

11.01.2021
SL No.9
Court No.12
(gc)

**MAT 1106 of 2018
With
CAN 1 of 2018
(Old No: CAN 7543 of 2018)**

**Gokul Rasaily & Ors.
Vs.
The State of West Bengal & Ors.**

(Via Video Conference)

Mr. Amit Prakash Lahiri,
Mr. Shuvro Prakash Lahiri,
Mr. Aishwarya Rajyashree,
...for the Appellants.
Ms. Chaitali Bhattacharya,
Mr. Mrinal Kanti Ghosh,
...for the State.

The appeal and the application are taken up together and disposed of by this common order.

The order under challenge dated 4th September, 2018 is arising out of a writ petition being WP 3538 (W) of 2016 filed by the appellants seeking benefits of pension and retiral benefits from 2001 by virtue of an order passed by the learned Single Judge in WP 9500 (W) of 2001. The appellants proceed on the basis that their rights crystallized in the year 2001 by virtue of an order passed by the learned Single Judge in WP 9500 (W) of 2001 for appointment on 3rd October, 2001.

Mr. Lahiri, learned Counsel appearing on behalf of the appellants submits that by reason of the order passed in the aforesaid writ petition and having regard to the fact that they were ultimately appointed in the year 2008 after lapses of almost 8 years, they are entitled in equity if not in

law to take into consideration continuity of their services from 2001 till they were appointed in the year 2008 for the purpose of pension and retiral benefits.

We have perused the order passed by the District Inspector of Schools (S.E), Darjeeling in disposing of the claim made by the writ petitioner in connection with an earlier writ petition being WP 6768 (W) of 2012. A judicial review would lie against an order if it is palpably erroneous, arbitrary and tempted with mala fides. The considerations which weighed with the District Inspector of Schools (S.E), Darjeeling in denying such benefits or Court proceedings that ultimately got crystallized on 7th September, 2007. There was a dispute as to whether the provision of the West Bengal School Service Commission Act, 1957 would be applicable to the Hill Region, Darjeeling where ultimately the writ petitioners were appointed. Had there been a finding by the Hon'ble Division Bench in disposing of the appeal that the said provision would not apply to the Hill Region, Darjeeling then possibly the writ petitioner would have no case. Moreover, the writ petitioners would not be affected, in the event the continuity of the service from 2001 till the actual date of appointment is not considered as he would otherwise qualify for the pension and retiral benefits subject to the successful completion of their tenure. We feel that the right of the appellants crystallized after disposal of the appeal and it was only thereafter that the writ petitioners were given appointment.

On such consideration, in a judicial review, we are not minded to interfere with the order of the District Inspector of Schools (S.E), Darjeeling as well as the learned Single Judge.

Accordingly, the appeal and the application fail.

The appeal being MAT 1106 of 2018 and the application being CAN 1 of 2018 (Old No: CAN 7543 of 2018) stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)