

(1987) 11 CAL CK 0005
In the Calcutta High Court
Case No : C.O. No. 16119 (W) of 1985

Satyabrata Shome and Others	Vs	APPELLANT
West Bengal Industrial Dev. Corpn. Ltd. and Others		RESPONDENT

Date of Decision : 30-11-1987

Acts Referred:

Citation : (1987) 11 CAL CK 0005

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Kashi Kanta Maitra and Mr. Atindra Nath Banerjee, for the Appellant; Anjan Mukherjee, Gautam Sen and Mr. Monoranjan Daw, for the Respondent

Final Decision : Dismissed

Judgement

Paritosh Kumar Mukherjee, J.—Three persons, who are all employees of Haldia Petro-Chemical Division of West Bengal Industrial Development Corporation Limited (hereinafter referred to as the said Corporation), moved the present joint writ petition for issue of necessary orders for their absorption in the said Corporation and obtained an order of "status quo", as on December 23, 1986 from U. C. Banerjee, J, which is continuing till this date.

2. The present writ Petitioners tried to bring their case within the doctrine of promissory estoppel and their case is as follows:

The Petitioners Nos. 1 and 2 Satyabrata Shome and Madhusudan Das were originally State Government employees, when they were deputed to the Haldia Petro Chemical Division of the West Bengal Industrial Development Corporation Limited on "foreign service" by orders of the State Government dated April 14, 1979 and February 13, 1980. The writ Petitioners respectively were sent "on deputation" for a limited period, which were subsequently extended from time to time by the State Government. As per last orders of extension dated November 28, 1983, which are at pages 116 and 117 of the present writ petition, such

period of deputation was extended till May 1, 1984, in case of the Petitioner No. 1 and February 28, 1984, in case of the Petitioner No. 2.

3. The Petitioner No. 3, Narayan Chandra Dutta was sent "on deputation" to the said Corporation from Calcutta Metropolitan Development Authority (hereinafter referred to as C. M. D. A) and the said authority had sent the Petitioner No. 3 on specific terms and conditions, which is Annexure "A" at page 90 of the writ petition. It further appears that in respect of Petitioner No. 3, on acceptance of terms and conditions by the said Corporation, the C.M.D.A. by its order dated May 22, 1980, placed the services of the Petitioner No. 3 at the disposal of the Corporation, on the terms and conditions set out wherein it has been made specifically clear that the period of deputation should not exceed 3 years in any case and thus according to the Petitioners, the original period of deputation of Petitioner No. 8 having ended on May 27, 1984, as per the terms of deputation of service and "the lien" of the Petitioner No. 3 stood terminated with effect from May 28, 1984.

4. In case of Petitioner Nos. 1 and 2, proposal was sent on October 15, 1980, by the authorities of the Corporation to the parent department of the Petitioner Nos. 1 and 2 to give them promotion in higher post and asked for "No objection" from the parent department, which will appear from page 111 of the writ petition, and the parent department appears to have given "No objection" on or about November 19, 1982, in respect of the Petitioner Nos. 1 and 2, to the proposed promotion, subject to the condition that either both the Petitioners would be "permanently absorbed" in the Haldia Petrochemical Division of West Bengal Industrial Development Corporation Limited, or in the alternative, after procuring undertakings from the Petitioners that they would not claim the benefit of said promotion at the time of reversion to the parent department after normal period of deputation, which would be evident from page 112 of the writ petition.

5. By a letter dated February 23, 1983, the authorities of the said Corporation had informed the parent department of the Petitioner Nos. 1 and 2 that the question of final absorption of the Petitioner Nos. 1 and 2 would be taken up on receipt of final clearance from the Government of India or on formation of a separate Company to implement the project, whichever is earlier, and since the Corporation had no experienced clerical hand, the services of the Petitioner Nos. 1 and 2 were very much indispensably necessary for the present in the interest of the project, as disclosed in page 115 of the writ petition.

6. Thereafter, the Petitioner Nos. 1 and 2 were promoted to the post of "Assistant Manager" by order dated March 25, 1983, On or about May 11, 1983, the authorities of the said Corporation informed the parent department of the Petitioner No. 3 that the question of his final absorption under the organisation would be taken up on receipt of final clearance from the Government of India or on formation of a separate company to implement the project, whichever is earlier and since the Corporation had limited number of experienced Stenographers, the services of the Petitioner No. 8 was very much indispensably

necessary.

7. By order dated July 8, 1983, the period of deputation was further extended for a further period of one year in respect of Petitioner No. 3.

8. By order dated November 28, 1983, the terms of deputation of the Petitioner Nos. 1 and 2 were further extended by another year.

9. On or about February 6, 1985, the said Corporation informed the parent department of Petitioner No. 3 that it has been decided that the Petitioner No. 3 would be absorbed in Haldia Petro Chemical Division of the Corporation in public interest, as soon as new Company to implement the project is formed and ultimately when an office order was issued by the authorities of the Corporation by releasing one Bhabesh Chandra Bhowmick, Assistant Manager (Accounts), who was on deputation, till recently, by releasing him from afternoon of November 30, 1986, and the said order was served upon the said Bhabesh Chandra Bhowmick, the present writ petition was moved, on the basis of the "apprehension" and/ or "immediate threat" of the order of repatriation of the writ Petitioners from the said Corporation to the parent department.

10. Mr. Kashi Kanta Maitra, learned Advocate appearing at the final hearing of the joint writ petition, urged the following points, in support of the present writ petition.

11. The main ground urged by Mr. Maitra in support of the present writ petition is that in view of the earlier "decision of absorption", which has been accepted by the parent department of the Petitioners, the authorities of the said Corporation were not entitled to take a "contrary decision" and thereby not to absorb the writ Petitioners and to revert them to their parent department, since the same is barred by the "principles of promissory estoppel".

12. In the next place, Mr. Maitra argued that the impugned decision and/or inaction on the part of the authorities in not absorbing the Petitioners in the Corporation, was unfair, unjust and opposed to the basic principles of natural justice.

13. In conclusion, it was submitted on behalf of the Petitioners that in the facts of the present case, the Petitioners' services having been extended from time to time, as the Petitioners could not be spared by the Corporation, it would not be open for the Respondent Corporation to release the Petitioners on any grounds whatsoever, and the action of the Respondent Corporation was unfair and against the principles of equity, justice and fair play.

14. In elaborating the first branch of submissions of the doctrine of promissory estoppel, Mr. Maitra submitted that positive declaration and/or assurance as well as from the conduct of the Respondent Corporation, the Petitioners having been permitted and/or allowed to remain in service after enjoying extension after extension, under the general law, the Petitioners are "deemed to be absorbed" in the said service, even assuming the doctrine of promissory estoppel is not

applicable in service matters, as pointed out by this Court, at the time of hearing of the writ petition.

15. This Court, at the time of hearing of this writ petition, pointed out to Mr. Maitra that the essential ingredients of the doctrine of promissory estoppel are not available in the facts of the present case, as by getting deputation facilities, the writ Petitioners cannot be stated to have "altered their position to their detriment" and as such, the doctrine of promissory estoppel cannot be said to be attracted in the facts of the present case.

16. Accordingly, Mr. Maitra was tempted to make the aforesaid last submissions, in support of the present joint writ petition.

17. Mr. Anjan Mukherjee, learned Advocate appearing for the Corporation, on the other hand, in the first place, on the preliminary point of maintainability submitted that the present writ petition is "premature" as no order of repatriation has yet been passed in respect of the writ Petitioners and this Court is not entitled to adjudicate any hypothetical question. He submitted that nothing is before this Court to adjudicate upon and, as such, this Court is not entitled to entertain the writ petition and the writ petition should be dismissed in limine.

18. Secondly, he submitted that the joint writ petition in respect of the three separate writ Petitioners, having separate cause of actions, are nest entitled to join in a single writ petition, and as such, is not maintainable in law, as admittedly, they are not aggrieved by "any common cause of action" or "common decision" of the Respondents.

19. Without waiving the aforesaid objections about the maintainability of the writ petition, Mr. Mukherjee submitted that on merit also, this writ petition is not maintainable, as the Petitioners cannot claim absorption in "foreign service", as a matter of right. Referring to the case of the Petitioner No. 1, who came on deputation from Panchayat and Community Development Department, Government of West Bengal, on May 2, 1979, for an initial period of 2 years and thereafter the same was extended from time to time till 1986, after referring to pages 65, 105, 115, 116 and 129, being Annexures "A", "C", "M", "N" and "V" respectively, it would be abundantly clear that the Petitioner No. 1 was still on deputation to Haldia Petrochemical Project under the Corporation, on the same terms and conditions as originally offered to him by the parent department of the Petitioner No. 1 and the Petitioner No. 1 was enjoying the same benefits of his parent department in the matter of provident fund, pension, leave travel concession, group insurance, etc., and he has also opted for the "new group insurance scheme" on April 29, 1984, introduced by his parent department, after filing of the present writ petition, which indicates that he still feels and treats that he is an employee of the State Government and not of the Corporation, being Respondent No. 1.

20. In case of Petitioner No. 2 who came on "deputation" on February 29, 1980, from Panchayat and Community Development Department, Government of West

Bengal for an initial period of 8 years and thereafter the same was extended from time to time. After referring to pages 77, 107 and 117 of the writ petition, being Annexures "A", "K" and "O" respectively, it was submitted that the Petitioner No. 2 was still "on deputation" to Haldia Petrochemical Project under the Corporation, on the same terms and conditions as originally offered to him by the parent department of the Petitioner No. 2 and the Petitioner No. 2 was enjoying the same benefits of his parent department in the matter of provident fund, pension, leave travel concession, group insurance, etc., and he has also opted for the "new group insurance scheme" on April 29, 1984, introduced by his parent department, after filing of the present writ petition. It appears further that the parent department of Petitioner No. 2 enquired by letter dated December 26, 1986, about the date and time when he will be repatriated to the parent department and the Respondent No. 1, being the Corporation by a letter dated March 3, 1987, informed his parent department that when the repatriation of Petitioner No. 2 was under consideration, in the meantime, the writ petition was filed.

21. In case of Petitioner No. 3, who came on deputation on August 28, 1980, from Calcutta Metropolitan Development Authority, his period of deputation was extended from time to time. After referring to pages 94, 109, 119, 123 and 124 of the writ petition, being Annexures "A", "C", "Q" and "U" respectively, it was submitted that the deputation period of Petitioner No. 3 was extended until further order and he is still under deputation at Haldia Petrochemicals under the same terms and conditions originally offered by his parent department and he is enjoying all the benefits of his parent department like other Petitioners.

22. With regard to the argument that the writ Petitioners, even after repatriation, will not get suitable berth commensurate to their position, does not held good at this stage, as the said argument is wholly premature.

23. In this connection, he has drawn my attention to the provision of Rule 20 (6) of the West Bengal Service Rules, 1964, Part-I and also to some other documents from the writ petition to show that it was clear that "the lien" of the Petitioners are still existing with their parent department and the Petitioners cannot claim absorption in the foreign service, as a matter of right.

24. Placing the aforesaid cases and their respective service conditions of the parent department, Mr. Mukherjee submitted that by necessary implication all the writ Petitioners are aware that after the period of deputation being over, they would be repatriated, as such, there is no point of raising any grievance of challenging any such order that might be passed in the event the Corporation is not in a position to absorb them.

25. In my view, Mr. Mukherjee is absolutely correct in his above submissions, as in law, nobody has any right to claim absorption, as a matter of right and in this type of service matters, the principles of promissory estoppel, cannot be made applicable, as all the ingredients of the said doctrine are not present.

26. Turning to the grounds of challenge regarding the Corporation acting against the principle of promissory estoppel, in my view, writ Petitioners before invoking such doctrine, must fulfil all the pre-conditions of the said doctrine, which can be enumerated as follows:

(i) There must be a "promise".

(ii) Persons must be acting on the basis of the said "promise".

(iii) Acting on the basis of the said "promise," those persons "altered" their position "to their detriment".

27. In the facts of the present case, the aforesaid ingredients are not at all present and, as such, the said doctrine cannot be extended by this Court for giving relief to the writ Petitioners.

28. In my opinion, the writ petition is wholly premature at this stage, as no order of repatriation in respect of the writ Petitioners has yet been passed and the Petitioners have not yet been directed to join the parent department. At the same time from the order of repatriation dated November 29, 1986, which has been served in respect of Bhabesh Chandra Bhowmick, Assistant Manager, Accounts, this Court can presume that the Respondent Corporation have in their mind an idea to pass such order and this Court intends to proceed and adjudicate upon on the basis of existence of such an order and on consideration of the affidavit affirmed on April 27, 1987, filed on behalf of the Corporation.

29. Mr. Mukherjee has drawn any attention to the statements made in paragraphs 13 and 14 of the affidavit-in-opposition where the following facts have been stated, which are relevant for the purpose of disposal of the present writ petition.

(a) Haldia Petrochemical Cell was set up to undertake preliminary work relating to formation of a new Government Company for implementation of the Petrochemical Project at Haldia and accordingly Haldia Petrochemical Cell has been taking suitable steps towards formation of such a new Government Company.

(b) The term of deputation of the Petitioners so extended by their respective parent organisations was coming to an end and accordingly it was thought necessary to extend the term of deputation of the Petitioners beyond 4 years since Haldia Petrochemical Project reached a take off stage and the new Government Company had not been registered.

(c) Fresh proposal for extension of their deputation period for one year was sent to their respective parent organisations and it was stated in the said proposal that the Petitioners would be "absorbed" in the new Government Company as soon as it is registered in view of the indication given by the Government of West Bengal, being No. 2075-Ind/Pl/dated 15.3.78.

(d) Thereafter, certain exchange of communication went on between the

Corporation and the parent department but the said proposal had not reached any finality and so no right has been accrued to the Petitioners on the basis of the said proposal.

30. On the basis of the aforesaid statements made in paragraphs 13 and 14 of the said affidavit-in-opposition and reasons given hereinabove, this Court has to accept such contention that the writ Petitioners have not been able to make out any case of absorption and the writ petition is accordingly liable to be dismissed.

31. The writ petition is, therefore, dismissed. All interim orders are vacated. In the circumstances of the case, there will be no order as to cost.

32. Prayer for stay of operation of this judgment, made on behalf of the writ Petitioner by Mr. Atindra Nath Banerjee, is considered and refused as no Rule has been issued by this Court.

33. Certified copy of this judgment, if applied for with urgent fee, may be made available within the prescribed period by the department for the purpose of preferring appeal before the Division Bench.