

SUPREME COURT OF INDIA

Airport Authority of India

Vs.

Shambhu Nath Das @ S.N.Das

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

16.05.2008

JUDGMENT

Harjit Singh Bedi, J.

1. Leave granted.
2. This appeal arises out of the following facts:
3. The respondent, Shambhu Nath Das, a resident of Kolkata, who was posted as an Assistant Engineer with the appellant authority at Kolkata was transferred to Delhi. He reported for duty at Delhi and served for 7 days and thereafter took leave for 18 days from 26th March 1985 to 12th April 1985 on account of his grandmother's illness. He did not rejoin duty thereafter but made several applications for extension of leave on medical grounds. The appellant accordingly directed him, vide order dated 12th August 1985, to appear before a Medical Board at Kolkata at 11 a.m. on that day. The Medical Board in its report opined that the respondent was physically fit and, therefore, capable of resuming duty. This information was also conveyed to the respondent vide letter dated 9th September 1985 and he was advised to report for duty immediately failing which action would be taken against him as per the rules. Despite this warning, however, the respondent did not report for duty. A Memorandum dated 17th October 1985 was also addressed to the respondent calling upon him yet again to resume duty on or before 30th October 1985 failing which it would be presumed that he had voluntarily abandoned his service with the consequence that his name would be struck off the rolls with effect from 1st November 1985. The respondent, however, still did not report for duty but challenged the memorandum dated 17th October 1985 by filing Writ Petition No. 5715 (W) of 1986 which was ultimately disposed of by a Single Judge of the Calcutta High Court vide order dated 10th November 1995 with a direction to the appellant to allow the respondent to resume duty but with a further direction that he would not be entitled to any arrears of pay and allowances or any other service benefit for the period of his absence. The respondent, however, still did not join duty in terms of the order dated 10th November 1995 but challenged the same by filing Writ Appeal No.3687/1995 before the Division Bench. The Division Bench in its order dated 9th August 1996 set aside the order dated 10th November 1995 and remanded the Writ Petition to the learned Single Judge with a direction that a reasoned order be passed after hearing the contesting

parties. The matter was, accordingly, re-heard by the learned Single Judge and it was observed that as the writ petitioner (now respondent) had overstayed his leave, the appellant authority would have been justified in dismissing him from service but after having observed as such, gave the following directions on 13th August 1999:

"The respondent Airports Authority of India is directed to reinstate the writ petitioner in service at Delhi or any other Airport where a suitable post is lying vacant within six weeks from the date of communication of this order. In so far as the salary of the writ petitioner is concerned during the period he stayed away from the work, the respondent, Airports Authority of India, is directed to consider the matter sympathetically and, if it is permissible under its rules, allow to him half of the salary and other benefits during the period from 17th October 1985 till 10th November 1985."

4. A subsequent order of the learned Single Judge vide order dated 31st August 1999 modified the order of 13th August 1999, to the extent that the period of consideration of salary etc. was to be limited to "the period from 17th October 1985 till 10th November 1995". The appellant accepted the judgment of the learned Single Judge and allowed the respondent to join duty with effect from 1st November 1999 leaving the issue of payment of back wages to be decided subsequently. The appellant thereafter gave a personal hearing to the respondent on 31st January 2002 and passed an order dated 14th May 2002 holding that the period of unauthorized absence was to be treated as dies-non and the claim for back wages was accordingly disallowed on the principle of "no work no pay". The order dated 14th May 2002 was once again challenged by the respondent by filing Writ Petition No. 12321-W/2002 before the Calcutta High Court claiming, inter-alia, back wages for the entire period of his unauthorized absence. This Writ Petition was also allowed by the learned Single Judge in his order dated 7th August 2003 and a direction was issued that the question of payment of back wages be decided afresh by the appellant. The matter was once again taken up by the appellant and the plea for back wages was yet again denied by order dated 2nd/5th January 2004. This order was challenged by the respondent by way of Writ Petition No.4283 (W) of 2004 which was, however, dismissed by a learned Single Judge of the High Court on 15th April 2004 observing as under:

"After hearing the learned counsel, appearing for the parties, this court is of the view that the petition needs to be thrown in limine for the following reasons:

(a) By the order dated 13th August 1999, this court directed that "in so far as the salary of the writ petitioner is concerned during the period he stayed away from the work, the respondent, Airports Authority of India, is directed to consider the matter sympathetically and, if it is permissible under its Rules, allow to him half of the salary and other benefits".

(b) The right of the petitioner, if any, has crystallized in the order dated 13th August 1999. He cannot be allowed to reopen the matter nor is he at liberty to advance new

grounds of his entitlement. At the highest he is entitled to execute the order dated 13th August 1999 as corrected by the order dated 31st August 1999.

(c) In the order under challenge dated 2nd/5th January, 2004, the authorities have recorded that the petitioner could not give any justification in order to support his claim for back wages. The authority concerned has recorded in his order that there is no such rule which permits such payment. The order dated 13th August 1999 directed the authority concerned to sympathetically consider the question of payment of back wages if it was permissible under the Rule. When factually there is no dispute between the parties that the rules do not permit the payment of any such back wages, the question came to an end then and there.

(d) The submission advanced by Mr. Basu, the learned Senior Advocate, for the petitioner, that if the rules are not there then the absence of Rule cannot militate against the claim of the petitioner, in any view, cannot be entertained because that would amount to sitting in appeal over the order dated 13th August, 1999 which I am unable to do.

(e) The submission that the Rule 31, and theory of 'dies-non' has no application to the facts of this case and, in my view, self-annihilating because if this submission were given effect to then all the benefits given to the petitioner under the order dated 14th May 2002 have to be recalled. He cannot blow hot and cold.

(f) It is submitted that the petitioner is not aggrieved by the rest of the order dated 14th May 2002 and the challenge is restricted to sub-para (i). Sub-Para (i) is based on the same principle on which the sub-paras (ii) to (vi) are based. The petitioner is happy with the directions contained in sub-para (i) whereas (vi) of the order dated 14th May 2002 is the same.

In that view of the matter, the approach of the petitioner, accordingly to this court, is anything but bonafide. Accordingly, this petition is dismissed with costs assessed at 200 G.Ms."

5. This order of the learned Single Judge has been set aside by the Division Bench vide the impugned order dated 21st March 2007 with the observations that the order of the High Court in C.R.(W)No. 5715/1986 which had directed that the respondent be paid 50% of the back wages for the period from 17th October, 1985 to 10th November, 1995 should be complied with.

6. The learned counsel for the appellant has pointed out that as the respondent had not attended to his duties for almost 15 years despite having been called upon to do so repeatedly, the direction of the Division Bench to grant him back wages from 17th October 1985 to 10th November 1995 was clearly not justified on the principle of "no work no pay". She has pointed out that the appellant authority would have been fully justified even if it had dismissed the respondent from service, but on the contrary, a huge benefit had already been

given to him as he had been taken back in service despite having remained absent for almost fifteen years. The learned counsel for the respondent has, however, supported the judgment of the Division Bench. We are of the opinion that in the light of the fact that the respondent did not report for duty for 15 years, there was no justification whatsoever to grant him any back wages on the general principle that nobody could be directed to claim wages for the period that he remained absent without leave or without justification. We also find that the judgment dated 13th August, 1999 which had attained finality had directed as under:

(a) "in so far as the salary of the writ petitioner is concerned during the period he stayed away from the work, the respondent, Airport Authority of India, is directed to consider the matter sympathetically and, if it is permissible under its Rules, allow to him half of the salary and other benefits".

7. This claim was considered by the competent authority and rejected for valid reasons. We are, thus, unable to endorse the High Court's order for payment of 50% back wages for the period from 17th October, 1985 to 10th November, 1995 which are far in excess of the directions in the order dated 13th August 1999. We accordingly allow this appeal set aside the order of the division bench and restore the order of the learned Single Judge dated 15 April 2004.

8. The appeal is allowed in the above terms. No order as to costs.