

Item-7. 28-08-2023

MAT 1789 of 2011
CAN 1 of 2012 (old CAN 1176 of 2012)

sg Ct. 8

The Director of Pension, Provident Fund & Group Insurance
Versus
Siba Das Majumdar & Ors.

Mr. Rezaul Hossain, Adv.

...for the appellant

1. The department has reported that there is a delay of 92 days in filing the appeal but no application for condonation of delay has been filed. The appellant did also not remove the defect.
2. The appeal is otherwise time barred. However, we have heard the learned Counsel for the appellant and proposed to dispose of the appeal on merits.
3. This appeal is arising out of an order dated 26th July, 2011 passed by the learned Single Judge in a writ petition in which the writ petitioner has challenged the unilateral deduction of a sum of Rs.81,499/- from the amount of gratuity while preparation of the pension payment order.
4. We have carefully read the order under appeal. The dispute arose with regard to the petitioner performing his duties till the age of 65 years without any formal order of extension and was paid salary. The learned Single Judge has relied upon the decision of the Hon'ble Apex Court in *Shyam Babu Verma & Ors. vs. Union of India & Anr.* reported in (1994) 2 SCC 521 and the Special Bench decision in case of *Srimanta Kumar Mondal & Ors. vs. The State of West Bengal & Ors.* reported in 1998 (2) CHN 276 where it is

held that if the teacher is allowed to work in a school despite non-issuance of the formal letter of extension it cannot be said that they have been working illegally. Admittedly, the service of the petitioner was utilized and the amount, if any, paid in excess was not arising out of any fault or misrepresentation.

5. In view of the aforesaid, the finding of the learned Single Judge that the unilateral deduction on account of fraud from the gratuity amount is not permissible.
6. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge. The appeal and the application stand dismissed. However, there shall be no order as to costs.
7. The order of the learned Single Judge, if not complied with in the meantime, shall be complied with within a period of three weeks from date.
8. In view of the fact that the writ petitioner is not represented, the department is directed to communicate this order to the writ petitioner in course of this week and shall report compliance of this order.
9. The learned Registrar Administration (L&OM) is directed to ensure compliance of this order.

(Uday Kumar, J.)

(Soumen Sen, J.)