

21.04.2023

Court : 04
Item : 274
Matter : WPST
Status : ADJRND
Bench ID :266048
Transcriber: NANDY

WPST 152 of 2016
with
CAN 2 (8187) of 2019
with
CAN 3 of 2022

Prabir Kumar Ganguly
Vs.
The State of West Bengal & Ors.

Mr. Avinaba Patra, Advocate
Mr. Partha Sarathi Das, Advocate
Ms. Shanta Sarkar, Advocate

.....for the Petitioner

Mr. Tapan Kumar Mukherjee, Learned AGP
Mr. Somnath Naskar, Advocate

.....for the State

The dispute pertains to reinstatement in service after being dismissed in the disciplinary proceeding initiated against the original writ-petitioner. During the pendency of the writ-petition, the writ-petitioner died intestate on April 24, 2021. The present application being CAN 3 of 2022 has been taken out by the heirs of the original writ-petitioner seeking substitution of their names in place and stead of the writ-petitioner and also permitting to withdraw the instant writ-petition.

Though the prayer made in the instant application is innocuous yet while embarking a journey on the peripheral of the cause of action and its survival, one has to determine whether the right to sue survives upon the present applicants. The dispute relates to reinstatement in service of the original writ-petitioner and, therefore, upon the death of the writ-petitioner, the right to sue does not survive upon the heirs and legal representatives of the said deceased. The substitution can only be made if the original cause of action can be pursued at the behest of the heirs and legal representatives but the provisions relating thereto

cannot be activated when the cause is personal to the original applicant of the proceeding and diminishes on its death.

Since the original writ-petitioner has expired and the right to sue does not survive upon the present applicants, the instant writ-petition being **WPST 152 of 2016** is **dismissed** as such. All connected applications also stands disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)