

08.03.2022
Item No. 12
Ct. No. 16
AN/RP

M.A.T 1962 of 2019
with
IA No.CAN 1 of 2020 (Old No.CAN 5 of 2020)
(application not found)
IA No.CAN 2 of 2021

State Project Director, Paschim Banga Sarva
Shiksha Mission
Vs.
Rajya Parshwa Shikshak Samanway Samity & Ors.

Mr. L.K. Gupta, Sr. Adv.
Mr. Arjun Ray Mukherjee
Ms. Debapriya Mitra

.... For the Appellant

Mr. Debabrata Saha Roy
Mr. Indranath Mitra
Mr. Pingal Bhattacharya
Mr. Subhankar Das
Mr. Neil basu

.... For Respondent

This appeal has been preferred by the fourth respondent in WP 11281 (W) of 2017 challenging the correctness of the order dated 17.09.2019 directing the Assistant Provident Commissioner to take consequential steps to implement the order dated 07.04.2016.

The appellant before us is questioning the order dated 07.04.2016 on the ground that the appellant would be entitled to the benefit of certain notifications issued under the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952, particularly the notification dated 14.05.2010. Apart from that the appellant also seeks to press into service the notification dated 17.08.2004 and other notifications. To be noted, such contention was never pleaded before the learned writ Court in the petition filed by the private respondent before us. The order and direction contained in the proceeding of Assistant Provident Commissioner dated 20.05.2010 remains intact. It is submitted by the learned counsel for the appellant that till date no notice of demand upon the appellant is served. The appellant would further contend that the benefit of those notifications should be extended to the appellant and if extended they would fall outside the purview of the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Unfortunately, such a plea cannot be considered by us in an appeal preferred by the appellant. Thus, the order passed by the learned Single Judge cannot be tested on the ground, which was never pleaded before the learned Single Judge. That apart we find earlier on 07.04.2016 the

Assistant Provident Commissioner has addressed the appellant directing compliance of the directions issued in the earlier orders and failure to comply would attract proceedings under the provisions of the Act. That apart we find there are documents to the effect that the Executive Committee of the appellant organization headed by Chief Secretary, Government of West Bengal in the annual meeting of February, 2015 approved implementation of Employees Provident Fund & Miscellaneous Provision Act, 1952 for the benefit of the employees of PBSSM. Thus, we are of the view that the impugned order and direction cannot be interfered with. If, according to the appellant, their establishment is eligible for exemption, such prayer be made before the appropriate authority and as on date exemption have not been granted and the appellant is bound to comply with the provisions of Employees Provident Fund & Miscellaneous Provision Act, 1952.

Hence, the appeal and the connected application are dismissed. The time for compliance of the order and direction issued by the learned Single Judge is extended by six weeks from today.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

