

SL
No.40
Court
No. 11
G.S.Das

05.12.2022

FMA 2790 of 2016

Kanwal Manmohan
-Vs-
Kolkata Port Trust & Ors.

Mr. Bikash Ranjan Neogi
Ms. Soma Chakraborty
Ms. Ananya Neogi

... for the Appellants

Mr. Kaool Basu
Ms. Sujata Majumdar

... for the KoPT

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

Mr. Neogi, Learned Counsel appearing for the appellants/writ petitioner, submits that he was served with an order of Compulsory Retirement by his employer/Kolkata Port Trust (for short, KoPT) in the year 1987. The order of Compulsory Retirement pursuant to a Disciplinary Proceeding (for short, DP) was set aside by the Hon'ble Single Bench which was challenged in appeal by the KoPT.

The attention of this Court is drawn by the appellant to an interim order dated 5th of December, 1990 passed by the Appellate Court in the appeal filed by the KoPT against the order of the Hon'ble Single Bench (*supra*). The Order dated 5th of December, 1990 at page 82 of the Informal Paper Book(s) reads as follows:

“At the invitation of the Ld. Counsel for the

appellants and after hearing the Ld. Counsel for respondent No.1 Court passes the following order:-

Respondent No.1 will be regularly paid his salary and allowances but he shall not join duty till the appeal is heard and decided.

The order is passed without prejudice to the rights and contentions of the parties.

The application is disposed of in terms of the foregoing order.”

The further attention of this Court is drawn to the final disposal of the said appeal *vide* the Order of the Hon'ble Division Bench dated 15th of December, 1997. By the said Judgment of the Hon'ble Appellate Court, the appeal of the present appellant stood dismissed and thereby restoring the order of Compulsory Retirement passed by the KoPT to be effective from the year 1987.

It is relevant to mention here that after dismissal of the writ petition one Special Leave Petition was filed by the appellant against the Judgement and Order of the Hon'ble Division Bench dated 15th of December, 1997 (*supra*), which also stood dismissed.

It is submitted by Mr. Neogi, Learned Counsel for the appellant, that the appellant is entitled to his arrears of salary and other benefits for the period

during which he was allowed to serve by the interim order of the Hon'ble Division Bench dated 5th of December, 1990 (*supra*).

The appellant submits that he served with the KoPT under the interim order of the Hon'ble Division Bench (*supra*) dated 5th of December, 1990 between 1987 and 1993 and therefore since such service was under the order of Court, he is entitled to be paid back his salaries for the period of such service.

Mr. Bose, Learned Counsel appearing for the KoPT, further draws the attention of this Court to the specific language of the interim order dated 5th of December, 1990. It is submitted that such interim order was passed without prejudice to the rights and contentions of the parties.

Learned counsel for the KoPT takes the stand that therefore the appellant served in the position as directed by the interim order of 5th of December, 1990 subject to the rider that the parties shall abide by the final position of the appeal *qua* the order of Compulsory Retirement of 1987, as challenged therein.

Mr. Bose submits that with the Order of Compulsory Retirement having been affirmed by the Hon'ble Appellate Court by the Judgement and Order dated 15th of December, 1997, the rights and contentions of the parties as recorded by the interim order stood finally determined.

Hence, the employer/KoPT was well within its rights to take steps for final calculation of the dues receivable by the appellant treating the date of his Compulsory Retirement to be of the year 1987. Moreover, when nothing remains to be further adjudicated on the issue upon the dismissal of the SLP by the Hon'ble Apex Court.

Therefore, Mr. Bose submits that the Hon'ble Single Bench by its Judgement and Order dated 20th of April, 2016 in WP No. 6591(W) of 2016, which is the order impugned in the present appeal, correctly decided that the protection as claimed by the petitioner in terms of the interim order dated 5th December, 1990 no longer held good after the final disposal of the appeal on the 15th of December, 1997 as affirmed by the Hon'ble Apex Court.

Other points in the appeal as discussed by the Hon'ble Single Bench *vide* the order impugned dated 20th of April, 2016 are however not pressed at the hearing by Mr. Neogi.

Mr. Bose submits that the second point relating to adjustment of occupation charges by the KoPT against official quarters illegally occupied by the appellant for the period 1993 to 2005, have been correctly decided in terms of the applicable Act being the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

In regard to the another aspect of the matter pertaining to pay scale claimed by the appellant corresponding to fixation of pensionary benefits, Learned Counsel for the KoPT submits that such pay scale relating to the last date of service of the appellant as fixed in terms of the Order of Compulsory Retirement in 1987, has also been correctly calculated by the KoPT.

Having heard the parties and considering the materials placed, this Court is of the view that the interim order of the Hon'ble Appellate Court dated 5th of December, 1990 was unambiguous being without prejudice to the rights and contentions of the parties *qua* the dispute which pertained to the punishment of Compulsory Retirement brought against the appellant by his employer/the KoPT. Such order having been upheld by the Hon'ble Division Bench and thereafter by the Hon'ble Apex Court, the appellant cannot revisit this issue by way of the present appeal.

This Court therefore finds no reason to disagree with the findings of the Hon'ble Single Bench *vide* the order impugned in this appeal being 20th of April, 2016 in WP 6591(W) of 2016.

For the reasons above, **FMA 2790 of 2016** stands **dismissed**.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court,

Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)