

04.07.2022
Item No. 03
Court No.32
Avijit Mitra

MAT 346 of 2016
with
IA No. CAN 1 of 2016 (Old No.CAN 2970 of 2016)
with
IA No. CAN 2 of 2016 (Old No.CAN 2972 of 2016)

State of West Bengal & anr.
Versus
Debdulal Gayen & ors.

Mr. Susanta Pal,
Mr. Ananda Dulal Sarkar
...for the appellants

Affidavit-of-service filed by the appellants be kept on record. No one appears today on behalf of the writ petitioner/respondent no.1.

Records reveal that in connection with the present appeal, an application for condonation of delay being IA No. CAN 1 of 2016 (Old No. CAN 2970 of 2016) and one application for stay being IA No. CAN 2 of 2016 (Old No.CAN 2972 of 2016) have been preferred by the appellants.

As we have invited Mr. Pal to advance his arguments on the merits of the appeal, we condone the delay in preferring the appeal and allow the application for condonation of delay. The application being IA No. CAN 1 of 2016 (Old No. CAN 2970 of 2016) is, accordingly, disposed of.

Mr. Pal, learned advocate appearing for the appellants submits that the respondent no.1/writ petitioner preferred a writ petition being W.P. No.5552 (W) of 2015 challenging an order dated 7th October, 2013 passed by the Director of Employment, West Bengal by which his prayer for recording his name as exempted category candidate as ex-census worker of 1991 Census was turned down. The said writ petition was allowed placing reliance upon a certificate dated 15th April, 2000 issued in favour of the writ petitioner by the Chairman, Borough-XII of the Kolkata Municipal Corporation and observing *inter alia* that in terms of the memo dated 19th November, 1990, the said Chairman was the certificate issuing authority.

Mr. Pal submits that another writ petition was preferred by one and Kalyani Samanta (Mondal) and others. The said writ petition was also disposed of by the learned Single Judge placing reliance upon similar certificate issued by the Chairman, Borough-XII of the Kolkata Municipal Corporation. The said order was assailed in an appeal and the Hon'ble Division Bench by a judgment and order dated 27th April, 2016 affirmed the order of the learned Single Judge. Challenging the said order, State preferred a Civil Appeal being No.7327 of 2016 and the same was finally heard and disposed of on 1st September, 2021 by the Hon'ble Supreme Court

setting aside the order of the Hon'ble Division Bench as well as the order passed by the learned Single Judge.

Mr. Pal submits that the writ petitioner, namely, Debdulal Gayen is similarly situated with Kalyani Samanta (Mondal). The issue involved in the present appeal is no longer *res integra* and as such, the present appeal also needs to be allowed setting aside the order of the learned Single Judge dated 13th August, 2015 passed in W.P. 5552 (W) of 2015. Subsequent to the decision of the Hon'ble Supreme Court in Civil Appeal No.7327 of 2016, another appeal being MAT No.348 of 2016 (State of West Bengal & another Vs. Tulsi Dey & others) preferred by the State was also allowed placing reliance upon the judgment delivered by the Hon'ble Supreme Court.

From the order passed by the Hon'ble Supreme Court as well as the order passed by the Coordinate Bench of this Court in MAT 348 of 2016, it appears that the certificates upon which reliance was placed by the writ petitioners therein are similar to the certificate issued in favour of Debdulal Gayen, the respondent no.1 herein. Having considered the said certificates in the earlier proceedings, the Court arrived at a specific finding that the Chairman, Borough-XII of the Kolkata Municipal Corporation had no authority to issue such certificates in view of the memo dated 19th November, 1990 and the notification dated 21st August, 2002. We do not find any reason to take any different stand in the present appeal.

In view thereof, the appeal is allowed and the order passed by the learned Single Judge dated 13th August, 2015 in W.P. 5552 (W) of 2015 is set aside.

The appeal and the stay application are, accordingly, disposed of.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)