292 **28.04.2023**

Ct. No. 04

Ab

WPCRC 10273 of 2006
With
IA No. CAN 1 of 2006 (Old No. CAN 8788 of 2006)
IA No. CAN 3 of 2020 (Old No. CAN 493 of 2020)

Basudev Roy
Vs.
Dhaleswar Konar and others.

Mr. Kushal Paul.
... for the applicant.

It appears from the record that CAN 1 of 2006 (Old No. CAN 8788 of 2006), which was filed in a contempt application, cannot survive upon the disposal of the contempt application on 29th April 2016.

The earlier Division Bench on the said date dropped the contempt proceeding upon discharging the Rule with categorical direction that the petitioner's service will be treated as continuous with effect from 1st January 2006 for the purpose of fixing his pay and allowance as well as pension and other retiral benefits. It was further clarified that the petitioner shall not be entitled to any amount as salary from 1st January 2006 till he joined service on 25th April 2016. It was further observed that in the event of non-compliance of the directions passed in the contempt application, the contempt application would be automatically revived.

Since the main contempt application was disposed of by the earlier Division Bench, CAN 1 of 2006 (Old No. CAN 8788 of 2006) cannot remain alive and, therefore, is deemed to have been disposed of on the said date.

So far as the CAN 3 of 2020 (Old No. CAN 493 of 2020) is concerned, the same has been taken out seeking modification of an order dated 29th April 2016 passed in the contempt application.

Learned Advocate for the applicant submits that on

the last occasion, as per the direction passed by this Court, the learned Advocate representing the alleged contemnors was approached, who showed his inability to appear on the said date. According to him, it was expected that the said learned Advocate would appear today, but there is no representation on behalf of the alleged contemnors.

It is stated in the instant petition that subsequent to the order dated 29th April 2016, it transpires that the person, who stand on the same pedestal, has been extended the notional benefits from 2002 and, therefore, the order dated 29th April 2016 may be modified to the extent that the service of the applicant should be treated as continuous with effect from the said date and not from 1st January 2006.

We had an occasion to peruse the order dated 29th April 2016 passed by the earlier Division Bench while disposing of the contempt application, wherefrom it appears that a suggestion was given by the learned Advocate for the applicant that the continuous service should be counted from 2006 onwards and not from an anterior date, as the applicant did not render any service. On the basis of the aforesaid submission, the earlier Division Bench records that the same being fair and, therefore, passed a direction in the following:

> "However, we direct that the Petitioner's serice will be treated as continuous w.e.f. 1st January 2006 for the purpose of fixing his pay and allowances as well as pension and other retiral benefits. We make it clear that the Petitioner will not be entitled to any amount as salary from 1st January, 2006 till he joined service on 25th April, 2016.
>
> It is made clear that if both these directions are not complied by the Respondents/Contemnors within four weeks from today, the contempt petition will revive."

The moment the applicant has taken a stand before the Court and the order was passed taking into consideration such stand and extended the benefits as claimed by the applicant, it is not open to the applicant to take a rebound and claim additional benefits. Even the tenet of the order dated 29th April 2016 is explicit to the sense that the applicant was aware that a person, who is working today in the organization, stands at par with the applicant, which obviously led to a presumption that the service of the said person reckoned prior to the date as suggested by the applicant.

The moment firm stand has been taken by the applicant that his continuous service should be counted from 2006, it does not invite any modification taking a different route.

The application being CAN 3 of 2020 (Old No. CAN 493 of 2020) is dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)