

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5267 OF 2010

Papia Mukherjee

..Appellants

versus

Union of India and others

..Respondents

O R D E R

The appellant was inducted into the service of the Postal Department as EDMC/Packer. Her services were terminated by an order dated 31.12.2013.

Dissatisfied with the order of termination, the appellant approached the Central Administrative Tribunal, Calcutta Bench, (hereinafter referred to as the 'Tribunal'), by filing Original Application No. 27 of 2004. The above Original Application was partly allowed by the Tribunal on 22.3.2005. In this behalf, it would be pertinent to mention, that the prayer of the appellant for setting aside the termination order dated 31.12.2013 was not accepted. Be that as it may, the Tribunal required the name of the appellant be wait-listed so as to be considered for employment, as and when a vacancy was available. The above consideration of the claim of the appellant stands recorded by the Tribunal in paragraphs 4 and 5 of its order dated 22.3.2005, which are reproduced hereunder:

"4. However, the fact remains that the applicant is working for more than 3 years on provisional basis as ED MC/Packer and the DGP&T letter dated 18.5.79 and circular dated 30.12.99 enjoins upon the dept. to keep her name in the waiting list of the ED agents discharged from service and to offer them alternative employment as and when the vacancy is available and her turn comes. Clause 2 of that letter reads as under:-

"Efforts should be made to give alternative employment to the ED Agent appointed provisionally and subsequently discharged from the service due to administrative reasons, if at the time of discharge they had put in not less than 3 years, continuous approved service. In such cases their names should be included in the waiting list of ED Agents discharged from service prescribed in the letter No. 43-4/77 EN dated 23.3.79."

5. In view of the above discussions given by the DGP & T the respondents are required to be directed to enter the name of the applicant in the waiting list of ED Agents in terms of the said letter and to offer her employment as and when the vacancy is available and her turn in the waiting list arises. For this

reason while upholding the termination order and rejecting the O.A. to that extent I direct the respondents to abide by the direction given in the above mentioned letter of the DGP & T and to enter her name in the waiting list of the ED Agents and offer her employment as and when the vacancy is available and her turn in the waiting list comes."

The Union of India as also the Postal Department, impugned the order passed by the Tribunal in Original Application No. 27 of 2004 before the High Court at Calcutta, by filing W.P.C.T. No. 35 of 2006. A Division Bench of the High Court, having considered the merits of the claim raised by the Union of India as also the Postal Department, dismissed the above writ petition on 6.2.2006.

A Review Petition (R.V.W.T. No. 2145/2006) was thereafter filed by the Union of India and the Postal Department. While considering the aforesaid review petition, a different Division Bench of the High Court felt, that there was an error apparent on the face of the record requiring re-determination of the controversy. In the above view of the matter, the High Court, by its order dated 7.5.2009, set aside even the direction issued by the Tribunal, requiring the Union of India and the Postal Department to place the name of the appellant in the waiting list of ED agents. For the above determination, the High Court recorded the following consideration:

"After hearing the learned counsel for the parties and after going through the circular and the appointment letters issued by the Union of India to the respondent which the respondent did not dispute, it appears that several appointments letters were given to the respondent but there was no continuity in service. In view of such fact, the respondent could not be held to be continuously in service for three years so as to get the benefit of re-employment or remaining in the waiting list in as much as the broken spells of service aggregating three years or more cannot be taken into consideration. We do not find any reason to call for the Attendance Register at this stage as suggested by Mr. Bhattacharya, the learned Advocate for the respondent for the simple reason that it is not her case that she got her salary continuously for more than three years nor did she ever allege that in spite of working for continuously period of more than three years, no salary was given to her for some time although she worked continuously.

We, therefore, find that there was an error apparent on the face of the record in the order of the Division Bench by which the Division Bench overlooked that the respondent was not in continuous service for three years so as to get the benefit of the circular mentioned in the order."

The order passed by the High Court in review was assailed by the appellant before this Court through Special Leave Petition (Civil) No.23730 of 2009. This Court issued notice on 1.10.2009. Even though, the respondents stood served, none has entered appearance on behalf of the respondents. Once again, in order to solicit the presence of the respondents, this Court vide its order dated 16.4.2010 granted permission to the appellant to serve the Central Agency. Despite the service on the Central Agency, none has appeared on behalf of the respondents. Fed up with the respondents absence, this Court eventually granted leave on 7.7.2010 and ordered expeditious hearing. It is in the above circumstances, that the instant civil appeal has been listed before this Court for final disposal.

Even till now, the respondents are unrepresented. Even a

counter affidavit has not been filed on behalf of the respondents. We have, therefore, no other alternative, but to proceed the respondents ex-parte.

The only issue that requires our consideration is, whether the High Court, while reviewing the order passed by a Division Bench on 6.2.2006, was justified in setting aside the order of the Tribunal requiring the name of the appellant to be placed in the waiting list of ED Agents, for consideration of fresh employment, as and when a vacancy became available. The above determination at the hands of the Tribunal came to be interfered with through a review order passed by the High Court, on the assumption that the appellant had not rendered continuous service for three years, so as to get the benefit of re-employment. A perusal of the impugned order (relevant portion whereof has been extracted hereinabove) reveals, that the learned counsel representing the appellant before the High Court, had pleaded with the High Court, to call for the attendance register, where the appellant had rendered service, so as to enable the High Court to determine the veracity of the submission advanced at the hands of the Union of India and Postal Department. Despite the prayer made by the respondent therein (appellant herein), the High Court, unilaterally and without adverting to the factual position, set aside the impugned order without even examining the original record, sought at the behest of the appellant. Such a determination at the hands of the High Court is clearly unacceptable in law, and for that matter, while adjudicating a review petition.

For the reasons recorded hereinabove, we are fully satisfied that the order passed by the High Court on 7.5.2009, while reviewing the earlier order passed by a different Division Bench of the High Court on 6.2.2006, deserves to be set aside. The same is accordingly, hereby, set aside. The order of the Tribunal dated 22.3.2005 shall be given due effect, without further delay.

The instant appeal is allowed in the aforesaid terms.

.....J.
[JAGDISH SINGH KHEHAR]

NEW DELHI;J.
FEBRUARY 20, 2014. [S.A. BOBDE]

ITEM NO.104 COURT NO.12 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5267 OF 2010

PAPIA MUKHERJEE Appellant (s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

Date: 20/02/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Mr. S.K. Bhattacharya, Adv.
Mr. Niraj Bobby Paonam, Adv.

For Respondent(s) None

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(Parveen Kr.Chawla)	(Phoolan Wati Arora)	
Court Master	Assistant Registrar	

[signed order is placed on the file]