

10.10.2023
SL No.43
Court No.8
(gc)

**MAT 1666 of 2023
CAN 1 of 2023
CAN 2 of 2023**

**Dinesh Kumar Samanta & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Shyamal Mukherjee,
Mr. Susanta Kr. Gangopadhyay,
...for the Appellants.
Mr. Nilotpal Chatterjee,
Mr. Sourabh Sengupta,
Mr. Satyaki Banerjee,
...for the Calcutta University.

Re: CAN 1 of 2023

1. Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation.
2. The delay of 47 days in filing the memorandum of appeal is condoned.
3. Accordingly, the application for condonation of delay is allowed and disposed of.

**Re: MAT 1666 of 2023
CAN 2 of 2023**

4. The appellants are aggrieved by the order dated 1st May, 2023. The appellants/writ petitioners claimed to be persons appointed by the canteen managers for doing different works in the canteens of the Calcutta University in different campus. Initially, they filed a writ petition along

with 43 other canteens employees. The writ petition was disposed of on 16th July, 1997 with a direction upon the State Government to take a decision in a time bound manner. The State Government, however, declined to grant any relief following the order of the learned Single Judge. This decision was challenged by filing the second writ petition being W.P. 190(W) of 2001. This writ petition was disposed of on 21st February, 2001 granting liberty upon the writ petitioners to make an application under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It appears that only 23 employees out of all the writ petitioners preferred an appeal before a Division Bench of this Court challenging the said order dated 21st February, 2001 while the remaining 22 including the present 5 writ petitioners chose not to pursue the case any further. It, thus, follows that the writ petitioners who have preferred the appeal, they have accepted the order of the learned Single Judge by which they were required to make an application under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. However, the Appeal

Court allowed the appeal and directed the State to consider the matter afresh in the light of the observation made in the said judgment. The State preferred a Special Leave Petition. During the pendency of the Special Leave Petition, the Chief Secretary of the State by an order dated 5th November, 2008 passed the following directions:-

“In view of the above facts and also in the light of the observation made by the Hon’ble Division Bench of High Court, Calcutta, in order dated 26.07.2022 I am of the view that the canteen employees of the University may be treated as the employees of the University and they may be given the status of the said University employees subject to the condition that their appointment to the post of the canteen employees shall abide by the result of the SLP which is being filed in the matter of State of W.B. & others - vs - Dwijendra Nath Singha and others.

The decision may, however, be communicated to all concerned.”

5. The said Special Leave Petition (C) 29773 of 2008 was subsequently disposed of on

March 1, 2016 with the following observations:-

“However, when this special leave petition was moved on 1.12.2008, it is apparent that the order of the Chief Secretary was not known to this Court which was dated 5.11.2008. In the circumstances, while issuing notice, order of interim stay came to be passed. Nevertheless it transpires that the respondents herein (who are now 23+2) continue to work in the canteen of the University of Calcutta- Respondent Nos. 24 & 25 herein. Inasmuch as, in his wisdom, the Chief Secretary having applied his mind to the plight of the above 25 employees, thought it fit to implement the decision of the Division Bench dated 26.7.2007 by directing the University of Calcutta to treat them as employees of the University and give the said status, in all fairness, we are convinced that the said direction of the Chief Secretary should be affirmed without giving scope for any further ambiguity. Therefore, while affirming the said decision of the Chief Secretary dated 5.11.2008, the University of Calcutta is directed to implement the said order

expeditiously, preferably within four weeks from the date of receipt of a copy of this order.

With the above observations and directions, the special leave petition stands disposed of.”

6. Ultimately, the State Government by an order dated 29th September, 2016 confirmed the status of the said canteen employees as the employees of the University of Calcutta only for those who were party to the appeal before the Division Bench of this Court and the Supreme Court. The present writ petitioners have filed a writ petition for conferment of the same benefit in 2018. The basis of the said writ petition appears to be that since the other canteen workers have been regularized by the order dated 24th September, 2016, similar benefit should be extended to the writ petitioners by the Government. The learned Single Judge has relied upon the order of the Supreme Court, which categorically stated that the 26 employees continued to work in the canteen of the University of Calcutta and the Chief Secretary has decided in their favour, disposed of the writ petition by

affirming the judgment of the Division Bench. The challenge by the present petitioners at a later date appears to be a clear afterthought and they cannot be given the benefit of the order obtained by 26 petitioners who were found to be in service at the time, when the SLP was disposed of.

7. Under such circumstances, we are not inclined to interfere with the order passed by the learned Single Judge.
8. Accordingly, the appeal and the application stand dismissed.
9. However, there shall be no order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)