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**02.05.
2022**

Ct. No. 04

Ab

**MAT 288 of 2022
IA No. CAN 1 of 2022**

**Shri Samar Nath Paul and others
Vs.
The State of West Bengal and others.**

With

**MAT 351 of 2022
IA No. CAN 1 of 2022**

**Pannalal Mondal
Vs.
The State of West Bengal and others.**

**Mr. Golam Mastafa,
Mr. Tara Sankar Samanta,
Mr. Samirul Sardar.**

**... for the appellants in
MAT 288 of 2022.**

**Mr. Suman Banerjee,
Mr. Siddhartha Paul.**

**... for the appellant in
MAT 351 of 2022.**

**Ms. Chaitali Bhattacharya,
Mr. Kartik Chandra Kapas**

... for the State.

Mr. Gourav Das.

... for the DPSC.

Having unsuccessful in first tier of the forum, the writ petitioners have approached the Division Bench invoking the remedy available under Clause 15 of the Letters Patent Act and squeezed the argument on awarding compensation for delayed appointment and inviting the Division Bench to pass an order in tune with the order of the Apex Court rendered in case of **State of Uttar Pradesh & Ors. vs. Ali Hussain Ansari & Anr.**, reported in **(2020) 3 Supreme Court Cases 99**.

The dispute is sought to be relatable to the

recruitment process initiated in the year 2000, which does not appear to be factually correct in view of the pleadings made in the writ petition as well as the documents produced before the Court. There were spate of litigation concerning the recruitment process in the year 2000, which were ultimately decided on 4th October 2005 directing the Council to permit the candidates to remedy the defects and also remove the obstructions that may come in their way by offering their candidatures in the selection process.

It has been initially contended that such recruitment process, which was initiated in the year 2000, in fact, was continued and the appointments were made in the year 2010. Since there was a delay and lapses on the part of the State of West Bengal in not timely recruiting and/or appointing the writ petitioners with the resultant effect of decreasing the qualifying service for the purpose of pension, the Court must issue a Mandamus directing the respondent authorities to treat the appointments from the date of participation for the purpose of qualifying service.

The Single Bench after passing such directions did not issue any Mandamus upon the authorities to continue with the selection process initiated in the year 2000 but granted remedy by directing the respondent authorities to consider all such writ petitioners in the next selection process to be held by the Council in near future. The Single Bench further directed that the age of the candidates, who are parties to the said proceeding, shall be taken as on the date of sponsoring their names.

What can be discerned from the aforesaid observations without any ambiguity that the right was created in favour of such writ petitioners to be considered in the next selection process and not intended to treat such writ petitioners to have been selected in the

selection process initiated in the year 2000. Even before us it is contended by the writ petitioners/appellants that they were considered in the selection process of 2005 and ought to have been appointed immediately thereafter but having appointed in the year 2010 after a considerable lapse of time they are entitled to compensation. In fact, the identical relief was claimed in the earlier round of litigation, which came to be disposed of by the Single Bench permitting the writ petitioners to make a representation and the concerned authority was directed to take a decision thereupon.

The respondents took a stand that since the Death-cum-Retirement Benefit Rules, 1981 does not loath any power upon the authority to condone the delay beyond six months in the qualifying service, such authority cannot exercise such power and, in fact, rejected the claim. The Single Bench by the impugned order did not find any substance in the stand of the writ petitioners and dismissed the writ petition.

Now the writ petitioners/appellants have restricted the relief to the plea of compensation and have abandoned the other claim of condonation of qualifying service. It is beyond cavil of doubt that the authorities cannot do anything unless the power is conferred by the statutory Rules or the documents applicable in this regard. The authorities cannot be permitted to travel beyond the circumference of the provisions of law. Equally the Court cannot issue Mandamus commanding the respondents to act contrary to law. The Rule does not provide the condonation beyond the permissible limit. The Rule has the statutory flavour and, therefore, in absence of any power to condone beyond the outer cap put therein, neither the authority nor the Court should allow such prayer, which runs directly in conflict with the statutory provisions.

The judgment of the Supreme Court rendered in case of **Ali Hussain Ansari & Anr. (supra)** does not appear to have any assistance to the appellants. It is no doubt true that the law declared by the Supreme Court is binding on all the sub-ordinate Courts including the High Court by virtue of Article 141 of the Constitution of India. However, the order passed in exercise of power under Article 142 of the Constitution of India does not partake the characteristic of the law having declared by the Supreme Court as such power is exercised through constitutional fiat specifically conferred upon the Supreme Court in order to render justice.

The process was initiated in the year 2006 and it was completed in the later part of the year 2009 and, in fact, the appointments were made immediately after getting the approval from the concerned authority in the year 2010. The writ petitioners/appellants had the knowledge at the time of getting the appointment to the said post that they would not fulfill the eligibility criteria enshrined under the qualifying service for pension. There was no claim having made immediately upon taking service nor any approach was made to the concerned Court in this regard. It is only after they attained superannuation or at the verge of superannuation the claim started to have been made and, therefore, we do not think that it is a fit case where the writ petitioners/appellants should be awarded compensation.

It is commonly said that there is no certainty in the life than the death. The said notion can be extended to the service jurisprudence where the certainty to attain superannuation is also inevitable and known at the time of appointment. If the writ petitioners/appellants were aware at the time of appointment that they would not be entitled to the pensionary benefit, as they could not achieve the qualifying service under the Scheme of 1981,

it is too late in a day to accept the claim, which itself is belated and aimed to resurrect the dead letter.

We, thus, do not find any infirmity in the impugned order. Both the appeals are dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)