

(2014) 03 CAL CK 0124
In the Calcutta High Court

Case No : M.A.T. No. 012 of 2013 and C.A.N. No. 080 of 2013

Shri Kishen Lall

APPELLANT

Vs

The Lieutenant Governor and Others

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2014) 03 CAL CK 0124

Hon'ble Judges : P. Mandal, J;Asim Kumar Roy, J

Bench : Division Bench

Advocate : Mohammed Tabraiz, Advocate for the Appellant; Santosh Kumar Mandal, Advocate for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This mandamus appeal is directed against the judgment and order dated August 07, 2012 passed by one of the learned Judges of this Hon?ble Court in W.P. No. 1331 of 2011 thereby dismissing the said writ petition.

2. While the petitioner was performing his duties as Engine-Serang and was on the sea at Chennai, he became ill and on the recommendations of the Medical Officer of the respondent authority, he was admitted to a Chennai Hospital. After treatment, the Medical Officer of the said Hospital opined that he had recovered and might be repatriated to his homeport for following up the matter as at that point of time he was fit to travel by air. Subsequently the respondent authority requested the Medical Superintendent, Medical Board, G.B. Pant Hospital, Port Blair to assess the fitness of the petitioner after medical examination and then the Medical Board advised that the petitioner might perform light duties i.e. offshore-duty for six months and thereafter his case might be reviewed. Subsequently, after re-examination, the Medical Board advised the authorities not to continue with the service of the appellant at sea since there was no provision for offshore-duty in the Directorate. He was declared medically unfit. Accordingly, the appellant was granted severance compensation and gratuity

which were accepted by the appellant on protest. Thereafter, he filed a representation for grant of disability compensation under Clause 25 of the NMB Agreement, 2006-2008. But, it was not granted.

3. The appellant was compelled to file the Writ Petition No. 1331 of 2011 which was dismissed by the impugned judgment and order. Being aggrieved, this appeal has been preferred by the petitioner/applicant herein.

4. Now, the question is whether the impugned judgment and order should be sustained.

5. Upon hearing the learned counsel for the parties and on going through the materials on record we find that admittedly, there is no dispute that while the appellant was performing his duties as Engine-Serang at Chennai, he became ill and on the recommendations of the respondent authority, he was examined at Chennai hospital for his heart ailments and after treatment, the ultimate conclusion of the Medical Board was to allot light duties to the appellant. Since there was no scope of allotting light duties to the appellant, he was paid severance compensation under Clause 25 but not under Clause 21 of the NMB Agreement 2006-2008 which describes death and disability compensation.

6. While the appeal is pending, the appellant filed an application under Order 41 Rule 27 of the CPC contending inter alia that two other employees who were on the same footing with the appellant were given the benefits of Clause 21 i.e. the disability compensation and not the severance compensation under Clause 25 of the NMB Agreement, 2006--2008. The appellant had obtained such particulars from the respondent authority after disposal of the writ petition upon filing an appropriate application under the provisions of the RTI Act, 2005 and on getting the information pursuant to his application, he filed the application under Order 41 Rule 27 of the CPC supported by the necessary documents showing payment of disability compensation to the other employees. From the application supported by Annexures it appears that the appellant had been declared permanently unfit for sea service with effect from April 02, 2009 and so the appellant deserves similar treatment as was done in the case of other two employees such as late Mojindar Lall and late Abdul Shameem as appearing in the annexures to the application under Order 41 Rule 27 of the CPC. It is also pertinent to mention that Abdul Shameem filed a writ petition being W.P. No. 003 of 2007 which was disposed of on March 08, 2007 directing the respondent authorities to release the appropriate compensation. Since this is the subsequent development of the matter akin to the matter in dispute, in our view, there is a scope for reconsideration of the prayer of the appellant for disability compensation under Clause 21 instead of severance compensation under Clause 25. Accordingly, we are constrained to hold that the impugned order should not be sustained and it should be set aside requesting the learned Single Judge to hear out the writ petition afresh in the light of the observation indicated above. Such a recourse is necessary inasmuch as the respondents should be given an opportunity to controvert the contentions raised in the application under Order

41 Rule 27 of the CPC. A thorough investigation is required. After giving such an opportunity to the respondents, the court is to arrive at a conclusion on the basis of the materials to be placed by the parties. So, in all fairness, we are of the view that it would be just and proper to remand the matter after setting aside the impugned judgment and order.

7. So, the Mandamus appeal succeeds and is, therefore, allowed. The impugned judgment and decree stands set aside. The application being CAN No. 080 of 2013 under Order 41 Rule 27 of the CPC also stands disposed of in the manner indicated above.

8. While disposing of the said writ petition, the learned Single Judge is requested to consider the stand as taken by the appellant in the application under Order 41 Rule 27 of the CPC. The learned Single Judge is also requested to dispose of the writ petition afresh within a period of six months from the date of communication of the order. His Lordship shall give adequate opportunities to the respondents herein to file an affidavit-in-opposition and reply thereto, if any, to the writ petitioner within the time to be fixed by His Lordship and then His Lordship shall dispose of the writ petition in accordance with law.

9. There will be no order as to costs.

10. Urgent Xerox certified copy of this judgment and order be supplied to the parties, if applied for, after observing all necessary formalities.