

04.10.2023
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Sl. No. 09 & 10
Ct. No. 12

FMA 1383 of 2015

with
CAN 6 of 2020(Old CAN 5028 of 2020) CAN 7 of 2020(Old CAN
5029 of 2020), CAN 8 of 2021

General Manager (Project), Eastern Coal field Limited

-Versus-

Asish Kumar Bhattacharjee & ors.

with

FMA 2699 of 2015

General Manager (Project), Eastern Coal field Limited

-Versus-

Gopal Chandra Mukhopadhyay & ors.

Mr. Bijay Kumar

.....for the appellant

Mr. Subir Sanyal

Mr. Pralay Bhattacharya

Ms. Tanusree Ghosh

.....for the respondents

The issues involved in both appeals are similar
and hence disposed of by this common order.

The contention of the first respondent/writ
petitioner in appeal No. 2699 of 2015 who filed writ
petition 27392 (w) of 2012 are as follows:

The first respondent/writ petitioner was
appointed in the appellant corporation under land
looser category. After serving in the appellant
corporation, the first respondent/writ petitioner retired
from service on 30th April. 2012 on attaining age of
superannuation. According to first respondent/writ
petitioner after retirement, the appellant did not pay
the retiral benefits and hence he filed above writ

petition claiming the retirement benefits. Before the learned Single Judge, the appellant did not produce any material for non-payment of retirement benefits.

The learned Single Judge considering the materials on record, allowed the writ petition directed the appellant to determine the retirement benefits payable to the first respondent and to pay the said amount with 6% from 1st May, 2012.

Challenging the said order, appellant filed appeal being No. FMA 2699 of 2015.

The respondent Nos. 1 to 10/writ petitioners in FMA 1383 of 2015 filed writ petition 7304 of 2001 challenging the decision of District Judge, Bankura canceling the land loser certificate. According to respondent Nos. 1 to 10 in appeal 1383 of 2015, the land loser certificate was issued only after due enquiry. The District Judge without any materials cancelled the said certificate. During enquiry of writ petition, the learned Judge directed the District Judge, Bankura to produce the materials based on which the land loser certificates were cancelled. Learned District Judge as well as State Government did not produce any materials to support the order of District Judge and to support the plea that certificates produced by respondent Nos. 1 to 10 is fake one. The learned Judge considered the materials placed before him and by the order dated 12th March, 2014 allowed the writ

petition setting aside the order of learned Judge. The learned Judge also directed the appellant to allow the respondent Nos. 1 to 10 to continue their service and to pay the salary and other benefits as regular employees.

Challenging the said order, appellant filed FMA 1383 of 2015.

The appellant raised same grounds in both the appeals. The contention of the learned counsel for the appellant is that respondent nos. 1 to 10 in FMA 1383 of 2015 and first respondent in FMA 2699 of 2015 are workmen covered by provision of Industrial Disputes Act and writ petition filed by them are not maintainable. The learned counsel for the appellant submitted that the learned District Judge examined 6 government witnesses and passed the order canceling the certificate produced by the writ petitioners. The writ petitioners even though take time, they failed to produce any witnesses or material to substantiate their claim that their certificates are genuine. The District Magistrate/District Collector after due enquiry held that Pattas produced by the writ petitioners are fake one. In view of the fact that the learned District Judge considering the materials, cancelled the certificates, the writ petitions are not entitled for appointment. The learned counsel for appellant further submitted that if employment is obtained by fraudulent manner they are

not entitled for any benefits and prayed for allowing the appeal.

The learned counsel appearing for the respondents/writ petitioners made submissions in support of the order of the learned single Judge and prayed for dismissal of both appeals.

Heard learned counsel appearing for the appellant as well as respondents and perused the entire materials on record.

As far as appeal No. 2699 of 2015 is concerned, the first respondent/writ petitioner on being appointed under land loser category retired from service on 30th April, 2012 after rendering service in the appellant corporation. During his service period, the appellant has not cancelled the appointment based on the order of the learned District Judge. Similarly, the ground now taken by the appellant that first respondent/writ petitioner in WPA 27393 of 2012 is not a land loser but he is only a nominee of land loser cannot be accepted after retirement of the first respondent. It is also seen from the materials, the Division Bench of this Court ordered appointment of first respondent. According to appellant, the same was challenged before the Hon'ble Apex Court by filing SLP but appellant could not produce any materials with regard to order passed by the Hon'ble Apex Court. In as much as the first respondent has worked with appellant corporation

and retired from service on 30th April, 2012 on attaining age of superannuation, he is entitled to all the eligible retirement benefits as per the rules of the appellant.

As far as the appeal No. 1383 of 2015 is concerned, the writ petition filed by respondent Nos. 1 to 10 challenging the order of learned District Judge, canceling the land loser certificate. From the order of the learned Judge, it is seen even though sufficient time is given to the District Judge as well as to the counsel for the State to produce the materials based on which the District Judge cancel the land loser certificates of respondent Nos. 1 to 10 and to support the plea taken by the State that land loser certificate produced by respondent Nos. 1 to 10 are fake, no material has been placed before the learned Single Judge. In such circumstances, the learned single Judge considered the materials in proper perspective and on the failure on the part of the authorities to produce the materials to substantiate the order of the District Judge has rightly allowed both the writ petitions. There is no error in the reasoning of the learned Single Judge warranting interference by this Court.

In view of the above, both the appeals are dismissed without any order as to costs.

There shall be no order as to costs.

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

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)