

(2012) 08 CAL CK 0005
In the Calcutta High Court
Case No : Writ Petition No. 1331 of 2011

Shri Kishen Lall

APPELLANT

Vs

Lieutenant Governor and Others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Citation : (2013) 137 FLR 268

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Hemraj Bahadur and Rakesh Kumar, for the Appellant; Sontosh Kumar Mandal, for the Respondent

Final Decision : Dismissed

Judgement

Soumitra Pal, J.—In the writ petition, the petitioner, who was engaged on board M.V. Swaraj Dweep as Engine Serang and had continued his service till 16th September, 2008, when he was signed off, has prayed for a direction upon the respondents to abide by the NBB Agreement (for short the "Agreement") for the period 2006-2008, particularly Clause 21 thereof and to release disability compensation after adjusting the amount paid under Clause 25 relating to the grant of severance compensation. The facts as stated in the petition are that the petitioner while duty on board the ship at Chennai fell ill and was found unfit for duty. Subsequently, by letter dated 12th January, 2009, the Medical Officer of the authority at Chennai intimated the Deputy Director, the Andaman and Nicobar Administration Shipping Service that he had recovered and might be repatriated to his homeport for following up the matter further as at that point of time he was fit for travel by air. On the same day, the hospital, which had undertaken the surgery of the petitioner had certified that he was fit for normal duties. Thereafter, the Officer in Charge (Crew Cell), Directorate of Shipping Services, Andaman and Nicobar Administration by letter dated 2nd February, 2009 requested the Medical Superintendent, Medical Board, G.B. Pant Hospital, Port Blair, to assess the fitness of the petitioner after medical examination and

request was made to submit a report. Pursuant thereto, the Medical Board in its report dated 5th February, 2009, advised that the petitioner might perform light duty, that is, off shore-duty for six months and thereafter his case might be reviewed. Subsequently, in response to a letter from the Directorate, the Medical Board reexamined the matter and by its report dated 2nd April, 2009, advised the authorities not to continue with the service of the petitioner at sea and since there was no provision for off shore duty in the Directorate with regard to the job performed, he was declared medically unfit. Consequently, by order dated 30th April, 2009, the Shipping Master, Port Blair cancelled the continuous discharge certificate issued in the name of the petitioner. Subsequently, on 9th July, 2009, the petitioner was granted severance compensation, amounting to Rs. 1,75,000/- under Clause 25 of the Agreement, and gratuity of Rs. 60,000/-, which was accepted by him under protest. Soon thereafter, the petitioner filed a representation praying for the grant of disability compensation under Clause 21 of the Agreement. Since it was not granted, aggrieved this writ petition was filed. After the writ petition was moved, directions were issued to file affidavits. Affidavits have since been filed and are on record.

Mr. Hemraj Bahadur, learned advocate for the petitioner relying on the statements in the writ petition submitted that the respondents while disbursing the amount had misinterpreted Clause 21 of the Agreement and had acted in violation of the same. Submission was though the consulting doctor at Chennai had declared him fit for service, however, the Directorate had willfully and deliberately denied him employment. It is submitted that since the petitioner was declared fit and as on a later date, the Medical Board opined that the petitioner was unfit for service and as the respondent-Director was bound by the Agreement, 100% Disability Compensation in terms of Clause 21 of the Agreement should have been paid after deducting the amount paid under Clause 25. The learned advocate for the petitioner had relied on the dictionary meaning of "Severance pay". In this regard reliance has been placed on an order passed in W.P. No. 003 of 2007, (Abdul Shameem v. Lt. Governor and others).

2. Mr. Mandal, learned advocate appearing for the Administration, relying on the affidavit in opposition submitted that as the petitioner was found by the Medical Board to be unfit to work in the engine room which means that he was permanently unfit for sea service and as there is no provision for allotting offshore duty to a Serang, the action of the respondents in declaring the petitioner to be medically unfit and granting severance compensation is just and proper.

3. In order to adjudicate the issue whether the petitioner is entitled to 100% Disability Compensation, it is necessary to refer to Clauses 21 and 25 of the Agreement.

Clause 21 is set out below:--

21. Death & Disability Compensation:

With effect from 1st April, 2006, the above compensation payable to Foreign Going/Home Trade/Offshore Ratings will be as follows:

In case of a rating declared partially incapacitated whilst in employment above Disability Compensation shall be paid on proportionate basis. This Death & Disability Compensation shall not be paid if the death and/or disability has resulted due to the rating's own willful act.

Clause 25 is extracted here under:--

25. Severance Compensation:

With effect from 1.4.2006, a Rating borne on a Company's Roster continuously for a period of not less than 5 years if declared permanently medically unfit for sea service by Company's Medical Officer. Severance Compensation is to be paid to such Rating as under:

For Ratings below age of 55 years:

@ 3 months" Basic Wages per year of articulated service including applicable leave periods on Company's vessels and @ 1 1/2 months" Basic Wages per year of prospective service subject to a minimum compensation of Rs. 2,75,000/-.

For Ratings between age of 55 to 58 years:

@ 3 months" Basic Wages per year of prospective service subject to 4 months Basic Wages or Compensation of Rs. 1,75,000/- whichever is higher.

For Ratings between age of 58 years:

@ 3 months" Basic Wages per year of prospective service subject to 4 months Basic Wages or Compensation of Rs. 1,25,000/- whichever is higher.

The above provision of compensation will not be applicable to a rating dealt with under the provisions Death & Disability Compensation.

(Emphasis supplied)

4. In the instant case, it is an admitted position that on 15th September, 2008 the petitioner, an Engine Serang, fell ill. The company doctor after examining the petitioner found him to be unfit for duty and was accordingly advised that he should be signed off. On 16th September, 2008, the petitioner was signed off from the vessel. Thereafter, he was hospitalized for three weeks. During the said period he underwent surgery and was discharged on 4th October, 2008. The petitioner was advised to come for review after three months. Thereafter, by a letter dated 12th January, 2009, the doctor of the Directorate intimated the authorities that at that time he was found "fit for travel by air" and could be repatriated to Port Blair for treatment. Incidentally, on the same day the hospital in which the petitioner underwent the operation certified that he was fit for performing normal duties from that day (page 31 of the writ petition). Thereafter, by letter dated 30th January, 2009 the Officer-in-Charge of the

Directorate requested the Medical Superintendent, Medical Board, G.B. Pant Hospital, Port Blair to issue fitness certificate in respect of the petitioner. Consequently, after examination, the Board by its report dated 5th February, 2009, found that "At present he is fit to join his duty but he is advised light duty for six months (i.e. offshore duty). He will be reviewed again after six months". Thereafter, pursuant to be request by the Administration, Medical Board reviewed the matter and by a report dated 2nd April, 2009 found that "it is not advisable for him to continue service in the sea, since there, is no provision for offshore duty in D.S.S. for the job in which he is in, he is declared medically unfit." (page 36 of the writ petition). As a result by order dated 30th April, 2009 continuous discharge certificate granted to the petitioner was cancelled.

5. The case made out by the petitioner is that as he fell ill during employment and was partially incapacitated and had recovered and was certified to be fit for performing the normal duties, the authorities should have awarded Disability Compensation under Clause 21 and not severance compensation under Clause 25. In this context, the question is whether the petitioner had recovered. That the petitioner, a Serang, was recuperating and did not fully recover to perform his duties assigned is borne out from the medical certificates issued by the appropriate authorities appealing at pages 28, 30 and 34 of the writ petition. The medical certificate dated 12th January, 2009 (page 31 of the writ petition) issued by the hospital at Chennai, in which the petitioner had undergone surgery, though recommended that the petitioner "was fit for normal duties" is silent with regard to the performance of duties of a Serang. In fact the medical report dated 2nd April, 2009 by the Board declaring the petitioner unfit is with reference to his duties performed at sea. Thus, the petitioner comes clearly within the purview of Clause 25. Therefore, action of the respondents in awarding severance compensation by order dated 9th July, 2009 is just and legal. The order passed in W.P. 003 of 2007 (Abdul Shameem v. Lt. Governor and others) relied on by the petitioner is of no assistance as it is not clear whether facts were similar. Moreover, there is no reference to the Agreement particularly Clauses 21 and 25. That apart, unlike the case in hand, therein "the Administration had recommended release of disability compensation. The dictionary meaning of "severance pay, relied on by the petitioner, cannot be of any assistance as Clauses 21 and 25 of the Agreement have to be construed in the background of facts. Hence, the writ petition is dismissed.

No order as to costs.