

22.03.2021

BP
Sl. 13

WPA 7392 of 2021

(Via Video Conference)

The Assembly of God Church
Vs.
The State of West Bengal & Ors.

Mr. Jayanta Dasgupta
Mr. Balaram Patra
Mr. Ritesh Maity
..for the petitioner.

Mr. Susanta Pal
Mr. Ananda Dulal Sarkar
..for the State.

Mr. Sourav Chatterjee
..for the respondent-union.

Affidavit of service filed in court today be kept on record.

This application has been filed challenging one reference made by the Government of West Bengal dated 1st July, 2015 wherein the first issue was as follows :-

“1. Whether the non-payment of V.D.A. to the non-school workmen of the Management with effect from 01-01-1997 & violation of Section 9A of the Industrial Disputes Act, 1947 are justified;”

Subsequently by issuing one corrigendum dated 12th February, 2021 the following has been notified:-

“Please read “April, 1998” instead of “01-01-1997” in the first and the second line of the ISSUE(S)

No.1 of the last para of this Department's order quoted above."

Learned advocate for the petitioner submits that it is prejudiced because of such corrigendum issued by the Government of West Bengal as because after six years the corrigendum has been made and the period has been changed from 1st January, 1997 to April 1998. He also raises the question that the earlier issue cannot be altered by using the corrigendum and it can only be altered if there is any printing mistake which is not the case here. The petitioner considers it as withdrawal and supersession of the earlier reference.

Learned advocate for the respondent union submits that it was an inadvertent mistake which has been corrected and at any point of time the mistake can be corrected and there is no question of prejudice of any of the parties for this corrigendum.

Learned advocate for the State supports the submission made by the respondent union and also adds that there is no limitation as to making any corrigendum to the reference.

In respect of the question of court as to how the petitioner is prejudiced by such corrigendum, learned advocate for the petitioner submits that the corrigendum is much delayed and the matter is in the argument stage and at this stage if any corrigendum is

made then they will suffer.

I do not find any justification of such objection on the ground of prejudice because it is not that by way of corrigendum, a back date has been given for which fresh facts are to be introduced, fresh evidences are to be adduced and arguments are to be made by both the parties including the fresh facts and evidences.

Learned advocate further submits that by not giving any hearing before issuing the corrigendum principles of natural justice has been violated. It is also not accepted by me in view of the judgment delivered by the Supreme Court in Asok Kumar Sonkar -vs- Union of India & Ors. reported in (2007) 4 SCC 54 wherein, inter alia, it has been held that it (principle of audi alteram partem) may not be applied unless a prejudice is shown. Here no prejudice is shown to my satisfaction. It would have been prejudicial if a date anterior to 1st January, 1998 was given by the corrigendum as in that case new facts were required to be introduced if necessary and new evidences would have to be adduced if situation so demanded and the argument would have to be made anew covering the newly introduced facts and evidences. In the present case as the period amended by corrigendum is shorter than the earlier period and within the earlier period such situation will not arise.

For the reasons as aforesaid, I do not find any merit in this application and the same is dismissed.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Abhijit Gangopadhyay, J.)

