

11.08.2023
rpan/05

WPCT 31 of 2023

Union of India & Others
– Versus –
Buddhadeb Mukhopadhyay & Others

Mr. S. N. Dutta,
Mr. Rajib Kumar Acharyya,
Mr. Saptarshi Chakraborty
... for the Petitioners.
Mr. Ujjal Roy,
Mr. Arpa Chakraborty
... for the Respondents.

The present writ petition has been preferred challenging an order dated 29th March, 2022 passed in an original application, being O. A. 350/00055/2017. By the said order the learned Tribunal, upon discussing the facts of the case and the judgments cited by the respective parties, directed the respondent authorities *‘to consider the case of the applicants in the light of Premachandran (supra) and Devamalya (supra) and to decide within a period of 16 weeks from the date of receipt of a copy of this order. Admissible benefits, if any, are to be disbursed to the applicants concerned within a further period of 10 weeks thereafter’*.

Mr. Dutta, learned advocate appearing for the petitioners herein/respondents in the original application, submits that the learned Tribunal erred in law in not taking into consideration the fact that the decision contained in DoPT O.M. dated 14th November,

2014 was a policy decision in which it was clearly stated that retired officials would have no right for actual promotion. The petitioners cannot be directed to act contrary to the same. The directions contained in the impugned order passed by the learned Tribunal are mutually contradictory and self-defeating and as such the impugned order is not sustainable in law. In support of such contention reliance has been placed upon a judgment delivered in the case of *Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others*, reported in (2007) 4 SCC 737.

Mr. Dutta argues that the learned Tribunal failed to evaluate the stand taken by the petitioners and though as per the records the respondents' claim does not deserve consideration afresh, the petitioners have been unnecessarily directed to embark upon a fresh exercise.

According to Mr. Dutta, the learned Tribunal erred in law in arriving at a finding that the petitioners have not performed their entrusted duties and had not demonstrated proactivity. In view of such finding, nothing is left to be reconsidered by the petitioners.

Per contra, Mr. Roy, learned advocate appearing for the applicants/respondents herein submits that it is an admitted fact that the Departmental Promotion Committee (in short, DPC) meetings could not be held for several years even though vacancies arose during

the years. Due to such laches on the part of the petitioners, the respondents cannot be made to suffer. Appreciating such argument, as advanced on behalf of the respondents and noting the proposition of law, as laid down in the judgments delivered in the cases of *P. M. Premachandran Vs. State of Kerala and Others*, reported in (2004) 1 SCC 245 and *Devamalya Basu & 9 Others Vs. Union of India & Others* (O.A. No.116 of 2003), the learned Tribunal directed the petitioners to consider the case of the respondents. Such direction neither does prejudice the petitioners in any manner nor does suffer from any infirmity warranting interference of this Court. In support of the arguments, Mr. Roy has drawn our attention to the averments made by the petitioners in the reply filed before the learned Tribunal.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

In the order impugned the learned Tribunal had *inter alia* observed that the petitioners ought to have been diligent in sending DPC proposal to the Union Public Service Commission (in short, UPSC) in resolving the procedural issues such as collection of APAR/ACRs and to reach finality on the issues well within time. Appropriate reasons were not disclosed by the petitioners towards the delay in resolving such

procedural issues and in view thereof, the learned Tribunal directed the petitioners to consider the respondents' claim in the light of the proposition of law laid down in judgments delivered in the cases of *P. M. Premachandran* (supra) and *Devamalya Basu* (supra).

In our opinion, the argument of Mr. Dutta that in view of the observations made in the impugned order nothing is left to be reconsidered by the petitioners is misconceived. The learned Tribunal upon disclosing the reasons had exercised discretion in favour of the respondents and directed the petitioners to consider the case of the respondents. Such directions, in our opinion, are neither unreasonable nor impulsive. The order impugned does not suffer from any patent error or any manifest injustice warranting interference of this Court.

In view thereof, the writ petition, being WPCT 31 of 2023 is dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)