

WPA 8391 of 2016
With
IA No. CAN 2/2019 (Old No. CAN 2981 of 2019)

Mantu Kumar Pradhan
Vs.
The State of West Bengal & Ors.

Mrs. Rita Patra

..for the Petitioner

Mr. Koushik Chatterjee

Mr. Nilanjan Adhikari

..for the Respondent Nos. 4 & 5

Affidavit-of-serviced filed in Court today be taken on record.

This matter has come up in the list for consideration of the two restoration application being CAN 4020 of 2018 and CAN 2981 of 2019 for recall of orders dated 8th June, 2018 and 1st October, 2018 passed by a coordinate Bench. While considering the recalling applications, this Court decides to hear the petitioner on merit of the writ petition in order to find out whether at all writ petitioner is entitled to get any relief if these two restoration application are allowed by this Court. Petitioner is provided opportunity to argue in support of the prayer couched in the writ petition. The matter was first taken up on 23rd November, 2021 when petitioner prayed for adjournment in order to come prepared on the merit of the writ petition. Today, the

writ petition is heard on merit along with the said two restoration applications.

This Court first opts to consider the merit of the writ petition prior to deciding the said two restoration applications.

Mrs. Rita Patra, learned Advocate, appears on behalf of the writ petitioner and submits that the writ petitioner was appointed on 9th January, 1985 under Contai Municipality, District- Purba Medinipur, in the post of clerk and he retired on 31st August, 2010. The petitioner's grievance is that in spite of retirement petitioner was not paid retiral dues including gratuity. This Court has examined the entitlement of the writ petitioner to get retiral dues including gratuity and in such quest has made an attempt to find out the initial appointment letter of the writ petitioner whereby he was alleged to have been appointed in the post of clerk. No appointment letter has been annexed in the writ petition. However, during course of hearing learned Advocate representing the petitioner hands up an identity card, which is said to have been issued in favour of the writ petitioner by the Contai Municipality. From perusal of the identity card, it does not appear that the petitioner was appointed in a permanent vacancy of clerk in Contai Municipality. Apart from this, the petitioner has tried to impress upon this Court upon drawing attention to a list annexed to the writ petition at page 23. Placing reliance upon the said list containing

name of some candidates, the petitioner's name is appearing at serial no. 12, it has been argued that it is a gradation list and petitioner's name was placed in said gradation list. Therefore, he is entitled to get the pensionary benefits. In addition thereto, reliance has also been placed on an order dated 10th March, 1996 issued by the Secretary, Government of West Bengal, Department of Municipal Affairs, whereby provision has been made for absorption of employees who were having requisite qualification and appointed within a particular cut off date. This Court has asked the writ petitioner whether in pursuance to such order dated 10th March, 1996, the petitioner was absorbed in any permanent vacancy. This Court does not get any satisfactory answer.

This Court has heard the petitioner and also examined the materials on record. It does not appear that the petitioner was appointed in permanent vacancy of clerk of Contai Municipality. If the petitioner was not appointed on substantive basis, the question of releasing retiral dues of the petitioner may not arise.

This Court also considers the two restoration applications being CAN 4020 of 2018 and CAN 2981 of 2019 which were filed respectively. It also appears from the pleadings made in those two restoration applications that the writ petition was dismissed by a coordinate Bench on 8th June, 2018. Subsequently, restoration application being CAN 4020 of 2018 was filed praying for recall of

order dated 8th June, 2018. The said restoration application being CAN 4020 of 2018 was dismissed by the coordinate Bench vide order dated 1st October 2018. From the fact of dismissal of said two restoration applications in quick succession it goes to show that the petitioner was not vigilant enough to pursue his remedy after filing the writ petition being WP 8391 (W) of 2016.

In view of the discussion made hereinabove on the merit of the writ petition as well as on the conduct of the writ petitioner while pursuing a writ remedy, this Court is not impressed to pass order in favour of the writ petitioner. Accordingly, the restoration application being CAN 2981 of 2019 stands dismissed. Another reason for dismissing the restoration application is the finding of this Court made above on the merit of the writ petition.

The identity card of the writ petitioner as produced before this Court be taken on record.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Saugata Bhattacharyya, J.)