

Court No. 22
02.9.2022
(Item No. 4)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 18814 of 2022

Dr. Narugopal Mukherjee
VS
State of West Bengal & Ors.

Mr. Subir Sanyal
Mr. Sutirtha Das
Mr. Aranya Basu
..... for the petitioner
Mr. Swapan Kumar Dutta, Ld. AGP
Mr. Rajat Dutta
..... For the State

This writ petition was filed assailing the impugned decision/order dated April 22, 2022 (for short, the impugned decisions/order) passed by the fourth respondent.

Mr. Subir Sanyal, learned counsel appearing for the writ petitioner drew attention of this Court to an order dated September 29, 2022 passed by a co-ordinate Bench. The relevant observations from the said order are quoted below:

“It appears from the order dated 1st March, 2016 passed by a co-ordinate Bench of this Court in W.P. 21049 (W) of 2015 (Dr. Sanchidra Nath Paul Vs. State of West Bengal & Ors.) with several other writ petitions, the Court has been pleased to set aside the impugned memo dated 31st March, 2015.

The Court directed the concerned authority to consider the individual case of the petitioners in accordance with law.....

As it appears that the issue in question has already been set at rest by this Court in the matter of Dr. Sachindra Nath Paul (supra) accordingly, the instant writ petition is disposed of by directing the Directorate of Public Instructions, being the respondent No. 4 herein to take a decision with regard to the prayer of the petitioner in the light of the observation made by this Court in the matter of Sachindra Nath Paul (supra) at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

The said respondent shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.”

From the observations made by the co-ordinate Bench, as quoted above, it appears that, the authority was specifically directed to decide the case of the petitioner in the **light of the judgment and order dated 1st March, 2016** passed by another co-ordinate Bench in a series of writ petitions and the first of that lot was **WP 21949 (W) of 2015, Annexure P-16** to the writ petition.

Mr. Sanyal, learned counsel submits that the said judgment and order dated March 1, 2016 still holds the field and to his knowledge no appeal was preferred by the State from the same. He also submits that, no appeal was also preferred from the said order of the co-ordinate Bench dated September 29, 2021.

Drawing attention of this Court to the impugned order dated April 22, 2022, part of

Annexure P-18 to the writ petition (**at page 94 thereof**) he submits that, the said judgment and order dated March 1, 2016 was not followed at all and the same would be evident from a plain reading of the said impugned order.

In view of the above, in such circumstance, Mr. Sanyal prays for setting aside of the said impugned order dated April 22, 2022 and submitted that this Court may decide the issue itself on the basis of the said judgment and order dated March 1, 2016.

Mr. Swapan Kumar Dutta, learned senior State counsel submits that, he has received instruction from the concerned department that, appeal has been preferred from the said judgment and order dated March 1, 2016 being **MAT 388 of 2019 (State Vs. Dr. Subhas Chandra Bhat)**. Hence, he submits that, the said judgment and order dated March 1, 2016 cannot be taken into consideration until that appeal is finally decided.

Mr. Dutta further submitted that, from a plain reading of the impugned order dated April 22, 2022 it is clear that the fourth respondent while passing the said impugned order had acted according to law and in compliance of the relevant legal provisions. Hence, he submits that, the said impugned order should not be interfered with.

After considering the rival contentions of the parties and on perusal of records, it appears to this

Court that, except the submissions made from the bar on behalf of the State nothing is on record to show that the said judgment and order dated March 1, 2016 is under appeal. In any event, so long operation of the said judgment and order dated March 1, 2016 is not stayed or the same does not stand set aside the said judgment and order holds the field on the subject and nothing to the contrary can be contended in any manner whatsoever.

The order of the other co-ordinate Bench dated September 29, 2021 clearly specified that the respondent authority shall consider the case of the petitioner in the light of the said judgment and order dated March 1, 2016. Such direction also binds the respondent authorities and holds the field.

On a close scrutiny of the said impugned order dated April 22, 2022 and on a plain reading of the said judgment and order dated March 1, 2016 simultaneously, this Court is of the firm view that, the fourth respondent while passing the said impugned order dated April 22, 2022 failed to consider the ratio decided and the observations made in the said judgment and order dated March 1, 2016. Such an impugned act on the part of the fourth respondent is clearly in derogation of the direction of the said co-ordinate Bench dated September 29, 2021. Thus, the said impugned order dated April 22, 2022 cannot sustain in law.

In view of the above discussions and reasons, the said impugned order dated April 22, 2022 passed by the fourth respondent stands set aside and quashed.

However, the fourth respondent is directed to revisit the issue in strict compliance of the direction made in the said order dated September 29, 2021. This exercise shall be carried out by the fourth respondent within a period of four weeks from the date of communication of this order.

On the above terms, this writ petition being **W.P.A. 18814 of 2022** stands allowed.

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

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Aniruddha Roy, J.)