

DL. January 6,
17. 2021

Through Video Conference

M.A.T. 293 of 2020

Mr. Supriyo Chattopadhyay,
Mr. Suman Dey,
...for the appellants.

Mr. Diptonil Hazra,
...for the writ petitioner/respondent.

Re: CAN 2378 of 2020 (stay)
filed on February 28, 2020.

Although the matter is appearing under the heading application, by consent of the parties, the appeal itself is taken up for hearing by treating the same as on day's list.

The appeal is directed against an order passed by a learned Single Judge of this court on June 28, 2017 in connection with a writ petition filed by the writ petitioner/respondent, namely, Irina Hazra working as Craft Instructorese in Bodhi Peet (School Section).

The grievance of the writ petitioner before the learned Single Judge appears to be that although she had higher qualification in the form of diploma in advance needlework on the date of her appointment, but she was not granted higher scale of pay. The school is sponsored by the Government of West Bengal. The Mass Education Extension Directorate, Government of West Bengal, granted approval to the appointment of the writ petitioner vide Memo No. 252/ME/RH dated March 14, 2000 with effect from the date of appointment. The learned Single Judge relied upon

paragraph 16(3) of the Revision of Pay and Allowances Rules, 1990 (ROPA 1990) and paragraph 12(3) of the Revision of Pay and Allowances Rules, 1998 (ROPA 1998) issued under Memo dated February 12, 1999 and also upon a judgment of the learned Single Judge in W.P. No. 10531 (W) of 2015 in granting relief to the writ petitioner/respondent.

It is an admitted position that instead of giving several opportunities to the present appellants, the appellants neither appeared nor had filed any affidavit before the learned Single Judge. The learned Single Judge, on the basis of the materials on record, disposed of the writ petition in favour of the writ petitioner/respondent.

An application for recalling of the said order was also summarily dismissed as the learned Single Judge was of the view that the appellants were not able to make out any ground for reviewing the order impugned in the said application.

Before us Mr. Supriyo Chattopadhyay, learned advocate appearing on behalf of the appellants, candidly admits that several provisions that are applicable to the writ petitioner was not brought to the notice of the learned Single Judge. Mr. Chattopadhyay strenuously argues that service condition of the writ petitioner is not covered either by Revision of Pay and Allowances Rules, 1990 or Revision of Pay and Allowances Rules, 1998. He draws our attention to Memo No. 531-Edn(MEE) dated March 30, 1999 in support of the submissions that similar provisions are absent in Revision of Pay and Allowances, 1998 relating to the employees of institutions of specially abled students.

However, at the same time, we find that the Directorate of Mass Education Extension has accepted the verdict of the learned Single Judge in W.P. No. 10531 (W) of 2015 and has extended benefit to Nilima Dey, being the writ petitioner in W.P. 10531 (W) of 2015, who was appointed as Craft Instructress of Calcutta Deaf and Dumb School in the year 1990. The learned Single Judge observed that the case of the present writ petitioner appears to be the same as that of the writ petitioner in W.P. 10531 (W) of 2015 and granted relief to the present petitioner. In Nilima Dey's case, the present appellants also did not file any affidavit and in absence of the respondents, the matter was decided by the learned Single Judge. However, since now the appellants have been able to justify their denial of extending such right to the writ petitioner, we feel that an opportunity should be given to the appellants to contest the claim of the writ petitioner, in stead of deciding the writ petition by us, as we feel that both the parties may be deprived of one forum had it been decided by us. We set aside the order under appeal and direct the writ petition to be heard afresh upon payment of costs to the writ petitioner by the appellants assessed at Rs. 5,000/- as a condition precedent for filing the affidavit in opposition to the writ petition within two weeks from date; reply thereto, if any, within two weeks thereafter. All points are left open.

The department shall not accept the affidavit in opposition without proof of payment of costs and in the event of failure of payment of costs, as above, this order shall stand automatically recalled and the order of the learned Single Judge

shall stand revived and enforceable immediately.

Liberty is granted to the parties to mention the writ petition for early hearing before the learned Single Judge.

We make it clear that the learned Single Judge shall not be influenced in any way by the views expressed by us in this order or by the learned Single Judge and shall decide the writ petition afresh.

With the aforesaid observations, the appeal being MAT 293 of 2020 stands disposed of.

In view of disposal of the appeal, nothing remains in the connected application and the same being CAN 2378 of 2020 is also disposed of.

(Soumen Sen, J.)

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(Saugata Bhattacharyya, J.)