

October 4, 2021

ARDR

(165)

WPA 13798 of 2021

Mahendra Mishra

Vs.

M/s. Gluconate Health Limited & ors.

Mr. R.K. Jaiswal,
Mr. M. K. Kundu,
Mr. N. P. Pradhan,

...for the petitioner.

Mr. Jayanta Dasgupta,
Mr. Balaram Patra,
Mr. Ritesh Maith,
Mr. Shib Sankar Roy,

...for the respondent no. 1.

Mr. Susovan Sengupta,
Mr. Manas Kumar Sadhu,

...for the State.

Affidavit of service filed by the petitioner be taken on record.

The allegation of the petitioner is that he was a regular permanent employee under the respondent no.1 and was posted in the head office of the authority. By an order dated 9th June, 1994 the authority transferred the petitioner to its factory with effect from 13th June, 1994 on existing terms and conditions of his service. The petitioner complains that after being transferred to the factory, he was deprived of his entitlements which were admissible to him right from the time he was posted in the head office. The petitioner filed a writ petition which was disposed of by a coordinate Bench of this Court on 8th July, 1997. The grievance of the petitioner as contained in the

present writ petition was also the subject matter of the earlier writ petition and the matter was decided on merits by the coordinate Bench. The said order not being complied with by the authority, the petitioner took out a contempt petition which was dismissed by the same coordinate Bench by an order dated 27th March, 1998. The petitioner thereafter approached the 1st Labour Court, Calcutta under Section 33-C(2) of the Industrial Disputes Act, 1947 for computation of the benefits that he was entitled to. By an order dated 31st October, 2017 the learned Labour Court dismissed the application of the petitioner by quoting the observations of the coordinate Bench of this Court in the judgment dated 8th July, 1997 and observed that the Hon'ble Court by order dated 27th March, 1998 had already determined the issues involved in the case before it. The petitioner thereafter approached this court in the present writ petition.

Referring to Section 33-C (2) of the Act of 1947, learned counsel for the petitioner has submitted that the Labour Court erred in holding that the Court had no jurisdiction to decide the question of entitlement. Learned counsel has referred to a decision of an Hon'ble Division Bench of this Court in FMA No. 896 of 2019 dated 19th February, 2021, wherein it has been observed by the Hon'ble Division Bench that Section 33-C(3) of the Act of 1947 empowers the

Labour Court to adjudicate upon any dues of the employer to the employees.

Refuting the submissions made on behalf of the petitioner, learned counsel for the first respondent has submitted that there has been inordinate delay in filing the present writ petition. Order impugned was passed on 31st October, 2017 and the writ petition was filed only in 2021. Learned counsel has further submitted that the question of entitlement of the employee cannot be gone into by the Labour Court under Section 33-C (2) of the Act of 1947.

I have heard the submissions made on behalf of the parties.

It is not in dispute that the entire case made out by the petitioner in the present writ petition was also the subject matter of the earlier writ petition and a coordinate Bench of this Court disposed of the said writ petition by an order dated 8th July, 1997 wherein the entire issue has been dealt with on merits. The contempt application filed by the petitioner was dismissed by the said coordinate Bench on merits. The same issue was reagitated before the learned Labour Court and the Court had no option but to refer to the judgment of the coordinate Bench and dismiss the application of the petitioner. No appeal was preferred by the petitioner against the order of the coordinate Bench of this Court.

Having considered the facts and circumstances of the case and material on record, this Court is of the view that as the subject matter of the present writ petition has already been decided on merits by a coordinate Bench of this Court earlier, this Court cannot sit in appeal over the said order.

The prayers in the present writ petition having already been dealt with, no further remedy lies in the present writ petition and the petition is liable to be dismissed.

Accordingly, WPA 13798 of 2021 be dismissed. However, there shall be no order as to costs.

Since no affidavits are invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties on usual undertakings.

(Suvra Ghosh, J.)