

(2014) 10 JH CK 0034
Jharkhand High Court
Case No: L.P.A. No. 403 of 2013

Pradyuman Prasad Sah

APPELLANT

Vs

Damodar Valley Corporation

RESPONDENT

Date of Decision: Oct. 8, 2014

Acts Referred:

- Constitution of India, 1950 - Article 12

Citation: (2015) 1 AJR 377 : (2015) 1 JLR 234

Hon'ble Judges: Dhirubhai Naranbhai Patel, Acting C.J.; Sujit Narayan Prasad, J

Bench: Division Bench

Advocate: Atanu Banerjee, Advocate for the Appellant; Srijit Choudhary, Advocate for the Respondent

Judgement

Dhirubhai Naranbhai Patel Actg. C.J.

1. This letters patent appeal has been preferred by original petitioner challenging the order passed by the learned Single Judge in WP(S) No. 3929 of 2013 dated 18th November, 2013, whereby petition preferred by this appellant has been dismissed.

2. This appellant (original petitioner) is seeking salary for the period running from June, 2012 to January, 2013.

3. The present appellant was working as Superintending Engineer (Mechanical) under the Damodar Valley Corporation (Central Government Undertaking Statutory Corporation). He was working at Bokaro Thermal Power Station for last 18 years. He was transferred on 24th May, 2012 at Trichurapalli. Lot of hue and cry has been made by this appellant as well as through the association. Ultimately, transfer order was modified and this appellant instead of Trichurapalli was transferred at Durgapur Thermal Power Station which is situated in the West Bengal and thereafter, again transfer order has been withdrawn and he was again placed at Bokaro Thermal Power Station where he was there for last 18 years. As he has not

joined duty at Trichurapalli or at Durgapur and now he is again placed at Bokaro Thermal Power Station and he resumed his duty on 17th December, 2012. Thus, intervening period from 24th May, 2012, he pursued his matter personally as well as through association and he has not resumed the duty at Trichurapalli or at Durgapur and ultimately, he succeeded in all his attempts, got several letters from Delhi and he was finally retained at Bokaro Thermal Power Station and now at present he is claiming salary for the period for which he has not done any work.

4. This writ petition has been dismissed by the learned Single Judge by the impugned order against which the present Letters Patent Appeal has been preferred.

5. Counsel for the appellant submitted that the transfer order dated 24.5.2012 was punitive in nature and therefore the respondents have withdrawn the said order. He has further submitted that there was a vigilance report which is also against the respondents and therefore the impugned order of transfer was withdrawn and also there was no fault lies on the part of this appellant. Hence, he is entitled for the salary for the period running from 24.5.2012 to 16.12.2012 but he has also been not paid salary for the month of January, 2013.

6. Counsel appearing for the respondent-Damodar Valley Corporation has submitted that the present appellant is not entitled for the salary for the period running from 24.5.2012 to 16.12.2012 because he has not done any work and in principle of "No work no Salary", the writ petition has been rightly dismissed by the learned Single Judge. It is fairly submitted by the counsel for D.V.C. that from 17.12.2012 onwards, this appellant was entitled to salary and if any amount is due and payable, the same will be paid within the period of eight weeks from today.

7. Having heard learned counsel appearing for both sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly on the following facts and reasons:

"i) The present appellant is an original petitioner and was working as Superintending Engineer (Mechanical) at Bokaro Thermal Power Station since last approximately 18 years.

ii) This appellant was transferred on 24.5.2012.

The said order of transfer reads as under:

OFFICE ORDER

"Shri P.P. Sah, SE(M), BTPS "B" is hereby transferred on his own pay and pay scale and posted at the manufacturing unit of BHEL at Trichurapalli as Headquarter against overall vacancy with immediate effect. Shri Sah will report to Shri N. Raja Sekaran, DCE (Civil), DVC posted at Trichurapalli.

This issues in the interest of the Corporation work and with the approval of the Competent Authority.

(S. Mukherjee)

Superintending Engineer (M)"

(Emphasis supplied)

iii) After the aforesaid transfer order, the appellant has not resumed his duty at Trichurapalli and he made representations mainly on the ground that he is a "Whistle Blower" and therefore, he has been punitively transferred. There is also a report of Vigilance Department and as per the report which is also annexed with the memo of this Letters Patent Appeal. Ultimately the order of transfer was modified vide another order dated 12.12.2012 and instead of Trichurapalli this appellant was transferred at Durgapur Thermal Power Station which is about 200 Kilometers away from Bokaro Thermal Power Station but, this appellant was also not ready to go even at Durgapur, even when we asked in the open court that whether this appellant is ready to go to Durgapur, the answer of the Counsel is stoic silence. Again the transfer order was modified. Looking to the various annexures of this Letters Patent Appeal, lot of instructions has been given from Delhi and ultimately he was retained at Bokaro Thermal Power Station.

iv) It appears that this appellant, might has made several complaints and he is labeling himself as a "Whistle Blower". Be as it may, but the fact remains that nobody can be posted at one place for decades together merely because he has made several complaints against the management. Consistent complaints do not make this appellant "Whistle Blower". In fact, he is a complainant and consistently he has a grievance against the management. On the contrary, he should have been transferred much earlier.

v) It further appears that this appellant has got several recommendations from one corner or another and is pressurizing the Management for withdrawal of his transfer order mainly on the ground that he is making several complaints which cannot be the ground for withdrawal of his transfer order otherwise: he will continue making complaints till his age of superannuation. It is kept in mind that Damadar Valley Corporation, a statutory company, which is "state" within the meaning of Article 12 of the Constitution of India, they should not come under pressure for changing of the transfer order mainly because few employees are making consistent complaints against the Management otherwise this will encourage other employees also to start making complaints so that they will also be labeled as "Whistle Blower" and thus they should also not be transferred for decades together. This is a novice methodology adopted by this appellant.

vi) It appears that this appellant had presumed that after transfer order dated 24.5.2012 he will make lots of hue and cry and ultimately the transfer order will be

cancelled and till then he will not resume the duty at Tirchurapalli. Finally when on 17.12.2012, he was retained at Bokaro Thermal Power Station by cancelling the transfer order he had resumed the duty. Thus, his presumption was much in advance and on his own he has not resumed the duty at Trichurapalli.

vii) This appellant was never prevented from resuming the duties at Tirchurapalli nor at Durgapur Thermal Power Station, but, it the confidence of the appellant himself that the respondent Management will have no option, but, to cancel his transfer order. Therefore, he waited and waited for days together, for weeks together and for months together and ultimately on 17.12.2012 he joined his duty at the very same place at which he had worked for last 18 years and now he is seeking salary for his absenteeism. No error has been committed by the learned Single Judge in dismissing the Writ Petition. The salary cannot be paid for the period for which this appellant is absent i.e. for the period running from 24.5.2012 to 16.12.2012.

viii) Counsel for the respondents has fairly agreed that from 17.12.2012 if, the appellant is not paid salary, he shall be paid within eight weeks from today.

8. In view of the aforesaid facts and circumstances we see no reason to entertain this Letters Patent Appeal as no error has been committed by the learned Single Judge in dismissing the Writ Petition on the principle of "No work no salary". The appellant (original petitioner) is not entitled to get any salary for the period running from 24 May 2012 to 16th December, 2012. This appellant will be paid salary from 17.12.2012 onwards for the work done by him in accordance with law, which will be paid within a period of eight weeks from today.

9. This Letters Patent Appeal stands dismissed with the aforesaid observations.