of making submission, cannot be construed that he had worked elsewhere. In this context, two Judgments were cited by the contesting Parties being Palghat BPL and PSP Thozhilali Union Vs. BPL India Ltd. and Another, and Manorama Verma(Smt) v. State of Bihar and others reported in 1994 supplementary (3) SCC 671 at paragraph 4, later one is more acceptable

inasmuch as without record one cannot be said to be gainfully employed.

11. In further, the allegations on the part of the appellant company that the respondent did not intimate about the delivery of judgment by the trial court on 22nd December, 1995 before 29th January, 1997 is not sustain-able because balance of convenience in the present case does not go absolutely against the respondent and in favour of the appellant specially on the basis of their due diligence as discussed.

12. Therefore, the equity reveals that we should not interfere with the judgment and order passed by the trial court in granting reliefs to the respondent writ petitioner in getting his full back wages. We, therefore, affirm the order of the trial court to that extent.

14.08.97. After the Judgment was delivered, learned counsel appearing for the appellants prays for stay of operation of the Judgment and order. Since we have decided the case on the basis of ratios already settled by the apex court, we do not think it is a fit case for grant of stay of operation of the judgment and order, and such prayer is refused.

Let xerox certified copy of the judgment be supplied to the parties within ten days from the date of putting in requisite stamps and folios for the same.

13. Appeal dismissed