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04.05.2022
TN

WPA No.6156 of 2022

Asit Baran Guria
Vs.
The State of West Bengal and others

Mr. Jayanta Samanta,
Mr. Karunamoyee Samanta
.... for the petitioner

Mr. Pinaki Dhole,
Mr. Avishek Prasad
.... for the State

Mr. R. Pattanayak
.... for the respondent nos.3 and 4

Learned counsel for the petitioner contends that, although the petitioner is not aware specifically, there might have been a departmental proceeding initiated against the petitioner by the Co-operative Society-Bank.

However, it is contended that despite the petitioner having given a representation to the Bank with regard to the balance payment of the petitioner's retirement benefits, such representation has not yet been considered by the Bank at all.

At this juncture, learned counsel appearing for the respondent-Bank places reliance on the order

dated September 11, 2018 passed by a coordinate Bench of this court in WP 24917(W) of 2017 where the said coordinate Bench had categorically held that the question of payment of terminal benefits, if not already paid, except the petitioner's own contribution to Provident Fund, does not arise. Hence, such chapter has already been concluded in the absence of the petitioner having filed any appeal against such order.

Learned counsel appearing for the petitioner, in controverting the limited submission of learned counsel for the Bank, argues that the observation as relied on by the Bank was merely a recording of the submission by the court of counsel appearing for the Co-operative Bank in that case and, as such, cannot be construed to be a conclusive determination on the issue.

The order dated September 11, 2018, as referred to above, is set out below:

"Affidavit of service filed today be kept with the record.

The petitioner claims that since he has been acquitted in criminal proceedings filed against him for the defalcation of money of the Co-operative Societies, and hence is entitled to terminal benefits.

The learned counsel appearing on behalf of the Cooperative Bank submits that the writ petitioner was

proceeding against the Bank departmentally by the Society concerned and was dismissed from service prior to his superannuation in the year 2009. The question of payment of terminal benefits, if not already paid, except the petitioner's own contribution to Provident Fund, therefore, does not arise.

With the above observations, W.P. 24917(W) of 2017 stands disposed of.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities."

It is evident, in view of the specific usage of the expression "therefore", preceding the phrase "does not arise" in the third paragraph of the said order, that the same was an observation of the court and not a continuation of the submissions of the learned Advocate appearing for the Bank. It is apparent from the tenor of the order that the submission of counsel, as recorded by the coordinate Bench, ended with the phrase "year 2009."

The sentence, the question of payment of terminal benefits, if not already paid, except the petitioner's own contribution to Provident Fund, *therefore*, does not arise, specifically indicates that the said issue was decided by the learned Single Judge on the basis of the submissions of counsel for the parties.

As such, in the absence of any challenge, the order dated September 11, 2018 has attained finality. Therefore, the same issue cannot be reopened as the same is barred by the principle of *res judicata*.

Accordingly, WPA No.6156 of 2022 is dismissed without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)