

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 226 of 2017

Mr. Thoiba Kabui Phaomei, aged about 57 years, S/o (L) A.K.
Phaomei, resident of Majorkhul, Imphal West District, Manipur.

..... ***Petitioner/s***

- Versus -

1. The Punjab National Bank, through its Chairman-cum-Managing Director, 7-Bhikaji Cama Place, New Delhi-66.
2. The Circle Head/Zonal Manager and Appellate Authority, Zonal Office, 3rd Floor, AG tower 125/1 Part Street, Kolkata-700017.
3. The Chief Manager and Disciplinary Authority, Punjab National Bank, Circle Office, G.S. Road, Bhanagarh, Guwahati-5 (Assam).

.... ***Respondent/s***

With WP(C) No. 227 of 2017

Shri H. Khupzathang, aged about 52 years, S/o Taulkhothang,
resident of Deulaland, Churachandpur District, Manipur.

..... ***Petitioner/s***

- Versus -

1. The Punjab National Bank, through its Chairman-cum-Managing Director, 7-Bhikaji Cama Place, New Delhi-66.
2. The Circle Head/Zonal Manager and Appellate Authority, Zonal Office, 3rd Floor, AG tower 125/1 Part Street, Kolkata-700017.
3. The Chief Manager and Disciplinary Authority, Punjab National Bank, Circle Office, G.S. Road, Bhanagarh, Guwahati-5 (Assam).

.... ***Respondent/s***

With WP(C) No. 228 of 2017

Shri Rosanglura Sanga, aged about 55 years, S/o Aithanglian,
resident of Airport Road Changangei Uchekon, Imphal West,
District, Manipur.

..... ***Petitioner/s***

- Versus -

1. The Punjab National Bank, through its Chairman-cum-Managing Director, 7-Bhikaji Cama Place, New Delhi-66.
2. The Circle Head/Zonal Manager and Appellate Authority, Zonal Office, 3rd Floor, AG tower 125/1 Part Street, Kolkata-700017.
3. The Chief Manager and Disciplinary Authority, Punjab National Bank, Circle Office, G.S. Road, Bhanagarh, Guwahati-5 (Assam).

.... ***Respondent/s***

With WP(C) No. 229 of 2017

Mrs. Mary Besa Norkhow, aged about 56 years, W/o Moses
Athiko, resident of Sangakpham Paomei Colony, Imphal West
District, Manipur.

..... ***Petitioner/s***

- Versus -

1. The Punjab National Bank, through its Chairman-cum-Managing Director, 7-Bhikaji Cama Place, New Delhi-66.
2. The Circle Head/Zonal Manager and Appellate Authority, Zonal Office, 3rd Floor, AG tower 125/1 Part Street, Kolkata-700017.
3. The Chief Manager and Disciplinary Authority, Punjab National Bank, Circle Office, G.S. Road, Bhanagarh, Guwahati-5 (Assam).

.... ***Respondent/s***

BEFORE

HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the petitioner/s : Mr. Th. Mahira, Advocate
Mr. W. Kanta, Advocate
For the respondent/s : Mr. A. Deni Sharma, Advocate
Date of hearing : 18.09.2019
Date of Judgment & Order : 24-10-2019

JUDGMENT & ORDER
(CAV)

[1] These writ petitions have been filed by the petitioners to quash the order dated 09.06.2015 issued by respondent No.3 party to the extent of invoking the principle of “no work no pay”, which was confirmed by the appellate authority vide orders dated 16.01.2017 and 25.01.2017 respectively and to consequently direct the respondents to pay subsistence allowances to the petitioners for the period of suspension.

[2] Since the issue involved in these writ petitions is one and the same, all the writ petitions were taken up together and disposed of by this common order.

[3] The case of the petitioners is that earlier they were imposed penalty of removal from service with superannuation benefits, without disqualifying from future employment. The said orders were challenged

by the petitioners in WP(C) No. 447 of 2009 and WP(C) No. 207 to 209 of 2012 respectively and by separate order dated 26.11.2014, the Division Bench of this Court set aside the orders dated 27.06.2009 and 16.05.2011 and directed that the petitioners shall be deemed to be under suspension with effect from 27.06.2009 and 16.05.2011 till passing of fresh order of penalty, which period will be dealt with by the appellate authority as regards entitlement in accordance with the relevant service rules for which the disciplinary authority may also invoke the principle of “no work no pay”.

[4] Pursuant to the orders passed in WP(C) No. 447 of 2009 and WP(C) No. 207 to 209 of 2012, dated 26.11.2014, the respondent authorities issued an order dated 09.06.2015 reinstating the petitioners into service and the order of reinstatement states that the petitioners will be treated to be under suspension since 27.06.2009 and 27.05.2011 respectively till the date of issue of the order and the period of suspension will be considered on the principle of “no work no pay” and hence, will not be entitled to any pay for that period. On 08.07.2015, the petitioners have submitted representations to the respondent Bank for subsistence allowance during their cessation of service period under which they have been treated to be under suspension.

[5] Since the respondent Bank has not paid the subsistence allowance, the petitioners have approached this Court by filing WP(C) Nos.60 to 63 of 2016. By separate orders dated 20.10.2016, learned Single Judge of this Court directed the appellate authority to examine the applicability of the principle of “no work no pay” as observed in WP(C) No.447 of 2009 and WP(C) No. 207 to 209 of 2012. Pursuant to the direction given in WP(C) Nos.60 to 63 of 2016, the petitioners have filed appeals before the appellate authority for reconsideration of the Bank authorities invocation of “no work no pay” principle while reinstating them in terms of the orders dated 20.10.2016. However, by the impugned orders dated 16.01.2017 and 25.01.2017 respectively, the appellate authority, rejected the appeals and confirmed the penalty imposed by the disciplinary authority dated 09.06.2015. Aggrieved by the same, the petitioners have filed these writ petitions.

[6] The respondent Bank resisted the writ petitions stating that the order dated 26.11.2014 clearly says that the disciplinary authority may also invoke the principle of “no work no pay” and as such the disciplinary authority invoked the principle of “no work no pay”. He would submit that after compulsory retirement, the petitioners were paid their retirement benefits which they enjoyed until their reinstatement. However, by an order dated 20.10.2016, the petitioners were directed to approach the

appellate authority and the appellate authority was directed to pass speaking fresh order, which was duly complied with by the respondent Bank by passing the impugned orders and there is no illegality in the impugned orders.

[7] The learned counsel for the petitioners submitted that as per Bank's own Rules, the suspended employee is entitled to one-third of pay and allowance he/she used to enjoy the suspension for three months and therefore, he/she will be entitled to half of the pay for another nine months and after twelve months, he/she will be entitled to full pay till the case is disposed of or acquitted of the charges. He would submit that while passing the impugned orders dated 09.06.2015 by the disciplinary authority and by the appellate authority dated 16.01.2017 and 25.01.2017, they have wrongly interrupted the order dated 26.11.2014 passed in WP(C) No. 447 of 2009 and WP(C) Nos. 207 to 209 of 2012. Further, the impugned orders did not follow the principles laid down by the Hon'ble Supreme Court in the case of *Shoba Ram Raturi v. Haryanan Vidyat Prasaran Nigam Limited and others*, reported in 2016 AIR (SC) 157.

[8] The learned counsel further submitted that while complying with the first directive of this Court for passing fresh order of penalty, respondent No.3 has not given an opportunity of being heard and

further, the appellate authority, the respondent No.2 herein, has also not considered the appeal in accordance with the service Rules applicable to the petitioners.

[9] Per contra, the learned counsel for the respondents submitted that the order dated 26.11.2014 passed by this Court is very clear that the disciplinary authority can invoke the principle of “no work no pay” and as per the direction of this Court, fresh order of penalty was passed by the disciplinary authority whereby the petitioners were reinstated. Further, he would submit that the petitioners who do not discharge their duty are not allowed pay and arrears at the cost of public exchequer and the disciplinary authority in the instant case has rightly invoked the principle of “no work no pay” which was in compliance with the orders of this Court.

[10] The learned counsel further submitted that after their compulsory retirement, the petitioners were paid their retirement benefits which they enjoyed until their reinstatement. He submitted that by the order dated 20.10.2016, the petitioners were directed to approach the appellate authority and the appellate authority was directed to pass fresh order which was duly complied with by the respondent officials by passing the impugned orders dated 16.01.2017 and 25.01.2017 respectively and

that the impugned orders are perfectly legal and valid and therefore, the writ petitions are liable to be dismissed.

[11] This Court considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[12] It appears that earlier the petitioners were imposed penalty of removal from service with superannuation benefits, without disqualifying from future employment. The aforesaid penalty was challenged by the petitioners by way of writ petitions being WP(C) No. 447 of 2009 and WP(C) Nos.207 to 209 of 2012. Though separate orders were passed in WP(C) No. 447 of 2009 and WP(C) Nos. 207 to 209 of 2012, the result of the writ petitions is the same. Therefore, it would be appropriate to quote the operative portion of the order passed in WP(C) No. 447 of 2009, dated 26.11.2014, which reads thus:

“8. In the result, the writ petition is allowed by interfering with the impugned order dated 27.06.2009 issued by the Disciplinary Authority to the extent indicated above and is accordingly set aside. The Disciplinary Authority is directed to pass a fresh order of penalty by keeping in mind the considerations as mentioned in Para 12(c) of the Bipartite Settlement as expeditiously as possible, against which the petitioner will have the right to prefer statutory appeal, if aggrieved with the order of the Disciplinary Authority that may be passed as directed by this Court, in accordance with the rules. Since the impugned order of penalty dated 27.06.2009 passed by the Disciplinary Authority has been

set aside, the petitioner shall be deemed to be under suspension w.e.f. 27.06.2009 till passing of the fresh order of penalty, which period will be dealt with by the authorities appropriately as regards entitlement in accordance with the relevant service rules for which the Disciplinary Authority may also invoke the principle of “no work no pay.”

[13] Pursuant to the above direction and on consideration of the matter, the respondent Bank issued an order dated 09.06.2015 reinstating the petitioners into service. The reinstatement order further states that the petitioners will be treated to be under suspension since 27.05.2011 till the date of issuance of the order and the period of suspension will be considered on the principle “no work no pay” and hence, they will not be entitled to any pay for that period.

[14] Thereafter, the petitioners have filed WP(C) Nos.60 to 63 of 2016 seeking for a direction to the respondents for payment of subsistence allowance for the period of suspension from 16.05.2011 to the date of reinstatement i.e., on 09.06.2015. By an order dated 20.10.2016, the said writ petitions were disposed of by this Court by observing as under:

“7. Be that as it may, this Court would not like to make any comment as regards the merit of the rival contentions of the parties in view of the fact that the Division Bench of this Court disposed of the said WP(C) No. 447 of 2009 making it clear that the petitioner will have the right to prefer statutory appeal, of aggrieved by the order of the Disciplinary Authority that may be passed as directed by the Division Bench of this Court in accordance with Rules. Therefore, if the petitioner is

aggrieved by the aforesaid portion of the order of the reinstating dated 09.06.2015 on the ground that the principle of “no work no pay” cannot be applied in the present case, the petitioner would be at liberty to raise the same before the appellate authority. Therefore, this Court is of the view that the petitioner has an alternative forum by way of preferring an appeal before the statutory appellate authority provided under the Rules against the aforesaid decision of the Disciplinary Authority in invoking the principle of “no work no pay.”

8. Accordingly, the present writ petition is disposed of with the direction to the petitioner to submit the statutory appeal before the appellate authority within a period of one month and the appellate authority, without taking into consideration the limitation period involved, shall consider such an appeal preferred by the petitioner and dispose of the same by issuing a speaking order within a further period of two months from the date of receipt of such an appeal filed by the petitioner.

9. It goes without saying that if the petitioner is still aggrieved by any decision that may be passed by the appellate authority, the petitioner would be at liberty to approach this Court again after exhausting any other further alternative remedy under the relevant service rules.

10. While disposing of this writ petition, this Court would like to deal with the submission made by Mr. R.K. Nokulsana, learned senior counsel for the petitioner that since the order passed by a Division Bench of this Court, this matter may be referred to a Division Bench. It is to be noted that when the matter was taken up by the Division Bench at that time, all matters relating to termination or dismissal from service were to be taken by a Division Bench of this Court. However, subsequently, an order has been issued on 06.10.2016 by the Hon'ble Chief Justice of this High Court that all matters pertaining to dismissal and termination from service etc. will henceforth be heard by a Single Bench of the Court. Thus, this Court is of the view that it may not be necessary to refer to a Division Bench. Further, what is in issue is whether the authorities had correctly invoked the principle of “no work no pay” as directed in the aforesaid order dated 26.11.2014

passed by this Court. The applicability of the aforesaid principle can be examined by the appellate authority as observed in the aforesaid order in WP(C) No. 447 of 2009, for which direction, the matter may not referred to the Division Bench as sought by the petitioner.

11. With the above observation and direction, the present writ petition stands disposed of.”

[15] Pursuant to the direction of this Court in WP(C) Nos.60 to 63 of 2016, dated 20.10.2016, the petitioners have filed statutory appeals before the appellate authority for reconsideration of invocation of “no work no pay” principle. By the impugned orders dated 16.01.2017 and 25.01.2017 respectively, the appellate authority rejected the appeals thereby confirmed the penalty dated 09.06.2015 imposed by the disciplinary authority, particularly invocation of “no work no pay” principle. At this juncture, it would be appropriate to extract the operative portion of the rejection order of the appellate authority, which reads thus:

“I have carefully gone through the records of the case comprising of charge sheet, enquiry report, order passed by the Disciplinary Authority dated 27.06.2009, Imphal High Court dated 15.12.2014, Disciplinary Authority dated 09.06.2015, Imphal High Court Order dated 28.10.2016 and other related papers. I find that High Court of Imphal has directed the petitioner to submit appeal against invocation of “no work no pay” imposed vide DA order dated 09.06.2015. His appeal and my observation are as under:

In the appeal the charged employee has stated that the Court’s order dated 20.10.2016 was wrongly interpreted by Bank’s authority and the bank while issuing the

reinstatement order dated 09.06.2015 invoked the principle of No Work No Pay during the period of cessation of service.

In view of the foregoing, I do not find any merit in the points raised by the petitioner in his appeal. I therefore concur with the view of the Disciplinary Authority and feel that no change in the DA order 09.06.2015 is required. I therefore reject the appeal and confirm the penalty imposed by the Disciplinary Authority vide order dated 09.06.2015. I order accordingly and the petitioner (H. Khupzathang) be informed.”

[16] It appears that in the case on hand, in compliance with the first directive of this Court to pass a fresh order of penalty, the disciplinary authority viz., respondent No.3 has not afforded an opportunity to the petitioners. The reason for the respondent Bank that since the petitioners have been reinstated into service with minor penalty, they have no grievance is not acceptable.

[17] In applying the principle of “no work no pay”, as per the Bank service rules, the petitioners shall be given an opportunity to submit their objection and /or written defence. In the case on hand, admittedly, no such opportunity was given to the petitioners and the disciplinary authority as well as the appellate authority have passed the impugned orders without affording an opportunity of hearing to the petitioners.

[18] The learned counsel for the petitioners submitted that in case the period between the date of suspension and the date of reinstatement is not treated as continuing service by applying the principle of “no work

no pay”, there may be interruption of service during the period and in such event, the petitioners shall be denied pensionary benefit for the said period after retirement from service. There is some force in the submission made by the learned counsel for the petitioners as in the impugned orders itself it has been clearly stated that the petitioners will not be entitled to any pay for the said period. The aforesaid impact on the service career of the petitioners shall be considered by the respondents in accordance with the service rules applicable to the petitioners. However, the respondents have failed to consider the same and have passed the impugned orders without giving an opportunity of hearing. Admittedly, since the date of suspension till the date of reinstatement, the petitioners have not been paid a single paise to maintain themselves and their family members.

[19] In Shoba Ram Raturi, supra, the Hon’ble Supreme Court held that the fault lies with the employer in not having utilized the services of the appellant therein for the period from 01.01.2013 to 31.12.2015 and the order denying him wages for the aforesaid period on the plea of principle of “no work no pay” is not proper.

[20] At this juncture, by relying upon the judgment of the Hon’ble Supreme Court in the case of Rajasthan State Road Transport v. Phool Chand (dead) through LRs (Civil Appeal No.1756 of 2010, decided on

20.09.2018), the learned counsel for the respondents submitted that back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal order.

[22] In Rajasthan State Road Transport, supra, the Hon'ble Supreme Court held:

"11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service."

[22] In Rajasthan State Road Transport, supra, the Hon'ble Supreme Court has not totally declined to award back wages. Taking note of the factual aspect of the case, it has awarded 50% of the total back wages to the legal heirs of the deceased workman-Phool Chand. In the facts and circumstances of the case on hand, the decision in Rajasthan State Road Transport will have no application to the case of the respondents.

[23] As stated supra, while setting aside the order of penalty imposed by the disciplinary authority in an earlier occasion in WP(C) No. 447 of 2009 and WP(C) No. 207 to 209 of 2012, the Hon'ble Division Bench of this Court directed that the petitioners shall be deemed to be under the

suspension with effect from 27.06.2009 and 16.05.2011 respectively till passing of fresh order of penalty. As against the said order of the Division Bench of this Court, the respondents have not preferred any appeal and thus, the said order attained finality. Subsequently, when the petitioners have filed WP(C) Nos.60 to 63 of 2016, seeking subsistence allowance for the period from suspension till the date of reinstatement, the learned Single Judge of this Court directed the petitioners to prefer an appeal before the appellate authority provided under the Rules against the decision of the disciplinary authority in invoking the principle of “no work no pay”. However, in the appeals preferred by the petitioners, the appellate authority has mechanically passed the orders dated 16.01.2017 and 25.01.2017 respectively that too without affording an opportunity of hearing to the petitioners.

[24] It is pertinent to mention that despite the direction of the Hon’ble Division Bench of this Court that the petitioners shall be deemed to be under suspension with effect from the date of suspension till passing of the fresh order of penalty, the appellate authority, without considering the factual matrix of the matter, has passed the impugned orders dated 16.01.2017 and 25.01.2017 rejecting the appeals of the petitioners, which in my view is unsustainable. This Court is of the opinion that the fault lies with the respondent Bank in not utilizing the services of the

petitioners for the said period. Had the petitioners been allowed to continue in service, they would have readily discharged their duties. Therefore, this Court is of the view that the petitioners are entitled to get subsistence allowance for the period from the date of original penalty i.e., 27.06.2009 and 16.05.2011 respectively till the date of passing fresh order of penalty.

[25] For the foregoing discussions, part of the impugned order dated 09.06.2015 to the extent of invoking the principle of “no work no pay” while reinstating the petitioners in service confirmed by the appellate authority vide order dated 16.01.2017 and 25.01.2017 respectively are liable to be set aside and the petitioners are entitled to get subsistence allowance as prayed for by them in these writ petitions.

[26] In the result,

- (i) The writ petition is allowed and the impugned order dated 09.06.2015 issued by respondent No.3 to the extent of invoking the principle of “no work no pay” while reinstating the petitioners in service and confirmed by the appellate authority in its orders dated 16.01.2017 and 25.01.2017 respectively are set aside.

- (ii) The respondents are directed to pay subsistence allowance to the petitioners for the period of suspension as mentioned in the writ petitions.
- (iii) The respondents are directed to pay the subsistence allowance to the petitioners as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.
- (iv) No costs.

JUDGE

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