

DL-22

12.06.2023
Court No.5
(AD)

WP.ST 31 of 2015

**Sri Subal Chandra Paul
Vs.
The State of West Bengal & Ors.**

*Mr. Atanu Biswas
Mr. Bikram Basak*

... for the petitioner.

*Mr. Tapan Kumar Mukherjee, Ld. Sr. Advocate
Mr. Pinaki Dhole
Mr. Avishek Prasad*

... for the State.

The writ petition is directed against an order dated November 14, 2014 passed by the West Bengal Administrative Tribunal in O.A. 1173 of 2001.

By the impugned order, learned Tribunal directed as follows:

“17. We, therefore, grant liberty to the petitioner to apply for leave due and admissible within a period of one month from the date of delivery of this judgment. We direct the State respondents, particularly respondent no.2 to sanction leave due and admissible to the petitioner if applied for by him within the stipulated period and pay admissible leave salary within three months from the date of receipt of the leave applications. The period of absence not covered by leave shall be treated as dies non. His retirement benefits shall be sanctioned on this basis within three months thereafter. We also make it clear

that if no leave application is made by the petitioner within the stipulated period, the respondents will be at liberty to treat the entire period of absence as dies non and sanction his retirement benefits accordingly.”

Learned Advocate appearing for the writ petitioner submits that, the writ petitioner was never released from his earlier posting. He contends that, the order of transfer was challenged before the High Court where an order of *status quo* was passed. However, subsequently, the writ petition was dismissed for default at a point of time when the writ petitioner was already superannuated. He submits that, he should be treated in service till the date of the dismissal of the writ petition.

State is represented.

We find from the record that, the writ petitioner was transferred by a memo dated July 10 1997. The writ petitioner filed a writ petition challenging that order of transfer. An order of *status quo* was initially passed by the High Court. The writ petition was dismissed for default in 2008. The writ petitioner superannuated on May 31, 2009.

The order of *status quo* passed by the High Court lost its effect on the dismissal of the writ petition.

The writ petitioner did not join the new post in terms of the transfer order. The transfer order remains valid in the eye of law.

In such circumstances, the learned Tribunal allowed the writ petitioner liberty to apply for leave due and

admissible. The authorities were directed to sanction leave due and admissible to the writ petitioner if applied for and pay admissible leave salary within three months from the date of receipt of the leave applications. The period of absence not covered by the leave was directed to be treated as dies non. Retirement benefits were directed to be sanctioned on such basis within three months. The learned Tribunal made it clear that if no application was made by the writ petitioner within the stipulated period, the authorities were at liberty to treat the entire period as dies non and sanction his retirement benefits accordingly.

Since the writ petitioner did not join his transferred post in terms of the order of transfer and since the order of transfer remains valid, we do not find any material irregularity in the directions issued by the learned Tribunal as contained in the impugned order.

In such circumstances, we find no merit in the present petition.

In the interest of justice and on the prayer of the petitioner, we extend the time to comply with the order impugned for a period of fortnight from date.

WP.ST 31 of 2015 is disposed of accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

