

06 16.10.2023

Ct-08

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FMA 1856 of 2016
with
I.A No. CAN 1 of 2016(Old CAN No. 1139 of 2016)

Biswanath Biswas & Ors.
Vs.
State of West Bengal & Ors.

1. The appellants are not represented nor any accommodation is prayed for on behalf of the appellant.

2. The appeal had appeared in the warning list of cases on and from 19th September, 2023 with a clear indication that the said matter shall be transferred to the Regular Bench on 6.10.2023. The appeal was appeared on 6.10.2023 and is again listed today. All the parties have sufficient notice about the listing of the matter before the Regular Bench on and from 6th October, 2023.

3. The appeal was filed on 13.01.2016. The record shows that no attempt has been made to move this appeal after it was filed. No step has been taken to serve notice and prepare paper books. It clearly shows that the appellants are not interested to proceed with the appeal.

4. The appeal is arising out of an order dated 3rd December, 2015 in which the writ petitioners had prayed for notional benefits from the date of commencement of their service on and from 17th

September, 1987 when the learned Single Judge allowed the writ petition.

5. The contention of the writ petitioners was that their first writ petition was disposed of by the judgment and order dated 17th September, 1987 requiring the authorities to give them appointment. The Nadia District Primary School Council preferred an appeal and the same was disposed of by a judgment and order dated 14th February, 1989. A contempt application was filed, which was disposed of on 30th June, 1989. Thereafter the appointment letters were issued on 5th July, 1989. Accordingly, they submitted that they should be considered to have been appointed from the date of the judgment of the learned Single Judge being 17th September, 1987. The writ petitioners also relied upon an unreported judgment of the Division Bench passed in FMA 1450 of 2011(Narayan Bhusan Deb & Ors. Vs. State of West Bengal) dated May 11, 2015 where the Division Bench in similar circumstance had allowed notional benefits to the writ petitioners therein.

6. The Council before the learned Single Judge contended that there was no delay in issuing the appointment letters. The appeal Court directed issuance of the appointment letters on 30th June, 1987. Ultimately, the appointment

Letters were issued on 5th July, 1989 in close proximity of the Division Bench direction. In any event, the appointment letters speak that the appointments were given with effect from 1st July, 1989 in terms of the Division Bench order.

7. Learned Single Judge from the materials on record found that *the authorities were directed to give the writ petitioners appointment with effect from July 1, 1989 in accordance with law complying with the direction contained in the judgment and order of the Division Bench dated February 14, 1989. The authorities have issued appointment letters in close proximity thereto being on July 5, 1989. More importantly, the authorities have treated the writ petitioners to be in employment with effect from July 1, 1989 in terms of the Division Bench order dated February 14, 1989 and June 30, 1989.*

8. Thereafter it was further held that *the parties are governed by the Division Bench order dated February 14, 1989 and June 30, 1989. The authorities have done so. Therefore, the writ petitioners are not entitled to seek any date prior to July 1, 1989 as the date of commencement of appointment notional or otherwise. Consequently, the contention on behalf of the writ petitioners*

that the date of appointment should be of the Single Bench judgment and order dated September 17, 1987 cannot be accepted.

As rightly pointed out by the Council authorities, the facts scenario in Narayan Bhusan Dev (supra) were different. In Narayan Bhusan Dev the Court did not specify the commencement of the service of the writ petitioners therein in the earlier record of litigation. In such context, the Division Bench had directed grant of notional benefits from a particular date. In the present case the Division Bench has specified commencement of the date of service of the writ petitioners. Consequently, the grant of any date other than that prescribed by the Division Bench is not permissible.

There is one more aspect I need to allude to in this case. The alleged cause of action of the writ petitioners, to my mind occurred in July 5, 1989 when they had received the letters of appointments specifying commencement of their service with effect from July 1, 1989. The present writ petition has been filed in 2015. There is no explanation in the writ petition as to the delay in filing the writ petition. On this score alone, the writ petition is not maintainable.”

9. In view of the aforesaid, we do not find any reason to interfere with the order passed by the learned Single Judge.

10. In view of the above, the appeal is accordingly dismissed along with the connected application.

(Uday Kumar,J.)

(Soumen Sen, J.)

