(2014) 2 CALLT 540 : (2014) 3 CHN 267 : (2014) LabIC 4364

Calcutta High Court

Case No: T.A. No. 71 of 2014, A.P.O.T. No. 216 of 2014 and W.P. No. 337 of 2014

Hiralal Shaw		APPELLANT
	Vs	
The State of West Bengal		RESPONDENT

Date of Decision: May 7, 2014

Citation: (2014) 2 CALLT 540 : (2014) 3 CHN 267 : (2014) LabIC 4364

Hon'ble Judges: S. Chatterjee, J; P.K. Chattopadhyay, J

Bench: Division Bench

Advocate: Jishnu Chowdhury, Soumabho Ghose and Nikunj Berlia, Advocate for the Appellant; Sadhan Roy Chowdhury and T.M. Siddique, Advocate for the Respondent

Judgement

1. Assailing the judgment and order dated 29th April, 2014 passed by a learned Judge of this Court disposing of the writ petition filed by the appellant herein, this appeal has been filed and in connection with the said appeal, an application for stay has also been tiled. Both the appeal and the application have been taken up for consideration today. The learned Single Judge by the impugned order under appeal directed the Commissioner of Police, Kolkata to institute appropriate proceeding against the appellant herein for realization of the mesne profits and damages for the wrongful occupation of the government premises by the appellant/petitioner herein. The learned Single Judge further directed the respondent authorities to retain such of the retiral and other dues of the appellant/petitioner, which have not yet been paid, till the mesne profits or damages are realized.

2. It is now to be decided whether the appellant/petitioner herein was in wrongful possession of the premises in question.

3. Mr. Sadhan Roy Chowdhury; learned Advocate representing the State-respondents relies on the provisions of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984 and submits that the compensation is payable for unlawful occupation of the government premises.

4. Going through the records, we find that the appellant/petitioner herein filed a writ petition" complaining that his age had been erroneously recorded in the service records and the same should be corrected on the basis of the school certificate. The said writ petition being Matter No. 3366 of 1990 was disposed of by this Court with the following directions:

"It is therefore, fit and proper that the Commissioner of Police, Calcutta shall immediately hold necessary enquiry with the school authorities to ascertain whether the duplicate certificate produced by the petitioner is genuine or not and complete it within two months from the date of communication of this order and if the concerned authority is satisfied about the genuineness of the said duplicate transfer certificate then the concerned authority shall have to correct the date of birth within one month of such information received about its genuineness and to reinstate the petitioner in the service and pay him all back wages from 1st November, 1989 till date and permit him to continue his services till he attained 58 years of age as recorded in the said school leaving certificate. If, however, the Respondent Commissioner of Police is satisfied on holding proper enquiry that the said certificate is not a genuine one, he shall communicate such decision to the Respondent and in such case the decision of the authority to superannuate the petitioner on the expiry of 31st October, 1989 shall be treated as final and all the interim orders passed by this Court shall stand vacated. The interim order passed by this court permitting the petitioner to stay in the quarters allotted to him shall continue till the final decision is taken by the Commissioner of Police.

The writ petition is disposed of accordingly.

All parties shall act upon the signed copy of the operative portion of the judgment on the usual undertaking."

5. Pursuant to the aforesaid specific order passed by this Court in the writ petition, being Matter No. 3366 of 1990 on 26th November, 1991, the appellant/petitioner herein had been occupying the quarter allotted to him. The aforesaid order of the High Court was not appealed against and is final and binding on the parties.

6. Unfortunately, under peculiar circumstances, the Commissioner of Police did not take any decision with regard to the claim of the appellant/petitioner for correction of his age on the basis of the school records. Ultimately, the Commissioner of Police took a reasoned decision in compliance with the aforesaid judgment and order dated 26th November, 1991 passed earlier by this court on 28th February, 2014 and communicated the same to the appellant by the forwarding letter dated 28th February, 2014. The aforesaid letter issued on behalf of the Commissioner of Police, Kolkata dated 28th February, 2014 is set out hereunder:

"Government of West Bengal

Office of the Commissioner of Police, Kolkata,

Kolkata Police Directorate, Law Section,

18, Lalbazar Street, Kolkata - 700001.

Memo No. 66/KPD/Law

Date: 28.02.2014

From: The Commissioner of Police, Kolkata,

18, Lalbazar Street, Kolkata - 700001.

To: Shri Hiralal Shaw (Ex. Const 11956)

S/o. Late Mahangu Shaw,

Flat No. 403, 4th Floor,

Bowbazar Police Station campus,

P.S. Bowbazar,

Kolkata - 700012.

Sub: Reasoned decision by the Commissioner of Police, Kolkata in compliance with the judgment dated 26.11.1991 passed by the Hon''ble High Court at Calcutta in the matter No. 3366 of 1990; Hiralal Shaw v. The State of West Bengal & Ors.

Enclosed please find herewith the Reasoned decision passed by the Commissioner of Police, Kolkata in compliance with the judgment dated 26.11.1991 passed by the Hon''ble High Court, Calcutta in the aforesaid matter for information.

For commissioner of Police,

Kolkata."

7. The appellant/petitioner being a retired constable did not know the ultimate decision of the Commissioner of Police for long 25 years and the retiral dues and other pensionary benefits have also not yet been disbursed to the said appellant. The appellant/petitioner herein had no scope even to demand the retiral dues as the said appellant/petitioner did not know what should be his actual date of retirement since the prayer for correction of his date of birth was not decided by the Commissioner of Police till 28th February, 2014.

8. It is not in dispute that the retiral benefits have not yet been made available to the appellant/petitioner herein, as a result whereof, the retired life of the appellant could not be settled earlier by him. The appellant/petitioner could not take any decision about his accommodation after retirement from service since the said appellant/petitioner did not

receive any amount from the respondent authorities towards the retiral benefits in order to find out a suitable accommodation for his retired life. The aforesaid unfortunate state of affairs in respect of the retired life of an employee was not considered by the learned Single Judge. The learned Single Judge in the impugned order under appeal specifically mentioned that the earlier order of this Court passed on 26th November, 1991 restrained the respondent authorities from interfering with the petitioner''s occupation of the staff quarter till the final decision is taken by the Commissioner of Police. Unfortunately, the learned Single Judge did not appreciate that the appellant/petitioner was entitled to occupy the staff quarter till the final decision was taken by the Commissioner of Police in terms of the aforesaid specific order passed earlier by this Court.

9. It may be mentioned that when the action of the appellant is covered by an order of a Court of competent jurisdiction and that order has been accepted by the parties, the appellant cannot be saddled with the liability of unauthorized occupation as long as the order permitting him to occupy the quarter stands.

10. In the aforesaid circumstances, no proceeding could be initiated against the appellant/petitioner for occupying the allotted quarter and it cannot be said that the appellant/petitioner herein was unauthorisedly occupying the said staff quarter when the fact remains that the appellant herein was occupying the said staff quarter in compliance with the specific order passed by this Court on 26th November, 1998 in Matter No. 3366 of 1990.

11. The appellant/petitioner herein is, however, bound to vacate the staff quarter after receiving the final decision from the Commissioner on 28th February, 2014.

12. The appellant/petitioner challenged the said order passed by the Commissioner of Police before this Court by filing a writ petition and the said writ petition was decided by this Court by the impugned order under appeal dated 29th April, 2014. In the aforesaid circumstances, the appellant/petitioner herein should no longer stay in the staff quarter as the Commissioner has already rejected the claim of the petitioner for correction of the date of birth.

13. The appellant/petitioner herein has also challenged the validity and/or the legality of the order passed by the Commissioner of Police.

14. We are, however, of the opinion that the Commissioner of Police has rightly rejected the claim of the appellant/petitioner for correction of his date of birth at the fag end of the service career.

15. Mr. Sadhan Roy Chowdhury, learned Advocate representing the State-respondents, however, submits that the appellant/petitioner should pay rent/occupation charges even at the low rate.

16. We have already observed that the appellant/petitioner herein had been occupying the staff-quarter pursuant to the order passed by this Court on 26th November, 1991 in Matter No. 3366 of 1990. By the aforesaid order, this Court specifically permitted the appellant/petitioner herein to stay in the staff quarter allotted to him till the final decision is taken by the Commissioner of Police and no direction was issued by this Court for payment of any rent or occupation charges. Furthermore, the appellant/petitioner herein could vacate the staff quarter earlier if the entire dues towards the retiral benefits were paid by the authorities after deciding the claim of the said appellant in compliance with the earlier order passed by this Court.

17. The appellant/petitioner herein could not find out a suitable accommodation for his retired life earlier because of non-availability of the retiral dues and for that the appellant/petitioner will have to suffer for the rest of his life. The respondent authorities are responsible for the aforesaid future sufferings of the appellant/petitioner. The appellant/petitioner will have to suffer in future because of the unusual delay of long 25 years on the part of the Commissioner of Police to comply with the direction passed by this Court. The aforesaid sufferings of the appellant/petitioner in the future retired life cannot be ignored by this Court under any circumstances.

18. The fact that the appellant stayed in the quarter for the period in question in view of the order passed by this Court on 26th November, 1991 without payment of rent, as there was no direction to that effect, is balanced by the fact that he has been denied retiral benefit till date. Therefore, equity has been done between the parties.

19. For the aforementioned reasons, we are unable to affirm the decision of the learned Single Judge and we set aside the impugned order under appeal with a direction upon the appellant/petitioner to vacate the staff quarter within a week from date positively. The respondent authorities are also directed to release all admissible pensionary benefits of the appellant without any further delay but positively on or before 30th June, 2014 subject to the condition that the appellant/petitioner herein will comply with all the formalities within two weeks from date positively.

20. With the aforesaid directions, we dispose of both the application and the appeal upon treating the said appeal as on day''s list. There will, however, be no order as to costs.

Urgent certified photocopies of this order be made available to the parties, if applied for, upon compliance with all requisite formalities.