

MAT 1091 of 2023

(South Bengal State Transport Corporation & Anr. Vs.
Goutam Kanti Ghosh)

With

IA No. CAN 1 of 2023

With

IA No. CAN 2 of 2023

**Mr. Ayan Banerjee
Ms. Debasree Dhamali
Ms. Riya Ghosh**

..... For the Appellants.

**Mr. M.K. Kundu
Ms. Saheli Mukherjee**

..... For the Respondent.

Affidavit-of-service filed by the appellants be kept on record.

As we have invited the learned advocates to advance their arguments on merits, the delay in preferring the appeal is condoned and the application being CAN 2/2023 is disposed of.

The present appeal has been preferred challenging the judgment dated 28th March, 2023 passed by the learned Single Judge in the writ petition being WPA 4217/2013.

Records reveal that the writ petitioner/respondent herein preferred the writ petition *inter alia* praying for setting aside an order of suspension dated 22nd November, 2012, a charge sheet dated 6th December, 2012 and for disbursement of all consequential service benefits. In the said writ petition initially an interim order was passed on 26th February. 2013 directing the

appellants to furnish the documents, as prayed for by the respondent *vide* letters dated 19th December, 2012, 2nd January, 2013 and 4th February, 2013. It was also directed that without furnishing the documents, as sought for, the appellants shall not proceed with the charge sheet and that in the event the documents are furnished, the appellants would be free to proceed with the charge sheet but shall not take any final decision thereon without the leave of the Court. Subsequently, by an order dated 16th April, 2018 the suspension order was revoked and thereafter the respondent attended his duties till attaining the age of his superannuation on 28th February, 2022. The appellants failed to conclude the disciplinary proceeding prior thereto and during pendency of the writ petition the appellants on their own volition made payment of the retiral dues. The respondent thereafter filed a supplementary affidavit claiming that the entirety of his dues had not been disbursed and by the order impugned in this appeal the appellant were directed to forthwith re-compute and disburse the retiral dues payable to the respondent along with all consequential benefits.

Mr. Banerjee, learned advocate appearing for the appellants submits that in spite of repeated reminders the respondent himself did not participate in the disciplinary proceeding. The allegation that the documents as sought for were not furnished to the

respondent is untrue. There was total non-cooperation on the part of the respondent and as such the proceeding could not be completed prior to his superannuation. Such facts, as argued, were glossed over by the learned Single Judge and no finding was returned on the same.

He further submits that by filing a supplementary affidavit the respondent had in fact sought to enlarge the scope of the writ petition and on the basis of the averments made in the same, the learned Single Judge erred in law in issuing directions towards recalculation of the retrial benefits, moreso when the respondent accepted the retrial dues, as disbursed.

Per contra Mr. Kundu, learned advocate appearing for the respondent submits that in spite of the interim order dated 28th February, 2013, the appellants did not furnish the documents and no steps were taken by the appellants to complete the disciplinary proceedings prior to his retirement. The appellants did not even approach the Court praying for any direction towards completion of such proceeding and the same stood lapsed after his retirement since there is no provision under the concerned regulations towards continuation of a disciplinary proceeding even after cessation of the employer-employee relationship between the appellants and the respondent.

Mr. Kundu, further submits that subsequent facts during pendency of proceeding can always be brought

on record to assist the Court to come to a logical conclusion and in the facts and circumstances of the case, the Court rightly did not relegate the respondent to file further writ petition, as the same would have protracted the litigation, moreso when the respondent had already retired. Reliance has been placed upon the judgment delivered in the case of *Ghisulal Tailor – vs – Union of India & Ors.*, reported in 2007 (4) CHN 205.

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

Indisputably the appellants failed to establish before the learned Single Judge that the representations submitted by the respondent for the documents were responded to and that for reasons attributable to the respondent, the disciplinary proceeding could not be completed prior to his retirement. The appellants also did not take any steps for vacating the interim order passed way back on 26th February, 2013. The allegation that the respondent deliberately did not participate in the disciplinary proceeding could have been brought to the notice of the Court by filing appropriate application but the appellants themselves kept the entire proceeding in abeyance and in the midst thereof, the respondent retired on 28th February, 2022 and the fact that there is no regulation which enables the appellants to

proceed with the enquiry after retirement stands admitted by the respondents.

The argument that the supplementary affidavit had in fact enlarged the scope of the writ petition was rightly discounted by the learned Single Judge since once the domestic enquiry lapses by reason of cessation of master-servant relationship, the employee is entitled to full retiral benefits on his retirement and there is no authority vested in the employer to make any deduction in the retiral dues.

The learned Single Judge upon dealing with all the factual issues had arrived at specific findings and we do not find any patent error of law in the same. The judgment also does not suffer from any jurisdictional error or any manifest injustice warranting interference of this Court in the present appeal.

Accordingly the appeal, MAT 1091 of 2023, and the connected application being CAN 1/2023 are dismissed.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(V.M. Velumani, J.)

(Tapabrata Chakraborty, J.)

